UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT PURSUANT
TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of report (Date of earliest event reported): July 27, 2015

Bacterin International Holdings, Inc.
(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of Incorporation)

001-34951	20-5313323
(Commission File Number)	(IRS Employer Identification No.)

600 Cruiser Lane Belgrade, Montana	59714
(Address of Principal Executive Offices)	(Zip Code)

(406) 388-0480
(Registrant's Telephone Number, Including Area Code)

(Former Name or Former Address, if Changed Since Last Report)

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

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

ITEM 1.01 Entry into a Material Definitive Agreement

Stock Purchase Agreement

On July 27, 2015, Bacterin International Holdings, Inc. ("Bacterin," the "Company" or the "Purchaser"), entered into a Stock Purchase Agreement (the "Purchase Agreement") with X-spine Systems, Inc. ("X-spine"), David L. Kirschman, M.D., the Kenneth J. Hemmelgarn, Jr. Revocable Living Trust Dated February 9, 1998, as amended, the Brian J. Hemmelgarn Revocable Living Trust Dated February 9, 1998, as amended, the Kenneth J. Hemmelgarn, Jr. Second Trust Dated March 18, 2010 and the Brian J. Hemmelgarn Second Trust Dated March 18, 2010 (the "Sellers"), pursuant to which the Sellers have agreed to sell and transfer to Purchaser, and Purchaser has agreed to acquire from the Sellers, all of the outstanding capital stock of X-spine (the "Acquisition"). As of the closing of the Acquisition, X-spine will become a wholly owned subsidiary of Bacterin.

Pursuant to the Purchase Agreement, the total consideration to be paid for the outstanding capital stock of X-spine is $90 million, subject to adjustment following the closing, upward or downward, if the actual working capital of X-spine exceeds or is less than the target working capital by $50,000 or more. If as a result of the working capital adjustment the purchase consideration is increased, Bacterin will pay additional cash to the Sellers to satisfy this obligation. The purchase consideration will consist of (i) $60 million in cash, and (ii) the issuance of Bacterin common stock. The Purchase Agreement provides that these shares be valued at $4.00 per share, which will result in the issuance of approximately 4,240,000 shares of common stock. In addition, $13 million will be paid to X-spine's lender in full satisfaction of X-spine's revolving credit facility, which will be terminated at the closing.

The Purchase Agreement contains customary representations, warranties and covenants by each of the parties. The Purchase Agreement also provides that certain of the Sellers will indemnify Bacterin for breaches of the warranties and covenants of the Sellers and X-spine, as well as certain other specified matters, subject to certain limitations set forth therein, including, among other things, limitations on the period during which Bacterin may make certain claims for indemnification and limitations on the amounts for which such Sellers may be liable. To secure the Sellers' indemnification obligations to Bacterin, $6 million of the cash consideration and all of the shares of Bacterin's common stock to be issued to the Sellers will be placed into escrow at the closing and may be used to settle indemnification claims.

The Purchase Agreement requires the delivery by certain of the Sellers and their principals of non-competition and non-solicitation agreements, pursuant to which such Sellers and principals will agree to not compete with X-spine or solicit X-spine's customers or employees for a period of three years following the closing. The Purchase Agreement further requires X-spine to deliver employment agreements executed by certain key employees, including David L. Kirschman.

Pursuant to the Purchase Agreement, David L. Kirschman, M.D., will be appointed as a member of Class II of Bacterin's board of directors as of the closing of the Acquisition.

At the closing of the Acquisition, Cockrell Group will receive a fee in the amount of $2,250,000 from the Sellers. Cockrell Group has been an investor relations consultant to Bacterin since 2013, and receives a monthly retainer fee from Bacterin.

The foregoing summary does not purport to be complete and is qualified in its entirety by reference to the full text of the Purchase Agreement, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated by reference herein.

The Purchase Agreement has been included to provide investors and stockholders with information regarding its terms. It is not intended to provide any other factual information about Bacterin or X-spine. The representations, warranties and covenants contained in the Purchase Agreement are made only for purposes of the Purchase Agreement and as of specific dates, are solely for the benefit of the parties to the Purchase Agreement, may be subject to limitations agreed upon by the contracting parties and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors are not third-party beneficiaries under the Purchase Agreement and should not rely on the representations, warranties or covenants or any descriptions thereof as a disclosure of factual information relating to the Acquisition, Bacterin, X-spine or any of Bacterin's or X-spine's respective subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Purchase Agreement, and such subsequent information may or may not be fully reflected in Bacterin's public disclosures.

The Company's press release dated July 27, 2015 announcing the entry into an agreement to acquire X-spine, a copy of which is attached as Exhibit 99.1 to this Report, is incorporated herein by reference.

Credit Agreement

Concurrently with the acquisition of X-spine, the Company's wholly owned subsidiary, Bacterin International, Inc. ("Bacterin International"), will enter into an amendment and restatement of its existing Credit Agreement (the "Existing Facility") with ROS Acquisition Offshore LP, which is referred to herein as the "New Facility." Approximately $24 million principal amount of term loans extended under the Existing Facility will remain outstanding under the New Facility, and $18 million principal amount of new term loans will be extended under the New Facility. The new term loans will be used to pay a portion of the costs associated with the Acquisition, with the balance being available for general corporate purposes.

The maturity date of the New Facility will be July 31, 2020 (the "Maturity Date").

Interest under the New Facility will be bifurcated into a "cash pay" portion and a "payment-in-kind" portion.

Until June 30, 2018 (the "First Period"), interest on loans outstanding under the New Facility will accrue at a rate equal to the sum of (a) 9% per annum, which portion of interest will be payable in cash, plus (b) additional interest ("PIK Interest") in an amount equal to the difference of (i) the sum of 14% per annum, plus the higher of (x) LIBOR and (y) 1% per annum, minus (ii) 9% per annum, which portion of interest will be payable "in kind." On or after June 30, 2018 until the New Facility is repaid in full (the "Second Period"), interest on loans outstanding under the New Facility will accrue at a rate equal to the sum of (a) 12% per annum, which portion of interest will be payable in cash, plus (b) PIK Interest in an amount equal to the difference of (i) the sum of 14% per annum, plus the higher of (x) LIBOR and (y) 1% per annum, minus (ii) 12% per annum, which portion of interest will be payable "in kind." In both the First Period and the Second Period, the portion of accrued interest constituting PIK Interest will not be payable in cash but will instead be added to the principal amount outstanding under the New Facility. However, at Bacterin International's option, it may choose to make any "payment-in-kind" interest payment in cash.

Until the third anniversary of the closing date of the New Facility, Bacterin International will not be allowed to voluntarily prepay the New Facility. Whenever loans outstanding under the New Facility are prepaid or paid, whether voluntarily, involuntarily or on the Maturity Date, a fee of 7.5% on the amount paid will be due and payable.

The New Facility will contain financial and other covenant requirements, including, but not limited to, financial covenants that require the Company to maintain revenue and liquidity at levels to be set forth in the amended and restated credit agreement and ensure that the Company's senior consolidated leverage ratio does not exceed levels to be set forth in the New Facility. The New Facility also will restrict the Company from making any payment or distribution with respect to, or purchasing, redeeming, defeasing, retiring or acquiring, the Notes (as defined below) other than payments of scheduled interest on the Notes, issuance of shares of our common stock upon conversion of the Notes, and payment of cash in lieu of fractional shares.

The loans under the New Facility are guaranteed by us and our current and future subsidiaries and are secured by substantially all of our and our current and future subsidiaries' assets. A copy of the New Facility is attached as Exhibit 10.2 to this Report and incorporated herein by reference.

ITEM 1.02 Termination of a Material Definitive Agreement

In connection with the New Facility, our royalty agreement with ROS Acquisition Offshore LP (the "Royalty Agreement") will be terminated effective July 31, 2015. A copy of the Termination of Royalty Agreement is attached as Exhibit 10.3 to this Report and incorporated herein by reference.

ITEM 7.01 Regulation FD Disclosure

A copy of the investor overview to be provided to investors in connection with the acquisition described above is attached as Exhibit 99.3 to this Report and is incorporated herein by reference.

The investor overview shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

ITEM 8.01 Other Events

Risk Factors

Bacterin has updated the risk factors contained in Item 1A of the Company's Quarterly Report on Form 10-Q for the three months ended March 31, 2015. The risk factors contained in Exhibit 99.4 hereto are incorporated herein by reference.

Securities Offering

On July 27, 2015, the Company issued a press release announcing the pricing of $65.0 million aggregate principal amount of its 6.00% convertible senior unsecured notes due 2021 (the "Notes") in a private placement offering to qualified institutional buyers, as defined in Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"). Certain private investment funds for which OrbiMed Advisors LLC, one of the Company's existing stockholders, serves as the investment manager, intend to purchase $52 million of the $65.0 million aggregate principal amount of the Notes directly from the Company in the offering. The Company has granted the investment bank acting as initial purchaser in the offering a 30-day option to purchase up to an additional $9.75 million aggregate principal amount of Notes from the Company.

The Notes will be the Company's senior, unsecured obligations and will bear interest at a rate of 6.00% per year. Following the first interest payment date, which will be on April 15, 2016, interest on the Notes will be payable semiannually in arrears on January 15 and July 15 of each year. At any time prior to the close of business on the second business day immediately preceding the maturity date, holders of the Notes may convert their Notes into shares of the Company's common stock (together with cash in lieu of fractional shares) at an initial conversion rate of 257.5163 shares per $1,000 principal amount of Notes (which represents an initial conversion price of approximately $3.88 per share), subject to adjustment.

The Company estimates that the net proceeds of the offering will be $62.8 million (or $72.2 million if the initial purchaser fully exercises its option to purchase additional Notes), after deducting the initial purchaser's discounts and commissions and estimated offering expenses payable by us. The Company intends to use the net proceeds of the offering to fund the cash portion of the purchase price for its acquisition of X-spine and for general corporate purposes.

This announcement is neither an offer to sell nor a solicitation of an offer to buy any of these securities and shall not constitute an offer, solicitation or sale in any jurisdiction in which such offer, solicitation or sale is unlawful. Any offer of the securities will be made only by means of a private offering memorandum. The offer and sale of the Notes and the shares of common stock issuable upon conversion of the Notes will not be registered under the Securities Act or any state securities laws, and, unless so registered, the Notes and such shares may not be offered or sold in the United States or to U.S. persons except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and applicable state laws.

A copy of the Company's press release announcing the offering is attached as Exhibit 99.2 to this report and is incorporated herein by reference.

Name Change

In connection with the transactions described in this Current Report, Bacterin International Holdings, Inc. will change its name to Xtant Medical Holdings, Inc., to be effective upon closing of the acquisition.

ITEM 9.01 Financial Statements and Exhibits

(a) ***Financial Statements of Businesses Acquired.***

The audited consolidated financial statements of X-spine as of December 31, 2014 and 2013 and for the years ended December 31, 2014 and 2013 and the unaudited interim condensed consolidated financial statements of X-spine as of and for the three months ended March 31, 2015 and 2014, filed as Exhibits 99.5 and 99.6 to this Report, respectively, are incorporated herein by reference.

(b) ***Pro Forma Financial Information.***

The following unaudited pro forma condensed combined financial information of Bacterin, filed as Exhibit 99.7 to this Report, is incorporated herein by reference:

(i) Introductory note;
(ii) Unaudited Pro Forma Condensed Combined Statement of Operations for the year ended December 31, 2014;
(iii) Unaudited Pro Forma Condensed Combined Statement of Operations for the three months ended March 31, 2015;
(iv) Unaudited Pro Forma Condensed Combined Balance Sheet as of March 31, 2015; and
(v) Notes to Unaudited Pro Forma Condensed Combined Financial Information.

(d) Exhibits.

10.1 Stock purchase agreement dated as of July 27, 2015 by and among Bacterin, X-spine, and the sellers named therein.

10.2 Amended and Restated Credit Agreement dated July 27, 2015 by and among Bacterin International, as the Borrower, the Lenders party thereto, and ROS Acquisition Offshore LP, as the Administrative Agent.

10.3 Termination of Royalty Agreement dated as of July 27, 2015 by and between Bacterin and ROS Acquisition Offshore LP.

10.4 Securities Purchase Agreement dated as of July 27, 2015 by and among Bacterin, ROS Acquisition Offshore LP and OrbiMed Royal Opportunities II.

10.5 Purchase Agreement dated as of July 27, 2015 by and between Bacterin and Leerink Partners LLC.

23.1 Consent of McGladrey LLP, Independent Auditors to X-spine.

23.2 Consent of Battelle Rippe Kingston LLP, Independent Auditors to X-spine.

99.1 Press Release of the Company dated July 27, 2015 announcing the entry into an agreement to acquire X-spine.

99.2 Press Release of the Company dated July 27, 2015 announcing the pricing of its offering of its 6.00% Convertible Senior Notes due 2021.

99.3 Investor Overview.

99.4 Risk Factors.

99.5 Audited consolidated financial statements of X-spine as of December 31, 2014 and 2013 and for the years ended December 31, 2014 and 2013.

99.6 Unaudited interim condensed consolidated financial statements of X-spine as of March 31, 2015 and for the three months ended March 31, 2015 and 2014.

99.7 Unaudited pro forma condensed combined financial information of the Company.

SIGNATURE

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

Dated: July 27, 2015

BACTERIN INTERNATIONAL HOLDINGS, INC.

By: /s/ John Gandolfo
Name: John Gandolfo
Title: Chief Financial Officer

Exhibit 10.1

Execution Version

STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (this "***Agreement***") is entered into as of July 27, 2015, by and among Bacterin International Holdings, Inc., a Delaware corporation ("***Purchaser***"), X-spine Systems, Inc., an Ohio corporation (the "***Company***"), David L. Kirschman, M.D. ("***Kirschman***"), the K. Hemmelgarn 1998 Trust, the B. Hemmelgarn 1998 Trust, the K. Hemmelgarn 2010 Trust, and the B. Hemmelgarn 2010 Trust. Kirschman, the K. Hemmelgarn 1998 Trust, the B. Hemmelgarn 1998 Trust, the K. Hemmelgarn 2010 Trust, and the B. Hemmelgarn 2010 Trust are each referred to herein as a "***Seller***," and collectively as the "***Sellers***." Unless otherwise specified, all capitalized terms used in this Agreement shall have the meanings set forth in Exhibit A.

Recitals:

A. Sellers directly own 100% of the issued and outstanding shares of capital stock of the Company (the "***Outstanding Shares***").

B. Sellers desire to transfer to Purchaser, and Purchaser desires to acquire from Sellers, the Outstanding Shares on the terms and conditions and as more specifically provided in this Agreement (the "***Purchase***").

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

ARTICLE 1
THE PURCHASE

Section 1.1 **Purchase and Sale of Outstanding Shares**. Subject to the terms and conditions of this Agreement, at the Closing, Sellers shall sell, convey, transfer and assign to Purchaser, and Purchaser shall purchase and acquire, all right, title and interest in and to the Outstanding Shares, free and clear of all Liens.

Section 1.2 **Purchase Price**. The aggregate purchase price for the Outstanding Shares (the "***Purchase Price***") shall be, subject to any adjustments (positive or negative) made in accordance with this Section 1.2 and Section 1.3, the Purchase Consideration, which shall be payable by Purchaser in accordance with the terms hereof.

(a) For purposes of this Agreement:

(i) "***Cash Consideration***" means cash in an amount of $60,000,000, plus or minus the Working Capital Adjustment, minus the Deductions;

(ii) "***Deductions***" means the sum of the Paid Transaction Costs, the Escrowed Cash, and the costs and expenses of the Tail Policies;

(iii) "***Net Purchase Consideration***" means the Purchase Consideration, minus each of (1) the Indebtedness Pay-Off Amount, (2) the Paid Transaction Costs, (3) the Escrowed Amount, and (4) all costs and expenses for the Tail Policies;

(iv) "***Ownership Interest Share***" of each Seller means the amount, expressed as a percentage, each Seller is entitled to receive of that portion of the Purchase Consideration paid to Sellers;

(v) "***Purchase Consideration***" means $90,000,000, plus or minus the Working Capital Adjustment, if any; and

(vi) ***"Purchaser Stock Consideration"*** means the Purchase Consideration, minus the Cash Consideration, minus the Indebtedness Pay-Off Amount, in shares of Purchaser Common Stock valued at $4.00 per share.

(b) The Purchase Consideration shall be paid at the Closing as provided in Sections 2.2(a) and 2.2(b)(i).

(c) Disclosure Schedule 1.2(c) sets forth a list of Sellers and their respective Ownership Interest Shares. The Purchase Consideration shall be allocated among Sellers in proportion to their Ownership Interest Shares and to each Seller as directed by Sellers in the Flow of Funds Memorandum.

Section 1.3 Working Capital.

(a) At least five Business Days prior to the Closing Date, the Company shall deliver to Purchaser and Sellers an estimated consolidated balance sheet of the Company as of the Closing Date (the "***Closing Balance Sheet***"), which shall set forth a good faith estimate of the components of the Working Capital Amount ("***Closing Working Capital***") to enable Purchaser to calculate the Working Capital Adjustment. The Closing Balance Sheet shall be prepared by the Company in accordance with GAAP and in a manner consistent with the preparation of the audited Financial Statements, including any year-end accounting adjustments, and specifically shall give effect to the payment of the Indebtedness Pay-Off Amount, the Paid Transaction Costs and the Tail Policies costs and expenses by or on behalf of the Company on or immediately prior to the Closing. If such Closing Balance Sheet is not acceptable to Purchaser, Purchaser shall promptly submit its comments on the Closing Balance Sheet to the Company, and the Company and Purchaser shall endeavor in good faith to promptly resolve such comments so as not to delay the Closing. The Purchase Consideration shall be adjusted by the amount of the Working Capital Adjustment as provided in Section 1.2(a).

(b) Within 60 days after the Closing Date, Purchaser shall prepare and deliver to Sellers a consolidated balance sheet of the Company as of the Closing Date (the "***Final Balance Sheet***"), which shall set forth the components of the Working Capital Amount. The Final Balance Sheet shall be calculated in the same way, using the same accounting principles, practices, methodologies and policies, as the line items comprising Current Assets and Current Liabilities included in the Closing Balance Sheet and that are consistent with GAAP and all accounting principles, practices, methodologies and policies historically used in the preparation of the Financial Statements. Following the delivery of the Final Balance Sheet to Sellers, Purchaser shall afford Sellers and their representatives the opportunity to examine the Final Balance Sheet, and such supporting schedules, analyses, workpapers and other underlying records or documentation as are reasonably necessary and appropriate. Purchaser shall cooperate promptly, as reasonably requested, with Sellers and their representatives in such examination.

(c) If within ten days following delivery of the Final Balance Sheet, Sellers have not delivered to Purchaser written notice of its objections to the Final Balance Sheet (the "***Objection Notice***"), then the Working Capital Amount as set forth in the Final Balance Sheet shall be deemed final and conclusive. If Sellers deliver the Objection Notice within such ten-day period, then Purchaser and Sellers shall endeavor in good faith to resolve the objections, for a period not to exceed 15 days from the date of delivery of the Objection Notice.

(d) If at the end of the 15-day period described in Section 1.3(c) there are any objections that remain in dispute, then the remaining objections in dispute shall be submitted for resolution to a nationally recognized accounting firm that has not been hired by either the Company or Purchaser in the last five years to be selected jointly by Sellers and Purchaser (the "***Neutral Firm***"). The Neutral Firm shall determine any unresolved items of the Working Capital Amount within 30 days after the objections that remain in dispute are submitted to it. If any remaining objections are submitted to the Neutral Firm for resolution, (i) each party shall furnish to the Neutral Firm such workpapers and other documents and information relating to such objections as the Neutral Firm may request and are available to that party, and shall be afforded the opportunity to present to the Neutral Firm any material relating to the determination of the matters in dispute and to discuss such determination with the Neutral Firm, (ii) to the extent that a value has been assigned to any objection that remains in dispute, the Neutral Firm shall not assign a value to such objection that is greater than the greatest value for such objection claimed by either party or less than the smallest value for such objection claimed by either party, and (iii) the determination by the Neutral Firm of the unresolved items of the Working Capital Amount, as set forth in a written notice delivered to Purchaser and Sellers by the Neutral Firm, shall be made in accordance with this Agreement and shall be binding and conclusive on the parties and shall constitute an arbitral award that is final, binding and non-appealable and upon which a judgment may be entered by a court having jurisdiction thereof. The fees and expenses of the Neutral Firm shall be paid by the party whose calculation of the Working Capital Amount in the Final Balance Sheet deviated the most from the Working Capital Amount in the Final Balance Sheet as determined by the Neutral Firm.

(e) To the extent that the Final Working Capital, as determined pursuant to Section 1.3(c) or (d), is less than the Closing Working Capital (such deficit, a "***Final Adjustment Deficiency***"), and the Final Adjustment Deficiency exceeds $50,000, Purchaser and Sellers shall instruct the Escrow Agent to release from the escrow to Purchaser the aggregate amount of the Final Adjustment Deficiency, first from the Escrowed Cash, and if the Escrowed Cash is insufficient for this purpose, then from the Escrowed Shares (such Escrowed Shares valued at $4.00 per share, As Adjusted). If the amount of the Final Adjustment Deficiency exceeds the total amount of Escrowed Cash and Escrowed Shares (as valued in accordance with the previous sentence), then the shortfall shall be promptly paid by Sellers in cash in proportion to their Ownership Interest Shares to Purchaser. To the extent that the Final Working Capital, as determined pursuant to Section 1.3(c) or (d), exceeds the Closing Working Capital (such excess, a "***Final Adjustment Surplus***"), and the Final Adjustment Surplus exceeds $50,000, Purchaser shall promptly pay to Sellers, in proportion to their Ownership Interest Shares, an aggregate amount of cash equal to the amount of the Final Adjustment Surplus. For the avoidance of doubt, if the Final Adjustment Deficiency or the Final Adjustment Surplus, as the case may be, does not exceed $50,000, then no payment shall be made pursuant to this Section 1.3.

(f) For all Tax purposes, any payment under this Section 1.3 shall be treated by Purchaser, Sellers and their respective Affiliates as an adjustment to the Purchase Consideration.

Section 1.4 **Withholding Rights**. Purchaser shall be entitled to deduct and withhold from any consideration otherwise payable to any Person pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code or any provision of Applicable Law. To the extent that such amounts are so withheld or paid over to or deposited with the relevant Governmental Entity, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the applicable Person in respect to which such deduction and withholding was made.

Section 1.5 **Adjustments**. In the event of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into capital stock), reorganization, reclassification, combination, recapitalization or other like change with respect to the Company or Purchaser occurring after the date hereof and prior to the Closing, all references in this Agreement to specified numbers of shares of any class or series affected thereby, and all calculations provided for that are based upon numbers of shares of any class or series (or trading prices therefor) affected thereby, shall be equitably adjusted to the extent necessary to provide the parties the same economic effect as contemplated by this Agreement prior to such stock split, reverse stock split, stock dividend, reorganization, reclassification, combination, recapitalization or other like change.

Section 1.6 **Escrow**. On the Closing Date, the Indemnifying Sellers, Purchaser and the Escrow Agent shall enter into the Escrow Agreement. $6,000,000 of the cash portion of the Purchase Consideration (the "***Escrowed Cash***") and all of the shares of Purchaser Common Stock comprising a portion of the Purchase Consideration (the "***Escrowed Shares***," and together with the Escrowed Cash, the "***Escrowed Amount***") shall be deducted from the Purchase Consideration and deposited in escrow at Closing and shall be held in escrow pursuant to the terms of this Agreement and the Escrow Agreement. All fees due to the Escrow Agent shall be borne by Purchaser.

ARTICLE 2
CLOSING

Section 2.1 **Closing**. Unless this Agreement shall have been terminated pursuant to Article 6, and subject to the satisfaction or waiver of the conditions set forth in Article 5, the Closing shall take place on a date not later than the second Business Day following satisfaction or waiver of the conditions set forth in Article 5, at the offices of the Company, 452 Alexandersville Road, Miamisburg, Ohio 45342, unless another date, time or place is mutually agreed to in writing by Purchaser, Sellers and the Company.

Section 2.2 Actions to Occur at Closing.

(a) Payments of the Indebtedness Pay-Off Amount and the Deductions from the Purchase Consideration by Purchaser. At the Closing, the Indebtedness Pay-Off Amount and the Deductions shall be paid as follows:

(i) Purchaser shall pay to each creditor of the Company under an Indebtedness Agreement the amount of the outstanding Indebtedness due to such creditor as specified in such creditor's Payoff Letter (collectively, the sum of such Indebtedness amounts for all such creditors being hereinafter referred to as the "***Indebtedness Pay-Off Amount***"), by wire transfer of immediately available funds to the account designated by such creditor in the Payoff Letter;

(ii) Purchaser shall pay any Transaction Costs that remain outstanding as of the Closing Date and for which the Company has received a Payoff Letter (collectively, the sum of such payments for all payees of Transaction Costs being hereinafter referred to as the "***Paid Transaction Costs***"), by wire transfer of immediately available funds to the account designated by such Person in the applicable Payoff Letter; and

(iii) Purchaser shall submit the Escrowed Cash to the Escrow Agent by wire transfer of immediately available funds to the account designated by the Escrow Agent, and shall submit the Escrowed Shares to the Escrow Agent.

(b) Deliveries by Purchaser. At the Closing, Purchaser shall deliver the following in accordance with the applicable provisions of this Agreement:

(i) the Net Purchase Consideration shall be delivered, as applicable, to the Escrow Agent and to Sellers, in accordance with the Flow of Funds Memorandum;

(ii) a counterpart of the Escrow Agreement, executed by Purchaser, shall be delivered to the Indemnifying Sellers and the Escrow Agent;

(iii) a certificate of Purchaser, duly executed by an officer of Purchaser, certifying in his or her capacity as an officer and not in his or her capacity as an individual, the satisfaction of the conditions set forth in Sections 5.3(a), (b) and (d), shall be delivered to Sellers;

(iv) resolutions of Purchaser's Board authorizing the appointment of the Appointee Director to Class II of Purchaser's Board effective on the Closing Date shall be delivered to Sellers; and

(v) a counterpart of the Employment Agreements for each Key Employee identified by Purchaser, executed by the Company (under Purchaser's control), shall be delivered to each Key Employee who is a party thereto.

(c) Deliveries by the Company and Sellers. At or prior to the Closing, the Company and Sellers shall deliver the following in accordance with the applicable provisions of this Agreement:

(i) original stock certificates for the Outstanding Shares, together with stock powers from the respective Sellers duly endorsed in blank;

(ii) a counterpart of the Escrow Agreement, executed by the Indemnifying Sellers, shall be delivered to Purchaser and the Escrow Agent;

(iii) a certificate of the Company, duly executed by an officer of the Company, certifying in his or her capacity as an officer and not in his or her capacity as an individual, the satisfaction of the conditions set forth in Sections 5.2(a), (b) and (c) as they relate to the Company, shall be delivered to Sellers and to Purchaser;

(iv) a certificate of each Seller, duly executed by such Seller, certifying the satisfaction of the conditions set forth in Sections 5.2(a) and (b) as they relate to such Seller, shall be delivered to Purchaser;

(v) a good standing certificate for the Company and the Subsidiary as issued by the Secretary of State, or other appropriate agency, of the state or other jurisdiction of the Company's or the Subsidiary's domicile, each dated within ten days of the Closing Date, shall be delivered to Purchaser;

(vi) the Consents set forth on Disclosure Schedule 3.2(e), in a form reasonably satisfactory to Purchaser, shall be delivered to Purchaser;

(vii) the resignations of the members of the board of directors of the Company and the Subsidiary and of those officers of the Company and the Subsidiary whose resignations are requested by Purchaser shall be delivered to Purchaser;

(viii) a counterpart of the Employment Agreements, executed by each Key Employee identified by Purchaser, shall be delivered to Purchaser;

(ix) the Payoff Letters shall be delivered to Purchaser;

(x) a certificate of the Company, duly executed by an officer of the Company, certifying in his or her capacity as an officer and not in his or her capacity as an individual, specifying the amounts of each of the Indebtedness Pay-Off Amount and Paid Transaction Costs (the "***Deductions Certificate***"), shall be delivered to Purchaser;

(xi) certificates with respect to each of the Company's and the Subsidiary's status as a "United States real property holding corporation," dated not more than 30 days prior to the Closing Date, as described in Treasury Regulations Sections 1.897-2(h) and 1.1445-2(c)(3), and proof of delivery to the Internal Revenue Service of the required notice, as described in Treasury Regulations Section 1.897-2(h)(2), shall be delivered to Purchaser;

(xii) a counterpart of the Seller Non-Compete Agreements, in the forms attached hereto as Exhibit B-1 and Exhibit B-2, executed by each Indemnifying Seller and Kenneth J. Hemmelgarn, Jr., and Brian J. Hemmelgarn, as applicable, shall be delivered to Purchaser;

(xiii) a counterpart of the Lock-Up Agreement, in the form attached as Exhibit C, executed by each Indemnifying Seller, shall be delivered to Purchaser;

(xiv) a counterpart of the Guaranty, in the form attached as Exhibit D, executed by each of Kenneth J. Hemmelgarn, Jr., and Brian J. Hemmelgarn;

(xv) a termination of the Amended and Restated Close Corporation Agreement, effective as of the Closing Date; and

(xvi) the Company and Sellers shall deliver to Purchaser such other documents and instruments as Purchaser may reasonably request to carry out the purpose and intent of this Agreement.

Section 2.3 **Appointment to Purchaser Board**. Prior to the Closing, Purchaser shall take such actions as are necessary to appoint Kirschman (the "***Appointee Director***") at the Closing to Class II of Purchaser's Board.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

Section 3.1 **Representations and Warranties Relating to Each Seller**. Each Indemnifying Seller, severally and not jointly with the other Indemnifying Sellers, hereby represents and warrants to Purchaser as follows, except that Kirschman only, and not the K. Hemmelgarn 1998 Trust or the B. Hemmelgarn 1998 Trust, makes the representation and warranty set forth in Section 3.1(j) (Kirschman HSR Act Compliance), and provided that the K. Hemmelgarn 1998 Trust and the B. Hemmelgarn 1998 Trust make the following representations and warranties, jointly and severally with each other, as to all of the Hemmelgarn Sellers:

(a) Authority; Due Execution and Binding Effect. Such Seller has the requisite power and authority to execute and deliver this Agreement and each other Transaction Document to which it is a party, to consummate the transactions contemplated hereby and thereby and to perform its obligations under this Agreement and each other Transaction Document to which it is a party. This Agreement has been, and each other Transaction Document to which such Seller is a party will be, duly and validly executed and delivered by such Seller. Assuming the due authorization, execution and delivery by the other parties hereto, this Agreement constitutes the valid and binding obligation of such Seller, enforceable against such Seller in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar Applicable Laws affecting the enforcement of creditors rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in law or equity).

(b) No Conflict. Neither the execution and delivery of this Agreement by such Seller, nor the performance by such Seller of its obligations hereunder shall, directly or indirectly: (i) contravene, conflict with, or result in (with or without notice or lapse of time) a violation or breach of any Applicable Law or order to which such Seller is subject; (ii) violate, conflict with or result in the breach of any provision of the organizational documents of such Seller, if such Seller is not an individual; or (iii) conflict in any material respect with, result in a material breach of, constitute a material default (or event which with the giving of notice or lapse of time, or both, would become a material breach or default) under, require any Consent under, or give to others any right of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any Lien pursuant to, any Contract to which such Seller is a party or by which any of its respective assets or properties are bound or affected.

(c) Litigation. There is no Action pending against, or to the knowledge of such Seller, threatened against or affecting such Seller before any court or arbitrator or any Governmental Entity which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated hereby.

(d) Government Approvals. No consents or approvals of, or filings, declarations or registrations with, any Governmental Entity are necessary for the execution and delivery of this Agreement by such Seller or the consummation by such Seller of the transactions contemplated hereby, other than such consents or approvals, filings, declarations or registrations that, if not obtained, made or given, could not, individually or in the aggregate, reasonably be expected to impair in any material respect the ability of such Seller to perform its obligations hereunder, or prevent or materially impede, interfere with, hinder or delay the consummation of the Purchase.

(e) Title to Outstanding Shares. Such Seller is the record and beneficial owner of, and holds good and valid title to the Outstanding Shares of the Company set forth on Disclosure Schedule 1.2(c), free and clear of any and all Liens. Such Seller has the sole power and authority to sell, transfer, assign and deliver the Outstanding Shares of such Seller set forth in Disclosure Schedule 1.2(c) as provided in this Agreement, and upon delivery of and payment for such Outstanding Shares, Purchaser will acquire at Closing good and valid title to all such Outstanding Shares, free and clear of any and all Liens, which Outstanding Shares are as of the date hereof, and will be at and immediately after Closing, 100% of the Outstanding Shares of the Company. Such Seller is not a party to any voting trust or other voting agreement with respect to any of its Outstanding Shares or to any agreement relating to the issuance, sale, redemption, acquisition, registration, transfer or other disposition of its Outstanding Shares, except for the Amended and Restated Close Corporation Agreement. Such Seller has not granted to any Person, other than Purchaser hereunder, any preferential right or option to purchase any of the Outstanding Shares of such Seller, except as set forth in the Amended and Restated Close Corporation Agreement.

(f) Brokers. Except for Cockrell Group, whose fees and expenses will be paid by Sellers, no broker, finder or agent is entitled to any brokerage fees, finder's fees or commissions in connection with this Agreement or the transactions contemplated hereby based upon agreement, arrangement or understanding made by or on behalf of such Seller, provided that the K. Hemmelgarn 1998 Trust and the B. Hemmelgarn 1998 Trust represent and warrant that no Hemmelgarn Seller has engaged any such broker, and they make no representation or warranty as to any such broker that may have been engaged by Kirschman or any other Person.

(g) Foreign Corrupt Practices Act. Such Seller has not, directly or indirectly, taken any action which would cause it to be in violation of the FCPA, used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, made, offered or authorized any unlawful payment to foreign or domestic government officials or employees, whether directly or indirectly, or made, offered or authorized any bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment, whether directly or indirectly.

(h) Securities Laws Compliance. Such Seller is an Accredited Investor. Such Seller acknowledges that the Purchaser Stock Consideration has not been registered under the Securities Act in reliance upon the exemption from registration set forth in Section 4(2) of the Securities Act and Regulation D promulgated thereunder. The Purchaser Stock Consideration is being acquired by such Seller for such Seller's own account without a view to public distribution or resale, and such Seller has no contract, undertaking, agreement or arrangement to sell or otherwise transfer or dispose of the Purchaser Stock Consideration or any portion thereof to any other Person. Such Seller will not sell or otherwise transfer or dispose of the Purchaser Stock Consideration or any portion thereof unless the transfer is made in accordance with the Securities Act.

(i) Seller HSR Act Compliance. There is no Contract by which any Person, including any Seller, or any combination of Sellers who are Affiliates, has the contractual power and authority to designate 50% or more of the directors of the Company within the meaning of the HSR Act.

(j) Kirschman HSR Act Compliance. Kirschman's total assets held, whether foreign or domestic, within the meaning of the HSR Act, do not exceed $152,500,000.

Section 3.2 Representations and Warranties Relating to the Company. The Indemnifying Sellers hereby represent and warrant to Purchaser as set forth in this Section 3.2. The following representations and warranties are made severally by Kirschman, on the one hand, and the K. Hemmelgarn 1998 Trust and the B. Hemmelgarn 1998 Trust, on the other hand, and by the K. Hemmelgarn 1998 Trust and the B. Hemmelgarn 1998 Trust jointly and severally with each other. Further, the Hemmelgarn Knowledge Representations and Warranties are made jointly and severally by the K. Hemmelgarn 1998 Trust and the B. Hemmelgarn 1998 Trust to the Knowledge of the Hemmelgarn Sellers, and the representations and warranties of the K. Hemmelgarn 1998 Trust and the B. Hemmelgarn 1998 Trust in Sections 3.2(p) (Foreign Corrupt Practices Act), 3.2(s) (FDA and Regulatory Matters) and 3.2(dd) (Warranty) are made jointly and severally by the K. Hemmelgarn 1998 Trust and the B. Hemmelgarn 1998 Trust with each other to the Knowledge of the Hemmelgarn Sellers.

(a) Organization and Qualification. The Company and the Subsidiary are corporations duly organized, validly existing and in good standing under the Applicable Laws of the states of their formation, and each has all requisite corporate power and authority to own, lease and operate its properties and to conduct the Business. The Company is not licensed or qualified to do business as a foreign corporation in any jurisdiction other than the State of Ohio. The Subsidiary is not licensed or qualified to do business as a foreign corporation in any jurisdiction other than the State of Nevada. The Company has delivered or made available to Purchaser true and complete copies of the currently effective articles of incorporation and bylaws of the Company and the Subsidiary (such instruments and documents, the "***Charter Documents***"), and the minute books and stock ledgers of the Company and the Subsidiary. Neither the Company nor the Subsidiary is in violation of its Charter Documents. The minute books contain all minutes and consents adopted by the Company's board of directors and Sellers.

(b) Subsidiary. Except for X-spine Sales Corporation (the "***Subsidiary***"), neither the Company nor the Subsidiary owns or controls, directly or indirectly, any interest in any Person. The Company is the record and beneficial owner of all of the outstanding equity interests of the Subsidiary, free and clear of all Liens, and such equity interests are duly authorized, validly issued fully paid and nonassessable. There are no outstanding options, warrants, call rights, rights of conversion or other rights, agreements, arrangements or commitments of any kind or character relating to the equity ownership interests of the Subsidiary to which the Company or Subsidiary is a party, or by which either is bound, obligating the Subsidiary to issue, deliver or sell, or cause to be issued, delivered or sold, any of its equity interests or any right to acquire any such equity interests.

(c) Capitalization. The authorized capital of the Company consists of 1,500 shares of common stock, no par value, of which 1,000 shares are designated Class A Voting Common Shares and 500 shares are designated Class B Non-Voting Common Shares (collectively, the "***Company Stock***"). On the date of this Agreement there are 250 shares of Company Stock (200 shares of Class A Voting Common Shares and 50 shares of Class B Non-Voting Common Shares) issued and outstanding, held by each Seller as described in Disclosure Schedule 3.2(c). There are no outstanding options, warrants, call rights, rights of conversion or other rights, agreements, arrangements or commitments of any kind or character relating to the capital stock of the Company to which the Company is a party, or by which it is bound, obligating the Company to issue, deliver or sell, or cause to be issued, delivered or sold, any Company Stock or other equity interests of the Company or any right to acquire any such equity interests. No Person shall be entitled to receive a portion of the Purchase Consideration other than Sellers. All Outstanding Shares are duly authorized and validly issued, fully paid and nonassessable, have been issued in accordance with all Applicable Laws and have not been issued in violation of any preemptive right. Disclosure Schedule 1.2(c) is accurate in all respects and, without limiting the foregoing, the allocation of the Purchase Consideration as provided in Disclosure Schedule 1.2(c) is in accordance with the provisions of the Company's Charter Documents. There are no Contracts to which the Company or the Subsidiary is a party relating to the registration, sale or transfer (including Contracts relating to rights of first refusal, co sale rights or "drag-along" rights) of any equity interests of the Company other than the Amended and Restated Close Corporation Agreement, which will be terminated by the Company and Sellers as of the Closing Date. As a result of the Purchase, Purchaser will be the sole record and beneficial holder of the Outstanding Shares. The directors and officers of the Company and Subsidiary are set forth in Disclosure Schedule 3.2(c).

(d) Authority; Due Execution and Binding Effect. The Company has the requisite corporate power and authority to execute and deliver this Agreement and each other Transaction Document to which it is a party, to consummate the transactions contemplated hereby and thereby and perform its obligations hereunder and thereunder. The Company's entry into and performance of its obligations under this Agreement and each other Transaction Document to which the Company is a party have been approved by the board of directors of the Company and will be duly authorized by all necessary corporate action of the Company. This Agreement has been, and each other Transaction Document to which the Company is a party will be, duly and validly executed and delivered by the Company. Assuming the due authorization, execution and delivery by Purchaser, this Agreement constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, reorganization, insolvency, fraudulent conveyance, moratorium or similar Applicable Laws affecting the enforcement of creditors rights generally and by general principles of equity (regardless of whether enforcement is considered in a proceeding in law or equity).

(e) No Conflict. Except as set forth in Disclosure Schedule 3.2(e), the execution and delivery of, and the performance by the Company of its obligations under, this Agreement and each other Transaction Document to which it is a party, will not, directly or indirectly: (i) contravene, conflict with, or result in (with or without notice or lapse of time) a violation or breach of any Applicable Law or order to which the Company or Subsidiary is subject; (ii) violate, conflict with or result in the breach of any provision of any Charter Document of the Company or Subsidiary; (iii) require the Company or Subsidiary to obtain any approval of, observe any waiting period imposed by, or make any filing with or notice to, any Governmental Entity; or (iv) conflict in any respect 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 breach or default) under, require any Consent under, or give to others any right of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any Lien (other than a Permitted Lien) pursuant to, any Contract to which the Company or Subsidiary is a party or by which any of their assets or properties are bound or affected.

(f) Financial Statements. The Company has prepared, or caused to be prepared, and has provided to Purchaser and attached in Disclosure Schedule 3.2(f), the (i) audited, consolidated financial statements of the Company and the Subsidiary, including the consolidated balance sheets as of December 31, 2013 and 2014 and the related consolidated statements of operations, changes in shareholders' equity and cash flows for the years ended December 31, 2013 and 2014, and (ii) unaudited, consolidated financial statements of the Company and the Subsidiary, including the consolidated balance sheet as of May 31, 2015 and the related consolidated statements of operations, changes in shareholders' equity and cash flows for the five months ended May 31, 2015 (collectively, the "***Financial Statements***"). The Financial Statements have been prepared from, and are in accordance with, the books and records of the Company and the Subsidiary and prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated therein and with each other (except that the unaudited Financial Statements do not contain all of the notes required by GAAP). The Financial Statements present fairly, in all material respects, the financial position, results of operations and cash flows of the Company and the Subsidiary as of the respective dates and during the respective periods indicated therein, subject in the case of the unaudited Financial Statements to normal recurring year-end adjustments which will not, individually or in the aggregate, be material. The books and records of the Company and the Subsidiary have been, and are being, maintained in all material respects in accordance with GAAP and any other applicable legal and accounting principles.

(g) No Undisclosed Liabilities. The Company has no Liabilities except as (i) reflected in, reserved against or disclosed in the Financial Statements, (ii) incurred in the ordinary course of business since the Latest Balance Sheet Date and not as a result of a breach of Contract, violation of Applicable Law or tort, or (iii) set forth in Disclosure Schedule 3.2(g). All Transaction Costs other than the Paid Transaction Costs will have been paid in full prior to the Closing. The aggregate amount of Indebtedness as of the Latest Balance Sheet Date was $12,508,140 and the aggregate amount of Indebtedness as of the date of this Agreement is not more than $13,100,000.

(h) Accounts Receivable; Accounts Payable; Inventory.

(i) All of the accounts receivable of the Company and the Subsidiary are valid and, to the Knowledge of the Company, are not subject to set-off or counterclaim except for customary allowances and reserves in the ordinary course of business. Since the Latest Balance Sheet Date, the Company and the Subsidiary have collected their respective accounts receivable in the ordinary course of business and in a manner which is consistent with past practices and have not accelerated any such collections. Set forth in Disclosure Schedule 3.2(h)(i) is an aging report with respect to the accounts receivable of the Company and the Subsidiary as of May 31, 2015.

(ii) Neither the Company nor the Subsidiary has any notes receivable.

(iii) All accounts payable of the Company and the Subsidiary arose in bona fide arm's length transactions in the ordinary course of business. Since the Latest Balance Sheet Date, the Company and the Subsidiary have paid their respective accounts payable in the ordinary course of their business and in a manner which is consistent with their past practices and have not delayed the payment of any accounts payable. Set forth in Disclosure Schedule 3.2(h)(iii) is a list of the accounts payable of the Company and the Subsidiary as of May 31, 2015.

(iv) The Company and the Subsidiary have good and marketable title to their respective inventories, free and clear of Liens other than Permitted Liens. The inventories are in good and merchantable condition, and are suitable and usable for the purposes for which they are intended.

(i) Litigation. Except as set forth in Disclosure Schedule 3.2(i), there are no (i) Actions by or against the Company or the Subsidiary, or any directors, officers or employees of the Company or Subsidiary in their capacities as such, or affecting the Company's or the Subsidiary's assets pending, or to the Knowledge of the Company, threatened; or (ii) Judgments or orders outstanding by any court or Government Entity to which the Company or Subsidiary, or any of their assets, are subject. Without limiting the generality of the foregoing, except as set forth in Disclosure Schedule 3.2(i), there are no Actions against the Company or Subsidiary pending, or, to the Knowledge of the Company, threatened relating to any alleged hazard or alleged defect in design, manufacture, materials or workmanship, including any failure to warn or alleged breach of express or implied warranty or representation, relating to any Company Product. There is no investigation, audit, or other proceeding pending or, to the Knowledge of the Company, threatened, against the Company, the Subsidiary, any of their respective assets or any of their respective directors, officers or employees by or before any Governmental Entity, nor to the Knowledge of the Company is there any reasonable basis therefor. No Governmental Entity has at any time challenged or questioned the legal right of the Company or the Subsidiary to conduct its operations as presently or previously conducted or as currently contemplated to be conducted. There is no Action pending against, or to the Knowledge of the Company, threatened against or affecting, the Company before any court or arbitrator or any Governmental Entity which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated hereby.

(j) Taxes.

(i) The Company and the Subsidiary have each timely filed, or have caused to be timely filed, all Tax Returns relating to Taxes required to be filed by or on behalf of the Company and the Subsidiary except for Tax Returns for which the Company and Subsidiary have recorded a liability under ASC 740 (relating to uncertain tax positions). All such Tax Returns are true and complete, and all Taxes due and payable by the Company or Subsidiary shown to be due on such Tax Returns have been fully and timely paid.

(ii) The Company has delivered to Purchaser correct and complete copies of all material Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by the Company since January 1, 2008.

(iii) The Company and the Subsidiary have complied with all requirements under Applicable Law relating to the payment, reporting and withholding of Taxes, including with respect to the Company's and the Subsidiary's employees, and with respect to payments made to any non-U.S. person.

(iv) Neither the Company nor the Subsidiary has been delinquent in the payment of any Tax, nor is there any Tax deficiency outstanding or assessed against the Company or Subsidiary.

(v) The Company has been a validly electing S corporation within the meaning of Code Sections 1361 and 1362 at all times since its formation, and the Company will be an S corporation up to and including the Closing Date.

(vi) The Subsidiary is an "Interest Charge Domestic International Sales Corporation" within the meaning of Code Sections 991 and 992, and has been and will be a qualified Interest Charge Domestic International Sales Corporation at all times since its formation up to and including the Closing Date. The Subsidiary has had since its date of formation a valid election to be treated as an "Interest Charge Domestic International Sales Corporation" within the meaning of Code Section 992, and has at all times since its formation met the requirements to be qualified as an "Interest Charge Domestic International Sales Corporation" under Code Section 992 and the Treasury Regulations thereunder. All commissions paid by the Company to the Subsidiary, and all agreements with respect thereto, have complied with the intercompany pricing rules under Code Section 994 and the Treasury Regulations thereunder.

(vii) Neither the Company nor the Subsidiary has, in the past ten years, (A) acquired assets from another corporation in a transaction in which Company's Tax basis for the acquired assets was determined, in whole or in part, by reference to the Tax basis for the acquired assets (or any other property) in the hands of the transferor, or (B) acquired the stock of any corporation that is a qualified subchapter S subsidiary, except for the formation of the Subsidiary as an Interest Charge Domestic International Sales Corporation.

(viii) There is no (A) claim that a Tax Return should have been filed, or for Taxes that has been asserted against the Company or Subsidiary, (B) Lien against the property of the Company or Subsidiary, other than Permitted Liens, (C) extension of any statute of limitations on the assessment of any Taxes granted by the Company or Subsidiary currently in effect, or (D) agreement to any extension of time for filing any Tax Return which has not been filed.

(ix) No audit or other examination of any Tax Return of the Company or Subsidiary by any taxing authority is presently in progress, nor to the Knowledge of the Company is there any threatened audit or other examination by any Governmental Entity in respect of any Taxes of the Company or Subsidiary.

(x) Neither the Company nor the Subsidiary has been notified by a taxing authority in any jurisdiction in which the Company or the Subsidiary does not pay Taxes or file Tax Returns asserting that the Company or the Subsidiary is or may be required to pay Taxes or file Tax Returns in such jurisdiction, which has not been resolved prior to the date of this Agreement.

(xi) The Latest Balance Sheet reflects all Liabilities for unpaid Taxes of the Company and the Subsidiary for periods (or portions of periods) through the Latest Balance Sheet Date. Neither the Company nor the Subsidiary has any Liability for unpaid Taxes accruing after the Latest Balance Sheet Date except for Taxes arising in the ordinary course of business subsequent to the Latest Balance Sheet Date. Neither the Company nor the Subsidiary has any Liability for Taxes for any periods or portions of the periods prior to the Closing Date that are not included in the calculation of the Closing Working Capital.

(xii) Neither the Company nor the Subsidiary (A) has been a member of an affiliated group filing a consolidated federal income Tax Return (other than a group the common parent of which was the Company), or (B) has any liability for the Taxes of any Person (other than the Company or the Subsidiary) under Treas. Reg. Section 1.1502-6 (or any similar provision of state, local, or non-U.S. law), as a transferee or success, by contract, or otherwise. Neither the Company nor Subsidiary is a party to or bound by any Tax sharing, Tax indemnity, or Tax allocation agreement.

(xiii) Neither the Company nor the Subsidiary is, or has been, a “United States real property holding corporation” (as defined in Section 897(c)(2) of the Code) during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(xiv) Disclosure Schedule 3.2(j)(xiv) lists all jurisdictions (whether foreign or domestic) to which any Tax has been paid by the Company or the Subsidiary. No claim in writing has ever been made by a Tax authority in a jurisdiction where the Company or the Subsidiary does not file Tax Returns that the Company or the Subsidiary is or may be subject to Tax in that jurisdiction. Neither the Company nor the Subsidiary has, or has ever had, a permanent establishment in any foreign country.

(xv) Neither the Company nor the Subsidiary has been (A) the subject of an IRS private letter ruling (or similar Tax ruling under state, local or foreign Law) that has continuing effect; (B) the subject of a "closing agreement" as that term is defined in Section 7121 of the Code (or any comparable agreement under state, local or foreign Law) with any Tax authority that has continuing effect; or (C) granted a power of attorney with respect to any Tax matters that continues in effect.

(xvi) Neither the Company nor the Subsidiary will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any (A) installment sale or open transaction disposition made on or prior to the Closing Date, or (B) prepaid amount received on or prior to the Closing Date. There are no requests for rulings or determinations in respect of any Tax pending between the Company and any governmental authority.

(xvii) Neither the Company nor the Subsidiary has ever been either a "controlled corporation" or a "distributing corporation" (within the meaning of Section 355(a)(1)(A) of the Code) with respect to a transaction that was described in, or intended to qualify as a tax-free transaction pursuant to Section 355 of the Code. Neither the Company nor the Subsidiary has made or agreed to make any adjustment under Section 481(a) of the Code (or any corresponding provision of state, local or foreign Tax law) by reason of a change in accounting method or otherwise. Neither the Company nor the Subsidiary has participated in an international boycott as defined in Section 999 of the Code. Neither the Company nor the Subsidiary owns, directly or indirectly, any interests in an entity that is or has been a "passive foreign investment company" within the meaning of Section 1297 of the Code or a "controlled foreign corporation" within the meaning of Section 957 of the Code.

(xviii) Neither the Company nor the Subsidiary is a party to any contract or plan (including any Company stock rights) that has resulted or would result, separately or in the aggregate, in the payment of (A) any "excess parachute payments" within the meaning of Section 280G of the Code (without regard to the exceptions set forth in Sections 280G(b)(4) and 280G(b)(5) of the Code) or (B) any amount for which a deduction would be disallowed or deferred under Section 162 or Section 404 of the Code.

(xix) Each plan, program, arrangement or agreement which constitutes in any part a nonqualified deferred compensation plan within the meaning of Section 409A of the Code is identified as such on Disclosure Schedule 3.2(j)(xix). Since December 31, 2004, each plan, program, arrangement or agreement of the Company or Subsidiary has been operated and maintained in accordance with the requirements of Section 409A of the Code.

(k) Title to Property and Assets.

(i) Neither the Company nor the Subsidiary owns or has ever owned any real property.

(ii) Disclosure Schedule 3.2(k)(ii) sets forth the address of each parcel of real property in which the Company has a leasehold interest (the "***Leased Real Property***"). Each parcel of Leased Real Property is leased under a valid and subsisting lease. Each lease relating to the Leased Real Property is in full force and effect. With respect to the Leased Real Property: (A) to the Knowledge of the Company, there are no pending or threatened condemnation proceedings, suits or administrative actions relating to any such parcel or other matters affecting adversely the current use, occupancy or value thereof; (B) the operation of the Leased Real Property in the manner in which it is now operated comply with all zoning, building, use, safety or other similar Laws; (C) all improvements are in good operating condition, ordinary wear and tear excepted, and are supplied with utilities and other services necessary for the operation of the Business as currently conducted; (D) neither the Company nor the Subsidiary has received any notice of any special Tax, levy or assessment for benefits or betterments that affect any parcel of Leased Real Property and, to the Knowledge of the Company, no such special Taxes, levies or assessments are pending or contemplated; and (E) there are no Contracts to which the Company is a party granting to any third party or parties the right of use or occupancy of the Leased Real Property, and there are no third parties (other than the Company) in possession of any of the Leased Real Property. The Company is not a party to any Contract or option to purchase any real property or any portion thereof or interest therein. True and complete copies of any lease or agreement to lease relating to the Leased Real Property have been provided or made available to Purchaser.

(iii) Each of the Company and the Subsidiary has good and marketable title to, or a valid leasehold interest or license in, the properties and assets (tangible and intangible) used by it, located on its premises or shown on the Latest Balance Sheet or acquired after the date thereof (other than inventory sold in the ordinary course of business), free and clear of all Liens, except for Permitted Liens. The assets, properties and rights owned by the Company or Subsidiary are all the assets, properties and rights used by the Company and the Subsidiary in the operation of the Business or necessary to operate the Business consistent with past practice.

(iv) The buildings, machinery, equipment and other tangible assets that the Company or the Subsidiary owns and leases (A) are, to the Knowledge of the Company, free from material defects (patent and latent), and (B) have been maintained in accordance with normal industry practice, and are in good operating condition and repair (subject to normal wear and tear).

(l) Intellectual Property.

(i) Disclosure Schedule 3.2(l)(i) contains a true and complete list of all Company Registered Intellectual Property and all Company Licensed Intellectual Property that is exclusively licensed to the Company or Subsidiary. The Company or Subsidiary, as applicable, owns all rights in, or has valid and enforceable rights to use, the Company Intellectual Property, free and clear of all Liens except Permitted Liens.

(ii) Except as set forth in Disclosure Schedule 3.2(l)(ii) and claims that have been fully resolved: (A) to the Knowledge of the Company, the Company Intellectual Property has not been infringed, misappropriated or otherwise violated in any material respect by any Person, including any employee or former employee of the Company or Subsidiary; (B) since January 1, 2012, no Action has been brought against the Company or Subsidiary (and neither the Company nor the Subsidiary has received any notice, or any threat) that involves a claim of infringement, misappropriation or other violation of any Intellectual Property of any third party or that contests the validity, ownership or right of the Company or Subsidiary to exercise any Intellectual Property right; (C) since January 1, 2012, neither the Company nor the Subsidiary has brought any Action for infringement, misappropriation or other violation of any Intellectual Property or breach of any Contract relating to the Company Intellectual Property; and (D) neither the Company nor the Subsidiary has received any unresolved written notice of any alleged invalidity with respect to any of the Company Intellectual Property in connection with the normal conduct of the Business.

(iii) Neither the Company nor the Subsidiary has transferred ownership of any Intellectual Property that is or was Company Owned Intellectual Property, to any third party, or granted any third party any exclusive rights with respect to any Company Intellectual Property, or to the Knowledge of the Company, permitted the Company's rights in any Intellectual Property that is or was Company Owned Intellectual Property to enter the public domain.

(iv) All fees, annuities, royalties, honoraria and other payments that are due from the Company on or before the date of this Agreement for any of the Company Intellectual Property and agreements related to the Company Intellectual Property have been paid. Disclosure Schedule 3.2(l)(iv) sets forth a list of all fees, annuities, royalties, honoraria and other payments that are due from the Company within one year of the Closing Date for any of the Company Intellectual Property and agreements related to the Company Intellectual Property existing as of date of this Agreement.

(v) All registration, maintenance and renewal fees currently due in connection with the Company Registered Intellectual Property have been paid and all documents, recordations and certificates in connection with such Company Registered Intellectual Property currently required to be filed have been filed with the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of prosecuting, maintaining and perfecting such Company Registered Intellectual Property and recording the Company's and the Subsidiary's ownership interests therein.

(vi) Each of the Company and the Subsidiary has secured from all of its consultants, employees and independent contractors who independently or jointly contributed to the conception, reduction to practice, creation or development of any Company Owned Intellectual Property, unencumbered and unrestricted exclusive ownership of all such third party's Intellectual Property in such contribution that the Company or Subsidiary does not already own by operation of law and such third party has not retained any rights or licenses with respect thereto.

(vii) The Company and the Subsidiary have taken commercially reasonable steps to protect and preserve the confidentiality of all confidential or non-public information included in the Company Intellectual Property.

(viii) No “open source software,” “free software” or other materials licensed under similar licensing or distribution terms have been incorporated into, combined with, used by, or distributed with the Company Intellectual Property or Company Products.

(ix) Neither the Company nor the Subsidiary nor, to the Knowledge of the Company, any other Person then acting on their behalf has disclosed, delivered or licensed to any Person, agreed to disclose, deliver or license to any Person, or permitted the disclosure or delivery to any escrow agent or other Person of, any software source code. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time, or both) will, or would reasonably be expected to, result in the disclosure, delivery or license by the Company or Subsidiary or any Person then acting on their behalf to any Person of any software source code.

(x) No (A) government funding, or (B) facilities of a university, college, other educational institution or research center was used in the development of the Company Owned Intellectual Property. To the Knowledge of the Company, there are no usage rights, march-in rights, manufacturing restrictions, or other rights of any Governmental Entity or any academic institution in or to any of the Company Owned Intellectual Property.

(xi) Neither the Company nor the Subsidiary is now or has ever been a member or promoter of, or a contributor to, any industry standards body or any similar organization that could reasonably be expected to require or obligate the Company or Subsidiary to grant or offer to any other Person any license or right to any Company Owned Intellectual Property. Neither the Company nor the Subsidiary has a present obligation to grant or offer to any other Person any license or right to any Company Owned Intellectual Property by virtue of the Company’s or any other Person’s membership in, promotion of, or contributions to any industry standards body or any similar organization.

(xii) The Company has taken all reasonable steps to protect and preserve the confidentiality of all trade secrets, know-how, source code, databases, customer lists, schematics, ideas, algorithms and processes and all use, disclosure or appropriation thereof by or to any Person has been pursuant to the terms of a written agreement between such third party and the Company. The Company has complied in all material respects with all of its confidentiality obligations under each Contract to which the Company is a party.

(xiii) Except as set forth on Disclosure Schedule 3.2(l)(xiii), to the Knowledge of the Company, (A) the Company Intellectual Property is all of the Intellectual Property necessary for the conduct of the Business as currently conducted, (B) the operation of the Business as currently conducted does not infringe, misappropriate or otherwise violate the Intellectual Property of any third party, (C) each item of Company Registered Intellectual Property is validly registered and subsisting, (D) all Company Products sold, licensed, leased, provided or delivered by the Company or Subsidiary to customers on or prior to the Closing Date conform as to applicable contractual commitments and warranties and conform to and perform in accordance with applicable packaging, advertising and marketing materials, specifications or documentation, and neither the Company nor the Subsidiary has any liability for replacement or repair thereof or other damages in connection therewith in excess of any reserves therefor reflected in, reserved against or disclosed in the Financial Statements, and (E) with respect to Company Products sold, licensed, leased, provided or delivered by the Company or Subsidiary to customers on or prior to the Closing Date with respect to which obligations of any kind on the part of the Company or such customer remain outstanding, such Company Products have been so sold, licensed, leased, provided or delivered pursuant to the Company’s standard form of distribution agreement or pursuant to one of the Company’s standard forms of customer agreement, which forms have been made available to Purchaser, and which forms are valid and enforceable.

(m) Business Continuity. None of the software, computer hardware (whether general or special purpose), telecommunications capabilities (including all voice, data and video networks), data storage, and other similar or related items of automated, computerized, and/or software systems and any other networks or systems and related services that are used by or relied on by the Company in all material respects in the conduct of its Business (collectively, the "***Systems***") have experienced bugs, failures, breakdowns, breaches, unauthorized access, or continued substandard performance in the past 24 months that has caused or reasonably could be expected to cause any substantial disruption or interruption in or to the use of any such Systems by the Company or the Subsidiary.

(n) Information Privacy and Data Security.

(i) The Company's practices concerning collection, use, analysis, retention, storage, protection, security, transfer, disclosure and disposal of Personal Information comply with, and have not violated, any (A) Contract, including any business associate agreement with a client, or (B) Privacy Laws.

(ii) The Company (A) is not now and has not been in the last ten years under investigation by any Governmental Entity for an actual or alleged violation of any Privacy Law, (B) has not received any notices from the United States Department of Health and Human Services Office for Civil Rights, Department of Justice, Federal Trade Commission, Attorney General of any state or territory of the United States, or any other Governmental Entity, relating to any such actual or alleged violations, (C) has not received any complaints, notices or other written or oral communications from any Person alleging a violation of any Privacy Law, and (D) is not aware of any incident that would trigger an obligation to notify any Person under any Privacy Laws or business associate agreement as that term is defined under HIPAA.

(iii) The Company has implemented reasonable administrative, physical and technical safeguards to protect the Personal Information processed by the Company. The Company maintains, and has remained in compliance with, written policies and procedures concerning the (A) protection of Personal Information, (B) the protection of the systems, technology and networks that process such Personal Information, and (C) prevention, detection, containment, and correction of security violations respecting its information systems. The Company has provided Purchaser with true and accurate copies of all such written and procedures. Each Company employee and agent has received training regarding information security that is relevant to each such employee's or agent's role and responsibility within the Company. The Company has deployed industry standard encryption on all portable devices and information systems containing Sensitive Personal Information.

(iv) To the extent the Company collects Personal Information of Persons who reside outside of the United States, the Company has implemented mechanisms to comply with Privacy Laws restricting the transfers of Personal Information from such Persons' home country to any other country.

(v) The Company has implemented commercially reasonable administrative, physical and technical safeguards to protect the Personal Information processed by the Company.

(vi) To the extent necessary or required by HIPAA, the Company has entered into a business associate agreement that complies with HIPAA and HITECH in each case in which the Company's counterparty is acting as Covered Entity or a Business Associate or the Company provides access to Protected Health Information to its agents, subcontractors or vendors. There have not been any material violations of any such business associate agreements by the Company.

(vii) The Company has made available or provided Purchaser with true and accurate copies of all Contracts with each third-party service provider, vendor and business partner that has access (including storage) to Sensitive Personal Information, including payment processors, advertising and marketing agencies, cloud storage vendors and outsourced technology or human resource functions.

(o) Compliance with Applicable Laws; Permits.

(i) Each permit, license, approval, franchise, order, consent, authorization, registration, qualification or other right and privilege from any Governmental Entity (A) pursuant to which the Company or Subsidiary currently operates or holds any interest in any of its properties or (B) which is required for the operation of the Company's and the Subsidiary's business or the holding of any such interest (collectively, "***Permits***") has been issued or granted to the Company or the Subsidiary. As of the date of this Agreement, the Permits held by or issued to the Company or Subsidiary are in full force and effect, and the Company and the Subsidiary are in compliance with each such Permit in all material respects.

(ii) Except as set forth in Disclosure Schedule 3.2(o)(ii), since June 30, 2012, each of the Company and the Subsidiary has complied in all material respects with all Applicable Laws and is not in violation of, and has not received any written notices of suspected, potential or actual violation with respect to, any Applicable Laws.

(iii) Except as set forth in Disclosure Schedule 3.2(o)(iii), during the five year period ending on the date of this Agreement, the Company has not had any product or manufacturing site subject to a Governmental Entity shutdown or import or export prohibition, nor received any Governmental Entity notice of inspectional observations, "warning letters," "untitled letters," or similar correspondence or written notice from any Governmental Entity alleging or asserting noncompliance with any Applicable Law, Permit or such correspondence or notice from any Governmental Entity, and, to the Knowledge of the Company, no Governmental Entity is considering such action.

(p) Foreign Corrupt Practices Act. Without limiting the generality of Section 3.2(o), neither the Company nor the Subsidiary (including any of their respective directors, officers, employees, agents or other Person associated with or acting on their behalf) has, directly or indirectly, taken any action which would cause it to be in violation of the Foreign Corrupt Practices Act of 1977, as amended, or any rules or regulations thereunder (the "***FCPA***"), used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, made, offered or authorized any unlawful payment to foreign or domestic government officials or employees, whether directly or indirectly, or made, offered or authorized any bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment, whether directly or indirectly.

(q) Export Control Laws. Without limiting the generality of Section 3.2(o), each of the Company and the Subsidiary has at all times conducted its export transactions in accordance with (i) all applicable U.S. export and re export controls, including the United States Export Administration Act and Regulations and Foreign Assets Control Regulations and (ii) all other applicable import/export controls in other countries in which the Company or Subsidiary conducts business. Without limiting the foregoing:

(i) each of the Company and the Subsidiary has obtained all export licenses, license exceptions and other consents, notices, waivers, approvals, orders, authorizations, registrations, declarations and filings with any Governmental Entity required for (A) the export and re export of products, services, software and technologies and (B) releases of technologies and software to foreign nationals located in the United States and abroad ("***Export Approvals***");

(ii) each of the Company and the Subsidiary is in compliance with the terms of all applicable Export Approvals;

(iii) there are no pending or, to the Knowledge of the Company, threatened claims against the Company or Subsidiary with respect to such Export Approvals; and

(iv) to the Knowledge of the Company, there are no actions, conditions or circumstances pertaining to the Company's or the Subsidiary's export transactions that may give rise to any future claims.

(r) Environmental Matters. The Company and the Subsidiary have obtained all Environmental Permits necessary for the conduct of Business and each is in compliance with the requirements of such Environmental Permits and with all applicable Environmental Laws. Except as set forth in Disclosure Schedule 3.2(r), (i) to the Knowledge of the Company no (A) underground storage tanks, (B) polychlorinated biphenyls or equipment containing polychlorinated biphenyls, or (C) asbestos or asbestos-containing materials are present at the Leased Real Property, and (ii) the operations of the Company and the Subsidiary have not resulted in any release of Hazardous Materials on the Leased Real Property in violation of Applicable Laws. The Company has not received any written or oral notice, report or other information regarding any actual or alleged violation of Environmental Laws, or any liabilities or potential liabilities (whether accrued, absolute, contingent, unliquidated or otherwise), including any investigatory, remedial or corrective obligations, relating to the Company, its current or former facilities or the Leased Real Property arising under Environmental Laws.

(s) FDA and Regulatory Matters.

(i) Except as set forth on Disclosure Schedule 3.2(s)(i), each of the Company and the Subsidiary is, and since its incorporation or organization has been, in compliance with all Healthcare Laws applicable to the Company, the Subsidiary and the Company Products, or by which any property or other asset of the Company or the Subsidiary is bound or affected. The design, manufacture, testing, and distribution of Company Products by or on behalf of the Company is being, and has been since its incorporation or organization, as applicable, conducted in compliance with all applicable Healthcare Laws, including the FDA's current good manufacturing practice regulations at 21 C.F.R. Part 820 for medical device products. The Company and the Subsidiary and, to the Knowledge of the Company, any contract manufacturers assisting in the manufacture of the Company Products are, and at all times have been, in compliance with FDA's registration and listing requirements to the extent required by applicable Healthcare Laws. Neither the Company nor the Subsidiary has received notification of any pending or threatened Action from any Governmental Entity, including the FDA, the Centers for Medicare & Medicaid Services, and the U.S. Department of Health and Human Services Office of Inspector General, or any comparable state or federal Governmental Entity alleging potential or actual non-compliance by, or Liability of, the Company or the Subsidiary under any Healthcare Law.

(ii) The Company and the Subsidiary hold such Permits of Governmental Entities from the United States government or government agencies required for the conduct of its Business as currently conducted, including those Permits necessary to permit the design, development, pre-clinical and clinical testing, manufacture, labeling, sale, shipment, distribution and promotion of the Company Products in jurisdictions where it currently conducts such activities (the "***Activities to Date***") with respect to each Company Product (collectively, the "***Company Licenses***"). The Company has fulfilled and performed all of its obligations in all material respects with respect to each Company License and is in compliance in all material respects with all terms and conditions of each Company License, and, to the Knowledge of the Company, no event has occurred which allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other impairment of the rights of the holder of any Company License. Neither the Company nor the Subsidiary has received any information or notification from the FDA or any other Governmental Entity with jurisdiction over the testing, marketing, sale, use, handling and control, safety, efficacy, reliability, or manufacturing of medical devices regarding the denial of any application for marketing approval or clearance currently pending before the FDA or any other Governmental Entity.

(iii) All filings, reports, documents, claims, submissions and notices required to be filed, maintained, or furnished to FDA, state, other federal equivalent agencies by the Company have been so filed, maintained or furnished and were complete and correct in all material respects on the date filed (or were corrected in or supplemented by a subsequent filing), including adverse event reports and medical device reports, with regard to the Company Products. Disclosure Schedule 3.2(s)(iii) sets forth a list of all adverse event reports related to the Company Products, including any Medical Device Reports required in accordance with 21 C.F.R. Part 803. Set forth on Disclosure Schedule 3.2(s)(iii) are complaint review and analysis reports of the Company and the Subsidiary, including information regarding complaints by product, which reports are complete and correct in all material respects. All applications, notifications, submissions, information, claims, reports, filings, and other data and conclusions derived therefrom utilized as the basis for or submitted in connection with any and all requests for a Company License from the FDA or other Governmental Entity relating to the Company, the Subsidiary or the Business, or the Company Products, when submitted to the FDA or any other Governmental Entity, whether oral, written or electronically delivered, were true, accurate and complete as of the date of submission. Any necessary or required updates, changes, corrections or modifications to such applications, notifications, submissions, information, claims, reports, filings, and other data have been submitted to the FDA or other Governmental Entity and as so updated, changed, corrected or modified remain true, accurate and complete, and do not materially misstate any of the statements or information included therein, or omit to state a material fact necessary to make the statements therein not misleading.

(iv) Neither the Company nor the Subsidiary has received any notice or other communication from the FDA or any other Governmental Entity contesting the pre-market clearance or approval of, the uses of or the labeling and promotion of any of the Company Products. No manufacturing site which assists in the manufacture of the Company Products (whether Company-owned or operated, or, to the Knowledge of the Company, that of a contract manufacturer for the Products) has been subject to a Governmental Entity (including FDA) shutdown or import or export prohibition. Neither the Company nor, to the Knowledge of the Company, any manufacturing site which assists in the manufacture of the Products (whether Company-owned or operated, or that of a contract manufacturer for the Products) has received any FDA Form 483 or other Governmental Entity notice of inspectional observations or adverse findings, "warning letters," "untitled letters" or similar correspondence or notice from the FDA or other Governmental Entity alleging or asserting noncompliance with any applicable Healthcare Laws or Company Licenses or alleging a lack of safety from the FDA or any other Governmental Entity, and there is no action or proceeding pending or, to the Knowledge of the Company, threatened.

(v) Except as set forth on Disclosure Schedule 3.2(s)(v), there have been no recalls (either voluntary or involuntary), field notifications, field corrections, market withdrawals or replacements, warnings, "dear doctor" letters, investigator notices, safety alerts or other notices of action relating to an alleged lack of safety, efficacy, or regulatory compliance of any Company Product, or seizures ordered or adverse regulatory actions taken (or, to the Knowledge of the Company, threatened) by the FDA or any other Governmental Entity with respect to any of the Company Products or any facilities where any such Company Products are tested, produced, processed, packaged or stored. The FDA has not mandated that the Company do a recall of any of the Company Products. There are no recalls of any of the Company Products contemplated or pending.

(vi) No preclinical or clinical trials have been completed, or are being conducted as of the date hereof, by or on behalf of, or sponsored by, the Company.

(vii) Neither the Company, nor, to the Knowledge of the Company, any director, officer or employee of the Company, nor any agent acting on behalf of or for the benefit of any of the Company, has directly or indirectly in connection with the Company: (A) offered or paid any remuneration, in cash or in kind, to or made any financial arrangements with, any past, present or potential customers, past or present suppliers, patients, contractors or employees of private third party payors or government programs in return for or to induce business or payments from such persons other than in the ordinary course of business; (B) given or agreed to give, any gift or gratuitous payment of any kind, nature or description (whether in money, property or services) to any customer or potential customer, supplier or potential supplier, contractor, private third party payor or any other person other than in connection with promotional or entertainment activities in the ordinary course of business and in compliance with the Company's compliance program; or (C) made any false entries on any of the Company's books or records for any purpose prohibited by Applicable Law.

(viii) The Company has delivered to Purchaser true, correct and complete copies of all of its material written communications with the FDA.

(ix) The Company is not the subject of any pending or, to the Knowledge of the Company, threatened investigation regarding the Company or the Company Products, by the FDA pursuant to its "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities" Final Policy set forth in 56 Fed. Reg. 46,191 (September 10, 1991) and any amendments thereto ("***FDA Fraud Policy***"), or otherwise. Neither the Company nor to the Knowledge of the Company, any officer, employee, agent or distributor of the Company has made an untrue statement of material fact to the FDA or any other Governmental Entity, failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Entity, or committed an act, made a statement or failed to make a statement that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA or any other Governmental Entity to invoke the FDA Fraud Policy or any similar policy. Neither the Company nor, to the Knowledge of the Company, any officer, employee, agent or distributor of the Company, has been convicted of any crime or engaged in any conduct for which such Person could be excluded from participating in the federal health care programs under Section 1128 of the Social Security Act of 1935, as amended, or any similar Law. No claims, actions, proceedings or investigation that would reasonably be expected to result in a material debarment or exclusion are pending or, to the Knowledge of the Company, threatened, against the Company or, to the Knowledge of the Company, any of its directors, officers, employees or agents.

(t) Health Care Professionals. Except as set forth on Disclosure Schedule 3.2(t), no Seller is a Health Care Professional. The Company and the applicable Sellers acknowledge that Purchaser shall be entitled to disclose information regarding payments and other related items provided to any Sellers who are or may be Health Care Professionals to the public and various government agencies as Purchaser deems appropriate for the purpose of providing disclosure of and transparency with respect to interactions with Health Care Professionals (including information regarding the name of such Seller and the purpose and amount of any such payments), whether or not required by Applicable Law and regulations and regardless of whether such information is actively sought by the public or any applicable government agencies.

(u) Restrictions on Business Activities. Except as set forth in Disclosure Schedule 3.2(u), there is no Contract (non-competition or otherwise), commitment, Judgment, injunction, order or decree to which the Company or Subsidiary is a party or otherwise binding upon the Company or Subsidiary which prohibits or impairs any business practice of the Company or Subsidiary, the conduct of business by the Company or Subsidiary, or otherwise limiting the freedom of the Company to engage or participate in any line of business, market or geographic area, or to conduct any business activities, or to compete with any Person.

(v) Brokers. Except for Cockrell Group, whose fees and expenses will be paid by Sellers, no broker, finder or agent is entitled to any brokerage fees, finder's fees or commissions in connection with this Agreement or the transactions contemplated hereby based upon agreement, arrangement or understanding made by or on behalf of the Company or the Subsidiary; provided, the K. Hemmelgarn 1998 Trust and the B. Hemmelgarn 1998 Trust represent and warrant that no Hemmelgarn Seller has engaged any such broker on behalf of the Company or the Subsidiary, and they make no representation or warranty as to any such broker that may have been engaged by Kirschman or any other Person on behalf of the Company or the Subsidiary.

(w) Employees; Compensation; Labor Matters.

(i) Disclosure Schedule 3.2(w) contains a complete list of all current employees and consultants of the Company, showing for each: (A) name, (B) hire date, (C) current job title, (D) actual base salary, bonus, commission or other remuneration paid during 2014, (E) 2015 base salary level and 2015 target bonus (if any), and (F) indicating whether there has been any increase in compensation, bonus, incentive, or service award or any grant of any severance or termination pay or any other increase in benefits or any commitment to do any of the foregoing since January 1, 2015.

(ii) The Company has provided Purchaser with complete and correct copies of (A) all existing severance, accrued vacation or other leave agreement, policies or retiree benefits of any such employee or consultant, (B) all employee or consultant trade secret, non-compete, non-disclosure and invention assignment agreements and (C) all manuals and handbooks applicable to any current or former officer, employee or consultant of the Company. The employment or consulting arrangement of each officer, employee, agent or consultant of the Company is, subject to Applicable Laws involving the wrongful termination of employees, terminable at will (without the imposition of penalties or damages) by the Company and the Company does not have any severance obligations if any such manager, officer, employee, agent or consultant is terminated. To the Knowledge of the Company, no executive or Key Employee of the Company or any group of employees of the Company has any plans to terminate employment with the Company.

(iii) The Company has not experienced (nor, to the Knowledge of the Company, has it been threatened with) any strike, slow down, work stoppage or material grievance, claim of unfair labor practices, or other collective bargaining dispute within the past three years. The Company has not committed any material unfair labor practice. To the Knowledge of the Company, there is no organizational effort presently being made or threatened by or on behalf of any labor union with respect to employees of the Company. The Company has paid in full to all of its employees and independent contractors all wages, salaries, commissions, bonuses, benefits and other compensation due and payable to such employees and independent contractors.

(iv) All individuals who have performed services for the Company or who otherwise have claims for compensation from the Company have been properly classified as an employee or an independent contractor and as exempt or non-exempt pursuant to all Applicable Laws, including the Code and ERISA.

(x) Employee Benefit Plans.

(i) Disclosure Schedule 3.2(x)(i) contains a list, as of the date of this Agreement, of all "employee benefit plans" within the meaning of §3(3) of ERISA, all bonus, equity option, equity purchase, equity, incentive, deferred compensation, supplemental retirement, severance, change in control, fringe benefit and other employee benefit plans, programs or arrangements, and all employment or compensation agreements, whether or not subject to ERISA, in each case for the benefit of, or relating to, current employees and/or former employees of the Company or Subsidiary, sponsored by, contributed to or maintained by the Company or Subsidiary, or under which the Company or Subsidiary has any present or future Liability, other than those plans, programs and arrangements sponsored or mandated by a Governmental Entity (collectively, the "***Employee Plans***").

(ii) Each Employee Plan has been established and administered in compliance in all material respects with its terms and the requirements prescribed by Applicable Laws, and the Company and the Subsidiary, as applicable, has performed all obligations required to be performed by it under, and is not in violation of the terms of, any of the Employee Plans. To the extent applicable, the Company has made available to Purchaser copies of: (A) each Employee Plan and applicable amendments; (B) the most recent IRS Form 5500, if any, prepared for each Employee Plan (including all schedules thereto); (C) the most recent determination letter; (D) any trust agreement or other funding instrument related to such Employee Plan; and (E) any summary plan description.

(iii) The execution of this Agreement and the consummation of the transactions contemplated by this Agreement shall not constitute an event under any Employee Plan that shall result in or cause (A) any payment (whether of severance pay or otherwise), (B) forgiveness of indebtedness or accelerated vesting with respect to any current employees or former employees of the Company or Subsidiary, (C) any limitation or restriction on the right of Purchaser to merge, amend or terminate any of the Employee Plans, or (D) payments under any of the Employee Plans that would not be deductible under Section 280G of the Code.

(iv) Neither the Company nor the Subsidiary nor any of their ERISA Affiliates maintains, contributes to or is obligated to contribute to, or has any Liability or responsibility with respect to any Employee Plan that is subject to Title IV of ERISA, including any multi-employer plan (as defined in Section 3(37) of ERISA).

(v) Neither the Company nor the Subsidiary has any Liability or obligation under any Employee Plan to provide post-termination life insurance or medical or health benefits to any employee or dependent other than as required by Part 6 of Title I of ERISA. No nonexempt "prohibited transaction" (as such term is defined in Section 406 of ERISA and Section 4975 of the Code) has occurred with respect to any Employee Plan.

(y) Material Contracts. Disclosure Schedule 3.2(y) sets forth a list of the Material Contracts, true and complete copies of which have been provided or made available to Purchaser. The Material Contracts are not in default by the Company or Subsidiary, are not in default by any other party thereto to the Knowledge of the Company, and no circumstance exists that (with or without notice, the passage of time or both) would constitute a default under any Material Contract by the Company or Subsidiary or, to the Knowledge of the Company, by any other party thereto. Except as set forth in Disclosure Schedule 3.2(y), neither the Company nor the Subsidiary has received any notice of default or intention to cancel or modify with respect to a Material Contract.

(z) Transactions with Affiliates. Except as set forth in Disclosure Schedule 3.2(z), none of Sellers or the directors or officers of the Company or any of their respective Affiliates or family members:

(i) owns, directly or indirectly, any ownership interest or investment in any Person that is engaged in the Business or is a competitor, supplier, customer, lessor or lessee of the Company; provided, however, that the foregoing representation shall be deemed not to be made as to the ownership of not more than five percent of the securities of any such Person that has securities registered pursuant to Section 13 or Section 15 of the Exchange Act;

(ii) has any claim against or owes any amount to, or is owed any amount by, the Company;

(iii) has any interest in or owns any assets, properties or rights used in the conduct of the Business of the Company;

(iv) is a party to any Contract to which the Company is a party or which otherwise benefits the Business of the Company; or

(v) is involved in any business relationship with the Company.

(aa) Absence of Changes. Since the Latest Balance Sheet Date, the Company and the Subsidiary have conducted the Business only in the ordinary course consistent with past practice and, except as set forth in Disclosure Schedule 3.2(aa), there has not been:

(i) any material change in the assets, liabilities, financial condition, properties, business or operations of the Company or the Subsidiary, other than changes occurring in the ordinary course of business consistent with past practices;

(ii) any Lien placed on any of the properties of the Company or the Subsidiary, other than Permitted Liens;

(iii) any damage, destruction or loss, whether or not covered by insurance, to any material property or right of the Company or Subsidiary;

(iv) any declaration, setting aside or payment of any distribution by the Company, or the making of any other distribution, in respect of the shares of Company Stock (other than tax distributions in accordance with past practice), or any direct or indirect redemption, purchase or other acquisition by the Company of its capital stock;

(v) any resignation, termination or removal of any officer of the Company or the Subsidiary, material loss of personnel of the Company or the Subsidiary, or change in the terms and conditions of the employment of the Company's or the Subsidiary's officers or Key Employees;

(vi) any amendment or termination of, or waiver under, any Material Contract, except as otherwise contemplated by this Agreement;

(vii) any acquisition or disposition of property for a purchase or sale price in excess of $50,000, other than sales of Company Products in the ordinary course of business;

(viii) any sale, disposition, transfer or license to any Person of any Company Intellectual Property (other than in the ordinary course of business consistent with past practice); or any acquisition or license from any Person of any Intellectual Property (other than "shrink wrap" and similar generally available commercial end-user licenses to software that is not redistributed with the Company Products);

(ix) any material change in the manner in which the Company or Subsidiary extends discounts, credits or warranties to customers or otherwise deals with its customers; or

(x) any agreement or understanding whether in writing or otherwise, for the Company or the Subsidiary to take any of the actions specified in paragraphs (i) through (ix).

(bb) Insurance. Disclosure Schedule 3.2(bb) sets forth the following information with respect to each insurance policy (including policies providing property, casualty, liability, director & officer, and workers' compensation coverage and bond and surety arrangements) with respect to which the Company or Subsidiary is a party, a named insured, or otherwise the beneficiary of coverage (collectively, the "***Insurance Policies***"): (A) the name of the insurer, (B) the policy number and the period of coverage; and (C) a description of any retroactive premium adjustments or other material loss-sharing arrangements. Except as set forth in Disclosure Schedule 3.2(bb), there is no claim by the Company or any other Person pending under any such policies and bonds as to which coverage has been questioned, denied or disputed. All premiums due and payable under all such policies and bonds have been paid. The Company has not received any threatened terminations of any of such policies or bonds. Disclosure Schedule 3.2(bb) sets forth a list of all claims made under the Insurance Policies, or under any other insurance policy, bond or agreement covering the Company or its operations since January 1, 2014. Since January 1, 2012, the Company has maintained insurance policies with coverage and policy limits that are substantially similar to the coverage and policy limits provided by the Insurance Policies.

(cc) Customers and Suppliers

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(i) Disclosure Schedule 3.2(cc) sets forth a correct and complete list of the ten largest suppliers (by dollar volume) of products or services to the Company, and the 20 largest customers (by revenue dollar volume) of the Company each during calendar year 2014 and the five months ended May 31, 2015. Disclosure Schedule 3.2(cc) also sets forth, for each such supplier and customer, the aggregate payments from and to such Person by the Company during such periods. There are no outstanding disputes with any of such suppliers or customers.

(ii) Since December 31, 2014, none of the suppliers listed on Disclosure Schedule 3.2(cc) has indicated that it shall stop, materially decrease the rate of, or materially change the pricing of, supplying materials, products or services to the Company, or otherwise materially change the terms of its relationship with the Company. The Company has no reason to believe that any supplier listed on Disclosure Schedule 3.2(cc) will stop, materially decrease the rate of, or materially change the pricing of, supplying products or services to the Company or otherwise materially change the terms of its relationship with the Company after, or as a result of, the consummation of any transactions contemplated by this Agreement or that any such supplier is threatened with bankruptcy or insolvency. The Company knows of no fact, condition or event which would adversely affect the relationship of the Company with any such supplier.

(iii) Since December 31, 2014, none of the customers listed on Disclosure Schedule 3.2(cc) has indicated that it shall stop, materially decrease the rate of, or materially change the pricing of, buying products or services from the Company or otherwise materially change the terms of its relationship with the Company. The Company has no reason to believe that any customer listed on Disclosure Schedule 3.2(cc) will stop, materially decrease the rate of, or materially change the pricing of, buying products or services from the Company or otherwise materially change the terms of its relationship with the Company after, or as a result of, the consummation of any transactions contemplated by this Agreement or that any such customer is threatened with bankruptcy or insolvency. The Company knows of no fact, condition or event which would adversely affect the relationship of the Company with any such customer. Since December 31, 2014, to the Knowledge of the Company, no Person who has been a customer or client of the Company has indicated that it shall stop, materially decrease the rate of, or materially change the pricing of, buying products or services from the Company or otherwise materially change the terms of its relationship with the Company.

(dd) Warranty. To the Knowledge of the Company, each Company Product or service, provided, sold, leased, or delivered by the Company is and has been provided, sold, or delivered in conformity with all applicable contractual commitments and all express and implied warranties. Disclosure Schedule 3.2(dd) includes copies of the standard terms and conditions of service, sale or lease for the Company (containing applicable guaranty, warranty, and indemnity provisions). To the Knowledge of the Company, no Company Product or service sold, leased, or delivered by the Company is subject to any material guaranty, warranty, or other indemnity beyond the applicable standard terms and conditions of sale or lease set forth in Disclosure Schedule 3.2(dd), except for any guaranty, warranty or other indemnity that is imposed by law.

(ee) Disclosure. Neither this Agreement nor any agreement, attachment, schedule, exhibit, certificate or other statement delivered pursuant to this Agreement or in connection with the transactions contemplated hereby omits to state a material fact necessary in order to make the statements and information contained herein or therein, not misleading. The Company is not aware of any information necessary to enable a prospective purchaser of the Company Stock or the Business of the Company to make an informed decision with respect to the purchase of such Company Stock or Business that has not been expressly disclosed herein. Purchaser has been provided full and complete copies of all documents referred to on the Disclosure Schedules.

Section 3.3 Representations and Warranties of Purchaser. Purchaser represents and warrants to Sellers as follows:

(a) Organization; Authority; Due Execution and Binding Effect. Purchaser is a corporation duly organized, validly existing and in good standing under the Applicable Laws of the State of Delaware, and has all requisite corporate power and authority to own, lease and operate its properties and to conduct its business. Purchaser has the requisite power and authority to execute and deliver this Agreement and each other Transaction Document to which it is a party, to consummate the transactions contemplated hereby and thereby and to perform its obligations under this Agreement and each other Transaction Document to which it is a party. This Agreement has been, and each other Transaction Document to which Purchaser is a party will be, duly and validly executed and delivered by Purchaser. Assuming the due authorization, execution and delivery by the other parties hereto, this Agreement constitutes the valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar Applicable Laws affecting the enforcement of creditors rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in law or equity).

(b) Purchaser Common Stock. The authorized capital stock of Purchaser consists of 95,000,000 shares of common stock, par value $0.000001 per share, of which 7,044,426 shares are issued and outstanding at April 13, 2015, and 5,000,000 shares of preferred stock, par value $0.000001 per share, none of which are issued or outstanding at April 13, 2015. All outstanding shares of Purchaser Common Stock are validly issued, fully paid, nonassessable and not subject to any preemptive rights, or to any agreement to which Purchaser is a party or by which Purchaser may be bound that would conflict with the obligations of Purchaser under this Agreement, the other Transaction Documents to which Purchaser is a party or the transactions contemplated hereby or thereby. The shares of Purchaser Common Stock to be issued pursuant to the terms of this Agreement are validly authorized and reserved for issuance and, when such shares of Purchaser Common Stock have been duly delivered pursuant to the terms of this Agreement, will not have been issued in violation of any preemptive or similar right of any shareholder or other Person. When the shares of Purchaser Common Stock have been duly delivered pursuant to the terms of this Agreement, such shares of Purchaser Common Stock will be validly issued, fully paid and non-assessable.

(c) No Conflict. Neither the execution and delivery of this Agreement by Purchaser, nor the performance by Purchaser of its obligations hereunder shall, directly or indirectly: (i) contravene, conflict with, or result in (with or without notice or lapse of time) a violation or breach of any Applicable Law or order to which Purchaser is subject; (ii) violate, conflict with or result in the breach of any provision of the organizational documents of Purchaser; or (iii) conflict in any material respect with, result in a material breach of, constitute a material default (or event which with the giving of notice or lapse of time, or both, would become a material breach or default) under, require any Consent under, or give to others any right of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any Lien pursuant to, any Material Contract to which Purchaser is a party or by which any of its respective assets or properties are bound or affected.

(d) Litigation. There is no Action pending against, or to the knowledge of Purchaser, threatened against or affecting, Purchaser before any court or arbitrator or any Governmental Entity which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated hereby.

(e) Purchaser SEC Documents. Since January 1, 2011, Purchaser has timely filed all Purchaser SEC Documents required to be filed by it with the SEC pursuant to the reporting requirements of the Exchange Act. Purchaser has made available to the Company an accurate and complete copy of each communication mailed by Purchaser to its stockholders since the time of filing of the Form 10-K for the year ending December 31, 2014. No such Purchaser SEC Document or communication, at the time filed or communicated (or, if amended prior to the date of this Agreement, as of the date of such amendment), contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances in which they are made, not misleading. As of their respective dates, all Purchaser SEC Documents complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto. To the knowledge of Purchaser, none of the Purchaser SEC Documents is the subject of any ongoing review or investigation by the SEC or any Governmental Entity and there are no unresolved SEC comments with respect to any of such documents.

(f) Government Approvals. Except for (i) compliance with applicable requirements of the Securities Act, the Exchange Act and the rules of the OTCQX Exchange, and (ii) filings required under and compliance with other Applicable Laws, no consents or approvals of, or filings, declarations or registrations with, any Governmental Entity are necessary for the execution and delivery of this Agreement by Purchaser or the consummation by Purchaser of the transactions contemplated hereby, other than such consents or approvals, filings, declarations or registrations that, if not obtained, made or given, could not, individually or in the aggregate, reasonably be expected to impair in any material respect the ability of Purchaser to perform its obligations hereunder, or prevent or materially impede, interfere with, hinder or delay the consummation of the Purchase.

(g) Financial Statements. The financial statements of Purchaser and its subsidiaries included (or incorporated by reference) in the Purchaser SEC Documents (including the related notes, where applicable) (i) have been prepared from, and are in accordance with, the books and records of Purchaser and the subsidiaries; (ii) fairly present in all material respects the consolidated results of operations, cash flows, change in stockholders' equity and consolidated financial position of Purchaser and its subsidiaries for the respective fiscal periods or as of the respective dates therein set forth (subject in the case of their unaudited statements to recurring year-end audit adjustments normal in nature and amount); (iii) complied, as of their respective dates of filing with the SEC, in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto; and (iv) have been prepared in accordance with GAAP consistently applied during the periods involved, except in each case, as indicated in such statements or in the notes thereto. The books and records of Purchaser and its subsidiaries have been, and are being, maintained in all material respects in accordance with GAAP and any other applicable legal and accounting principles.

(h) Absence of Certain Changes or Events. Except as disclosed in the Purchaser SEC Documents: (i) since December 31, 2014, no event or events have occurred or condition or conditions have existed that have had or would reasonably be expected to have, either individually or in the aggregate, a material adverse effect on the operations, business, financial condition or results of operations of Purchaser and its subsidiaries, taken as a whole; and (ii) since December 31, 2014 through and including the date of this Agreement, Purchaser and its subsidiaries have carried on their respective businesses in all material respects in the ordinary course of business consistent with their past practice.

(i) Compliance with Applicable Laws. Purchaser and each of its subsidiaries hold all permits, licenses, franchises and authorizations necessary for the lawful conduct of their respective businesses, are in compliance in all material respects with all Applicable Laws and have not received any written notices from a Governmental Entity alleging a violation of Applicable Laws that remain unresolved.

(j) Brokers. Except for William Blair & Co., L.L.C., whose fees and expenses will be paid by Purchaser, no broker, finder or agent is entitled to any brokerage fees, finder's fees or commissions in connection with this Agreement or the transactions contemplated hereby based upon agreement, arrangement or understanding made by or on behalf of Purchaser.

ARTICLE 4
COVENANTS

Section 4.1 **Additional Agreements**. Each of the parties shall use its commercially reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under Applicable Laws, and execute and deliver such documents and other papers, as may reasonably be required to carry out the provisions of this Agreement and consummate and make effective the transactions contemplated hereby. Without limiting the generality of the foregoing, the Company and Sellers shall use their commercially reasonable efforts to obtain the Consents set forth in Disclosure Schedule 3.2(e) in form reasonably acceptable to Purchaser.

Section 4.2 **Conduct of Business**. Except as specifically permitted under this Agreement or to the extent that Purchaser shall otherwise consent in writing, from the date of this Agreement until the Closing Date, Sellers covenant and agree with Purchaser that the Company and the Subsidiary shall (i) conduct their business only in the ordinary course of business and in a manner consistent with past practice and (ii) conduct their business in compliance in all material respects with all Applicable Laws, and shall not:

(a) take or authorize any of the actions set forth in Section 3.2(aa);

(b) issue or sell any stock or other equity interest in the Company or the Subsidiary, or issue or sell any equity interests convertible into, or options with respect to, or warrants to purchase or rights to subscribe to, any stock or other equity interest in the Company or the Subsidiary, or make any commitment to issue or sell any such equity interest;

(c) change the Company's or the Subsidiary's Charter Documents;

(d) change the salary, bonus, wage rates, fringe benefits or other compensation of any employee or consultant;

(e) waive or release any right or claim of the Company or the Subsidiary, other than in the ordinary course of business;

(f) commence any lawsuit or settle any lawsuit or threat of a lawsuit, except for collection actions in the ordinary course of business;

(g) enter into any Contract that would be a Material Contract, except in the ordinary course of business consistent with past practice, or terminate or waive any of the material terms of any Material Contract;

(h) sell, dispose, transfer or license to any Person any Company Intellectual Property (other than in the ordinary course of business consistent with past practice); or abandon or permit to lapse any Company Registered Intellectual Property; or acquire or license from any Person any Intellectual Property (other than "shrink wrap" and similar generally available commercial end-user licenses to software that is not redistributed with the Company Products);

(i) make any material change in the manner in which the Company or the Subsidiary extends discounts, credits or warranties to customers or otherwise deals with its customers; or

(j) agree or commit to do or authorize any of the foregoing.

Section 4.3 Access.

(a) General. From the date of this Agreement until the Closing Date, the Company and Sellers shall provide Purchaser and its representatives reasonable access during normal business hours to (i) all of the premises, properties, books, Contracts, documents and records of the Company and the Subsidiary, (ii) all other information concerning the business, properties and personnel (subject to restrictions imposed by Applicable Law) of the Company and the Subsidiary as Purchaser may reasonably request, and (iii) all employees, customers or suppliers of the Company or the Subsidiary as identified by Purchaser.

(b) Financial Information. From the date of this Agreement until the Closing Date, the Company shall provide to Purchaser and its accountants, counsel and other representatives copies of internal financial statements (including Tax Returns and supporting documentation) promptly upon request

(c) Environmental Investigations. Purchaser and Sellers shall cause to be conducted, at Sellers' expense, a Phase I environmental investigation of the Leased Real Property. Further, Purchaser shall have the right to cause to be conducted a Phase II environmental investigation of the Leased Real Property if the results of the Phase I environmental investigation indicate that a Phase II investigation is necessary or desirable. In the event that Purchaser concludes that a Phase II environmental investigation of the Leased Real Property is necessary or desirable, Sellers will allow reasonable access to Purchaser and its consultants to such Leased Real Property for the purposes of conducting such an investigation. Such access shall be granted in accordance with an access agreement in standard form to be agreed upon by the parties.

(d) No Limitation of Remedies. No information discovered through the access afforded by this Section 4.3 shall (i) limit or otherwise affect any remedies available to Purchaser, (ii) constitute an acknowledgment or admission of a breach of this Agreement, or (iii) be deemed to amend or supplement the Disclosure Schedules or prevent or cure any misrepresentations, breach of warranty or breach of covenant.

Section 4.4 Tail Insurance Policies. Purchaser shall maintain in effect (a) a director's and officers' liability insurance policy covering, for a period of three years from the Closing Date, those persons who are currently covered by the Company's director's and officers' liability insurance policy with coverage in amount and scope at least as favorable as the Company's existing coverage, and (b) a tail product liability insurance policy in the amount of at least $20,000,000 covering, for a period of seven years from the Closing Date, product liability claims based on events occurring before the Closing Date (together, the "***Tail Policies***"). All costs and expenses associated with the Tail Policies required to be purchased and maintained pursuant to this Section 4.4 shall be Transaction Costs paid out of the Purchase Consideration.

Section 4.5 Disclosure Schedules. From time to time prior to the Closing, Sellers shall have the right to supplement or amend the Disclosure Schedules with respect to any matter hereafter arising or discovered after the delivery of the Disclosure Schedules pursuant to this Agreement; provided, however, that such supplements or amendments to the Disclosure Schedules shall not be deemed to amend or otherwise modify the Disclosure Schedules delivered on the date of this Agreement or the representations and warranties of Sellers contained herein or otherwise have any effect on the satisfaction of the conditions to Purchaser's obligations to close hereunder or on Sellers' indemnity obligations hereunder.

Section 4.6 Tax Matters.

(a) No Revocation of S Election. Prior to the Closing Date, the Company and Sellers shall not revoke the Company's election to be taxed as an S corporation within the meaning of Code Sections 1361 and 1362. The Company and Sellers shall not take or allow any action that would result in the termination of the Company's status as a validly electing S corporation within the meaning of Code Sections 1361 and 1362.

(b) Tax Returns. Purchaser shall prepare and timely file (taking into account extensions granted), or cause to be prepared and timely filed, any Tax Returns for the Company and the Subsidiary that are required to be filed after the Closing Date. All such Tax Returns for tax periods ending on the closing date, and in the case of Straddle Periods, for the pre-Closing portion of such Straddle Period shall be prepared in a manner consistent with the Tax Returns of the Company and the Subsidiary for preceding Tax periods, unless a different treatment is required by Applicable Law. All Taxes relating to Tax periods ending on the Closing Date or the portion of Straddle Periods ending on the Closing Date shall be paid to Purchaser from the Escrowed Amount pursuant to Section 7.6.

(c) Straddle Period. For purposes of Section 4.6(b), in the case of Taxes that are payable with respect to any Straddle Period, the portion of any such Tax that is attributable to the portion of the Straddle Period ending on and including the Closing Date shall be:

(i) in the case of Taxes that are either (A) based upon or related to income or receipts, or (B) imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible), deemed equal to the amount that would be payable if the Taxable period of the Company and the Subsidiary ended with, and included, the Closing Date; and

(ii) in the case of Taxes that are imposed on a periodic basis with respect to the assets of the Company and the Subsidiary, deemed to be the amount of such Taxes for the entire Straddle Period, or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period, multiplied by a fraction, the numerator of which is the number of calendar days in the portion of the Straddle Period ending on and including the Closing Date, and the denominator of which is the number of calendar days in the entire Straddle Period.

(d) Refunds and Credits. Any refunds or credits of Taxes that are paid or credited in respect of any period ending on or prior to the Closing Date, and in the case of Straddle Periods, for the pre-Closing portion of such Straddle Period, shall be for the account of Sellers (except to the extent included as a Current Asset on the Final Balance Sheet in the calculation of the Final Working Capital or attributable to the carryback of a Tax attribute incurred after the Closing Date) and Purchaser shall pay the amount of any such refunds or credits that it receives to Sellers in proportion to their Ownership Interest Shares as soon as reasonably practicable following the receipt thereof. Any refund or credits of Taxes not described in the preceding sentence shall be for the account of Purchaser. Purchaser shall prepare and file, or cause to be prepared and filed, at the sole cost and expense of Sellers, any amended Tax Returns or other filings necessary for the Company and/or the Subsidiary to claim any refunds or credits that Sellers would be entitled to and that Sellers reasonably request; provided that Purchaser determines in its reasonable discretion that the taking of any such action is not inconsistent with Purchaser's, the Company's or the Subsidiary's Tax reporting positions and/or Tax Returns, as the case may be, following the Closing.

(e) Tax Proceedings. If Purchaser becomes aware of any assessment, official inquiry, examination or proceeding (a "***Tax Proceeding***") that could result in an official determination with respect to any Purchaser Indemnified Tax, Purchaser shall promptly so notify Sellers; provided, however, that the failure to so notify Sellers shall not relieve Sellers of their obligations with respect to such Purchaser Indemnified Tax unless, and only to the extent that, such failure results in actual material prejudice to Sellers. If any Seller becomes aware of any Tax Proceeding that could result in an official determination with respect to Taxes related to the Subsidiary, Sellers shall promptly so notify Purchaser; provided, however, that the failure to so notify Purchaser shall not relieve Purchaser of its obligation under this Section 4.6 unless, and only to the extent that, such failure results in actual material prejudice to Purchaser.

(f) Control. Purchaser shall have the right to exercise control over the contest and/or settlement of any issue raised in any Tax Proceeding with respect to Taxes related to the Subsidiary; provided, however, that (i) Purchaser shall keep Sellers informed of all material developments with respect to such Tax Proceeding if it relates to any Purchaser Indemnified Taxes, and (ii) Purchaser shall not settle or compromise any such Tax Proceeding that relates to any Tax for which Sellers could be liable, except after good faith consultation with Sellers concerning such settlement or compromise. Any reasonable expenses incurred in connection therewith shall be paid by Purchaser to the extent that such expenses relate to a Tax that is not a Purchaser Indemnified Tax. To the extent that such expenses relate to a Tax that is a Purchaser Indemnified Tax, Purchaser shall have the right to make a claim for indemnification pursuant to Section 7.6 and the Escrow Agreement in the amount of any Purchaser Indemnified Taxes.

(g) Cooperation. Sellers and Purchaser shall provide each other with any information reasonably necessary to prepare and file complete and accurate Tax Returns.

(h) Transfer Taxes. All transfer, documentary, sales, use, stamp, registration and other such Taxes and fees (including any penalties and interest) incurred in connection with the transactions contemplated by this Agreement shall be paid by Sellers when due, and Sellers will, at their own expense, file all necessary Tax Returns and other documentation with respect to all such transfer, documentary, sales, use, stamp, registration and other Taxes and fees, and, if required by Applicable Law, Purchaser will join in the execution of any such Tax Returns and other documentation. If required by Applicable Law, the amount paid to any Person pursuant to this Agreement will be reduced by the amount of Taxes payable by such Person pursuant to this Section 4.6(h). Any amount so withheld will be promptly remitted to the appropriate Tax authority.

Section 4.7 Exclusivity.

(a) From the date of this Agreement until termination of this Agreement or the Closing Date, Sellers and the Company shall not (and shall cause the Subsidiary and the directors, officers, Key Employees, consultants, members, agents, advisors, attorneys, accountants, and representatives (collectively, "***Company's Representatives***") of the Company and the Subsidiary to not) directly or indirectly, take any of the following actions with any party other than Purchaser: (i) solicit, initiate, encourage or facilitate in any inquiry, negotiations or discussions, or enter into any Contract, with respect to any offer or proposal to acquire all or any part of the Business, properties, any of the technologies or assets of the Company or of the Subsidiary, or any amount of the equity ownership of the Company, (ii) disclose or furnish any information not customarily disclosed to any person concerning the Business, technologies or properties or assets of the Company or the Subsidiary, or afford to any Person access to its properties, technologies, books or records, not customarily afforded such access, (iii) assist or cooperate with any Person to make any proposal to purchase all or any part of the capital stock of the Company or assets of the Company or Subsidiary, or (iv) enter into any Contract with any Person providing for the acquisition of the Company or of the Subsidiary (other than inventory in the ordinary course of business), whether by merger, purchase of assets, license, tender offer or otherwise. Sellers and the Company shall, and shall cause the Subsidiary and the Company's Representatives to immediately cease and cause to be terminated any such negotiations, discussion or agreements (other than with Purchaser) that are the subject matter of the preceding sentence.

(b) In the event that Sellers, the Company, the Subsidiary or any of the Company's Representatives shall receive any offer, proposal, or request, directly or indirectly, of the type referenced in clause (i), (iii), or (iv) of Section 4.7(a), or any request for disclosure or access as referenced in clause (ii) of Section 4.7(a), Sellers and the Company shall (i) not engage in any discussions with such offeror or party with regard to such offers, proposals, or requests and (ii) immediately thereafter, notify Purchaser thereof, which notice shall contain the pricing, terms, conditions and other material provisions of such proposed transaction.

(c) The parties hereto agree that irreparable damage would occur in the event that the provisions of this Section 4.7 were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed by the parties hereto that Purchaser shall be entitled to an immediate injunction or injunctions, without the necessity of proving the inadequacy of money damages as a remedy and without the necessity of posting any bond or other security, to prevent breaches of the provisions of this Section 4.7 and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which Purchaser may be entitled at law or in equity. Without limiting the foregoing, it is understood that any violation of the restrictions set forth above by any of the Company Representatives shall be deemed to be a breach of this Agreement by Sellers and the Company.

Section 4.8 **Release of Liens**. In connection with the Closing, Sellers and the Company shall file, or shall have filed, all Contracts, instruments, certificates and other documents, in form and substance reasonably satisfactory to Purchaser, that are necessary or appropriate to effect the release of all Liens set forth in Disclosure Schedule 4.8.

Section 4.9 **General Release**. Notwithstanding anything contained herein to the contrary, effective as of the Closing Date, in consideration of the mutual agreements contained herein, including the Purchase Price to be received by Sellers, Sellers, for themselves and all of their Affiliates (other than the Company), heirs, executors, administrators, and assigns (collectively, the "***Releasors***"), hereby irrevocably release and forever discharge Purchaser, the Company, and their respective past, present and future subsidiaries, divisions, Affiliates and parents, and their respective current and former officers, directors, employees, agents, shareholders, and/or owners, and their respective successors, and assigns and any other Person jointly or severally liable with Purchaser, the Company or any of the aforementioned Persons (all of the foregoing, collectively, the "***Released Parties***"), from any and all manner of actions and causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, Judgments, charges, claims, and demands whatsoever which the Releasor and its, his or her heirs, executors, administrators, and assigns have, had, or may hereafter have, against the Released Parties or any of them of any nature, including by reason of or relating to or arising from the fact of the Releasor's employment and/or service with the Company or the Releasor's direct or indirect ownership interest in the Company, and any and all matters arising under any employment-related federal, state, or local statute, rule, or regulation, or principle of contract law or common law, in each case whether known, or unknown, suspected or unsuspected, to the extent relating to facts, actions, events, circumstances or conditions arising, occurring or failing to occur in the period on or prior to the Closing; provided, however, that nothing contained herein shall operate to release any claims, liabilities or obligations on account of, arising out of, or relating to the Releasor's rights under this Agreement or any of the Transaction Documents.

Section 4.10 **Financing**. Upon request of Purchaser from time to time prior to the Closing, Sellers and the Company shall provide reasonable cooperation and assistance to Purchaser in connection with the arrangement of appropriate financing (and in connection with any closing conditions and/or post-closing covenants contained in the definitive documentation for such financing); provided, that such requested cooperation and assistance does not unreasonably interfere with the Business. The foregoing cooperation of Sellers and the Company shall include: (a) as promptly as practicable, responding to and complying with reasonable requests of Purchaser for information about the Company and the Subsidiary and their respective business operations, assets, properties and condition (financial or otherwise), (b) granting Purchaser and its representatives full and complete reasonable access to (and copies of) the books, contracts, commitments and records of the Company and to senior management knowledgeable about such books, contracts, commitments and records as set forth in Section 4.3; provided that such representatives agree to be bound by the provisions of the Confidentiality Agreement, (c) using commercially reasonable efforts to furnish to Purchaser necessary financial and operational information for interim periods ending subsequent to May 31, 2015, and prior to the Closing in connection with such financing, (d) using commercially reasonable efforts to obtain landlord estoppel certificates, in form and substance reasonably acceptable to the lenders providing the financing, and (e) causing the Company and the Subsidiary to execute and deliver any definitive financing documents, including any guaranties, pledge documents, security documents and other definitive financing documents (including any certificates and instruments required pursuant to such definitive financing documents), such documents to be effective immediately prior and subject to the Closing, and otherwise facilitating the pledge, grant, recordation and perfection of security interests to be granted to the lenders under such definitive financing documents in any and all assets of the Company and the Subsidiary.

ARTICLE 5
CONDITIONS PRECEDENT

Section 5.1 **Conditions to Each Party's Obligation**. The respective obligations of Purchaser, the Company, and Sellers to effect the transactions contemplated hereby are subject to the satisfaction on or prior to the Closing Date of the following conditions:

(a) Governmental Approvals. Any authorizations or approvals of a Governmental Entity necessary for the consummation of the transactions contemplated by this Agreement shall have been obtained.

(b) No Injunctions or Restraints. No temporary restraining order, preliminary or permanent injunction, or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the transactions contemplated by this Agreement or any other Transaction Document shall be in effect.

(c) No Legal Prohibition. No Applicable Law shall be enacted, issued or enforced by any Governmental Entity that would have the effect of making the transactions contemplated by this Agreement illegal or would otherwise restrain or prohibit the consummation of such transactions.

Section 5.2 Conditions to Obligation of Purchaser. The obligations of Purchaser to effect the transactions contemplated hereby are subject to the satisfaction of the following conditions unless waived, in whole or in part, by Purchaser:

(a) Representations and Warranties. The representations and warranties of Sellers set forth in Section 3.1 and the Company set forth in Section 3.2 shall have been be true and correct in all material respects (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) on the date they were made and shall be true and correct in all material respects (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) on and as of the Closing Date as though such representations and warranties were made on and as of such date (other than the representations and warranties of the Seller and the Company as of a specified date, which shall be true and correct in all material respects (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) as of such date) in all cases without giving effect to any supplements or amendments to the Disclosure Schedules pursuant to Section 4.5.

(b) Performance of Covenants. The Company and Sellers shall have performed and complied with, in all material respects, all covenants and agreements required by this Agreement to be performed or complied with by them at or prior to the Closing.

(c) No Material Adverse Effect. There shall not have occurred any Material Adverse Effect subsequent to the date of this Agreement that is continuing.

(d) Closing Deliveries. All documents, instruments, certificates or other items required to be delivered by the Company and Sellers pursuant to Section 2.2(c) shall have been delivered.

(e) Fairness Opinion. Purchaser shall have received a fairness opinion from William Blair & Co., L.L.C., in a form reasonably satisfactory to Purchaser, opining as to the fairness of the Purchase and the other transactions contemplated by this Agreement.

(f) Financing. Purchaser shall have obtained financing for the Purchase in such amount and on such terms satisfactory to Purchaser in its sole discretion.

(g) Litigation. There shall be no action, suit, claim, order, injunction or proceeding of any nature pending, or overtly threatened, against Purchaser, the Company, or Sellers, their respective properties or any of their respective officers, directors, or subsidiaries (i) by any Person arising out of, or in any way connected with, the Purchase or the other transactions contemplated by the terms of this Agreement, or that could give rise to material damages, or (ii) by any Governmental Entity arising out of, or in any way connected with, the Purchase or the other transactions contemplated by the terms of this Agreement, or that could give rise to material damages.

(h) Compliance with Rule 506. Purchaser shall have reasonably concluded in good faith that the issuance of the Purchaser Stock Consideration can be completed in compliance with Rule 506 of Regulation D promulgated by the SEC under the Securities Act.

Section 5.3 Conditions to Obligations of the Company and Sellers. The obligation of the Company and Sellers to effect the transactions contemplated hereby is subject to the satisfaction of the following conditions unless waived, in whole or in part, by the Company and Sellers.

(a) Representations and Warranties. The representations and warranties of Purchaser contained in Section 3.3 shall have been be true and correct in all material respects (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) on the date they were made and shall be true and correct in all material respects (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) on and as of the Closing Date as though such representations and warranties were made on and as of such date (other than the representations and warranties of the Company as of a specified date, which shall be true and correct in all material respects (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) as of such date).

(b) Performance of Covenants. Purchaser shall have performed and complied with, in all material respects, all covenants and agreements required by this Agreement to be performed or complied with by Purchaser on or prior to the Closing.

(c) Closing Deliveries. All documents, instruments, certificates or other items required to be delivered by Purchaser pursuant to Sections 2.2(a) and (b) shall have been delivered.

(d) No Material Adverse Effect. There shall not have occurred any material adverse effect on the operations, business, financial condition or results of operations of Purchaser and its subsidiaries, taken as a whole, subsequent to the date of this Agreement that is continuing.

(e) Appointment to Board. The Appointee Director shall be approved for appointment to Class II of Purchaser's Board on the Closing Date.

ARTICLE 6
TERMINATION, AMENDMENT AND WAIVER

Section 6.1 Termination.

(a) Subject to Section 6.1(b), this Agreement may be terminated on written notice:

(i) By either Purchaser, on the one hand, and the Company and Sellers, on the other hand, if such terminating party is not then in breach of this Agreement, in the event of a breach by the other party of its material obligations under this Agreement which remains uncured after notice and opportunity to cure as provided in Section 6.1(b);

(ii) By Purchaser, if any of the conditions in Sections 5.1 and 5.2 have not been satisfied in all material respects by August 31, 2015, or if satisfaction of a condition is or becomes impossible (other than through the failure of Purchaser to comply with its obligations under this Agreement) and Purchaser has not waived the condition on or before August 31, 2015; or

(iii) By the Company and Sellers, if any of the conditions in Sections 5.1 and 5.3 have not been satisfied in all material respects by August 31, 2015, or if satisfaction of a condition is or becomes impossible (other than through the failure of the Company or Sellers to comply with their obligations under this Agreement) and the Company and Sellers have not waived such condition on or before August 31, 2015.

(b) If noncompliance, nonperformance or breach by a party hereto occurs or exists and can be cured or eliminated, the party wishing to terminate this Agreement in accordance with Section 6.1(a) shall not terminate unless and until (i) it has given the other party written notice that the noncompliance, nonperformance or breach has occurred, specifying the nature thereof and the action required to cure, and (ii) such noncompliance, nonperformance or breach shall not have been cured or eliminated, or the party giving the notice shall not have otherwise been held harmless from the consequences of the noncompliance, nonperformance or breach to its satisfaction, within 30 days of the receipt of such notice.

Section 6.2 Effect of Termination.

(a) Upon termination of this Agreement, this Agreement shall forthwith become null and void and there shall be no Liability on the part of any party hereto, or their respective directors, officers, shareholders, employees, agents or Affiliates; provided, however, that nothing herein shall relieve any party from any Liability for any willful breach by such party of any of its representations or warranties or for its breach of any of its covenants or agreements set forth in this Agreement, and all rights and remedies of such nonbreaching party under this Agreement in the case of such a breach, at law or in equity, shall be preserved.

(b) If the Closing does not occur, Purchaser shall not, and Purchaser shall cause its Affiliates not to, directly or indirectly, (a) use any Confidential Information for any purpose, (b) disclose any Confidential Information to any Person, (c) keep or make copies of any documents, records or property containing any Confidential Information, except that Purchaser may keep one copy of Confidential Information in its archives, or (d) assist any other Person in engaging in any of the foregoing, except to the extent necessary to comply with the express terms of any written agreement between Purchaser and the Company and except to the extent explicitly requested in writing by the Company. Notwithstanding the foregoing, Purchaser may disclose Confidential Information at such times, in such manner and to the extent such disclosure is (i) required by Applicable Law, provided that Purchaser (A) provides the Company with prior written notice thereof, (B) limits such disclosure to what is strictly required, and (C) attempts to preserve the confidentiality of any Confidential Information so disclosed, or (ii) is necessary for Purchaser to assert its rights under this Agreement.

(c) If the Closing does not occur, Sellers shall not, and Sellers shall cause their Affiliates not to, directly or indirectly, (a) use any confidential information of Purchaser for any purpose, (b) disclose any confidential information of Purchaser to any Person, (c) keep or make copies of any documents, records or property containing any confidential information of Purchaser, except that Sellers may keep one copy of Confidential Information in their archives, or (d) assist any other Person in engaging in any of the foregoing, except to the extent necessary to comply with the express terms of any written agreement between Purchaser and the Company and except to the extent explicitly requested in writing by Purchaser. Notwithstanding the foregoing, Purchaser may disclose Confidential Information at such times, in such manner and to the extent such disclosure is (i) required by Applicable Law, provided that Purchaser (A) provides the Company with prior written notice thereof, (B) limits such disclosure to what is strictly required and (C) attempts to preserve the confidentiality of any Confidential Information so disclosed, or (ii) is necessary for Sellers to assert their rights under this Agreement.

ARTICLE 7
INDEMNIFICATION

Section 7.1 Survival.

(a) General. All representations, warranties, covenants and agreements of the parties in this Agreement or any other certificate or document delivered pursuant to this Agreement will survive the Closing. The right to indemnification, payment of any Losses or other remedy based on such representations, warranties, covenants, and obligations will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant, or obligation.

(b) Company Representations. Notwithstanding the generality of Section 7.1(a), the Indemnifying Sellers will have no liability with respect to any claim under Section 7.2(a)(i) unless Purchaser notifies the Indemnifying Sellers of such a claim on or before the date that is 15 months after the Closing Date; provided, however, that:

(i) any claim relating to any representation made in Sections 3.2(e) (No Conflicts), 3.2(f) (Financial Statements), 3.2(g) (No Undisclosed Liabilities), 3.2(i) (Litigation), 3.2(j) (Taxes), 3.2(k) (Title to Property and Assets), 3.2(l) (Intellectual Property), 3.2(o) (Compliance with Applicable Laws; Permits), 3.2(q) (Export Control Laws), 3.2(r) (Environmental Matters), 3.2(x) (Employee Benefit Plans) and 3.2(z) (Transactions with Affiliates) (collectively, the "***Interim Representations***") may be made at any time for a period of 27 months after the Closing Date;

(ii) any claim relating to any representation made in Sections 3.2(p) (Foreign Corrupt Practices Act) and 3.2(s) (FDA and Regulatory Matters), may be made at any time for a period of 48 months after the Closing Date;

(iii) any claim relating to any representation made in Sections 3.2(a) (Organization and Qualification), 3.2(b) (Subsidiary), 3.2(c) (Capitalization), 3.2(d) (Authority; Due Execution and Binding Effect), 3.2(j) (Taxes), and 3.2(v) (Brokers) may be made at any time without any time limitation (collectively with the representations set forth in Section 7.1(b)(ii) and Section 7.1(d)(i), the "***Fundamental Representations***"); and

(iv) any claim related to intentional or fraudulent breaches of the representations and warranties may be made at any time within any applicable statute or period of limitations.

(c) Company Covenants. Notwithstanding the generality of Section 7.1(a), any claim under Section 7.2(a)(ii) may be made at any time without limitation unless the covenant breached or unfulfilled contains an express expiration date, in which case, absence active concealment of a breach by Sellers, the Indemnifying Sellers will have no liability with respect to any such claim unless Purchaser notifies the Indemnifying Sellers of the claim on or before the date such covenant expires.

(d) Individual Seller Representations. Notwithstanding the generality of Section 7.1(a), no Indemnifying Seller will have liability with respect to any claim under Section 7.2(b)(i) unless Purchaser notifies such Indemnifying Seller of such a claim on or before the date that is 15 months after the Closing Date; provided, however, that (i) any claim relating to any representation made in Sections 3.1(a) (Authority; Due Execution and Binding Effect), 3.1(e) (Title to Outstanding Shares), and 3.1(f) (Brokers), may be made at any time without any time limitation, and (ii) any claim related to intentional or fraudulent breaches of the representations and warranties by such Indemnifying Seller may be made at any time within any applicable statute or period of limitations.

(e) Individual Seller Covenants. Notwithstanding the generality of Section 7.1(a), any claim under Section 7.2(b)(ii) may be made at any time without limitation unless the covenant breached or unfulfilled contains an express expiration date, in which case, absence active concealment of a breach by such Seller, such Indemnifying Seller will have no liability with respect to any such claim unless Purchaser notifies such Indemnifying Seller of the claim on or before the date such covenant expires.

(f) Purchaser Representations. Notwithstanding the generality of Section 7.1(a), Purchaser will have no liability with respect to any claim under Section 7.2(c)(i) unless Sellers notify Purchaser of such a claim on or before the date that is 15 months after the Closing Date; provided, however, that any claim relating to any representation made in Sections 3.3(a) (Organization; Authority; Due Execution and Binding Effect), 3.3(b) (Purchaser Common Stock), and 3.3(j) (Brokers) (collectively, the "***Purchaser Fundamental Representations***") may be made at any time without any time limitation, and any claim related to intentional or fraudulent breaches of the representations and warranties may be made at any time within any applicable statute or period of limitations.

(g) Purchaser Covenants. Notwithstanding the generality of Section 7.1(a), any claim under Section 7.2(c)(ii) may be made at any time without limitation unless the covenant breached or unfulfilled contains an express expiration date, in which case, absence active concealment of a breach by Purchaser, Purchaser will have no liability with respect to any such claim unless Sellers notify Purchaser of the claim on or before the date such covenant expires.

(h) Extension if Claim is Made. If Purchaser or Sellers, as applicable, provides proper notice of a claim within the applicable time period set forth above, then liability for such claim will continue until such claim is resolved.

Section 7.2 Indemnification; Limitations.

(a) By the Indemnifying Sellers. Upon the terms and subject to the conditions set forth in this Article 7, Kirschman, on the one hand, and the K. Hemmelgarn 1998 Trust and the B. Hemmelgarn 1998 Trust, on the other hand, severally and not jointly, but with the K. Hemmelgarn 1998 Trust and the B. Hemmelgarn 1998 Trust acknowledging and agreeing that they shall be jointly and severally liable with each other as to all of the Hemmelgarn Sellers for the Hemmelgarn Sellers' aggregate Ownership Interest Share of Losses, shall indemnify and hold harmless Purchaser and its directors, officers, employees and Affiliates (collectively, the "***Purchaser Indemnified Parties***"), from and against any and all Losses paid, payable, suffered or incurred that relate to or arise out of (i) the inaccuracy or breach of any representation or warranty made by the Indemnifying Sellers in Section 3.2, (ii) any nonfulfillment or breach by the Company of any of the covenants set forth in this Agreement, (iii) any inaccuracy in Disclosure Schedule 1.2(c), (iv) any inaccuracy of the Indebtedness Pay-Off Amount or the Deductions Certificate, (v) (A) any fraud by the Company or any of its directors, officers or Affiliates in connection with this Agreement or the transactions contemplated hereby, or (B) any intentional or willful breach of a representation or warranty of the Company set forth in this Agreement (including the Disclosure Schedules) or in any certificate delivered by the Company to Purchaser pursuant to this Agreement, (vi) any Purchaser Indemnified Taxes, or (vii) any Pre-Closing Product Liability Claims.

(b) By the Indemnifying Sellers for Individual Representations. Upon the terms and subject to the conditions set forth in this Article 7, each Indemnifying Seller, severally and not jointly with the other Indemnifying Sellers, except that the K. Hemmelgarn 1998 Trust and the B. Hemmelgarn 1998 Trust shall be jointly and severally liable with each other as to all of the Hemmelgarn Sellers for the Hemmelgarn Sellers' aggregate Ownership Interest Share of Losses, shall indemnify and hold harmless the Purchaser Indemnified Parties from and against any and all Losses paid, payable, suffered or incurred that relate to or arise out of (i) the inaccuracy or breach of any representation or warranty made by such Indemnifying Seller in Section 3.1, (ii) any nonfulfillment or breach by such Seller of any of such Seller's covenants set forth in this Agreement, or (iii) (A) any fraud by such Seller in connection with this Agreement or the transactions contemplated hereby, or (B) any intentional or willful breach of a representation or warranty of such Seller set forth in this Agreement or in any certificate delivered by such Seller to Purchaser pursuant to this Agreement.

(c) Limitations for Product Liability. For the avoidance of doubt, and notwithstanding any other provision of this Agreement, except for Liability for Pre-Closing Product Liability Claims, and except to the extent that a Seller had actual knowledge prior to the Closing, no Seller shall have any indemnification obligations or other liability to Purchaser in respect of (i) any Liabilities in the nature of product liability, including any Liabilities for claims made for injury to person, damage to property or other damage arising from, caused by or arising out of the design, manufacture, assembly, installation, marketing, sale, distribution, lease or license of any Company Product (whether or not any such products are shipped before or after the Closing), (ii) any Liabilities arising from, caused by or arising out of any defective or insufficient warnings, labeling or instructions contained on or provided in connection with any Company Product, or (iii) any Liabilities arising from, caused by or arising out of any obligation to implement any replacement, field fix, retrofit, modification or recall campaign with respect to any Company Product that was made, designed, manufactured, assembled, installed, sold, leased or licensed (whether or not any such products are shipped before or after the Closing).

(d) By Purchaser. Upon the terms and subject to the conditions set forth in this Article 7, Purchaser shall indemnify and hold harmless each Seller and its respective Affiliates (collectively, the "***Seller Indemnified Parties***," and together with the Purchaser Indemnified Parties, each an "***Indemnified Party***"), from and against any and all Losses paid, payable, suffered or incurred and that relate to or arise out of (i) the inaccuracy or breach of any representation or warranty made by Purchaser in Section 3.3, (ii) any nonfulfillment or breach by Purchaser of any of the covenants set forth in this Agreement, (iii)(A) any fraud by Purchaser or any of its officers, directors or Affiliates in connection with this Agreement or the transactions contemplated hereby, or (B) any intentional or willful breach of a representation or warranty of Purchaser set forth in this Agreement or in any certificate delivered by Purchaser pursuant to this Agreement, or (iv) the Post-Closing Operations.

(e) Seller Deductible and Cap. The indemnification obligations of the Indemnifying Sellers are subject to the following provisions:

(i) The indemnification obligations set forth in Sections 7.2(a) and 7.2(b) for breaches of the Fundamental Representations, Purchaser Indemnified Taxes, Pre-Closing Product Liability Claims and fraud or intentional or willful breach of a representation or warranty in this Agreement or in any certificate delivered hereunder shall, with respect to Kirschman, be limited to Kirschman's Ownership Interest Share of the Transaction Cap, and, with respect to the K. Hemmelgarn 1998 Trust and the B. Hemmelgarn 1998 Trust, jointly and severally, shall be limited to the Hemmelgarn Sellers' aggregate Ownership Interest Share of the Transaction Cap; provided that nothing in this Section 7.2(e)(i) alters the joint and several liability of the K. Hemmelgarn 1998 Trust and the B. Hemmelgarn 1998 Trust with respect to each other, and the K. Hemmelgarn 1998 Trust and the B. Hemmelgarn 1998 Trust shall be jointly and severally liable with each other as to all of the Hemmelgarn Sellers for the Hemmelgarn Sellers' aggregate Ownership Interest Share.

(ii) The indemnification obligations set forth in Sections 7.2(a) and 7.2(b) for all matters other than those described in Section 7.2(e)(i) shall apply only after the aggregate amount of claims for indemnification against the Indemnifying Sellers under this Agreement exceeds $100,000 (the "***Deductible***"), and thereafter the Indemnifying Sellers shall be liable for all indemnification obligations in excess of the Deductible up to any applicable Cap.

(iii) The aggregate amount of all indemnification obligations of the Indemnifying Sellers pursuant to Sections 7.2(a) and 7.2(b) for the Basic Representations shall not exceed the Escrowed Cash (the "***Basic Cap***").

(iv) The aggregate amount of all indemnification obligations of the Indemnifying Sellers pursuant to Sections 7.2(a) and 7.2(b) for the Interim Representations shall not exceed the Escrowed Amount (the "***Interim Cap***").

(v) The aggregate amount of all other indemnification obligations of the Indemnifying Sellers not subject to the Basic Cap or the Interim Cap shall not exceed the Transaction Cap.

(vi) Each Indemnifying Seller's respective liability to the Purchaser Indemnified Parties shall be limited to such Indemnifying Seller's share of any applicable Cap, pro rata based on the Sellers' Ownership Interest Shares, except that (A) the K. Hemmelgarn 1998 Trust and the B. Hemmelgarn 1998 Trust acknowledge and agree that they shall be jointly and severally liable with each other for all of the Hemmelgarn Sellers' aggregate Ownership Interest Share, and (B) if the K. Hemmelgarn 1998 Trust and the B. Hemmelgarn 1998 Trust avoid liability due to their lack of Knowledge of a breach of any representation or warranty qualified by Knowledge of the Hemmelgarn Sellers, then Kirschman shall bear all liability for Losses attributable to such breach, but not more than $13,500,000 in the aggregate (including the Escrowed Shares attributable to Kirschman, valued as provided in Section 7.6(f)).

(f) Purchaser Deductible and Cap. The indemnification obligations set forth in Section 7.2(d) (other than for breaches of Purchaser Fundamental Representations and for fraud or intentional or willful breach of a representation or warranty or in any certificate delivered hereunder) shall apply only after the aggregate amount of claims for indemnification against Purchaser under this Agreement exceeds the Deductible, and thereafter Purchaser shall be liable for all indemnification obligations in excess of the Deductible. The aggregate amount of all indemnification obligations of Purchaser pursuant to Section 7.2(d) shall not exceed an amount equal to the Escrowed Amount.

(g) Escrow. Except as set forth below, any amounts payable by an Indemnifying Seller(s) pursuant to Sections 7.2(a) and 7.2(b) shall be satisfied (i) first against the Escrowed Cash in accordance with the terms of Section 7.6 and the Escrow Agreement, (ii) if and to the extent that a Purchaser Indemnified Party is entitled to indemnification in amounts in excess of any then remaining Escrowed Cash, next against the Escrowed Shares (such Escrowed Shares valued at $4.00 per share, As Adjusted) in accordance with the terms of Section 7.6 and the Escrow Agreement, and (iii) if and to the extent that a Purchaser Indemnified Party is entitled to indemnification in amounts in excess of any then remaining Escrowed Amount, then from each Indemnifying Seller as may be applicable pro rata based on the Ownership Interest Shares for Losses under Section 7.2(a) and from the Indemnifying Seller at issue for Losses under Section 7.2(b).

(h) Losses. For all purposes of and under this Agreement, "***Losses***" shall mean (i) any loss, claim, demand, damage, deficiency, lost profits, diminution in value, consequential or punitive damage, liability, Judgment, fine, penalty, cost or expense (including reasonable attorneys', consultants' and experts' fees and expenses), (ii) any and all reasonable fees and costs of enforcing an Indemnified Party's rights under this Agreement, and (iii) any and all reasonable fees and costs defending any Third Party Actions. For purposes of determining whether there has been any misrepresentation or breach of a representation or warranty, and for purposes of determining the amount of Losses resulting therefrom, all qualifications or exceptions in any representation or warranty relating to or referring to the terms "material," "materiality," "in all material respects," "Material Adverse Effect" or any similar term or phrase shall be disregarded, it being the understanding of the parties that for purposes of determining liability under this Article 7, the representations and warranties of the parties contained in this Agreement shall be read as if such terms and phrases were not included in them.

(i) No Contribution Claims. No Seller will have or assert any claims or rights to contribution or indemnity from the Company with respect to any amounts paid by such Seller pursuant to this Section 7.2.

(j) Insurance. Each Indemnified Party shall be obligated in connection with any claim for indemnification under this Article 7 to use commercially reasonable efforts to obtain any insurance proceeds available to such Indemnified Party with regard to the applicable claims. The amount that any Indemnifying Party is or may be required to pay to any Indemnified Party pursuant to this Article 7 shall be reduced (retroactively, if necessary) by any insurance proceeds or other amounts actually recovered by or on behalf of such Indemnified Party in reduction of the related Losses, less the amount of any deductible and other out-of-pocket costs to the Indemnified Party in seeking such recovery. If an Indemnified Party shall have received the payment required by this Agreement from the Indemnifying Party in respect of a Loss and shall subsequently receive insurance proceeds or other amounts in respect of such Loss, then such Indemnified Party shall promptly repay to the Indemnifying Party a sum equal to the amount of such insurance proceeds or other amounts actually received.

Section 7.3 Defense of Third Party Claims.

(a) An Indemnified Party shall give prompt written notice to any Person who is obligated to provide indemnification hereunder (an "***Indemnifying Party***") of the commencement or assertion of any action, proceeding, demand or claim by a third party (collectively, a "***Third Party Action***") in respect of which such Indemnified Party shall seek indemnification hereunder. Any failure so to notify an Indemnifying Party will not relieve such Indemnifying Party from any Liability that it may have to such Indemnified Party under this Article 7 unless the failure to give such notice materially and adversely prejudices such Indemnifying Party. Other than with respect to a Third Party Action relating to any Tax due from Purchaser, the Indemnifying Party shall have the right to assume control of the defense of, settle, or otherwise dispose of such Third Party Action on such terms as it deems appropriate; provided, however, that:

(i) the Indemnified Party shall be entitled, at its own expense, to participate in the defense of such Third Party Action; provided further that the Indemnifying Party shall pay the reasonable attorneys' fees of the Indemnified Party if (A) the employment of separate counsel shall have been authorized in writing by all Indemnifying Parties in connection with the defense of such Third Party Action, (B) the Indemnifying Parties shall not have employed counsel reasonably satisfactory to the Indemnified Party to have charge of such Third Party Action, (C) the Indemnified Party shall have reasonably concluded that there may be defenses available to such Indemnified Party that are different from or additional to those available to the Indemnifying Party, or (D) the Indemnified Party's counsel shall have advised the Indemnified Party in writing, with a copy delivered to the Indemnifying Party, that there is a conflict of interest that could make it inappropriate under applicable standards of professional conduct to have common counsel;

(ii) the Indemnifying Party shall obtain the prior written approval of the Indemnified Party before entering into or making any settlement, compromise, admission or acknowledgment of the validity of such Third Party Action or any Liability in respect thereof if pursuant to or as a result of such settlement, compromise, admission or acknowledgment, injunctive or other equitable relief would be imposed against the Indemnified Party or if, in the reasonable opinion of the Indemnified Party, such settlement, compromise, admission or acknowledgment could have an adverse effect on its business;

(iii) no Indemnifying Party shall consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by each claimant or plaintiff to each Indemnified Party of a release from all Liability; and

(iv) the Indemnifying Party shall not be entitled to control (but shall be entitled to participate at its own expense in the defense of), and the Indemnified Party shall be entitled to have sole control over, the defense or settlement, compromise, admission or acknowledgment of any Third Party Action (A) relating to any Tax to be collected from a Purchaser Indemnified Party or an Affiliate of a Purchaser Indemnified Party, (B) as to which the Indemnifying Party fails to admit Liability in writing delivered to the Indemnified Party and/or fails to assume the defense within a reasonable length of time, (C) to the extent the Third Party Action seeks an order, injunction, or other equitable relief against the Indemnified Party which, if successful, would materially adversely affect the business, operations, assets or financial condition of the Indemnified Party, or (D) for which the Liability may exceed the Cap; provided, however, in the case of (B) and (C), that the Indemnified Party shall make no settlement, compromise, admission or acknowledgment that would give rise to Liability on the part of any Indemnifying Party without the prior written consent of such Indemnifying Party, which shall not be unreasonably withheld, and in the case of (D), the Indemnifying Party may control the defense of the Third Party Action if it irrevocably in writing agrees to waive the Cap. For the avoidance of doubt, any Third Party Action relating to any Tax shall be governed by Section 4.6 to the extent provided therein.

(b) The parties hereto shall extend reasonable cooperation in connection with the defense of any Third Party Action pursuant to this Section 7.3 and, in connection therewith, shall furnish such records, information and testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested.

Section 7.4 **Direct Claims**. In any case in which an Indemnified Party seeks indemnification hereunder which is not subject to Section 7.3 because no Third Party Action is involved, the Indemnified Party shall notify the Indemnifying Party in writing of any matters which such Indemnified Party claims are subject to indemnification under the terms hereof. The failure of the Indemnified Party to exercise promptness in such notification shall not amount to a waiver of such claim unless the resulting delay materially and adversely prejudices the position of the Indemnifying Party with respect to such claim.

Section 7.5 **Determination of Loss Amount**. To the extent that a claim for indemnification by Purchaser hereunder relates to a Liability incurred by the Company and (a) there is an accrual on the Final Balance Sheet in respect of such Liability, then the determination of Loss in respect of such claim shall be net of such accrual, or (b) the Liability was a Current Liability taken into account in the Working Capital Amount, then the determination of Loss in respect of such claim shall be net of such Current Liability.

Section 7.6 **Procedures for Claims Against, and Distributions of, the Escrowed Amount**.

(a) Claims. Purchaser may make an indemnification claim on behalf of a Purchaser Indemnified Party pursuant to Sections 7.2(a) or 7.2(b) (a "***Claim***") by delivering written notice of the Claim (the "***Claim Notice***") to the Escrow Agent and the Indemnifying Sellers. Any such Claim Notice shall include a brief description of the Claim, and the amount (which may be a reasonable estimate) of the Claim. Upon receipt of a Claim Notice, the Escrow Agent shall retain the Claim amount in escrow (in the form of Escrowed Cash and/or Escrowed Shares, as applicable) and only thereafter distribute the same in accordance with the joint written instructions of Purchaser and the Indemnifying Sellers given to the Escrow Agent (a "***Joint Written Instruction***") or a final, non-appealable judgment of a court of competent jurisdiction, and the Escrow Agreement. Any Seller may make an indemnification claim on behalf of a Seller Indemnified Party pursuant to Section 7.2(d) by delivering a claims notice in writing to Purchaser containing a brief description of the claim, and the amount (which may be a reasonable estimate) of the claim.

(b) Uncontested Claims. If within 30 days of its receipt of a Claim Notice the Indemnifying Sellers agree with such Claim or do not contest such Claim in writing to Purchaser, the Indemnifying Sellers shall be conclusively deemed to have consented to the recovery by the Purchaser Indemnified Person of the full amount of Losses specified in the Claim Notice, including the forfeiture of the Escrowed Cash and/or Escrowed Amount, as applicable, in the amount of the uncontested Claim.

(c) Contested Claims. If the Indemnifying Sellers give Purchaser written notice contesting all or any portion of a Claim Notice (a "***Contested Claim***") (with a copy to the Escrow Agent) within the 30 day period, then such Contested Claim shall be resolved by either (i) a written settlement agreement executed by Purchaser and the Indemnifying Sellers (a copy of which shall be furnished to the Escrow Agent) or (ii) in the absence of such a written settlement agreement within 30 days following receipt by Purchaser of the written notice from the Indemnifying Sellers, by binding litigation between Purchaser and the Indemnifying Sellers in accordance with the terms and provisions of Section 7.6(d).

(d) Litigation of Contested Claims. Either Purchaser or the Indemnifying Sellers may bring suit as provided in Sections 8.12 and 8.13 to resolve the Contested Claim. Judgment upon any award rendered by the trial court as to the validity and amount of any claim in such Claim Notice may be entered in any court having jurisdiction, such award or judgment shall be immediately paid to the successful party, and the Escrow Agent shall be entitled to act in accordance with such award or judgment and make or withhold payments out of the Escrowed Amount in accordance therewith. Notwithstanding the foregoing, any award rendered or judgment entered by the trial court shall be subject to appeal pursuant to Applicable Law, and, once any such appeals are resolved and all appeals rights are either exhausted or waived, the resulting final decision shall be binding and conclusive upon the parties to this Agreement. In the event the final, binding and conclusive decision on appeal reverses the trial court's initial award and/or judgment, any payment previously made to the successful party shall be returned within a reasonable time.

(e) Distributions. On the date that is 15 months after the Closing Date, the Escrow Agent shall release to the Indemnifying Sellers, as provided in the Escrow Agreement, the Escrowed Cash, less that amount of Escrowed Cash necessary to satisfy an unsatisfied Claim (an "***Outstanding Escrow Claim***"). On the dates that are 18 months, 21 months and 24 months after the Closing Date, the Escrow Agent shall release to the Indemnifying Sellers, as provided in the Escrow Agreement, 25% of the Escrowed Shares, less that number of Escrowed Shares with a value necessary to satisfy a then Outstanding Escrow Claim. On the date that is 27 months after the Closing Date, the Escrow Agent shall release to the Indemnifying Sellers, as provided in the Escrow Agreement, the remaining Escrowed Shares, less that number of Escrowed Shares with a value necessary to satisfy a then Outstanding Escrow Claim. As soon as any Outstanding Escrow Claims are resolved pursuant to the procedures set forth in this Article 7, the Escrow Agent shall release any remaining Escrowed Amount held by the Escrow Agent pursuant to the terms of the Escrow Agreement to the Indemnifying Sellers.

(f) Escrow Amount; Value of Escrowed Shares. Whenever a payment is to be made to Purchaser from the Escrow Amount, such payment shall be made first from the Escrowed Cash until there is no Escrowed Cash, and then, if applicable, from the Escrowed Shares. When the Escrowed Shares must be valued for purposes of an Outstanding Escrow Claim or a release of Escrowed Shares, the Escrowed Shares shall be valued at $4.00 per share, As Adjusted.

ARTICLE 8
GENERAL PROVISIONS

Section 8.1 **Notices**. All notices, requests, demands or other communications that are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given: (a) on the date of delivery, if personally delivered by hand, (b) upon the third day after such notice is deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, (c) upon the date scheduled for delivery after such notice is sent by a nationally recognized overnight express courier if the delivery date is a Business Day, or otherwise on the next Business Day, or (d) by fax upon written confirmation (including the automatic confirmation that is received from the recipient's fax machine) of receipt by the recipient of such notice if such confirmation is received on a Business Day during Business Hours, or otherwise on the next Business Day.

If to Purchaser, to:

Bacterin International Holdings, Inc.
600 Cruiser Lane
Belgrade, MT 59714
Attn: Chief Executive Officer
Facsimile: (406) 388-0422

With a copy to:

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004
Attn: Karen C. McConnell
Facsimile: (602) 798-5595

If to the Company prior to Closing to:

X-spine Systems, Inc.
452 Alexandersville Rd.
Miamisburg, OH 45342
Attn: David L. Kirschman
Facsimile: (937) 847-8410

With a copy to:

Dunlevey, Mahan & Furry
110 N. Main Street, Suite 1000
Dayton, OH 45402-1738
Attn: Donald B. Rineer
Facsimile: (937) 223-6003

If to Sellers, to:

David L. Kirschman
5101 Garden Spring Court
Dayton, OH 45429
Facsimile: (937) 226-9898

Kenneth J. Hemmelgarn, Jr. Revocable Living Trust Dated February 9, 1998, as amended
Brian J. Hemmelgarn Revocable Living Trust Dated February 9, 1998, as amended
Kenneth J. Hemmelgarn, Jr. Second Trust Dated March 18, 2010
Brian J. Hemmelgarn Second Trust Dated March 18, 2010
2122 Winners Circle
Dayton, OH 45404
Facsimile: (937) 228-1608

With a copy to:

Dunlevey, Mahan & Furry
110 N. Main Street, Suite 1000
Dayton, OH 45402-1738
Attn: Donald B. Rineer
Facsimile: (937) 223-6003

Section 8.2 **Severability**. The unenforceability, illegality or invalidity of any provision of this Agreement shall not affect the enforceability or validity of any other provision.

Section 8.3 **Assignment; Successors**. Neither this Agreement, nor any rights, obligations or interests hereunder, may be assigned by any party hereto except with the prior written consent of the other parties hereto; provided that Purchaser may nominate a direct or indirect subsidiary to take ownership of the Outstanding Shares without the consent of Sellers. Subject to the preceding sentence, this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors and assigns.

Section 8.4 **Counterparts**. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 8.5 **Expenses**. Except as otherwise expressly provided in this Agreement, all costs and expenses incurred by the parties hereto in connection with the transactions contemplated by this Agreement shall be borne solely and entirely by the party that has incurred such expenses.

Section 8.6 **Governing Law**. This Agreement shall be construed and governed in accordance with the Applicable Laws of the State of Delaware, without regard to its Applicable Laws regarding conflicts of law.

Section 8.7 **Headings**. The section headings of this Agreement are included for reference purposes only and shall not affect the construction or interpretation of any of the provisions of this Agreement.

Section 8.8 **Entire Agreement**. This Agreement and the Disclosure Schedules, the Confidentiality Agreement and the other Transaction Documents set forth the entire understanding of the parties with respect to the transactions contemplated hereby, supersede all prior discussions, understandings, agreements and representations, and shall not be modified or affected by any offer, proposal, statement or representation, oral or written, made by or for any party in connection with the negotiation of the terms hereof.

Section 8.9 **Third-Party Beneficiaries**. Except for the Purchaser Indemnified Parties and the Seller Indemnified Parties and as provided in Section 4.4, nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement.

Section 8.10 **Disclosure Schedules**. All Disclosure Schedules attached hereto are incorporated herein and expressly made a part of this Agreement as though completely set forth herein.

Section 8.11 **Interpretive Matters**. Unless the context otherwise requires, (a) all references to articles, sections or schedules are to Articles, Sections or Schedules in this Agreement; (b) each accounting term not otherwise defined in this Agreement has the meaning assigned to it in accordance with GAAP; (c) words in the singular or plural include the singular and plural, and pronouns stated in either the masculine, feminine or neuter gender shall include the masculine, feminine and neuter; and (d) the term “including” means by way of example and not by way of limitation. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

Section 8.12 **Submission to Jurisdiction**. Each of the parties submits to the exclusive jurisdiction of the state or federal courts located in Delaware, in any action or proceeding arising out of, or relating to, this Agreement, agrees that all claims in respect of the action or proceeding may be heard and determined in any such court, and agrees not to bring any action or proceeding arising out of, or relating to, this Agreement in any other court. Each of the parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought. Each party agrees that a final judgment in any action so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by Applicable Law.

Section 8.13 **Waiver of Jury Trial**. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF, OR RELATING TO, THIS AGREEMENT.

Section 8.14 **Public Announcements**. No party shall issue or cause the publication of any press release or other public announcement with respect to this Agreement or the Purchase without the prior consent of the others, which shall not be unreasonably withheld or delayed; provided, however, that nothing herein shall prohibit any party from issuing or causing publication of any such press release or public announcement to the extent that such party determines such action to be required by Applicable Law, applicable regulation or stock market rule, in which case the party making such determination shall, if practicable in the circumstances, use commercially reasonable efforts to allow the other parties reasonable time to comment on such release or announcement in advance of its issuance. To the extent feasible, all press releases or other announcements or notices regarding this transaction shall be made jointly by the parties.

Section 8.15 **Amendment**. This Agreement may not be amended, restated, supplemented or otherwise modified except by an instrument in writing signed by Purchaser, the Company and Sellers.

[Signature Page Follows]

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

BACTERIN INTERNATIONAL HOLDINGS, INC.

By: /s/ Daniel Goldberger
Name: Daniel Goldberger
Title: CEO

X-SPINE SYSTEMS, INC.

By: /s/ David Kirschman
Name: David Kirschman
Title: President and CEO

/s/ David Kirschman
David L. Kirschman, M.D.

KENNETH J. HEMMELGARN, JR. REVOCABLE LIVING TRUST DATED FEBRUARY 9, 1998, AS AMENDED

By: /s/ Kenneth J. Hemmelgarn, Jr.
Kenneth J. Hemmelgarn, Jr., Trustee

BRIAN HEMMELGARN REVOCABLE LIVING TRUST DATED FEBRUARY 9, 1998, AS AMENDED

By: /s/ Brian J. Hemmelgarn
Brian J. Hemmelgarn, Trustee

[Signature Page to Stock Purchase Agreement]

KENNETH J. HEMMELGARN, JR. SECOND TRUST DATED MARCH 18, 2010

By: /s/ Kenneth J. Hemmelgarn
Kenneth J. Hemmelgarn, Trustee

BRIAN HEMMELGARN SECOND TRUST DATED MARCH 18, 2010

By: /s/ Kenneth J. Hemmelgarn
Kenneth J. Hemmelgarn, Trustee

[Signature Page to Stock Purchase Agreement]

LIST OF EXHIBITS AND SCHEDULES

Exhibits:

Exhibit A – Definitions
Exhibit B-1 – Form of Seller Non-Compete Agreement (Kirschman)
Exhibit B-2 – Form of Seller Non-Compete Agreement (Hemmelgarn)
Exhibit C - Lock-Up Agreement
Exhibit D - Guaranty

Disclosure Schedules:

Disclosure Schedule 1.2(c) – Sellers and Ownership Interest Shares
Disclosure Schedule 3.2(c) – Capitalization; Directors and Officers
Disclosure Schedule 3.2(e) – No Conflict
Disclosure Schedule 3.2(f) – Financial Statements
Disclosure Schedule 3.2(g) – Liabilities
Disclosure Schedule 3.2(h)(i) – Accounts Receivable
Disclosure Schedule 3.2(h)(iii) – Accounts Payable
Disclosure Schedule 3.2(i) – Litigation
Disclosure Schedule 3.2(j)(xiv) – Taxes
Disclosure Schedule 3.2(j)(xix) – Tax Deficiencies
Disclosure Schedule 3.2(k)(ii) – Leased Real Property
Disclosure Schedule 3.2(l)(i) – Intellectual Property
Disclosure Schedule 3.2(l)(ii) – Intellectual Property Exceptions
Disclosure Schedule 3.2(l)(iv) – Company Intellectual Property Payments
Disclosure Schedule 3.2(l)(xiii) – Intellectual Property Violations
Disclosure Schedule 3.2(o)(ii) – Applicable Laws
Disclosure Schedule 3.2(o)(iii) – Governmental Notices
Disclosure Schedule 3.2(r) – Environmental Matters
Disclosure Schedule 3.2(s)(i) – FDA Exceptions
Disclosure Schedule 3.2(s)(iii) – Adverse Event and Complaint Review and Analysis Reports
Disclosure Schedule 3.2(s)(v) – Recalls and Notices
Disclosure Schedule 3.2(t) – Health Care Professionals
Disclosure Schedule 3.2(u) – Restrictions on Business
Disclosure Schedule 3.2(w) – Employees
Disclosure Schedule 3.2(x)(i) – Employee Plans
Disclosure Schedule 3.2(y) – Material Contracts
Disclosure Schedule 3.2(z) – Transactions with Affiliates
Disclosure Schedule 3.2(aa) – Absence of Changes
Disclosure Schedule 3.2(bb) – Insurance
Disclosure Schedule 3.2(cc) – Largest Suppliers and Customers
Disclosure Schedule 3.2(dd) – Standard Terms and Conditions for Company Products
Disclosure Schedule 4.8 – Liens

EXHIBIT A

DEFINITIONS

The following terms shall have the following meanings in this Agreement:

"***Action***" means any claim, action, suit or proceeding, litigation, arbitral action, governmental inquiry, criminal prosecution, audit or other investigation as to which written notice has been provided to the applicable party.

"***Accredited Investor***" has the meaning ascribed thereto in Rule 501(a) of Regulation D promulgated by the SEC under the Securities Act.

"***Activities to Date***" is defined in Section 3.2(s)(ii).

"***Affiliate***" means, with respect to any Person, any other Person controlling, controlled by or under common control with such Person. For purposes of this definition and this Agreement, the term "control" (and correlative terms) means the power, whether by contract, equity ownership or otherwise, to direct the policies or management of a Person.

"***Agreement***" is defined in the preamble.

"***Applicable Law***" or "***Applicable Laws***" means all laws, statutes, constitutions, rules, regulations, principles of common law, codes, ordinances, Judgments, orders, decrees, injunctions, and writs of any Governmental Entity which has jurisdiction over the applicable Person or the businesses, operations or assets of the applicable Person.

"***Appointee Director***" is defined in Section 2.3.

"***As Adjusted***" means, in the event of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into capital stock), reorganization, reclassification, combination, recapitalization or other like change with respect to Purchaser occurring after the Closing, such equitable adjustment to the agreed value of $4.00 per share of the Purchaser Common Stock necessary to provide the parties the same economic effect as contemplated by this Agreement prior to such stock split, reverse stock split, stock dividend, reorganization, reclassification, combination, recapitalization or other like change.

"***B. Hemmelgarn 1998 Trust***" means the Brian J. Hemmelgarn Revocable Living Trust Dated February 9, 1998, as amended.

"***B. Hemmelgarn 2010 Trust***" means the Brian J. Hemmelgarn Second Trust Dated March 18, 2010.

"***Basic Cap***" is defined in Section 7.2(e)(iii).

"***Basic Representations***" means all representations and warranties in Sections 3.1 and 3.2 of this Agreement except the Fundamental Representations and the Interim Representations.

"***Business***" means the manufacturing and distribution of spinal implant products for the treatment of spinal disease.

"***Business Associate***" shall have the meaning given to it 45 C.F.R. 160.103.

"***Business Day***" means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the State of Delaware are authorized by Applicable Law to close.

"***Cap***" means the Transaction Cap, Basic Cap or Interim Cap.

"***Cash Consideration***" is defined in Section 1.2(a)(i).

"***Charter Documents***" is defined in Section 3.2(a).

"***Claim***" is defined in Section 7.6(a).

"***Claim Notice***" is defined in Section 7.6(a).

"***Closing***" means the consummation of the transactions contemplated by this Agreement.

"***Closing Balance Sheet***" is defined in Section 1.3(a).

"***Closing Date***" means the date on which the Closing occurs.

"***Closing Working Capital***" is defined in Section 1.3(a).

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

"***Company***" is defined in the preamble.

"***Company Intellectual Property***" means any and all Intellectual Property of the Company or the Subsidiary whether owned or controlled by or for, licensed to, or otherwise held by or for the benefit of the Company or Subsidiary that is related to the Business, including any and all (a) Company Owned Intellectual Property and (b) Company Licensed Intellectual Property.

"***Company Licensed Intellectual Property***" means any and all third party Intellectual Property that is licensed to the Company or the Subsidiary.

"***Company Licenses***" is defined in Section 3.2(s)(ii).

"***Company Owned Intellectual Property***" means any and all Intellectual Property rights that are owned or are purportedly owned by the Company or the Subsidiary.

"***Company Products***" means all products or services produced, marketed, licensed, sold, distributed or performed by or on behalf of the Company or Subsidiary and all products or services currently under development by the Company or Subsidiary.

"***Company Registered Intellectual Property***" means all United States, international and foreign (a) patents and patent applications (including provisional applications), (b) registered trademarks, applications to register trademarks, intent-to-use applications, or other registrations or applications related to trademarks, (c) registered Internet domain names, (d) registered copyrights and applications for copyright registration and (e) any other Intellectual Property that is the subject of an application, certificate, filing, registration or other document issued, filed with, or recorded by any Governmental Entity that is owned by, registered or filed in the name of, the Company or Subsidiary.

"***Company Stock***" is defined in Section 3.2(c).

"***Company's Representatives***" is defined in Section 4.7(a).

"***Confidential Information***" means information, in any form, relating to the Company's past, present or future research, development or business activities, whether or not marked or otherwise identified as "confidential" or "proprietary," including any copies, excerpts, summaries, analyses or notes thereof, including all of the following: designs, drawings, specifications, techniques, models, data, source code, object code, documentation, diagrams, copyrights, flow charts, research, development, processes, procedures, "know-how," new product or new technology information, product prototypes, product copies, operational and data processing capabilities, systems, software and hardware and the documentation thereof development or marketing techniques and materials, development or marketing timetables, business relationships, methods of transacting business, strategies and development plans, including trade secrets, trade names, trademarks, customer, supplier or personal names and other information related to customers, sub-contractors and dealers, suppliers or personnel, current or future cost, pricing information, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets or nonpublic business information, including the terms or conditions of this Agreement. "***Confidential Information***" shall not include information or documentation that: (a) is or becomes generally available to the public by acts or omissions other than those of the Person subject to restrictions with respect to the Confidential Information; or (b) becomes available to a Person on a non-confidential basis from a source other than the Company, provided that to the knowledge of such Person such source is not bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the applicable Company or any other Person with respect to such information.

"***Confidentiality Agreement***" means that certain Mutual Confidentiality and Nondisclosure Agreement, dated April 1, 2015, by and between the Company and Bacterin International, Inc.

"***Consents***" means all consents, approvals, waivers or authorizations of any Governmental Entity or other Person.

"***Contested Claim***" is defined in Section 7.6(c).

"***Contract***" means any written or oral agreement, contract, subcontract, settlement agreement, lease, instrument, note, option, warranty, purchase order, license, sublicense, or legally binding commitment or undertaking of any nature.

"***Covered Entity***" shall have the meaning given to it 45 C.F.R. 160.103.

"***Current Assets***" means the sum of all current assets of the Company and the Subsidiary on the Closing Date, as determined in accordance with this Agreement and GAAP.

"***Current Liabilities***" means the sum of all current liabilities of the Company and the Subsidiary on the Closing Date, but excluding the Indebtedness Pay-Off Amount and the Paid Transaction Costs that are paid at the Closing, each as determined in accordance with this Agreement and GAAP.

"***Deductible***" is defined in Section 7.2(e)(ii).

"***Deductions***" is defined in Section 1.2(a)(ii).

"***Deductions Certificate***" is defined in Section 2.2(c)(x).

"***Disclosure Schedules***" means the disclosure schedules numbered according to the relevant sections in this Agreement, prepared by Sellers and the Company and delivered to Purchaser concurrently with the execution hereof.

"***Employee Plans***" has the meaning set forth in Section 3.2(x)(i).

"***Environmental Law***" means any Applicable Law pertaining to land use, air, soil, surface water, groundwater (including the protection, cleanup, removal, remediation or damage thereof), or any other environmental matter as in effect as of the date of this Agreement.

"***Environmental Permit***" means any permit, approval, identification number, license, registration, consent, exemption, variance or other authorization required under or issued pursuant to any applicable Environmental Law.

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

"***ERISA Affiliate***" means any subsidiary or other entity that would be considered a single employer with a Person or a subsidiary within the meaning of Section 414 of the Code.

"***Escrow Agent***" means Wells Fargo Bank, N.A.

"***Escrow Agreement***" means the escrow agreement in a form reasonably satisfactory to the Indemnifying Sellers and Purchaser entered into on or prior to the Closing Date by and among Purchaser, the Indemnifying Sellers and the Escrow Agent.

"***Escrowed Amount***" is defined in Section 1.6.

"***Escrowed Cash***" is defined in Section 1.6.

"***Escrowed Shares***" is defined in Section 1.6.

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

"***Export Approvals***" is defined in Section 3.2(q)(i).

"***FCPA***" is defined in Section 3.2(p).

"***FDA***" means the Food and Drug Administration.

"***FDA Fraud Policy***" is defined in Section 3.2(s)(ix).

"***Final Adjustment Deficiency***" is defined in Section 1.3(e).

"***Final Adjustment Surplus***" is defined in Section 1.3(e).

"***Final Balance Sheet***" is defined in Section 1.3(b).

"***Final Working Capital***" means the Working Capital Amount in the Final Balance Sheet as agreed upon by Sellers and Purchaser in accordance with Section 1.3(c), or the Working Capital Amount in the Final Balance Sheet as agreed upon by Sellers and Purchaser with any such objections submitted to and resolved by the Neutral Firm in accordance with Section 1.3(d), as the case may be.

"***Financial Statements***" is defined in Section 3.2(f).

"***Flow of Funds Memorandum***" means a memorandum to be prepared as of the Closing Date in form and substance satisfactory to Purchaser and Sellers and consistent with the provisions of this Agreement setting forth how the Purchase Consideration is to be disbursed, which shall include, among other things, instructions from Sellers to Purchaser as to the allocation and disbursement of the Cash Consideration and the Purchaser Stock Consideration among Sellers.

"***Fundamental Representations***" is defined in Section 7.1(b)(iii).

"***GAAP***" means generally accepted accounting principles in the United States.

"***Governmental Entity***" means any government, any governmental entity, department, commission, board, agency or instrumentality, and any court, tribunal or judicial body, whether federal, state, county, local or foreign.

"***Hazardous Material***" means any material or substance that is prohibited or regulated by any Environmental Law or that has been designated by any Governmental Entity to be radioactive, toxic, hazardous or otherwise a danger to health, reproduction or the environment, including asbestos, petroleum, radon gas and radioactive matter.

"***Healthcare Laws***" means, to the extent related to the conduct of the Business as of the date hereof, the FDCA, Medicare (Title XVIII of the Social Security Act) and Medicaid (Title XIX of the Social Security Act), the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the Stark Anti-Self-Referral Law (42 U.S.C. §§ 1395nn), the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), HIPAA, HITECH, all regulations or guidance promulgated pursuant to such Applicable Laws, and any other federal, or state Applicable Law that regulates the design, development, testing, studying, manufacturing, processing, storing, importing or exporting, licensing, labeling or packaging, advertising, distributing or marketing of pharmaceutical or medical device products, or that is related to kickbacks, patient or program charges, recordkeeping, claims process, documentation requirements, medical necessity, referrals, the hiring of employees or acquisition of services or supplies from those who have been excluded from government health care programs, quality, safety, privacy, security, licensure, accreditation or any other aspect of providing health care services.

"***Health Care Professional***" means any Person that is licensed or otherwise authorized by Law to provide health care directly to individuals, or an officer, employee, agent or contractor of such Person acting in the course and scope of his or her employment, agency or contract related to or in support of the provision of health care directly to individuals.

"***Hemmelgarn Knowledge Representations and Warranties***" means the representations and warranties set forth in Sections 3.2(g) (No Undisclosed Liabilities), 3.2(i) (Litigation), 3.2(j) (Taxes), 3.2(l) (Intellectual Property), 3.2(o) (Compliance with Applicable Laws; Permits), 3.2(q) (Export Control Laws), 3.2(r) (Environmental Matters), and 3.2(x) (Employee Benefit Plans).

"***Hemmelgarn Sellers***" means the K. Hemmelgarn 1998 Trust, the B. Hemmelgarn 1998 Trust, the K. Hemmelgarn 2010 Trust, and the B. Hemmelgarn 2010 Trust.

"***HIPAA***" means the administrative simplification section of the Health Insurance Portability and Accountability Act of 1996, as amended, including as amended by HITECH.

"***HITECH***" means Subtitle D of the Health Information Technology for Clinical Health Act.

"***HSR Act***" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

"***Indebtedness***" means, without duplication, (a) all indebtedness (including the principal amount thereof or, if applicable, the accreted amount thereof and the amount of accrued and unpaid interest thereon) of the Company, whether or not represented by bonds, debentures, notes or other securities, for the repayment of money borrowed, whether owing to banks, financial institutions, on equipment leases or otherwise, (b) all deferred indebtedness of the Company for the payment of the purchase price of property or assets purchased, (c) any outstanding reimbursement obligation of the Company with respect to letters of credit, bankers' acceptances or similar facilities issued for the account of the Company, (d) all guaranties, endorsements, assumptions and other contingent obligations of the Company in respect of or to purchase or to otherwise acquire, indebtedness for borrowed money of others.

"***Indebtedness Agreements***" means all agreements between the Company and a holder of Indebtedness.

"***Indebtedness Pay-Off Amount***" is defined in Section 2.2(a)(i).

"***Indemnified Party***" is defined in Section 7.2(d).

"***Indemnifying Party***" is defined in Section 7.3(a).

"***Indemnifying Sellers***" means Kirschman, the K. Hemmelgarn 1998 Trust and the B. Hemmelgarn 1998 Trust.

"***Insurance Policies***" is defined in Section 3.2(bb).

"***Intellectual Property***" means any or all industrial and intellectual property rights and all rights associated therewith, throughout the world, including: (a) all patents and applications therefor and all reissues, reexaminations, inter partes review, divisions, renewals, extensions, adjustments, restorations, provisionals, continuations and continuations-in-part thereof; (b) all inventions (whether patentable or not), invention disclosures and improvements, all trade secrets, proprietary or Confidential Information, know-how, technology, technical data, proprietary processes and formulae, algorithms, specifications, customer lists and supplier lists, computer software, including all source code, object code, firmware, development tools, files, records and data, schematics, methodologies, prototypes, devices, databases and data collections and all rights therein; (c) all copyrights in both published and unpublished works of authorship, including all compilations, databases, computer programs, content and manuals and other documentation, and registrations and applications for any of the foregoing; (d) all corporate names, trade names, logos, trademarks and service marks, trademark and service mark registrations and applications, and any and all goodwill associated with and symbolized by the foregoing items, and all Internet domain names; (e) all moral and economic rights of authors and inventors, however denominated, and any similar or equivalent rights to any of the foregoing, and (f) all tangible embodiments of the foregoing items under the preceding sub-clauses (a) - (e).

"***Interim Cap***" is defined in Section 7.2(e)(iv).

"***Interim Representations***" is defined in Section 7.1(b)(i).

"***Joint Written Instruction***" is defined in Section 7.6(a).

"***Judgment***" means any order, judgment, injunction (whether temporary, preliminary or permanent), edict, decree, stipulation, ruling, pronouncement, determination, decision, opinion, verdict, sentence, subpoena, writ or award issued, made, entered, rendered or otherwise put into effect by or under the authority of any Governmental Entity or any arbitrator or arbitration panel.

"***K. Hemmelgarn 1998 Trust***" means the Kenneth J. Hemmelgarn, Jr. Revocable Living Trust Dated February 9, 1998, as amended.

"***K. Hemmelgarn 2010 Trust***" means the Kenneth J. Hemmelgarn, Jr. Second Trust Dated March 18, 2010.

"***Key Employees***" means Kirschman, Michael Schmitz, Kriss Anderson, Deborah Klopsch, Greg Causey and Daniel Abramowitz.

"***Kirschman***" is defined in the preamble.

"***Knowledge of the Hemmelgarn Sellers***" means the actual knowledge of Kenneth J. Hemmelgarn, Jr., and Brian J. Hemmelgarn.

"***Knowledge of the Company***" means the actual knowledge of each Key Employee after reasonable inquiry of such officers and employees of the Company whom they reasonably believe would have knowledge of the matters represented.

"***Latest Balance Sheet***" means the unaudited, consolidated balance sheet of the Company and the Subsidiary at May 31, 2015.

"***Latest Balance Sheet Date***" means May 31, 2015.

"***Leased Real Property***" is defined in Section 3.2(k)(ii).

"***Liabilities***" means any and all debts, liabilities, commitments and obligations, whether contingent, fixed or absolute, direct or indirect, accrued or unaccrued, asserted or unasserted, matured or unmatured, liquidated or unliquidated, known or unknown, due or to become due, or determined or determinable.

"***Lien***" or "***Liens***" means any pledges, claims, liens, charges, encumbrances, options and security interests of any kind or nature whatsoever.

"***Losses***" is defined in Section 7.2(h).

"***Material Adverse Effect***" means any change, circumstance, event or condition that is materially adverse to the operations, business, financial condition or results of operations of the Company and the Subsidiary, taken as a whole, or that materially impairs the ability of the Company to consummate the transaction, other than any changes, circumstances, events or conditions resulting, directly or indirectly, from: (a) the announcement or performance of the transaction, including any action or inaction by the Company, Purchaser, Sellers or any of the customers, suppliers, lessors, employees or competitors of the Business; (b) changes in general economic conditions in any of the markets in which the Business operates (to the extent such change does not affect the Company and the Subsidiary disproportionately from their competitors); (c) any change in economic conditions or the financial, banking, currency or capital markets in general; (d) any calamity or other condition generally affecting the medical device industry and/or the body shaping market (to the extent such change does not affect the Company and the Subsidiary disproportionately from their competitors); (e) national or international political or social conditions, including the engagement by any country in hostilities, whether commenced before or after the date of this Agreement, and whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack; (f) changes in any Applicable Law (including relating to excise Taxes on medical devices and healthcare reform) or interpretations thereof affecting the medical device industry and/or the body shaping market in general (to the extent such change does not affect the Company and the Subsidiary disproportionately from their competitors); or (g) changes in GAAP or interpretations thereof or other accounting principles or requirements.

"***Material Contract***" means any of the following: (a) any Contract that requires or that likely will require future expenditures by the Company or Subsidiary in excess of $150,000 or that likely will result in payments to the Company or Subsidiary in excess of $150,000; (b) lease agreements in connection with the Leased Real Property; (c) any Contract relating to the Company Intellectual Property, excluding standard license provisions in distribution agreements and fee per procedure agreements; (d) any Contract to which the Company or Subsidiary is a party that requires a Consent to a change of control, merger or an assignment by operation of law, either before or after the Closing Date; (e) any Contract to which the Company or Subsidiary is a party granting any cash change of control, severance, or termination pay to any Employee; (f) any fidelity or surety bond or completion bond and any Contract of indemnification or guarantee to which the Company or Subsidiary is a party; (g) any indentures, guarantees, loans or credit agreements, security agreements or other Contracts or instruments relating to the borrowing of money or extension of credit or other Indebtedness to which the Company or Subsidiary is a party or by which any of its property is bound; (h) any dealer, distribution, joint marketing, strategic alliance, affiliate or development Contract; (i) any Contract containing any "most favored nation" or other preferred pricing provision; (j) any sales representative, original equipment manufacturer, manufacturing, value added, remarketer, reseller, or independent software vendor, or other Contract for use or distribution of the Company Products; (k) any nondisclosure, confidentiality or similar Contract, other than those entered into with any actual or prospective customer or vendor in the ordinary course of business consistent with past practices; (l) any Contract which has or may reasonably be expected to have the effect of prohibiting or impairing in any material respect any business practice of the Company or the Subsidiary, any acquisition of property (tangible or intangible) by the Company or the Subsidiary, the conduct of business by the Company or the Subsidiary, or otherwise limiting in any material respect the freedom of the Company to engage in any line of business, to conduct any business activities, or to compete with any Person; (m) any partnership or joint venture Contract; (n) any settlement or co-existence agreement; and (o) any other Contract, or group of Contracts, the termination or breach of which would be reasonably expected to have a Material Adverse Effect.

"***Net Purchase Consideration***" is defined in Section 1.2(a)(iii).

"***Neutral Firm***" is defined in Section 1.3(d).

"***Objection Notice***" is defined in Section 1.3(c).

"***Outstanding Escrow Claim***" is defined in Section 7.6(e).

"***Outstanding Share***" or "***Outstanding Shares***" is defined in Section A of the Recitals.

"***Ownership Interest Share***" is defined in Section 1.2(a)(iv).

"***Paid Transaction Costs***" is defined in Section 2.2(a)(ii).

"***Payoff Letters***" means the payoff letters in the form prescribed by Purchaser, issued by (a) creditors under all Indebtedness Agreements, setting forth the amounts required to repay the Indebtedness under the Indebtedness Agreements in full, and (b) recipients of Transaction Costs that remain outstanding as of the Closing Date, setting for the amount of Transaction Costs outstanding, each of which shall specifically include a release of the Company and Purchaser for all matters up to the Closing Date, contingent upon receipt of such payment.

"***Permits***" is defined in Section 3.2(o)(i).

"***Permitted Liens***" means such of the following as to which no enforcement, collection, execution, levy or foreclosure proceeding shall have been commenced: (a) Liens for Taxes, assessments, charges, levies or other claims not yet due and payable, or the validity of which are being contested in good faith and for which adequate reserves have been provided on the Latest Balance Sheet; (b) Liens arising by operation of Applicable Laws, such as materialmen's, mechanics' carriers', warehousemen's, workmen's and repairmen's liens and other similar liens for amounts not yet due and payable; (c) pledges or deposits to secure obligations under workers' compensation or similar Applicable Laws or to secure public or statutory obligations; (d) immaterial Liens, irregularities, easements, reserves, servitudes, encroachments, rights of way or other imperfections of title or possession the existence of which do not interfere with the present use of the affected real or other tangible property; (e) registered easements, rights-of-way, restrictive covenants and servitudes and other similar rights in land granted to, reserved or taken by any Governmental Entity or public utility, or any registered subdivision, development, servicing, site plan or other similar agreement with any Governmental Entity or public utility the existence of which do not interfere with the present use of the affected real property; (f) restrictions on transfer of securities under applicable state and federal securities laws; and (g) Liens that will be released in connection with the Closing.

"***Person***" means an individual, corporation, partnership, limited liability company, association, trust, unincorporated organization or other entity.

"***Personal Information***" refers to data that, separately or when combined with other data, can be used to identify an individual person, such as name, address, email address, photograph, IP address, and unique device identifier.

"***Post-Closing Operations***" means the operations of the Company following the Closing Date, including with respect to any claims for product liability asserted after the Closing Date; provided that Purchaser shall not be obligated to indemnify or hold harmless any Seller Indemnified Party for Post-Closing Operations to the extent the Losses attributable to such Post-Closing Operations arise out of or result from a breach by any Seller of its representations and warranties to Purchaser in this Agreement.

"***Pre-Closing Product Liability Claims***" means claims for product liability asserted against the Company prior to the Closing Date.

"***Privacy Laws***" means all Applicable Laws and industry self-regulatory programs concerning the collection, use, analysis, retention, storage, protection, transfer, disclosure and/or disposal of Personal Information including HIPAA, HITECH, state consumer protection Applicable Laws, state breach notification Applicable Laws, state social security number protection Applicable Laws, the Federal Trade Commission Act, the federal Privacy Act of 1974, the Telephone Consumer Protection Act, the Fair Credit Reporting Act and its state law equivalents, the California Online Privacy Protection Act, the Massachusetts Data Security Regulations (201 CMR 17.00 et seq.), each as amended to the date hereof, as well as the Digital Advertising Alliance's Self-Regulatory Principles for Online Behavioral Advertising.

"***Protected Health Information***" shall have same meaning prescribed by HIPAA.

"***Purchase***" is defined in Recital B.

"***Purchase Consideration***" is defined in Section 1.2(a)(v).

"***Purchase Price***" is defined in Section 1.2.

"***Purchaser***" is defined in the preamble.

"***Purchaser Common Stock***" means the Common Stock, par value $0.001, of Purchaser.

"***Purchaser Fundamental Representations***" is defined in Section 7.1(f).

"***Purchaser Indemnified Parties***" is defined in Section 7.2(a).

"***Purchaser Indemnified Taxes***" means any and all Taxes together with any costs, expenses or damages (including court and administrative costs and reasonable legal fees and expenses incurred in investigating and preparing for any audit, examination, litigation or other judicial or administrative proceeding) arising out of, in connection with or incident to the determination, assessment or collection of such Taxes (a) imposed on the Company or the Subsidiary (including Taxes imposed on or with respect to the income, business, property or operations of the Company and the Subsidiary), or for which the Company and the Subsidiary may otherwise be liable, with respect to (i) any Taxable period ending on or prior to the Closing Date or (ii) the portion of any Straddle Period ending on the Closing Date (determined in accordance with Section 4.6(c)), or (b) arising out of, in connection with, or related to, a breach of any representation or warranty set forth in Section 3.1(j) or the covenants set forth in Section 4.6; provided, however, that any such Tax shall not be a Purchaser Indemnified Tax to the extent such Tax was included as a Current Liability in the determination of Final Working Capital pursuant to Section 1.3(c).

"***Purchaser SEC Documents***" means all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the Exchange.

"***Purchaser Stock Consideration***" is defined in Section 1.2(a)(vi).

"***Purchaser's Board***" means the board of directors of Purchaser.

"***Released Parties***" is defined in Section 4.9.

"***Releasors***" is defined in Section 4.9.

"***Rule 144***" means Rule 144 as promulgated by the SEC under the Securities Act.

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

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

"***Seller***" or "***Sellers***" is defined in the preamble.

"***Seller Indemnified Parties***" is defined in Section 7.2(d).

"***Sensitive Personal Information***" refers to a subset of Personal Information that, separately or when combined with other data can be used to cause harm, embarrassment, financial loss or injury to an individual or result in identity theft or fraud. Sensitive Personal Information is a subset of Personal Information. Sensitive Personal Information includes, for example, name or email address in combination with: date of birth, social security number, government-issued identification numbers, payment card numbers, log-in credentials, geo-location information, fingerprints, financial account numbers, health information and other health-related information.

"***Straddle Period***" means any taxable period that begins on or before the Closing Date and ends after the Closing Date.

"***Subsidiary***" is defined in Section 3.2(b).

"***Systems***" is defined in Section 3.2(m).

"***Tail Policies***" is defined in Section 4.4.

"***Tax***" or "***Taxes***" means (i) any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, franchise, profits, capital stock, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not; (ii) any liability for payment of amounts described in clause (i) whether as a result of transferee liability, of being a member of an affiliated, consolidated, combined or unitary group for any period or otherwise through operation of law; and (iii) any liability for the payment of amounts described in clauses (i) or (ii) as a result of any tax sharing, tax indemnity or tax allocation agreement or any other express or implied agreement to indemnify any other Person.

"***Tax Proceeding***" is defined in Section 4.6(e).

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

"***Third Party Action***" is defined in Section 7.3(a).

"***Transaction Cap***" means an amount equal to the Purchase Consideration.

"***Transaction Costs***" means all fees, costs and expenses of any brokers, financial advisors, consultants, accountants, attorneys or other professionals engaged by the Company in connection with the structuring, negotiation or consummation of the transactions contemplated by this Agreement, including the costs associated with the Phase I environmental investigation of the Leased Real Property, and all fees, costs and expenses of any party that are to be paid by the Company as a result of the transactions contemplated by this Agreement, whether or not such costs, fees and expenses have been paid prior to Closing.

"***Transaction Document***" or "***Transaction Documents***" means this Agreement and all other documents to be executed by any of the parties to this Agreement in connection with the consummation of the transactions contemplated in this Agreement.

"***Working Capital Adjustment***" means the amount, if any, by which the Working Capital Amount is greater than or less than the Working Capital Target.

"***Working Capital Amount***" means Current Assets minus Current Liabilities on the Closing Balance Sheet or the Final Balance Sheet (as the case may be).

"***Working Capital Target***" means $13,576,366.

EXHIBIT B-1

SELLER NON-COMPETE AGREEMENT

(Kirschman)

NON-COMPETITION AND NON-SOLICITATION AGREEMENT

This Non-Competition and Non-Solicitation Agreement (this "***Agreement***"), dated [_____], 2015, is made by and between Bacterin International Holdings, Inc., a Delaware corporation (the "***Purchaser***"), and David L. Kirschman, M.D. ("***Seller***").

Recitals:

In connection with the closing (the "***Closing***") of the transactions contemplated by the Stock Purchase Agreement, dated as of [_____], 2015, by and among Purchaser, X-spine Systems, Inc., an Ohio corporation (the "***Company***"), Seller, and certain other parties (the "***Purchase Agreement***"), Seller has agreed to provide the Company with certain restrictive covenants, upon the terms and conditions set forth herein, in order to maintain the value and goodwill of the business of the Company purchased by Purchaser pursuant to the Purchase Agreement. Capitalized terms used but not otherwise defined herein shall take their meaning from the Purchase Agreement.

Agreements:

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

SECTION 1. **Effective Date**. This Agreement shall commence on the date hereof (the "***Effective Date***").

SECTION 2. **Restrictive Covenants**. As an inducement and as essential consideration for Purchaser to consummate the Purchase contemplated by the Purchase Agreement, and as additional consideration for the payments to which Seller is entitled under the Purchase Agreement, Seller hereby agrees to the restrictive covenants contained in this Section 2. The parties agree that such restrictive covenants are essential to preserve the goodwill of the business of the Company acquired under the Purchase Agreement and that Purchaser would not have entered into the Purchase Agreement without Seller's consent to the restrictive covenants set forth in this Section 2.

2.1. **Non-Competition.** During the period commencing on the Effective Date and ending on the date that is three years following the Effective Date (the "***Restricted Period***"), Seller shall not, without the advance written consent of the board of directors of Purchaser (the "***Board***"), such consent to be granted or withheld in the Board's sole discretion, either directly or indirectly, as a proprietor, partner, stockholder (except as the passive holder of not more than 1% of the outstanding stock of a publicly held company), director, executive, employee, consultant, joint venturer, investor or otherwise, (a) own, manage, operate or control, (b) participate in the ownership, management, operation or control of, or (c) be employed by and/or perform services for any Person that engages in the design, manufacturing and/or distribution of spinal implant products (the "***Restricted Business***"), in North America, except for Purchaser and the Company.

2.2. **Non-Solicitation.** During the Restricted Period, Seller shall not, directly or indirectly, on its own behalf or on behalf of any other Person, solicit, divert, take away, encourage to terminate or reduce, or otherwise harm the Company's relationship with any present or prospective customer of the Company (each, a "***Customer***"). During the Restricted Period, Seller shall not, directly or indirectly, on its own behalf or on behalf of any other Person, solicit, employ, engage, interfere with, or attempt to entice away from the Company, any individual who either (i) is employed by or engaged as an independent contractor consultant to the Company at the time of the solicitation, or (ii) has been so employed or engaged within six months prior to the time of solicitation. During the Restricted Period, Seller shall not, directly or indirectly, on its own behalf or on behalf of any other Person, harm the Company's relationship, or attempt to harm the Company's relationship, with any landlord or supplier.

2.3. **Confidentiality**. Seller shall not, without the advance written consent of the Board, directly or indirectly divulge, disclose or make available or accessible any Confidential Information to any Person, other than to enforce its rights under the Purchase Agreement or Transaction Documents, or when required to do so by a lawful order of a court of competent jurisdiction, any governmental authority or agency, or any recognized subpoena power, or in connection with Seller's continued employment with the Company or Purchaser, if applicable. In addition, Seller shall not create any derivative work or other product based on or resulting from any Confidential Information, and shall proffer to the Board's designee, on or promptly (and in any event, within five Business Days) following the Effective Date, and without retaining any copies, notes or excerpts thereof, all memoranda, computer disks or other media, computer programs, diaries, notes, records, data, customer or client lists, marketing plans and strategies, and any other documents consisting of or containing Confidential Information that are in Seller's actual or constructive possession or which are subject to its control at such time.

2.4. **Injunctive Relief**. Seller acknowledges and agrees that Purchaser will have no adequate remedy at law and would be irreparably harmed, if Seller actually breaches or threatens to breach any of the provisions of this Section 2. Seller agrees that Purchaser shall be entitled to equitable and/or injunctive relief to prevent any actual breach or threatened breach of this Section 2, and to specific performance of each of the terms of such Section 2, without the need for posting a bond or other security and in addition to any other legal or equitable remedies that Purchaser may have. Seller further agrees that it shall not, in any equity proceeding relating to the enforcement of the terms of this Section 2, raise the defense that Purchaser has an adequate remedy at law.

2.5. **Special Severability.** The terms and provisions of this Section 2 are intended to be separate and divisible provisions and if, for any reason, any one or more of them is held to be invalid or unenforceable, neither the validity nor the enforceability of any other provision of this Agreement shall thereby be affected. Seller acknowledges and agrees, and it is the intention of the parties to this Agreement, that the potential restrictions on Seller's future employment and activities imposed by this Section 2 are reasonable in both duration and geographic scope and in all other respects to protect the legitimate business interests of Purchaser. Further, Seller agrees and acknowledges that the Company is currently engaging in business and actively marketing its services and products throughout North America, and the Company expends significant time and effort developing and protecting the confidentiality of its Confidential Information. If for any reason any court of competent jurisdiction shall find any provisions of this Section 2 unreasonable in duration or geographic scope or otherwise, it is the intention of the parties that the restrictions and prohibitions contained herein shall be reformed and enforced to the fullest extent allowed under applicable law in such jurisdiction.

2.6. **Tolling During Periods of Breach**. The parties agree and intend that Seller's obligations under this Section 2 be tolled during any period that Seller is in breach of any of the obligations under this Section 2, so that Purchaser is provided with the full benefit of the restrictive periods set forth herein.

2.7. **Notification**. Seller consents to Purchaser notifying any future employer of Seller of Seller's obligations under this Section 2, and if Seller becomes self-employed or has an ownership interest in any future employer, then Seller further consents to Purchaser notifying any future customer, vendor or client of such future employer of Seller's obligations under this Section 2.

2.8. **Fees**. If Purchaser (a) brings any action or proceeding to enforce any provision of this Agreement or to obtain damages as a result of a breach of this Agreement or to enjoin any breach of this Agreement and (b) prevails in such action or proceeding, then Seller will, in addition to any other rights and remedies available to Purchaser, reimburse Purchaser for any and all reasonable costs and expenses (including attorneys' fees) incurred by Purchaser in connection with such action or proceeding.

SECTION 3. **Successors**. This Agreement is personal to Seller and, without the prior express written consent of the Board, shall not be assignable by Seller. This Agreement shall be binding upon Seller's heirs, beneficiaries and/or legal representatives. This Agreement shall inure to the benefit of Purchaser and its respective successors, purchasers and assigns.

SECTION 4. **Miscellaneous**.

4.1. **Notices**. All notices, requests, demands or other communications that are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given: (a) on the date of delivery, if personally delivered by hand, (b) upon the third day after such notice is deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, (c) upon the date scheduled for delivery after such notice is sent by a nationally recognized overnight express courier if the delivery date is a business day, or otherwise on the next business day, or (d) by fax upon written confirmation (including the automatic confirmation that is received from the recipient's fax machine) of receipt by the recipient of such notice if such confirmation is received on a business day during business hours, or otherwise on the next business day.

if to Purchaser, to:

Bacterin International Holdings, Inc.
600 Cruiser Lane
Belgrade, MT 59714
Attn: Chief Executive Officer
Facsimile: (406) 388-0422

with a copy to:

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004
Attn: Karen C. McConnell
Facsimile: (602) 798-5595

if to Seller, to:

David L Kirschman
5101 Garden Spring Court
Dayton, OH 45429
Facsimile: (937) 226-9898

with a copy to:

Dunlevey, Mahan & Furry
110 N. Main Street, Suite 1000
Dayton, OH 45402-1738
Attn: Donald B. Rineer
Facsimile: (937) 223-8550

4.2. **Severability**. The unenforceability, illegality or invalidity of any provision of this Agreement shall not affect the enforceability or validity of any other provision.

4.3. **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

4.4. **Governing Law**. This Agreement shall be construed and governed in accordance with the Applicable Laws of the State of Delaware, without regard to its Applicable Laws regarding conflicts of law.

4.5. **Headings**. The section headings of this Agreement are included for reference purposes only and shall not affect the construction or interpretation of any of the provisions of this Agreement.

4.6. **Entire Agreement**. This Agreement, the Purchase Agreement and the Transaction Documents set forth the entire understanding of the parties with respect to the transactions contemplated hereby, supersede all prior discussions, understandings, agreements and representations, and shall not be modified or affected by any offer, proposal, statement or representation, oral or written, made by or for any party in connection with the negotiation of the terms hereof.

4.7. **Interpretive Matters**. Unless the context otherwise requires, (a) all references to sections are to Sections in this Agreement; (b) words in the singular or plural include the singular and plural, and pronouns stated in either the masculine, feminine or neuter gender shall include the masculine, feminine and neuter; and (c) the term “including” means by way of example and not by way of limitation. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

4.8. **Submission to Jurisdiction**. Each of the parties submits to the exclusive jurisdiction of the state or federal courts located in Delaware, in any action or proceeding arising out of, or relating to, this Agreement, agrees that all claims in respect of the action or proceeding may be heard and determined in any such court, and agrees not to bring any action or proceeding arising out of, or relating to, this Agreement in any other court. Each of the parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought. Each party agrees that a final judgment in any action so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by applicable law.

4.9. **Waiver of Jury Trial**. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF, OR RELATING TO, THIS AGREEMENT.

4.10. **Amendments**. This Agreement may not be amended, restated, supplemented or otherwise modified except by an instrument in writing signed by the parties.

[Signature Page Follows]

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

BACTERIN INTERNATIONAL HOLDINGS, INC.

By: _____
Name: _____
Title: _____

Seller:

_____
David L. Kirschman, M.D.

[Signature Page to Non-Competition Agreement]

EXHIBIT B-2

SELLER NON-COMPETE AGREEMENT

(Hemmelgarn)

NON-COMPETITION AND NON-SOLICITATION AGREEMENT

This Non-Competition and Non-Solicitation Agreement (this "***Agreement***"), dated [_____], 2015, is made by and between Bacterin International Holdings, Inc., a Delaware corporation (the "***Purchaser***"), and Kenneth J. Hemmelgarn, Jr. ("***Hemmelgarn***"), and the Kenneth J. Hemmelgarn, Jr. Revocable Living Trust Dated February 9, 1998, as amended ("***Seller***," and together with Hemmelgarn, the "***Hemmelgarn Parties***").

Recitals:

In connection with the closing (the "***Closing***") of the transactions contemplated by the Stock Purchase Agreement, dated as of [_____], 2015, by and among Purchaser, X-spine Systems, Inc., an Ohio corporation (the "***Company***"), Seller, and certain other parties (the "***Purchase Agreement***"), the Hemmelgarn Parties have agreed to provide the Company with certain restrictive covenants, upon the terms and conditions set forth herein, in order to maintain the value and goodwill of the business of the Company purchased by Purchaser pursuant to the Purchase Agreement. Capitalized terms used but not otherwise defined herein shall take their meaning from the Purchase Agreement.

Agreements:

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

SECTION 5. **Effective Date**. This Agreement shall commence on the date hereof (the "***Effective Date***").

SECTION 6. **Restrictive Covenants**. As an inducement and as essential consideration for Purchaser to consummate the Purchase contemplated by the Purchase Agreement, and as additional consideration for the payments to which Seller is entitled under the Purchase Agreement, the Hemmelgarn Parties hereby agree to the restrictive covenants contained in this Section 2. The parties agree that such restrictive covenants are essential to preserve the goodwill of the business of the Company acquired under the Purchase Agreement and that Purchaser would not have entered into the Purchase Agreement without the Hemmelgarn Parties' consent to the restrictive covenants set forth in this Section 2.

6.1. **Non-Competition.** During the period commencing on the Effective Date and ending on the date that is three years following the Effective Date (the "***Restricted Period***"), the Hemmelgarn Parties shall not, without the advance written consent of the board of directors of Purchaser (the "***Board***"), such consent to be granted or withheld in the Board's sole discretion, either directly or indirectly, as a proprietor, partner, stockholder (except as the passive holder of not more than 1% of the outstanding stock of a publicly held company), director, executive, employee, consultant, joint venturer, investor or otherwise, (a) own, manage, operate or control, (b) participate in the ownership, management, operation or control of, or (c) be employed by and/or perform services for any Person that engages in the marketing and/or selling of spinal implant products (the "***Restricted Business***"), in North America. Notwithstanding the foregoing, for purposes of clarification, "***Restricted Business***" shall not include the Hemmelgarn Parties' ownership, management, operation or control of Norwood Tool Company d/b/a Norwood Medical ("***Norwood***"), which, in part, is a contract manufacturer for third parties engaged in the spinal products business, so long as Norwood itself does not sell spinal products to hospitals or other end-user purchasers of spinal products.

6.2. **Non-Solicitation.** During the Restricted Period, the Hemmelgarn Parties shall not, directly or indirectly, on their own behalf or on behalf of any other Person, solicit, divert, take away, encourage to terminate or reduce, or otherwise harm the Company's relationship with any present or prospective customer of the Company (each, a "***Customer***"). During the Restricted Period, the Hemmelgarn Parties shall not, directly or indirectly, on their own behalf or on behalf of any other Person, solicit, employ, engage, interfere with, or attempt to entice away from the Company, any individual who either (i) is employed by or engaged as an independent contractor consultant to the Company at the time of the solicitation, or (ii) has been so employed or engaged within six months prior to the time of solicitation. During the Restricted Period, the Hemmelgarn Parties shall not, directly or indirectly, on their own behalf or on behalf of any other Person, harm the Company's relationship, or attempt to harm the Company's relationship, with any landlord or supplier; provided the foregoing shall not apply with respect to Norwood and the parties acknowledge that the Hemmelgarn Parties may operate Norwood in their sole discretion.

6.3. **Confidentiality**. The Hemmelgarn Parties shall not, without the advance written consent of the Board, directly or indirectly divulge, disclose or make available or accessible any Confidential Information to any Person, other than to enforce their rights under the Purchase Agreement or Transaction Documents, or when required to do so by a lawful order of a court of competent jurisdiction, any governmental authority or agency, or any recognized subpoena power, or in connection with the Hemmelgarn Parties' continued employment with the Company or Purchaser, if applicable. In addition, the Hemmelgarn Parties shall not create any derivative work or other product based on or resulting from any Confidential Information, and shall proffer to the Board's designee, on or promptly (and in any event, within five Business Days) following the Effective Date, and without retaining any copies, notes or excerpts thereof, all memoranda, computer disks or other media, computer programs, diaries, notes, records, data, customer or client lists, marketing plans and strategies, and any other documents consisting of or containing Confidential Information that are in the Hemmelgarn Parties' actual or constructive possession or which are subject to its control at such time.

6.4. **Injunctive Relief**. The Hemmelgarn Parties acknowledge and agree that Purchaser will have no adequate remedy at law and would be irreparably harmed, if the Hemmelgarn Parties actually breach or threaten to breach any of the provisions of this Section 2. The Hemmelgarn Parties agree that Purchaser shall be entitled to equitable and/or injunctive relief to prevent any actual breach or threatened breach of this Section 2, and to specific performance of each of the terms of such Section 2, without the need for posting a bond or other security and in addition to any other legal or equitable remedies that Purchaser may have. The Hemmelgarn Parties further agree that they shall not, in any equity proceeding relating to the enforcement of the terms of this Section 2, raise the defense that Purchaser has an adequate remedy at law.

6.5. **Special Severability.** The terms and provisions of this Section 2 are intended to be separate and divisible provisions and if, for any reason, any one or more of them is held to be invalid or unenforceable, neither the validity nor the enforceability of any other provision of this Agreement shall thereby be affected. The Hemmelgarn Parties acknowledge and agree, and it is the intention of the parties to this Agreement, that the potential restrictions on the Hemmelgarn Parties' future employment and activities imposed by this Section 2 are reasonable in both duration and geographic scope and in all other respects to protect the legitimate business interests of Purchaser. Further, the Hemmelgarn Parties agree and acknowledge that the Company is currently engaging in business and actively marketing its services and products throughout North America, and the Company expends significant time and effort developing and protecting the confidentiality of its Confidential Information. If for any reason any court of competent jurisdiction shall find any provisions of this Section 2 unreasonable in duration or geographic scope or otherwise, it is the intention of the parties that the restrictions and prohibitions contained herein shall be reformed and enforced to the fullest extent allowed under applicable law in such jurisdiction.

6.6. **Tolling During Periods of Breach**. The parties agree and intend that the Hemmelgarn Parties' obligations under this Section 2 be tolled during any period that the Hemmelgarn Parties are in breach of any of the obligations under this Section 2, so that Purchaser is provided with the full benefit of the restrictive periods set forth herein.

6.7. **Fees**. If Purchaser (a) brings any action or proceeding to enforce any provision of this Agreement or to obtain damages as a result of a breach of this Agreement or to enjoin any breach of this Agreement and (b) prevails in such action or proceeding, then the Hemmelgarn Parties will, in addition to any other rights and remedies available to Purchaser, reimburse Purchaser for any and all reasonable costs and expenses (including attorneys' fees) incurred by Purchaser in connection with such action or proceeding.

SECTION 7. **Successors**. This Agreement is personal to the Hemmelgarn Parties and, without the prior express written consent of the Board, shall not be assignable by the Hemmelgarn Parties. This Agreement shall be binding upon the Hemmelgarn Parties' heirs, beneficiaries and/or legal representatives. This Agreement shall inure to the benefit of Purchaser and its respective successors, purchasers and assigns.

SECTION 8. **Miscellaneous**.

8.1. **Notices**. All notices, requests, demands or other communications that are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given: (a) on the date of delivery, if personally delivered by hand, (b) upon the third day after such notice is deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, (c) upon the date scheduled for delivery after such notice is sent by a nationally recognized overnight express courier if the delivery date is a business day, or otherwise on the next business day, or (d) by fax upon written confirmation (including the automatic confirmation that is received from the recipient's fax machine) of receipt by the recipient of such notice if such confirmation is received on a business day during business hours, or otherwise on the next business day.

if to Purchaser, to:

Bacterin International Holdings, Inc.
600 Cruiser Lane
Belgrade, MT 59714
Attn: Chief Executive Officer
Facsimile: (406) 388-0422

with a copy to:

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004
Attn: Karen C. McConnell
Facsimile: (602) 798-5595

if to the Hemmelgarn Parties, to:

Kenneth J. Hemmelgarn, Jr.
Kenneth J. Hemmelgarn, Jr. Revocable Living Trust Dated February 9, 1998, as amended
2122 Winners Circle
Dayton, OH 45404
Facsimile: (937) 228-1608

with a copy to:

Dunlevey, Mahan & Furry
110 N. Main Street, Suite 1000
Dayton, OH 45402-1738
Attn: Donald B. Rineer
Facsimile: (937) 223-8550

8.2. **Severability**. The unenforceability, illegality or invalidity of any provision of this Agreement shall not affect the enforceability or validity of any other provision.

8.3. **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

8.4. **Governing Law**. This Agreement shall be construed and governed in accordance with the Applicable Laws of the State of Delaware, without regard to its Applicable Laws regarding conflicts of law.

8.5. **Headings**. The section headings of this Agreement are included for reference purposes only and shall not affect the construction or interpretation of any of the provisions of this Agreement.

8.6. **Entire Agreement**. This Agreement, the Purchase Agreement and the Transaction Documents set forth the entire understanding of the parties with respect to the transactions contemplated hereby, supersede all prior discussions, understandings, agreements and representations, and shall not be modified or affected by any offer, proposal, statement or representation, oral or written, made by or for any party in connection with the negotiation of the terms hereof.

8.7. **Interpretive Matters**. Unless the context otherwise requires, (a) all references to sections are to Sections in this Agreement; (b) words in the singular or plural include the singular and plural, and pronouns stated in either the masculine, feminine or neuter gender shall include the masculine, feminine and neuter; and (c) the term “including” means by way of example and not by way of limitation. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

8.8. **Submission to Jurisdiction**. Each of the parties submits to the exclusive jurisdiction of the state or federal courts located in Delaware, in any action or proceeding arising out of, or relating to, this Agreement, agrees that all claims in respect of the action or proceeding may be heard and determined in any such court, and agrees not to bring any action or proceeding arising out of, or relating to, this Agreement in any other court. Each of the parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought. Each party agrees that a final judgment in any action so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by applicable law.

8.9. **Waiver of Jury Trial**. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF, OR RELATING TO, THIS AGREEMENT.

8.10. **Amendments**. This Agreement may not be amended, restated, supplemented or otherwise modified except by an instrument in writing signed by the parties.

[Signature Page Follows]

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

BACTERIN INTERNATIONAL HOLDINGS, INC.

By: _____
Name: _____
Title: _____

_____
Kenneth J. Hemmelgarn, Jr.

KENNETH J. HEMMELGARN, JR. REVOCABLE LIVING TRUST DATED FEBRUARY 9, 1998, AS AMENDED

By: _____
Name: _____
Title: _____

[Signature Page to Non-Competition Agreement]

NON-COMPETITION AND NON-SOLICITATION AGREEMENT

This Non-Competition and Non-Solicitation Agreement (this "***Agreement***"), dated [_____], 2015, is made by and between Bacterin International Holdings, Inc., a Delaware corporation (the "***Purchaser***"), and Brian J. Hemmelgarn ("***Hemmelgarn***") and the Brian J. Hemmelgarn Revocable Living Trust Dated February 9, 1998, as amended ("***Seller***," and together with Hemmelgarn, the "***Hemmelgarn Parties***").

Recitals:

In connection with the closing (the "***Closing***") of the transactions contemplated by the Stock Purchase Agreement, dated as of [_____], 2015, by and among Purchaser, X-spine Systems, Inc., an Ohio corporation (the "***Company***"), Seller, and certain other parties (the "***Purchase Agreement***"), the Hemmelgarn Parties have agreed to provide the Company with certain restrictive covenants, upon the terms and conditions set forth herein, in order to maintain the value and goodwill of the business of the Company purchased by Purchaser pursuant to the Purchase Agreement. Capitalized terms used but not otherwise defined herein shall take their meaning from the Purchase Agreement.

Agreements:

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

SECTION 9. **Effective Date**. This Agreement shall commence on the date hereof (the "***Effective Date***").

SECTION 10. **Restrictive Covenants**. As an inducement and as essential consideration for Purchaser to consummate the Purchase contemplated by the Purchase Agreement, and as additional consideration for the payments to which Seller is entitled under the Purchase Agreement, the Hemmelgarn Parties hereby agree to the restrictive covenants contained in this Section 2. The parties agree that such restrictive covenants are essential to preserve the goodwill of the business of the Company acquired under the Purchase Agreement and that Purchaser would not have entered into the Purchase Agreement without the Hemmelgarn Parties' consent to the restrictive covenants set forth in this Section 2.

10.1. **Non-Competition.** During the period commencing on the Effective Date and ending on the date that is three years following the Effective Date (the "***Restricted Period***"), the Hemmelgarn Parties shall not, without the advance written consent of the board of directors of Purchaser (the "***Board***"), such consent to be granted or withheld in the Board's sole discretion, either directly or indirectly, as a proprietor, partner, stockholder (except as the passive holder of not more than 1% of the outstanding stock of a publicly held company), director, executive, employee, consultant, joint venturer, investor or otherwise, (a) own, manage, operate or control, (b) participate in the ownership, management, operation or control of, or (c) be employed by and/or perform services for any Person that engages in the marketing and/or selling of spinal implant products (the "***Restricted Business***"), in North America. Notwithstanding the foregoing, for purposes of clarification, "***Restricted Business***" shall not include the Hemmelgarn Parties' ownership, management, operation or control of Norwood Tool Company d/b/a Norwood Medical ("***Norwood***"), which, in part, is a contract manufacturer for third parties engaged in the spinal products business, so long as Norwood itself does not sell spinal products to hospitals or other end-user purchasers of spinal products.

10.2. **Non-Solicitation.** During the Restricted Period, the Hemmelgarn Parties shall not, directly or indirectly, on their own behalf or on behalf of any other Person, solicit, divert, take away, encourage to terminate or reduce, or otherwise harm the Company's relationship with any present or prospective customer of the Company (each, a "***Customer***"). During the Restricted Period, the Hemmelgarn Parties shall not, directly or indirectly, on their own behalf or on behalf of any other Person, solicit, employ, engage, interfere with, or attempt to entice away from the Company, any individual who either (i) is employed by or engaged as an independent contractor consultant to the Company at the time of the solicitation, or (ii) has been so employed or engaged within six months prior to the time of solicitation. During the Restricted Period, the Hemmelgarn Parties shall not, directly or indirectly, on their own behalf or on behalf of any other Person, harm the Company's relationship, or attempt to harm the Company's relationship, with any landlord or supplier; provided the foregoing shall not apply with respect to Norwood and the parties acknowledge that the Hemmelgarn Parties may operate Norwood in their sole discretion.

10.3. **Confidentiality**. The Hemmelgarn Parties shall not, without the advance written consent of the Board, directly or indirectly divulge, disclose or make available or accessible any Confidential Information to any Person, other than to enforce their rights under the Purchase Agreement or Transaction Documents, or when required to do so by a lawful order of a court of competent jurisdiction, any governmental authority or agency, or any recognized subpoena power, or in connection with the Hemmelgarn Parties' continued employment with the Company or Purchaser, if applicable. In addition, the Hemmelgarn Parties shall not create any derivative work or other product based on or resulting from any Confidential Information, and shall proffer to the Board's designee, on or promptly (and in any event, within five Business Days) following the Effective Date, and without retaining any copies, notes or excerpts thereof, all memoranda, computer disks or other media, computer programs, diaries, notes, records, data, customer or client lists, marketing plans and strategies, and any other documents consisting of or containing Confidential Information that are in the Hemmelgarn Parties' actual or constructive possession or which are subject to its control at such time.

10.4. **Injunctive Relief**. The Hemmelgarn Parties acknowledge and agree that Purchaser will have no adequate remedy at law and would be irreparably harmed, if the Hemmelgarn Parties actually breach or threaten to breach any of the provisions of this Section 2. The Hemmelgarn Parties agree that Purchaser shall be entitled to equitable and/or injunctive relief to prevent any actual breach or threatened breach of this Section 2, and to specific performance of each of the terms of such Section 2, without the need for posting a bond or other security and in addition to any other legal or equitable remedies that Purchaser may have. The Hemmelgarn Parties further agree that they shall not, in any equity proceeding relating to the enforcement of the terms of this Section 2, raise the defense that Purchaser has an adequate remedy at law.

10.5. **Special Severability.** The terms and provisions of this Section 2 are intended to be separate and divisible provisions and if, for any reason, any one or more of them is held to be invalid or unenforceable, neither the validity nor the enforceability of any other provision of this Agreement shall thereby be affected. The Hemmelgarn Parties acknowledge and agree, and it is the intention of the parties to this Agreement, that the potential restrictions on the Hemmelgarn Parties' future employment and activities imposed by this Section 2 are reasonable in both duration and geographic scope and in all other respects to protect the legitimate business interests of Purchaser. Further, the Hemmelgarn Parties agree and acknowledge that the Company is currently engaging in business and actively marketing its services and products throughout North America, and the Company expends significant time and effort developing and protecting the confidentiality of its Confidential Information. If for any reason any court of competent jurisdiction shall find any provisions of this Section 2 unreasonable in duration or geographic scope or otherwise, it is the intention of the parties that the restrictions and prohibitions contained herein shall be reformed and enforced to the fullest extent allowed under applicable law in such jurisdiction.

10.6. **Tolling During Periods of Breach**. The parties agree and intend that the Hemmelgarn Parties' obligations under this Section 2 be tolled during any period that the Hemmelgarn Parties are in breach of any of the obligations under this Section 2, so that Purchaser is provided with the full benefit of the restrictive periods set forth herein.

10.7. **Fees**. If Purchaser (a) brings any action or proceeding to enforce any provision of this Agreement or to obtain damages as a result of a breach of this Agreement or to enjoin any breach of this Agreement and (b) prevails in such action or proceeding, then the Hemmelgarn Parties will, in addition to any other rights and remedies available to Purchaser, reimburse Purchaser for any and all reasonable costs and expenses (including attorneys' fees) incurred by Purchaser in connection with such action or proceeding.

SECTION 11. **Successors**. This Agreement is personal to the Hemmelgarn Parties and, without the prior express written consent of the Board, shall not be assignable by the Hemmelgarn Parties. This Agreement shall be binding upon the Hemmelgarn Parties' heirs, beneficiaries and/or legal representatives. This Agreement shall inure to the benefit of Purchaser and its respective successors, purchasers and assigns.

SECTION 12. **Miscellaneous**.

12.1. **Notices**. All notices, requests, demands or other communications that are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given: (a) on the date of delivery, if personally delivered by hand, (b) upon the third day after such notice is deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, (c) upon the date scheduled for delivery after such notice is sent by a nationally recognized overnight express courier if the delivery date is a business day, or otherwise on the next business day, or (d) by fax upon written confirmation (including the automatic confirmation that is received from the recipient's fax machine) of receipt by the recipient of such notice if such confirmation is received on a business day during business hours, or otherwise on the next business day.

if to Purchaser, to:

Bacterin International Holdings, Inc.
600 Cruiser Lane
Belgrade, MT 59714
Attn: Chief Executive Officer
Facsimile: (406) 388-0422

with a copy to:

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004
Attn: Karen C. McConnell
Facsimile: (602) 798-5595

if to the Hemmelgarn Parties, to:

Brian J. Hemmelgarn
Brian J. Hemmelgarn Revocable Living Trust Dated February 9, 1998, as amended
2122 Winners Circle
Dayton, OH 45404
Facsimile: (937) 228-1608

with a copy to:

Dunlevey, Mahan & Furry
110 N. Main Street, Suite 1000
Dayton, OH 45402-1738
Attn: Donald B. Rineer
Facsimile: (937) 223-8550

12.2. **Severability**. The unenforceability, illegality or invalidity of any provision of this Agreement shall not affect the enforceability or validity of any other provision.

12.3. **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

12.4. **Governing Law**. This Agreement shall be construed and governed in accordance with the Applicable Laws of the State of Delaware, without regard to its Applicable Laws regarding conflicts of law.

12.5. **Headings**. The section headings of this Agreement are included for reference purposes only and shall not affect the construction or interpretation of any of the provisions of this Agreement.

12.6. **Entire Agreement**. This Agreement, the Purchase Agreement and the Transaction Documents set forth the entire understanding of the parties with respect to the transactions contemplated hereby, supersede all prior discussions, understandings, agreements and representations, and shall not be modified or affected by any offer, proposal, statement or representation, oral or written, made by or for any party in connection with the negotiation of the terms hereof.

12.7. **Interpretive Matters**. Unless the context otherwise requires, (a) all references to sections are to Sections in this Agreement; (b) words in the singular or plural include the singular and plural, and pronouns stated in either the masculine, feminine or neuter gender shall include the masculine, feminine and neuter; and (c) the term “including” means by way of example and not by way of limitation. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

12.8. **Submission to Jurisdiction**. Each of the parties submits to the exclusive jurisdiction of the state or federal courts located in Delaware, in any action or proceeding arising out of, or relating to, this Agreement, agrees that all claims in respect of the action or proceeding may be heard and determined in any such court, and agrees not to bring any action or proceeding arising out of, or relating to, this Agreement in any other court. Each of the parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought. Each party agrees that a final judgment in any action so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by applicable law.

12.9. **Waiver of Jury Trial**. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF, OR RELATING TO, THIS AGREEMENT.

12.10. **Amendments**. This Agreement may not be amended, restated, supplemented or otherwise modified except by an instrument in writing signed by the parties.

[Signature Page Follows]

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

BACTERIN INTERNATIONAL HOLDINGS, INC.

By: _____
Name: _____
Title: _____

_____
Brian J. Hemmelgarn

BRIAN J. HEMMELGARN REVOCABLE LIVING TRUST DATED FEBRUARY 9, 1998, AS AMENDED

By: _____
Name: _____
Title: _____

[Signature Page to Non-Competition Agreement]

EXHIBIT C

LOCK-UP AGREEMENT

[_____], 2015

Bacterin International Holdings, Inc.
600 Cruiser Lane
Belgrade, MT 59714
Attention: Chief Executive Officer

Re: Lock-Up Agreement

Ladies and Gentlemen:

Reference is made to that certain Stock Purchase Agreement, dated [_____], 2015 (the "***Purchase Agreement***"), by and among Bacterin International Holdings, Inc., a Delaware corporation (the "***Purchaser***"), X-spine Systems, Inc., an Ohio corporation (the "***Company***"), David L. Kirschman, M.D. ("***Kirschman***"), the Kenneth J. Hemmelgarn, Jr. Revocable Living Trust Dated February 9, 1998, as amended (the "***K. Hemmelgarn 1998 Trust***"), the Brian J. Hemmelgarn Revocable Living Trust Dated February 9, 1998, as amended (the "***B. Hemmelgarn 1998 Trust***"), the Kenneth J. Hemmelgarn, Jr. Second Trust Dated March 18, 2010 (the "***K. Hemmelgarn 2010 Trust***"), and the Brian J. Hemmelgarn Second Trust Dated March 18, 2010 (the "***B. Hemmelgarn 2010 Trust***," and collectively with Kirschman, the K. Hemmelgarn 1998 Trust, the B. Hemmelgarn 1998 Trust, the K. Hemmelgarn 2010 Trust, and the B. Hemmelgarn 2010 Trust, the "***Sellers***"), pursuant to which Sellers will sell and transfer to Purchaser, and Purchaser will acquire from Sellers, the Outstanding Shares of the Company (the "***Purchase***"). In connection with the Purchase, Purchaser will issue Purchaser Common Stock to certain of the Sellers in reliance on one or more exemptions from the registration requirements of the Securities Act of 1933, as amended (the "***Securities Act***"), and exemptions from the qualification requirements of applicable state law. Unless otherwise defined herein, all capitalized terms used herein shall have the respective meanings given to such terms in the Purchase Agreement.

In order to induce Purchaser to enter into the Purchase Agreement, the undersigned Seller hereby executes this Lock-Up Agreement and agrees with Purchaser as follows.

The undersigned will not engage in any of the following dispositive actions with respect to the shares of Purchaser Common Stock issued to the undersigned in the Purchase (the "***Shares***") for a period of one year following the Closing Date: (1) offer, pledge, announce the intention to sell, 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, or otherwise transfer or dispose of, directly or indirectly, the Shares or (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Shares, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of the Shares, in cash or otherwise ("***Dispositive Actions***"). The restrictions set forth in this paragraph shall not apply to (1) any transfers made by the undersigned (a) as a bona fide gift to any member of the immediate family (as defined below) of the undersigned or to a trust, the beneficiaries of which are exclusively the undersigned or members of the undersigned's immediate family, (b) by will or intestate succession upon the death of the undersigned or (c) as a bona fide gift to a charity or educational institution, or (2) if the undersigned is a trust, the distribution by the trust of the Shares to its beneficiaries; provided, however, that it shall be a condition to any such transfer that the transferee executes and delivers to Purchaser, not later than one business day prior to such transfer, a written agreement, in substantially the form of this letter agreement and otherwise satisfactory in form and substance to the Purchaser. For purposes of this paragraph, "immediate family" shall mean a spouse, domestic partner, child, grandchild or other lineal descendant (including by adoption), father, mother, brother or sister of the undersigned.

The undersigned acknowledges that the Shares issued to the undersigned in the Purchase are characterized as "restricted securities" under the Securities Act inasmuch as they are being acquired from Purchaser in a transaction not involving a public offering and that, consequently, such Shares may be resold only pursuant to an exemption from registration under the Securities Act. The undersigned acknowledges and agrees that any certificate issued to the undersigned respecting the Shares will bear a restricted legend, including a legend referencing this Lock-Up Agreement.

This Lock-Up Agreement will be binding upon and inure to the benefit of the undersigned and its successors and permitted assigns. This Lock-Up Agreement may be executed in any number of counterparts, each of which will be an original and all of which together will constitute one and the same instrument.

The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Lock-Up Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that Purchaser shall be entitled to seek an injunction to prevent breaches of this Lock-Up Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, without the need to post any bond or other security therefor.

Any term or provision of this Lock-Up Agreement may be amended, and the observance of any term of this Lock-Up Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only by a writing signed by the undersigned and Purchaser.

[Signature Page Follows]

Very truly yours,

_____

Signature

_____

Name (Please Type or Print)

_____

Name and Title if signing on behalf an entity

_____

Address

_____

City, State and Zip Code

Agreed to and Accepted:

Bacterin International Holdings, Inc.

By: _____

Name: _____

Title: _____

[Signature Page to Lock-Up Agreement]

EXHIBIT D

GUARANTIES

GUARANTY

This Guaranty ("***Guaranty***"), dated [_____], 2015, is made by Kenneth J. Hemmelgarn, Jr. ("***Guarantor***"), in favor of Bacterin International Holdings, Inc., a Delaware corporation (the "***Purchaser***").

Recitals:

In connection with the closing of the transactions contemplated by the Stock Purchase Agreement, dated as of [_____], 2015, by and among Purchaser, X-spine Systems, Inc., an Ohio corporation, and certain selling parties (the "***Purchase Agreement***"), Guarantor has agreed to guarantee the obligations of the K. Hemmelgarn 1998 Trust and K. Hemmelgarn 2010 Trust (together, the "***Trusts***") owed to Purchaser under the Purchase Agreement, upon the terms and conditions set forth herein. Capitalized terms used but not otherwise defined herein shall take their meaning from the Purchase Agreement.

Agreements:

NOW, THEREFORE, in consideration of the promises contained herein, and the other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor, intending to be legally bound, agrees as follows:

SECTION 13. **Affirmation and Guaranty of Guarantor**. Guarantor hereby represents and warrants that he is in control of and a direct or indirect beneficiary of the K. Hemmelgarn 1998 Trust and the grantor of the K. Hemmelgarn 2010 Trust, and will receive value under the Purchase Agreement, including some of the Purchase Consideration that the Sellers receive from Purchaser pursuant to the Purchase Agreement. As a result, and in order to induce Purchaser to enter into the Purchase Agreement, to pay the Purchase Consideration and as security for the performance of the Trusts' obligations under the Purchase Agreement, Guarantor unconditionally guarantees the full and prompt payment and performance of all obligations of the Trusts to Purchaser arising out of or in connection with the Purchase Agreement. This guaranty is an absolute, complete and continuing guaranty and shall be fully binding upon and enforceable against Guarantor. Guarantor acknowledges that because he is in control of and is a beneficiary of the K. Hemmelgarn 1998 Trust that will receive a portion of the Purchase Consideration, but may distribute such consideration to Guarantor pursuant to the applicable trust agreement, and because he is the grantor of the K. Hemmelgarn 2010 Trust, without this guaranty Purchaser would not have agreed to consummate the transactions contemplated by the Purchase Agreement. Guarantor may not rescind or revoke his obligations hereunder and his liabilities hereunder shall be absolute, unconditional and irrevocable irrespective of the failure of Purchaser to exercise any available rights or remedies against any other Person, any amendment to or waiver of the Purchase Agreement that does not expressly reference this Guaranty, or the insolvency or bankruptcy of, or similar event affecting the Trusts.

SECTION 14. **Miscellaneous**.

14.1. **Notices**. All notices, requests, demands or other communications that are required or may be given pursuant to the terms of this Guaranty shall be in writing and shall be deemed to have been duly given: (a) on the date of delivery, if personally delivered by hand, (b) upon the third day after such notice is deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, (c) upon the date scheduled for delivery after such notice is sent by a nationally recognized overnight express courier if the delivery date is a business day, or otherwise on the next business day, or (d) by fax upon written confirmation (including the automatic confirmation that is received from the recipient's fax machine) of receipt by the recipient of such notice if such confirmation is received on a business day during business hours, or otherwise on the next business day.

if to Guarantor, to:

Kenneth J. Hemmelgarn, Jr.
2122 Winners Circle
Dayton, OH 45404
Facsimile: (937) 228-1608

with a copy to:

Dunlevey, Mahan & Furry
110 N. Main Street, Suite 1000
Dayton, OH 45402-1738
Attn: Donald B. Rineer
Facsimile: (937) 223-8550

14.2. **Severability**. The unenforceability, illegality or invalidity of any provision of this Guaranty shall not affect the enforceability or validity of any other provision.

14.3. **Governing Law**. This Guaranty shall be construed and governed in accordance with the Applicable Laws of the State of Delaware, without regard to its Applicable Laws regarding conflicts of law.

14.4. **Headings**. The section headings of this Guaranty are included for reference purposes only and shall not affect the construction or interpretation of any of the provisions of this Guaranty.

14.5. **Entire Agreement**. This Guaranty, the Purchase Agreement and the Transaction Documents set forth the entire understanding of the parties with respect to the transactions contemplated hereby, supersede all prior discussions, understandings, agreements and representations, and shall not be modified or affected by any offer, proposal, statement or representation, oral or written, made by or for any party in connection with the negotiation of the terms hereof.

14.6. **Interpretive Matters**. Unless the context otherwise requires, (a) all references to sections are to Sections in this Guaranty; (b) words in the singular or plural include the singular and plural, and pronouns stated in either the masculine, feminine or neuter gender shall include the masculine, feminine and neuter; and (c) the term "including" means by way of example and not by way of limitation. The parties have participated jointly in the negotiation and drafting of this Guaranty. In the event an ambiguity or question of intent arises, this Guaranty shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Guaranty.

14.7. **Submission to Jurisdiction**. Guarantor submits to the exclusive jurisdiction of the state or federal courts located in Delaware, in any action or proceeding arising out of, or relating to, this Guaranty, agrees that all claims in respect of the action or proceeding may be heard and determined in any such court, and agrees not to bring any action or proceeding arising out of, or relating to, this Guaranty in any other court. Guarantor waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought. Guarantor agrees that a final judgment in any action so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by applicable law.

14.8. **Waiver of Jury Trial**. GUARANTOR HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF, OR RELATING TO, THIS GUARANTY.

14.9. **Amendments**. This Guaranty may not be amended, restated, supplemented or otherwise modified except by an instrument in writing signed by Guarantor and approved by Purchaser.

[Signature Page Follows]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

Kenneth J. Hemmelgarn, Jr.

[Signature Page to Guaranty]

GUARANTY

This Guaranty ("***Guaranty***"), dated [_____], 2015, is made by Brian J. Hemmelgarn ("***Guarantor***"), in favor of Bacterin International Holdings, Inc., a Delaware corporation (the "***Purchaser***").

Recitals:

In connection with the closing of the transactions contemplated by the Stock Purchase Agreement, dated as of [_____], 2015, by and among Purchaser, X-spine Systems, Inc., an Ohio corporation, and certain selling parties (the "***Purchase Agreement***"), Guarantor has agreed to guarantee the obligations of the B. Hemmelgarn 1998 Trust and B. Hemmelgarn 2010 Trust (together, the "***Trusts***") owed to Purchaser under the Purchase Agreement, upon the terms and conditions set forth herein. Capitalized terms used but not otherwise defined herein shall take their meaning from the Purchase Agreement.

Agreements:

NOW, THEREFORE, in consideration of the promises contained herein, and the other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor, intending to be legally bound, agrees as follows:

SECTION 15. **Affirmation and Guaranty of Guarantor**. Guarantor hereby represents and warrants that he is in control of and a direct or indirect beneficiary of the B. Hemmelgarn 1998 Trust and the grantor of the B. Hemmelgarn 2010 Trust, and will receive value under the Purchase Agreement, including some of the Purchase Consideration that the Sellers receive from Purchaser pursuant to the Purchase Agreement. As a result, and in order to induce Purchaser to enter into the Purchase Agreement, to pay the Purchase Consideration and as security for the performance of the Trusts' obligations under the Purchase Agreement, Guarantor unconditionally guarantees the full and prompt payment and performance of all obligations of the Trusts to Purchaser arising out of or in connection with the Purchase Agreement. This guaranty is an absolute, complete and continuing guaranty and shall be fully binding upon and enforceable against Guarantor. Guarantor acknowledges that because he is in control of and is a beneficiary of the B. Hemmelgarn 1998 Trust that will receive a portion of the Purchase Consideration, but may distribute such consideration to Guarantor pursuant to the applicable trust agreements, and because he is the grantor of the B. Hemmelgarn 2010 Trust, without this guaranty Purchaser would not have agreed to consummate the transactions contemplated by the Purchase Agreement. Guarantor may not rescind or revoke his obligations hereunder and his liabilities hereunder shall be absolute, unconditional and irrevocable irrespective of the failure of Purchaser to exercise any available rights or remedies against any other Person, any amendment to or waiver of the Purchase Agreement that does not expressly reference this Guaranty, or the insolvency or bankruptcy of, or similar event affecting the Trusts.

SECTION 16. **Miscellaneous**.

16.1. **Notices**. All notices, requests, demands or other communications that are required or may be given pursuant to the terms of this Guaranty shall be in writing and shall be deemed to have been duly given: (a) on the date of delivery, if personally delivered by hand, (b) upon the third day after such notice is deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, (c) upon the date scheduled for delivery after such notice is sent by a nationally recognized overnight express courier if the delivery date is a business day, or otherwise on the next business day, or (d) by fax upon written confirmation (including the automatic confirmation that is received from the recipient's fax machine) of receipt by the recipient of such notice if such confirmation is received on a business day during business hours, or otherwise on the next business day.

if to Guarantor, to:

Brian J. Hemmelgarn
2122 Winners Circle
Dayton, OH 45404
Facsimile: (937) 228-1608

with a copy to:

Dunlevey, Mahan & Furry
110 N. Main Street, Suite 1000
Dayton, OH 45402-1738
Attn: Donald B. Rineer
Facsimile: (937) 223-8550

16.2. **Severability**. The unenforceability, illegality or invalidity of any provision of this Guaranty shall not affect the enforceability or validity of any other provision.

16.3. **Governing Law**. This Guaranty shall be construed and governed in accordance with the Applicable Laws of the State of Delaware, without regard to its Applicable Laws regarding conflicts of law.

16.4. **Headings**. The section headings of this Guaranty are included for reference purposes only and shall not affect the construction or interpretation of any of the provisions of this Guaranty.

16.5. **Entire Agreement**. This Guaranty, the Purchase Agreement and the Transaction Documents set forth the entire understanding of the parties with respect to the transactions contemplated hereby, supersede all prior discussions, understandings, agreements and representations, and shall not be modified or affected by any offer, proposal, statement or representation, oral or written, made by or for any party in connection with the negotiation of the terms hereof.

16.6. **Interpretive Matters**. Unless the context otherwise requires, (a) all references to sections are to Sections in this Guaranty; (b) words in the singular or plural include the singular and plural, and pronouns stated in either the masculine, feminine or neuter gender shall include the masculine, feminine and neuter; and (c) the term "including" means by way of example and not by way of limitation. The parties have participated jointly in the negotiation and drafting of this Guaranty. In the event an ambiguity or question of intent arises, this Guaranty shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Guaranty.

16.7. **Submission to Jurisdiction**. Guarantor submits to the exclusive jurisdiction of the state or federal courts located in Delaware, in any action or proceeding arising out of, or relating to, this Guaranty, agrees that all claims in respect of the action or proceeding may be heard and determined in any such court, and agrees not to bring any action or proceeding arising out of, or relating to, this Guaranty in any other court. Guarantor waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought. Guarantor agrees that a final judgment in any action so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by applicable law.

16.8. **Waiver of Jury Trial**. GUARANTOR HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF, OR RELATING TO, THIS GUARANTY.

16.9. **Amendments**. This Guaranty may not be amended, restated, supplemented or otherwise modified except by an instrument in writing signed by Guarantor and approved by Purchaser.

[Signature Page Follows]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

Brian J. Hemmelgarn

[Signature Page to Guaranty]

Exhibit 10.2

Execution Version

AMENDED AND RESTATED CREDIT AGREEMENT

dated as of July 27, 2015

by and among

BACTERIN INTERNATIONAL, INC.,

as the Borrower,

The Lenders Party Hereto,

and

ROS ACQUISITION OFFSHORE LP

as the Administrative Agent

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AMENDED AND RESTATED CREDIT AGREEMENT

THIS AMENDED AND RESTATED CREDIT AGREEMENT dated as of July 27, 2015 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this "Agreement"), is by and among BACTERIN INTERNATIONAL, INC., a Nevada corporation (the "Borrower"), ROS ACQUISITION OFFSHORE LP, a Cayman Islands Exempted Limited Partnership (together with its Affiliates, successors, transferees and assignees, "ROS"), as lender and as "Administrative Agent" for the lenders pursuant to Section 10.1.1 hereof, and ORBIMED ROYALTY OPPORTUNITIES II, LP, a Delaware limited partnership (together with its Affiliates, successors, transferees and assignees, "Royalty Opportunities" and together with ROS, each individually a "Lender" and collectively, the "Lenders").

WITNESSETH:

WHEREAS, Holdings (such term and each other capitalized term used but not otherwise defined herein having the meaning assigned to it in Article I), X-spine Systems, Inc., an Ohio corporation (the "Target"), David L. Kirschman, M.D., the Kenneth J. Hemmelgarn, Jr. Revocable Living Trust Dated February 9, 1998, as amended, the Brian J. Hemmelgarn Revocable Living Trust Dated February 9, 1998, as amended, the Kenneth J. Hemmelgarn, Jr. Second Children's Trust Dated March 18, 2010, and the Brian J. Hemmelgarn Second Children's Trust Dated March 18, 2010, have entered into a Stock Purchase Agreement dated as of the date hereof (the "Acquisition Agreement");

WHEREAS, pursuant to the Acquisition Agreement, Holdings has agreed to acquire, 100% of the issued and outstanding shares of capital stock of the Target (the "Acquisition");

WHEREAS, on the date hereof, the parties to the 2012 Royalty Agreement have agreed to terminate the 2012 Royalty Agreement, effective on the Restatement Date;

WHEREAS, the Borrower has requested that the Lenders agree to amend and restate the Existing Credit Agreement in order to continue the existing Loans thereunder and provide $18,000,000 of additional Loans hereunder to finance a portion of the Acquisition; and

WHEREAS, the Lenders are willing, on the terms and subject to the conditions hereinafter set forth, to continue Loans under the Existing Credit Agreement, extend the Commitment, make the new Loans to the Borrower and amend and restate the Existing Credit Agreement in the form hereof;

NOW, THEREFORE, the parties hereto agree as follows.

ARTICLE I
DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.1 Defined Terms. The following terms (whether or not underscored) when used in this Agreement, including its preamble and recitals, shall, except where the context otherwise requires, have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):

"2012 Royalty Agreement" means the Royalty Agreement, dated as of August 24, 2012 (as amended, supplemented or otherwise modified from time to time), by and between ROS Acquisition Offshore LP, a Cayman Islands Exempted Limited Partnership, and Bacterin International, Inc., a Nevada corporation.

"361 Product" means a human cellular or tissue-based product that meets the criteria under 21 C.F.R. § 1271.10 and is subject to regulation under Section 361 of the Public Health Services Act and 21 C.F.R. Part 1271, but is not regulated under Section 351 of the Public Health Services Act or regulated as drug, biologic, or medical device.

"Acquisition" is defined in the preamble.

"Acquisition Agreement" is defined in the preamble.

"Additional PIK Interest" is defined in Section 3.4(b)(ii).

"Administrative Agent" is defined in the Section 10.1.1(a).

"Affiliate" of any Person means any other Person which, directly or indirectly, Controls, is Controlled by or is under common Control with such Person. "Control" (and its correlatives) by any Person means the power of such Person, directly or indirectly, (i) to vote 10% or more of the Voting Securities (determined on a fully diluted basis) of another Person or (ii) to direct or cause the direction of the management and policies of such other Person (whether by contract or otherwise).

"Agreement" is defined in the preamble.

"Applicable Margin" means 14.00%.

"Authorized Officer" means, relative to Holdings, the Borrower or any of the Subsidiaries, those of its officers, general partners or managing members (as applicable) whose signatures and incumbency shall have been certified to the Lenders pursuant to Section 5.1.1.

"Benefit Plan" means any employee benefit plan, as defined in section 3(3) of ERISA, that either: (i) is a "multiemployer plan," as defined in section 3(37) of ERISA, (ii) is subject to section 412 of the Code, section 302 of ERISA or Title IV of ERISA or (iii) provides welfare benefits to terminated employees, other than to the extent required by section 4980B(f) of the Code and the corresponding provisions of ERISA.

"BLA" means (a) (i) a biologics license application (as defined in the Public Health Services Act, 42 U.S.C. § 262) for authorization to introduce, or deliver for introduction, a biologic product into commerce in the U.S., or any successor application or procedure; and (ii) any similar application or functional equivalent relating to market authorization for biologics applicable to or required by any country, jurisdiction or Governmental Authority other than the U.S.; and (b) all supplements and amendments that may be filed with respect to the foregoing.

"Borrower" is defined in the preamble.

"Business Day" means any day which is neither a Saturday or Sunday nor a legal holiday on which banks are authorized or required to be closed in New York, New York, or the Cayman Islands.

"Capital Securities" means, with respect to any Person, all shares of, interests or participations in, or other equivalents in respect of (in each case however designated, whether voting or non-voting), of such Person's capital stock, whether now outstanding or issued after the Restatement Date; provided that the Convertible Notes shall be deemed not to be Capital Securities for all purposes hereof.

"Capitalized Lease Liabilities" means, with respect to any Person, all monetary obligations of such Person and its Subsidiaries under any leasing or similar arrangement which have been (or, in accordance with GAAP, should be) classified as capitalized leases, and for purposes of each Loan Document the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP, and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a premium or a penalty.

"Cash Equivalent Investment" means, at any time:

(a) any direct obligation of (or unconditionally guaranteed by) the United States (or any agency or political subdivision thereof, to the extent such obligations are supported by the full faith and credit of the United States) maturing not more than one year after such time;

(b) commercial paper maturing not more than 270 days from the date of issue, which is issued by a corporation (other than an Affiliate of the Borrower or any of its Subsidiaries) organized under the laws of any state of the United States or of the District of Columbia and rated A-1 or higher by S&P or P-1 or higher by Moody's; or

(c) any certificate of deposit, time deposit or bankers acceptance, maturing not more than 180 days after its date of issuance, which is issued by any bank organized under the laws of the United States (or any state thereof) and which has (x) a credit rating of A2 or higher from Moody's or A or higher from S&P and (y) a combined capital and surplus greater than $500,000,000.

"Casualty Event" means the damage, destruction or condemnation, as the case may be, of property of any Person or any of its Subsidiaries.

"cGTP" means Current Good Tissue Practices, including the requirements for registration, donor eligibility screening, and the processing and distribution of tissue-based products, as set forth in 21 C.F.R. § 1271 and guidance documents.

"Change in Control" means and shall be deemed to have occurred if (i) any "person" or "group" (within the meaning of Rule 13d-5 of the Securities Exchange Act of 1934 as in effect on the date hereof) shall own, directly or indirectly, beneficially or of record, determined on a fully diluted basis, more than 35% of the Voting Securities of Holdings; (ii) a majority of the seats (other than vacant seats) on the board of directors (or equivalent) of Holdings shall at any time be occupied by persons who were neither (x) nominated by the board of directors of Holdings nor (y) appointed by directors so nominated; or (iii) Holdings shall cease to own, directly or indirectly, beneficially and of record, 100% of the issued and outstanding Capital Securities of the Borrower or the Subsidiaries. The Acquisition and the transactions contemplated by the Acquisition Agreement (including under the "Escrow Agreement," as defined in the Acquisition Agreement) shall not be deemed to be a "Change in Control."

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (i) the adoption or taking effect of any law, rule, regulation or treaty, (ii) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (iii) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) 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 or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Code" means the Internal Revenue Code of 1986, and the regulations thereunder, in each case as amended, reformed or otherwise modified from time to time.

"Commitment" means, with respect to each Lender, its obligations (if any) to make New Loans hereunder on the Restatement Date.

"Commitment Amount" means $18,000,000.

"Commitment Termination Date" means the earlier to occur of (i) the Restatement Date (immediately after the making of the Loans on such date) and (ii) August 3, 2015, if the Loans shall not have been made hereunder prior to such date.

"Compliance Certificate" means a certificate duly completed and executed by an Authorized Officer of the Borrower, substantially in the form of Exhibit C hereto, together with such changes thereto as the Administrative Agent may from time to time request for the purpose of monitoring the Borrower's compliance with the financial covenants contained herein.

"Confidential Information" means any and all information or material (whether written or oral, or in electronic or other form) that, at any time before, on or after the Restatement Date, has been or is provided or communicated to the Receiving Party by or on behalf of the Disclosing Party pursuant to this Agreement or in connection with the transactions contemplated hereby or any discussions or negotiations with respect thereto.

"Consolidated EBITDA" shall mean, for Holdings and its Subsidiaries, for any period, an amount equal to the sum of (i) Consolidated Net Income for such period plus (ii) solely to the extent deducted in determining Consolidated Net Income for such period, and without duplication, (A) Consolidated Interest Expense, (B) income tax expense determined on a consolidated basis in accordance with GAAP, (C) depreciation and amortization determined on a consolidated basis in accordance with GAAP, (D) compensation paid solely in Capital Securities of Holdings that are not Disqualified Capital Securities, and (E) all other non-cash charges approved by the Administrative Agent in its sole discretion, determined on a consolidated basis in accordance with GAAP, in each case for such period.

"Consolidated Interest Expense" shall mean, for Holdings and its Subsidiaries, for any period, the consolidated total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest), in each case whether or not paid in cash during such period.

"Consolidated Net Income" shall mean, for Holdings and its Subsidiaries for any period, the net income (or loss) of Holdings and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, but excluding therefrom (to the extent otherwise included therein) (i) extraordinary or non-recurring gains, losses or charges (such losses or charges to be approved by the Administrative Agent in its sole discretion), (ii) any non-cash gains or losses attributable to write-ups or write-downs of assets, (iii) any Capital Securities of Holdings or any of its Subsidiaries in the unremitted earnings of any Person that is not a Subsidiary, to the extent received by Holdings or any Subsidiary in cash, (iv) any income (or loss) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with Holdings or any Subsidiary on the date that such Person's assets are acquired by Holdings or any Subsidiary, (v) the income (but not loss) of any Subsidiary to the extent there is a legal or contractual restriction which limits distributions from such Subsidiary to Holdings and (vi) any non-cash gains or losses attributable to any increase or decrease of the warrant derivative liability of Holdings relating to changes in the fair value of warrants to purchase common stock of Holdings.

"Consolidated Senior Debt" shall mean, as of any date, all Indebtedness of Holdings and its Subsidiaries (other than the Indebtedness under the Convertible Notes Documents and any Permitted Subordinated Indebtedness) measured on a consolidated basis as of such date.

"Consolidated Senior Leverage Ratio" shall mean the ratio of (a) Consolidated Senior Debt to (b) the following, as applicable: (i) with respect to the four Fiscal Quarter period ending on September 30, 2016, four multiplied by Consolidated EBITDA for the Fiscal Quarter ended September 30, 2016; (ii) with respect to the four Fiscal Quarter period ending on December 31, 2016, two multiplied by the aggregate Consolidated EBITDA for the Fiscal Quarters ended September 30, 2016 and December 31, 2016; (iii) with respect to the four Fiscal Quarter period ending on March 31, 2017, four-thirds ($^4/_3$) multiplied by the aggregate Consolidated EBITDA for the Fiscal Quarters ended September 30, 2016, December 31, 2016 and March 31, 2017; and (iv) starting with the four Fiscal Quarter period ended June 30, 2017 and thereafter, Consolidated EBITDA for the most recently ended four Fiscal Quarters for which financial statements are required to have been delivered (or for which financial statements are not yet required to be delivered but have already been delivered) pursuant to this Agreement.

"Contingent Liability" means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the Indebtedness of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the Capital Securities of any other Person. The amount of any Person's obligation under any Contingent Liability shall (subject to any limitation set forth therein) be deemed to be the outstanding principal amount of the debt, obligation or other liability guaranteed thereby.

"Continuing Lender" means each Lender under the Existing Credit Agreement on the Restatement Date that is listed as a Continuing Lender on Schedule 2.1.

"Continuing Loans" means the term loans made to the Borrower pursuant to the Existing Credit Agreement and continued under this Agreement pursuant to Section 2.1.

"Control" is defined within the definition of "Affiliate".

"Controlled Account" is defined in Section 7.13(a).

"Convertible Notes" means the $65,000,000 of 6.00% Convertible Senior Notes due 2021 of Holdings to be issued on the Restatement Date pursuant to the Convertible Notes Indenture.

"Convertible Notes Documents" means (i) the Convertible Notes, (ii) the Convertible Notes Indenture and (iii) the Registration Rights Agreement, to be dated as of the Restatement Date, by and among Holdings and the purchasers party thereto.

"Convertible Notes Indenture" means the Indenture, to be dated as of the Restatement Date, by and between Holdings and Wilmington Trust, National Association, as trustee.

"Copyrights" means all copyrights, whether statutory or common law, and all exclusive and nonexclusive licenses from third parties or rights to use copyrights owned by such third parties, along with any and all (i) renewals, revisions, extensions, derivative works, enhancements, modifications, updates and new releases thereof, (ii) income, royalties, damages, claims and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past, present or future infringements thereof, (iii) rights to sue for past, present and future infringements thereof and (iv) foreign copyrights and any other rights corresponding thereto throughout the world.

"Copyright Security Agreement" means any Copyright Security Agreement executed and delivered by Holdings, the Borrower or any of the Subsidiaries in substantially the form of Exhibit C to the Security Agreement, as amended, supplemented, amended and restated or otherwise modified from time to time.

"CTA" means a clinical trial application filed with any regulatory authority in the European Union.

"Default" means any Event of Default or any condition, occurrence or event which, after notice or lapse of time or both, would constitute an Event of Default.

"Designated Jurisdiction" means any country or territory to the extent that such country or territory is the subject of any Sanction.

"Device" means any instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is (a) recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them, (b) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals or (c) intended to affect the structure or any function of the body of man or other animals; and which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes.

"Device Approval Application" means a premarket approval application (PMA) submitted under Section 515 of the FD&C Act (21 U.S.C. § 360e), a de novo request submitted under Section 513(f) of the FD&C Act (21 U.S.C. § 360c(f)), or premarket notification submitted under Section 510(k) of the FD&C Act (21 U.S.C. § 360(k)) seeking clearance from FDA for a device that is substantially equivalent to a legally marketed predicate device ("510(k)"), as defined in the FD&C Act, or any corresponding foreign application in the Territory, including, with respect to the European Union, a submission to a Notified Body for a Certificate of Conformity under EU Directive 93/42/EEC concerning medical devices.

"Disclosing Party" means the party disclosing Confidential Information.

"Disposition" (or similar words such as "Dispose") means any sale, transfer, lease, license, contribution or other conveyance (including by way of merger) of, or the granting of options, warrants or other rights to, any of Holdings, the Borrower's or the Subsidiaries' assets (including accounts receivable and Capital Securities of Subsidiaries) to any other Person (other than to the Borrower or any of its Subsidiaries) in a single transaction or series of transactions.

"Disqualified Capital Securities" shall mean any Capital Securities that, by their terms (or by the terms of any security or other Capital Securities into which they are convertible or for which they are exchangeable) or upon the happening of any event or condition, (a) mature or are mandatorily redeemable (other than solely for Qualified Capital Securities), pursuant to a sinking fund obligation or otherwise (except as a result of a Change in Control or asset sale so long as any rights of the holders thereof upon the occurrence of a Change in Control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitment), (b) are redeemable at the option of the holder thereof (other than solely for Qualified Capital Securities) (except as a result of a Change in Control or asset sale so long as any rights of the holders thereof upon the occurrence of a Change in Control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitment), in whole or in part, (c) provide for the scheduled payment of dividends in cash or (d) are or become convertible into or exchangeable for Indebtedness or any other Capital Securities that would constitute Disqualified Capital Securities, in each case, prior to the date that is one hundred and eighty-one (181) days after the Maturity Date; provided that if such Capital Securities are issued pursuant to a plan for the benefit of employees of Holdings or any of its Subsidiaries, or by any such plan to such employees, such Capital Securities shall not constitute Disqualified Capital Securities solely because they may be required to be repurchased by Holdings or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

"EMA" means the European Medicines Agency or any successor entity.

"Environmental Laws" means all federal, state, local or international laws, statutes, rules, regulations, codes, directives, treaties, requirements, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, natural resources, Hazardous Material or health and safety matters.

"Environmental Liability" means any liability, loss, claim, suit, action, investigation, proceeding, damage, commitment or obligation, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of or affecting the Borrower or any Subsidiary directly or indirectly arising from, in connection with or based upon (i) any Environmental Law or Environmental Permit, (ii) the generation, use, handling, transportation, storage, treatment, recycling, presence, disposal, Release or threatened Release of, or exposure to, any Hazardous Materials or (iii) any contract, agreement, penalty, order, decree, settlement, injunction or other arrangement (including operation of law) pursuant to which liability is assumed, entered into, inherited or imposed with respect to any of the foregoing.

"Environmental Permit" is defined in Section 6.7(c).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" means, as applied to any Person, (i) any corporation that is a member of a controlled group of corporations within the meaning of section 414(b) of the Code of which that Person is a member, (ii) any trade or business (whether or not incorporated) that is a member of a group of trades or businesses under common control within the meaning of section 414(c) of the Code of which that Person is a member and (iii) any member of an affiliated service group within the meaning of section 414(m) or 414(o) of the Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member.

"Event of Default" is defined in Section 9.1.

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

"Existing Credit Agreement" means that certain Credit Agreement, dated as of August 24, 2012, as amended by that certain First Amendment to Credit Agreement, dated as of May 16, 2013, as further amended by that certain Waiver and Second Amendment to Credit Agreement, dated as of August 12, 2013, as further amended by that certain Waiver and Third Amendment to Credit Agreement, dated as of August 12, 2013, as further amended by that certain Fourth Amendment to Credit Agreement, dated as of August 30, 2013, as further amended by that certain Waiver and Fifth Amendment to Credit Agreement, dated as of November 14, 2013, and as further amended by that certain Sixth Amendment to Credit Agreement, dated as of March 6, 2014.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not more onerous to comply with), any regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code, and any applicable intergovernmental agreement and local implementing law, regulation or official guidance with respect to the foregoing.

"FDA" means the U.S. Food and Drug Administration and any successor entity.

"FD&C Act" means the U.S. Food, Drug and Cosmetic Act (or any successor thereto), as amended from time to time, and the rules, regulations, guidelines, guidance documents and compliance policy guides issued or promulgated thereunder. For purposes of this Agreement, "FD&C Act" includes provisions of the Public Health Services Act that apply to biological products and products derived from human tissue.

"Fiscal Quarter" means a quarter ending on the last day of March, June, September or December.

"Fiscal Year" means any period of 12 consecutive calendar months ending on December 31; references to a Fiscal Year with a number corresponding to any calendar year (e.g., the "2011 Fiscal Year") refer to the Fiscal Year ending on December 31 of such calendar year.

"F.R.S. Board" means the Board of Governors of the Federal Reserve System or any successor thereto.

"GAAP" means generally accepted accounting principles in the United States.

"Governmental Authority" means any national, supranational, federal, state, county, provincial, local, municipal or other government or political subdivision thereof (including any Regulatory Agency), whether domestic or foreign, and any agency, authority, commission, ministry, instrumentality, regulatory body, court, tribunal, arbitrator, central bank or other Person exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to any such government.

"Guarantee" means the guarantee executed and delivered by an Authorized Officer of Holdings and each Subsidiary, substantially in the form of Exhibit D hereto, as amended, supplemented, amended and restated or otherwise modified from time to time.

"Guarantors" means, collectively, Holdings and each Subsidiary.

"Hazardous Material" means any material, substance, chemical, mixture or waste which is capable of damaging or causing harm to any living organism, the environment or natural resources, including all explosive, special, hazardous, polluting, toxic, industrial, dangerous, biohazardous, medical, infectious or radioactive substances, materials or wastes, noise, odor, electricity or heat, and including petroleum or petroleum products, byproducts or distillates, asbestos or asbestos-containing materials, urea formaldehyde, polychlorinated biphenyls, radon gas, ozone-depleting substances, greenhouse gases and all other substances or wastes of any nature regulated pursuant to any Environmental Law or as to which any Governmental Authority requires investigation, reporting or remedial action.

"Hedging Obligations" means, with respect to any Person, all liabilities of such Person under currency exchange agreements, interest rate swap agreements, interest rate cap agreements and interest rate collar agreements, and all other agreements or arrangements designed to protect such Person against fluctuations in interest rates or currency exchange rates.

"herein", "hereof", "hereto", "hereunder" and similar terms contained in any Loan Document refer to such Loan Document as a whole and not to any particular Section, paragraph or provision of such Loan Document.

"Holdings" means Bacterin International Holdings, Inc., a Delaware corporation.

"IDE" means an application, including an application filed with a Regulatory Authority, for authorization to commence human clinical studies, including (a) an Investigational Device Exemption as defined in the FD&C Act or any successor application or procedure filed with the FDA, (b) an abbreviated IDE as specified in FDA regulations in 21 C.F.R. § 812.2(b), (c) any equivalent of a United States IDE in other countries or regulatory jurisdictions, (d) all amendments, variations, extensions and renewals thereof that may be filed with respect to the foregoing and (e) all related documents and correspondence thereto, including documents and correspondence with Institutional Review Boards (IRBs).

"Impermissible Qualification" means any qualification or exception to the opinion or certification of any independent public accountant as to any financial statement of the Borrower (i) which is of a "going concern" or similar nature, (ii) which relates to the limited scope of examination of matters relevant to such financial statement or (iii) which relates to the treatment or classification of any item in such financial statement and which, as a condition to removal of such qualification or exception, would require an adjustment to such item the effect of which would be to cause the Borrower to be in Default.

"including" and "include" means including without limiting the generality of any description preceding such term, and, for purposes of each Loan Document, the parties hereto agree that the rule of *ejusdem generis* shall not be applicable to limit a general statement, which is followed by or referable to an enumeration of specific matters, to matters similar to the matters specifically mentioned.

"IND" means (a) (i) an investigational new drug application (as defined in the FD&C Act) that is required to be filed with the FDA before beginning clinical testing in human subjects, or any successor application or procedure; and (ii) any similar application or functional equivalent relating to any investigational new drug application applicable to or required by any country, jurisdiction or Governmental Authority other than the U.S. (including any CTA); and (b) all supplements and amendments that may be filed with respect to the foregoing.

"Indebtedness" of any Person means:

(a) all obligations of such Person for borrowed money or advances and all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;

(b) all obligations, contingent or otherwise, relative to the face amount of all letters of credit, whether or not drawn, and banker's acceptances issued for the account of such Person;

(c) all Capitalized Lease Liabilities of such Person and all obligations of such Person arising under Synthetic Leases;

(d) net Hedging Obligations of such Person;

(e) all obligations of such Person in respect of Disqualified Capital Securities;

(f) whether or not so included as liabilities in accordance with GAAP, all obligations of such Person to pay the deferred purchase price of property or services (excluding trade accounts payable in the ordinary course of business which are not overdue for a period of more than 90 days or, if overdue for more than 90 days, as to which a dispute exists and adequate reserves in conformity with GAAP have been established on the books of such Person), and indebtedness secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien on property owned or being acquired by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse; and

(g) all Contingent Liabilities of such Person in respect of any of the foregoing.

The Indebtedness of any Person shall include the Indebtedness of any other Person (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such Person, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"Indemnified Liabilities" is defined in Section 11.4.

"Indemnified Parties" is defined in Section 11.4.

"Infringement" and "Infringes" mean the misappropriation or other violation of know-how, trade secrets, confidential information, and/or Intellectual Property.

"Intellectual Property" means all (i) Patents; (ii) Trademarks; (iii) Copyrights and other works of authorship (registered or unregistered), and all applications, registrations and renewals therefor; (iv) Product Authorizations; (v) Product Agreements; (vi) computer software, databases, data and documentation; (vii) trade secrets and confidential business information, whether patentable or unpatentable and whether or not reduced to practice, know-how, inventions, manufacturing processes and techniques, research and development information, data and other information included in or supporting Product Authorizations; (vii) financial, marketing and business data, pricing and cost information, business, finance and marketing plans, customer and prospective customer lists and information, and supplier and prospective supplier lists and information; (viii) other intellectual property or similar proprietary rights; (ix) copies and tangible embodiments of any of the foregoing (in whatever form or medium); and (x) any and all improvements to any of the foregoing.

"Interest Period" means, (a) initially, the period beginning on (and including) the date on which the Loans are made hereunder pursuant to Section 2.4 and ending on (and including) the last day of the Fiscal Quarter in which the Loans were made, and (b) thereafter, the period beginning on (and including) the first day of each succeeding Fiscal Quarter and ending on the earlier of (and including) (x) the last day of such Fiscal Quarter and (y) the Maturity Date.

"Investment" means, relative to any Person, (i) any loan, advance or extension of credit made by such Person to any other Person, including the purchase by such Person of any bonds, notes, debentures or other debt securities of any other Person, (ii) Contingent Liabilities in favor of any other Person and (iii) any Capital Securities held by such Person in any other Person. The amount of any Investment shall be the original principal or capital amount thereof less all returns of principal or equity thereon and shall, if made by the transfer or exchange of property other than cash, be deemed to have been made in an original principal or capital amount equal to the fair market value of such property at the time of such Investment.

"Key Permits" means all Permits relating to the Products (including all Product Authorizations).

"knowledge" of the Borrower means the knowledge of any executive officer or the most senior legal officer of Holdings, the Borrower or any Subsidiary.

"Lender" and "Lenders" are each defined in the preamble.

"LIBO Rate" means the three-month London Interbank Offered Rate for deposits in U.S. Dollars at approximately 11:00 a.m. (London, England time), quoted by the Administrative Agent from the appropriate Bloomberg or Reuters page selected by the Administrative Agent (or any successor thereto or similar source determined by the Administrative Agent from time to time), which shall be that three-month London Interbank Offered Rate for deposits in U.S. Dollars in effect two Business Days prior to the last Business Day of the relevant Fiscal Quarter, adjusted for any reserve requirement in effect on such Business Day (including, basic, supplemental, marginal and emergency reserves) under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board) maintained by a member bank of the Federal Reserve System), such rate to be rounded up to the nearest 1/16 of 1% and such rate to be reset quarterly as of the first Business Day of each Fiscal Quarter. If the Loans are advanced other than on the first Business Day of a Fiscal Quarter, the initial LIBO Rate shall be that three-month London Interbank Offered Rate for deposits in U.S. Dollars in effect two Business Days prior to the date of the Loans, which rate shall be in effect until (and including) the last Business Day of the Fiscal Quarter next ending. The Administrative Agent's internal records of applicable interest rates shall be determinative in the absence of manifest error.

"Lien" means any security interest, mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge against or interest in property, or other priority or preferential arrangement of any kind or nature whatsoever, to secure payment of a debt or performance of an obligation.

"Liquidity" means, at any time, an amount determined for Holdings and its Subsidiaries incorporated or organized under the laws of the United States of America, or any state or other political subdivision thereof equal to the sum of unrestricted cash-on-hand and Cash Equivalent Investments of Holdings and such Subsidiaries, to the extent held in a Controlled Account located in the United States.

"Loan Documents" means, collectively, this Agreement, the Notes, the Security Agreement, each other agreement pursuant to which the Lender is granted a Lien to secure the Obligations (including any mortgages entered into pursuant to Section 7.8), the Guarantee, and each other agreement, certificate, document or instrument delivered in connection with any Loan Document, whether or not specifically mentioned herein or therein.

"Loan Request" means a Loan request and certificate duly executed by an Authorized Officer of the Borrower substantially in the form of Exhibit B hereto.

"Loans" means (i) the Continuing Loans and (ii) the New Loans.

"MAA" means a marketing authorization application filed with any regulatory authority in the European Union.

"Material Adverse Effect" means a material adverse effect on (i) the business, condition (financial or otherwise), operations, performance, properties or prospects of Holdings and its Subsidiaries taken as a whole, (ii) the rights and remedies of the Administrative Agent or any Lender under any Loan Document or (iii) the ability of Holdings, the Borrower or any Subsidiary to perform its material Obligations under any Loan Document.

"Material Agreements" means (i) each contract or agreement to which Holdings, the Borrower or any Subsidiary is a party involving annual aggregate payments of more than $500,000, whether such payments are being made by Holdings, the Borrower or any Subsidiary to a non-Affiliated Person, or by a non-Affiliated Person to Holdings, the Borrower or any Subsidiary and (ii) all other contracts or agreements which are, individually or in the aggregate, material to the business, condition (financial or otherwise), operations, performance, properties or prospects of Holdings, the Borrower or any Subsidiary.

"Maturity Date" means July 31, 2020.

"Moody's" means Moody's Investors Service, Inc.

"NDA" means (a) (i) a new drug application (as defined in the FD&C Act) and (ii) any similar application or functional equivalent relating to any new drug application applicable to or required by any country, jurisdiction or Governmental Authority other than the U.S. (including any MAA); and (b) all supplements and amendments that may be filed with respect to the foregoing.

"Net Casualty Proceeds" means, with respect to any Casualty Event, the amount of any insurance proceeds or condemnation awards received by Holdings or any of its Subsidiaries in connection with such Casualty Event in excess of $2,000,000 in the aggregate through the Termination Date (net of all reasonable and customary collection expenses thereof, attorney's fees and taxes), but excluding any proceeds or awards required to be paid to a creditor (other than the Administrative Agent or a Lender under the Loan Documents) which holds a first priority Lien permitted by clause (e) of Section 8.3 on the property which is the subject of such Casualty Event.

"Net Equity Proceeds" means with respect to the sale or issuance after the Restatement Date by Holdings to any Person of any Capital Securities, warrants or options or the exercise of any such warrants or options, the excess of:

(a) the gross cash proceeds received by Holdings from such sale, exercise or issuance in excess of $50,000,000, individually or in the aggregate through the Termination Date, over

(b) all reasonable and customary underwriting commissions and legal, investment banking, brokerage and accounting and other professional fees, sales commissions and disbursements actually incurred in connection with such sale or issuance which have not been paid to Affiliates of Holdings in connection therewith.

"New Loans" means Loans made by Lenders on the Restatement Date pursuant to Section 2.1.

"Net Sales" means, with respect to each Product, the gross invoiced amount on sales of, and distribution income, stocking orders, transfer payments and other consideration received, directly or indirectly, by Holdings or any of its Subsidiaries in respect of any such Product in any applicable Territory from any Third Party after deduction of: (i) normal and customary trade, quantity or prompt settlement discounts (including chargebacks, shelf stock adjustments and allowances) with respect to customers actually allowed; (ii) amounts repaid or credited by reason of rejection, returns or recalls of goods, rebates or bona fide price reductions; (iii) rebates and similar payments actually made with respect to sales paid for by Federal or state Medicaid, Medicare or similar programs in the Territory; and (iv) excise taxes, customs duties, customs levies and import fees imposed on the sale, importation, use or distribution of such Product (to the extent included in the gross invoiced amount), in each case as calculated (x) in a manner consistent with the Borrower's customary practice for its Products and (y) consistent with GAAP. Net Sales with respect to sales of such Product that are not made on an arm's length basis or that are made for consideration other than cash shall be calculated based on the average per-unit Net Sales of such Product during the applicable period without regard to such non-arm's length or non-cash sales.

"Non-Excluded Taxes" means any Taxes other than (i) net income and franchise Taxes imposed with respect to the Administrative Agent or any Lender by any Governmental Authority under the laws of which the Administrative Agent or such Lender is organized or in which it maintains its applicable lending office, (ii) any branch profits Taxes imposed by the United States or any similar Tax imposed by any other jurisdiction, (iii) any other tax imposed on the Administrative Agent or any Lender and any business activity of the Administrative Agent or such Lender that is not directly related to the Loans or the business of the Borrower, Holdings or any Subsidiary, (iv) in the case of a Lender resident in or organized under the laws of a jurisdiction other than the jurisdiction where the Borrower is resident for tax purposes, any U.S. federal withholding Tax that is 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 at the time such Lender acquires such interest in the Loan or Commitment (or designates a new lending office), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding Tax pursuant to Section 4.3 (provided that such Lender has complied with Section 4.3(e)), (v) Taxes attributable to a Lender's failure or inability to comply with Section 4.3(e), and (vi) any U.S. federal withholding Taxes imposed under FATCA.

"Note" means a promissory note of the Borrower payable to a Lender, in the form of Exhibit A hereto (as such promissory note may be amended, endorsed or otherwise modified from time to time), evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from the outstanding amount of the Loans, and also means all other promissory notes accepted from time to time in substitution therefor or renewal thereof.

"Notified Body" means an entity licensed, authorized or approved by the applicable government agency, department or other authority to assess and certify the conformity of a medical device with the requirements of EU Directive 93/42/EEC concerning medical devices, and applicable harmonized standards.

"Observer" is defined in Section 7.16(a).

"Obligations" means all obligations (monetary or otherwise, whether absolute or contingent, matured or unmatured) of Holdings, the Borrower and each Subsidiary arising under or in connection with a Loan Document and the principal of and premium, if any, and interest (including interest accruing during the pendency of any proceeding of the type described in Section 9.1.8, whether or not allowed in such proceeding) on the Loans.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Optional PIK Interest" is defined in Section 3.4(c).

"Organic Document" means, relative to Holdings, the Borrower or any Subsidiary, its certificate of incorporation, by-laws, certificate of partnership, partnership agreement, certificate of formation, limited liability agreement, operating agreement and all shareholder agreements, voting trusts and similar arrangements applicable to Holdings', the Borrower's or any Subsidiary's Capital Securities.

"Other Taxes" means any and all stamp, documentary or similar Taxes, or any other excise or property Taxes or similar levies that arise on account of any payment made or required to be made under any Loan Document or from the execution, delivery, registration, recording or enforcement of any Loan Document.

"Other Administrative Proceeding" means any administrative proceeding relating to a dispute involving a patent office or other relevant intellectual property registry which relates to validity, opposition, revocation, ownership or enforceability of the relevant Intellectual Property.

"Patent" means any patent, patent application or invention disclosure, including all divisions, continuations, continuations in-part, provisionals, continued prosecution applications, substitutions, reissues, reexaminations, renewals, extensions, restorations, supplemental protection certificates and other additions in connection therewith, whether in or related to the United States or any foreign country or other jurisdiction.

"Patent Security Agreement" means any Patent Security Agreement executed and delivered by Holdings, the Borrower or any of the Subsidiaries in substantially the form of Exhibit A to the Security Agreement, as amended, supplemented, amended and restated or otherwise modified from time to time.

"Permits" means all permits, licenses, registrations, certificates, orders, approvals, clearances, authorizations, consents, waivers, franchises, variances and similar rights issued by or obtained from any Governmental Authority or any other Person, including, without limitation, those relating to Environmental Laws.

"Permitted Subordinated Indebtedness" means Indebtedness incurred after the Restatement Date by Holdings, the Borrower or the Subsidiaries that is (i) subordinated to the Obligations and all other Indebtedness owing from Holdings, the Borrower or the Subsidiaries to the Administrative Agent or the Lenders pursuant to a written subordination agreement satisfactory to the Administrative Agent in its sole discretion and (ii) in an amount and on terms approved by the Administrative Agent in its sole discretion.

"Person" means any natural person, corporation, limited liability company, partnership, joint venture, association, trust or unincorporated organization, Governmental Authority or any other legal entity, whether acting in an individual, fiduciary or other capacity.

"PIK Interest" is defined in Section 3.4(a)(ii).

"Product" means any current or future product developed, manufactured, licensed, marketed, sold or otherwise commercialized by Holdings or any of its Subsidiaries, including any such product in development or which may be developed.

"Product Agreement" means each agreement, license, document, instrument, interest (equity or otherwise) or the like under which one or more parties grants or receives any right, title or interest with respect to any Product Development and Commercialization Activities in respect of one or more Products specified therein or to exclude third parties from engaging in, or otherwise restricting any right, title or interest as to any Product Development and Commercialization Activities with respect thereto, including each contract or agreement with suppliers (including human tissue supply agreements), manufacturers, distributors, clinical research organizations, hospitals, group purchasing organizations, wholesalers, pharmacies or any other Person related to any such entity.

"Product Authorizations" means any and all approvals (including applicable supplements, amendments, pre and post approvals, clearances, drug master files, governmental price and reimbursement approvals and approvals of applications for regulatory exclusivity), licenses, notifications, registrations, certifications or authorizations of any Governmental Authority, any Standard Body or any Notified Body necessary for the manufacture, development, distribution, use, storage, import, export, transport, promotion, marketing, sale or other commercialization of a Product in any country or jurisdiction, including without limitation registration and listing (including registration and listing of 361 Products), IDEs, INDs, NDAs, Device Approval Applications and BLAs or similar applications.

"Product Development and Commercialization Activities" means, with respect to any Product, any combination of research, development, manufacture, import, use, sale, importation, storage, labeling, marketing, promotion, supply, distribution, testing, packaging, purchasing or other commercialization activities, receipt of payment in respect of any of the foregoing, or like activities the purpose of which is to commercially exploit such Product.

"Product Standards" means all safety, quality and other specifications and standards applicable to any Products, including all medical device and other standards promulgated by Standard Bodies.

"Projections" is defined in Section 6.5.

"Proportionate Share" means with respect to all matters (including, without limitation, the indemnification obligations arising under Section 11.4) arising under or in connection with this Agreement or any other Loan Document, 63.8% for ROS and 36.2% for Royalty Opportunities, such percentages to be adjusted commensurate with any permitted assignment by any Lender of its rights and interests hereunder.

"Qualified Capital Securities" shall mean any Capital Securities that are not Disqualified Capital Securities.

"Receiving Party" means the party receiving Confidential Information.

"Recipients" is defined in Section 11.14.

"Register" is defined in Section 10.3.

"Regulatory Agencies" means any Governmental Authority that is concerned with the use, control, safety, efficacy, reliability, manufacturing, marketing, distribution, sale or other Product Development and Commercialization Activities relating to any Product of Holdings, the Borrower or any of the Subsidiaries, including the FDA and all similar agencies in other jurisdictions, and includes Standard Bodies.

"Regulatory Authorizations" means all approvals, clearances, notifications, authorizations, orders, exemptions, registrations, certifications, licenses and permits granted by, submitted to or filed with any Regulatory Agencies or Notified Bodies, including all Product Authorizations.

"Related Parties" means the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of Holdings, the Borrower and the Subsidiaries.

"Release" means any releasing, disposing, discharging, injecting, spilling, leaking, leaching, pumping, pouring, dumping, depositing, emitting, escaping, emptying, seeping, dispersal, migrating or placing, including movement through, into or upon the environment or any natural or man-made structure.

"Restatement Date" means the date of the making of the Loans hereunder.

"Restatement Date Certificate" means a restatement date certificate executed and delivered by an Authorized Officer of the Borrower in form and substance satisfactory to the Lenders.

"Restricted Payment" means (i) the declaration or payment of any dividend on, or the making of any payment or distribution on account of, or setting apart assets for a sinking or other analogous fund for the purchase, redemption, defeasance, retirement or other acquisition of, any class of Capital Securities of Holdings, the Borrower or any Subsidiary or the Convertible Notes or any warrants, options or other right or obligation to purchase or acquire any such Capital Securities or the Convertible Notes, whether now or hereafter outstanding (other than the payment of scheduled interest payments on the Convertible Notes in accordance with their terms, issuance of common stock of Holdings upon exercise thereof, and cash in lieu of fractional shares) or (ii) the making of any other distribution in respect of such Capital Securities or the Convertible Notes or any warrants, options or other right or obligation to purchase or acquire any such Capital Securities or the Convertible Notes, in each case either directly or indirectly, whether in cash, property or obligations of Holdings, the Borrower or any Subsidiary or otherwise (other than the payment of scheduled interest payments on the Convertible Notes in accordance with their terms, issuance of common stock of Holdings upon exercise thereof, and cash in lieu of fractional shares).

"Revenue Base" means, with respect to any period, the Net Sales of all Products for such period.

"ROS" is defined in the preamble.

"Royalty Opportunities" is defined in the preamble.

"S&P" means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc.

"Sanctions" means any international economic sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority.

"SEC" means the Securities and Exchange Commission.

"Security Agreement" means the Amended And Restated Pledge and Security Agreement executed and delivered by each of the parties thereto, substantially in the form of Exhibit E hereto, as amended, supplemented, amended and restated or otherwise modified from time to time.

"Solvent" means, with respect to any Person on a particular date, that on such date (i) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (ii) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (iii) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond its ability to pay as such debts and liabilities mature, (iv) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which the property of such Person would constitute an unreasonably small capital and (v) such Person has not executed this Agreement or any other Loan Document, or made any transfer or incurred any obligations hereunder or thereunder, with actual intent to hinder, delay or defraud either present or future creditors. The amount of Contingent Liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at such time, can reasonably be expected to become an actual or matured liability.

"Standard Bodies" means any of the organizations that create, sponsor or maintain safety, quality or other standards, including ISO, ANSI, CEN and SCC and the like.

"Subsidiary" means, with respect to any Person, any other Person of which more than 50% of the outstanding Voting Securities of such other Person (irrespective of whether at the time Capital Securities of any other class or classes of such other Person shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more other Subsidiaries of such Person, or by one or more other Subsidiaries of such Person. Unless the context otherwise specifically requires, the term "Subsidiary" shall be a reference to a Subsidiary of Holdings, which shall include the Borrower and its Subsidiaries and, effective on and as of the Restatement Date, the Target and its respective Subsidiaries.

"Synthetic Lease" means, as applied to any Person, any lease (including leases that may be terminated by the lessee at any time) of any property (whether real, personal or mixed) (i) that is not a capital lease in accordance with GAAP and (ii) in respect of which the lessee retains or obtains ownership of the property so leased for federal income tax purposes, other than any such lease under which that Person is the lessor.

"Target" is defined in the preamble.

"Taxes" means all income, stamp or other taxes, duties, levies, imposts, charges, assessments, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, and all interest, penalties or similar liabilities with respect thereto.

"Termination Date" means the date on which all Obligations have been paid in full in cash and the Commitment shall have terminated.

"Territory" means all of the countries and territories of the world.

"Trademark" means any trademark, service mark, trade name, logo, symbol, trade dress, domain name, corporate name or other indicator of source or origin, and all applications and registrations therefor, together with all of the goodwill associated therewith.

"Trademark Security Agreement" means any Trademark Security Agreement executed and delivered by Holdings, the Borrower or any of the Subsidiaries substantially in the form of Exhibit B to the Security Agreement, as amended, supplemented, amended and restated or otherwise modified from time to time.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided that, if, with respect to any financing statement or by reason of any provisions of law, the perfection or the effect of perfection or non-perfection of the security interests granted to the Administrative Agent for the benefit of the Lenders pursuant to the applicable Loan Document is governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than New York, then "UCC" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions of each Loan Document and any financing statement relating to such perfection or effect of perfection or non-perfection.

"United States" or "U.S." means the United States of America, its fifty states and the District of Columbia.

"U.S. Tax Compliance Certificate" is defined in Section 4.3(e)(b)(3).

"Voting Securities" means, with respect to any Person, Capital Securities of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

SECTION 1.2 Use of Defined Terms. Unless otherwise defined or the context otherwise requires, terms for which meanings are provided in this Agreement shall have such meanings when used in each other Loan Document and the schedules attached hereto.

SECTION 1.3 Cross-References. Unless otherwise specified, references in a Loan Document to any Article or Section are references to such Article or Section of such Loan Document, and references in any Article, Section or definition to any clause are references to such clause of such Article, Section or definition.

SECTION 1.4 Accounting and Financial Determinations. Unless otherwise specified, all accounting terms used in each Loan Document shall be interpreted, and all accounting determinations and computations thereunder (including under Section 8.4 and the definitions used in such calculations) shall be made, in accordance with GAAP, as in effect from time to time; provided that, if either the Borrower or the Administrative Agent requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or the application thereof on the operation of such provision, regardless of whether any such notice is given before or after such change in GAAP or the application thereof, then such provision shall be interpreted on the basis of GAAP in effect and applied immediately before such change shall have become effective until such request shall have been withdrawn or such provision amended in accordance herewith. Unless otherwise expressly provided, all financial covenants and defined financial terms shall be computed on a consolidated basis for Holdings and its Subsidiaries, in each case without duplication.

ARTICLE II
COMMITMENT AND BORROWING PROCEDURES

SECTION 2.1 Restatement Date Transactions. Subject to the terms and conditions set forth herein, (a) the Continuing Lender will continue as a Lender under this Agreement holding on the Restatement Date, after giving effect to the transactions provided for herein, a Loan in the amount set forth as a Continuing Loan opposite the name of such Lender on Schedule 2.1 and (b) each Lender having a Commitment as set forth in Schedule 2.1 agrees to make a New Loan to the Borrower on the Restatement Date in a principal amount equal to its Commitment, with the result that each Lender will hold on the Restatement Date, after giving effect to the transactions provided for herein, Loans in the amount set forth opposite its name on Schedule 2.1. Amounts paid or prepaid in respect of Loans may not be reborrowed. The Commitments of the Lenders shall expire at 5:00 p.m., New York City time, on the Restatement Date.

SECTION 2.2 Loans and Borrowing. Each Loan outstanding on the Restatement Date, after giving effect to the transactions provided for in Section 2.1, shall be part of a borrowing consisting of Loans held ratably by the Lenders in accordance with the percentages that their respective Loans bear to the aggregate principal amount of the outstanding Loans. The failure of any Lender having a Commitment to make any New Loan required to be made by it on the Restatement Date shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make New Loans as required.

SECTION 2.3 Borrowing Procedure. The Borrower may irrevocably request that the New Loans be made by delivering to the Administrative Agent a Loan Request on or before 10:00 a.m. on the Restatement Date.

SECTION 2.4 Funding. After receipt of the Loan Request for the New Loans, the Lenders shall, on the Restatement Date and subject to the terms and conditions hereof, make the requested proceeds of the New Loans available to the Borrower by wire transfer to the account the Borrower shall have specified in its Loan Request.

SECTION 2.5 Reduction of the Commitment Amounts. The Commitment Amount shall automatically and permanently be reduced to zero on the Commitment Termination Date.

ARTICLE III
REPAYMENTS, PREPAYMENTS, INTEREST AND FEES

SECTION 3.1 Repayments and Prepayments; Application. The Borrower agrees that the Loans, and any fees or interest accrued or accruing thereon, shall be repaid and prepaid solely in U.S. dollars pursuant to the terms of this Article III.

SECTION 3.2 Repayments and Prepayments. The Borrower shall repay in full the unpaid principal amount of the Loans on the Maturity Date. Prior thereto, payments and prepayments of the Loans shall be made as set forth below.

(a) Except as otherwise provided in this Section 3.2, no payments or prepayments, including voluntary prepayments, of principal of the Loan shall be permitted.

(b) Within three Business Days of receipt by Holdings of any Net Equity Proceeds, or receipt by Holdings, the Borrower or any Subsidiary of any Net Casualty Proceeds, the Borrower shall notify the Administrative Agent thereof. If requested by the Administrative Agent, the Borrower shall within three Business Days of such request make a mandatory prepayment of the Loans, in an amount equal to 50% of such Net Equity Proceeds or 100% of such Net Casualty Proceeds (or, in each case, such lesser amount as the Administrative Agent may specify on the date of such request), as the case may be, to be applied as set forth in Section 3.3; provided, however, that no such payment shall be required (and the Administrative Agent shall not make a request for any such payment) on account of Net Casualty Proceeds that are intended to be reinvested within 360 days in the repair or replacement of the property subject to the applicable Casualty Event; provided, further, that if such Net Casualty Proceeds are at any time no longer intended to be so reinvested or have not in fact been so re-invested at the expiration of such 360 day period then any such Net Casualty Proceeds shall be paid to Lenders as provided herein at such time.

(c) The Borrower shall repay the Loans in full immediately upon any acceleration of the Maturity Date thereof pursuant to Section 9.2 or Section 9.3, unless, pursuant to Section 9.3, only a portion of the Loans is so accelerated (in which case the portion so accelerated shall be so repaid).

(d) Subject to the terms of this Section 3.2, (i) during the period from the Restatement Date to and including the date that is 36 months after the Restatement Date, the Borrower shall not voluntarily prepay, in whole or in part, any unpaid principal amount of the Loans and (ii) at any time following the date that is 36 months after the Restatement Date, the Borrower may, in its sole discretion, voluntarily prepay, in whole or in part, any unpaid principal amount of the Loans.

At such time as the Borrower pays, prepays or repays, or is required to pay, prepay or repay, any principal amount of the Loans, whether on the Maturity Date or otherwise, whether voluntarily or involuntarily (if involuntarily, whether required by this Agreement or any other Loan Document) and whether before or after acceleration of the Obligations, including without limitation any payment pursuant to any provision of this Section 3.2, the Borrower shall pay to each Lender, a fee in the amount equal to 7.5% of the aggregate principal amount of such payment, prepayment or repayment to such Lender.

SECTION 3.3 Application. Except as provided in Section 4.4(b), amounts repaid or prepaid in respect of the outstanding principal amount of the Loans pursuant to Section 3.2 shall be applied pro rata to the Loans.

SECTION 3.4 Interest Rate.

(a) From and after the Restatement Date until June 30, 2018:

(i) interest payable in cash by the Borrower shall accrue on the Loans during such period at a rate per annum equal to 9.00%; and

(ii) additional interest ("PIK Interest") shall accrue on the Loans during such period at a rate per annum equal to the difference of (A) the sum of (1) the Applicable Margin plus (2) the higher of (x) the LIBO Rate for such Interest Period and (y) 1.00% *minus* (B) 9.00%, and such PIK Interest shall be added to the outstanding principal amount of the Loans on the last day of each Fiscal Quarter until June 30, 2018.

(b) From and after June 30, 2018:

(i) interest payable in cash by the Borrower shall accrue on the Loans during such period at a rate per annum equal to 12.00%; and

(ii) additional interest ("Additional PIK Interest") shall accrue on the Loans during such period at a rate per annum equal to the difference of (A) the sum of (1) the Applicable Margin plus (2) the higher of (x) the LIBO Rate for such Interest Period and (y) 1.00% *minus* (B) 12.00%, and such Additional PIK Interest shall be added to the outstanding principal amount of the Loans on the last day of each Fiscal Quarter until the Maturity Date.

(c) Notwithstanding anything in Section 3.4(a) to the contrary, from and after the Restatement Date until December 31, 2015, the Borrower may elect, in its sole discretion and in lieu of interest payments pursuant to Section 3.4(a) during such period, by delivering written notice to the Administrative Agent prior to the date on which the first cash interest payment would be payable pursuant to Section 3.4(a)(i) and Section 3.6(c), to have all or any portion (as the Borrower shall so elect) of interest on the Loans accrue on the Loans during such period at a rate per annum equal to the sum of (i) the Applicable Margin plus (ii) the higher of (x) the LIBO Rate for such Interest Period and (y) 1.00% ("Optional PIK Interest"), and such Optional PIK Interest shall be added to the outstanding principal amount of the Loans on the last day of each Fiscal Quarter until December 31, 2015.

(d) The interest rate shall be recalculated and, if necessary, adjusted for each Interest Period, in each case pursuant to the terms hereof.

(e) All references hereunder to the principal amount of the Loans shall include any PIK Interest, Additional PIK Interest or Optional PIK Interest, if any, so added to the principal.

(f) Notwithstanding anything in this Section 3.4 to the contrary, the Borrower may, in its sole discretion, and in lieu of PIK Interest, Additional PIK Interest and/or Optional PIK Interest payments pursuant to Sections 3.4(a), (b) or (c), by delivering written notice to the Administrative Agent prior to the date on which any such payment-in-kind interest payment would have been payable pursuant to Section 3.4(a), (b) or (c) and Section 3.6(c), elect to pay such aggregate principal amount of PIK Interest, Additional PIK Interest and/or Optional PIK Interest in cash instead of making payment-in-kind, in which case the Borrower shall be required to make such PIK Interest, Additional PIK Interest, and/or Optional PIK Interest payment in cash at the time such payment-in-kind interest would have been payable pursuant to Section 3.4(a), (b) or (c) and Section 3.6(c).

SECTION 3.5 Default Rate. At all times commencing upon the date any Event of Default occurs, and continuing until such Event of Default is no longer continuing, the Applicable Margin shall be increased by 3% per annum. Notwithstanding anything in Section 3.4 to the contrary, upon the occurrence and during the continuation of an Event of Default, the increased amount of the Applicable Margin shall be payable only in cash and not as PIK Interest, Additional PIK Interest or Optional PIK Interest.

SECTION 3.6 Payment Dates. Interest accrued on the Loans shall be payable in cash, without duplication:

(a) on the Maturity Date therefor;

(b) on the date of any payment or prepayment, in whole or in part, of principal outstanding on such Loan on the principal amount so paid or prepaid;

(c) on the last day of each Fiscal Quarter; provided that if such day is not a Business Day, then such payment shall be made on the next succeeding Business Day; and

(d) on that portion of the Loans that is accelerated pursuant to Section 9.2 or Section 9.3, immediately upon such acceleration.

Interest accrued on the Loans or other monetary Obligations after the date such amount is due and payable (whether on the Maturity Date, upon acceleration or otherwise) shall be payable upon demand.

ARTICLE IV
LIBO RATE AND OTHER PROVISIONS

SECTION 4.1 Increased Costs, Etc. The Borrower agrees to reimburse each Lender for any increase in the cost to such Lender of, or any reduction in the amount of any sum receivable by such Lender in respect of, such Lender's Commitment and the making, continuation or maintaining of the Loans hereunder that may arise in connection with any Change in Law, except for such changes with respect to increased capital costs and Taxes which are governed by Section 4.2 and Section 4.3, respectively and except for any changes with respect to Taxes described in (i) through (vi) of the definition of Non-Excluded Taxes. Each Lender shall notify the Borrower in writing of the occurrence of any such event, stating the reasons therefor and the additional amount required fully to compensate such Lender for such increased cost or reduced amount. Such additional amounts shall be payable by the Borrower directly to such Lender within five days of its receipt of such notice, and such notice shall, in the absence of manifest error, be conclusive and binding on the Borrower. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 4.1 shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section 4.1 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

SECTION 4.2 Increased Capital Costs. If any Change in Law affects or would affect the amount of capital required or expected to be maintained by any Lender or any Person controlling any Lender, and such Lender determines (in good faith but in its sole and absolute discretion) that the rate of return on its or such controlling Person's capital as a consequence of the Commitment or the Loans made by it hereunder is reduced to a level below that which such Lender or such controlling Person could have achieved but for the occurrence of any such circumstance, then upon notice from time to time by such Lender to the Borrower, the Borrower shall within five days following receipt of such notice pay directly to such Lender additional amounts sufficient to compensate such Lender or such controlling Person for such reduction in rate of return. A statement of any Lender as to any such additional amount or amounts shall, in the absence of manifest error, be conclusive and binding on the Borrower. In determining such amount, a Lender may use any method of averaging and attribution that it (in its sole and absolute discretion) shall deem applicable. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 4.2 shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section 4.2 for any such compensation suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such claim for compensation is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

SECTION 4.3 Taxes. The Borrower covenants and agrees as follows with respect to Taxes.

(a) Any and all payments by the Borrower under each Loan Document shall be made without setoff, counterclaim or other defense, and free and clear of, and without deduction or withholding for or on account of, any Non-Excluded Taxes. In the event that any Taxes are imposed and required to be deducted or withheld from any payment required to be made by Holdings, the Borrower or any of the Subsidiaries to or on behalf of the Administrative Agent or any Lender under any Loan Document, then:

(i) the amount of such payment shall be increased as may be necessary so that such payment is made, after withholding or deduction for or on account of such Non-Excluded Taxes, in an amount that is not less than the amount provided for in such Loan Document; and

(ii) the Borrower shall withhold the full amount of such Non-Excluded Taxes from such payment (as increased pursuant to clause (a)(i) and shall pay such amount to the Governmental Authority imposing such Taxes in accordance with applicable law.

(b) In addition, the Borrower shall pay all Other Taxes imposed to the relevant Governmental Authority imposing such Other Taxes in accordance with applicable law.

(c) As promptly as practicable after the payment of any Non-Excluded Taxes or Other Taxes, and in any event within 45 days of any such payment being due, the Borrower shall furnish to the Administrative Agent a copy of an official receipt (or a certified copy thereof) evidencing the payment of such Non-Excluded Taxes or Other Taxes.

(d) The Borrower shall indemnify the Administrative Agent and each Lender for any Non-Excluded Taxes and Other Taxes levied, imposed or assessed on (and whether or not paid directly by) the Administrative Agent and each Lender whether or not such Non-Excluded Taxes or Other Taxes are correctly or legally asserted by the relevant Governmental Authority. Promptly upon having knowledge that any such Non-Excluded Taxes or Other Taxes have been levied, imposed or assessed, and promptly upon notice thereof by the Administrative Agent, the Borrower shall pay such Non-Excluded Taxes or Other Taxes directly to the relevant Governmental Authority (provided that, neither the Administrative Agent nor any Lender shall be under any obligation to provide any such notice to the Borrower). In addition, the Borrower shall indemnify the Administrative Agent and each Lender for any incremental Non-Excluded Taxes that may become payable by the Administrative Agent or any such Lender as a result of any failure of the Borrower to pay any Non-Excluded Taxes when due to the appropriate Governmental Authority or to deliver to the Administrative Agent, pursuant to clause (c), documentation evidencing the payment of Non-Excluded Taxes or Other Taxes. With respect to indemnification for Non-Excluded Taxes and Other Taxes actually paid by the Lender or the indemnification provided in the immediately preceding sentence, such indemnification shall be made within 30 days after the date the Administrative Agent or any Lender makes written demand therefor. The Borrower acknowledges that any payment made to the Administrative Agent, any Lender or any Governmental Authority in respect of the indemnification obligations of the Borrower provided in this clause shall constitute a payment in respect of which the provisions of clause (a) and this clause shall apply.

(e) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall 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, shall 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 (A), (B) and (D) below) shall 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. Without limiting the generality of the foregoing, (i) any Lender that is a U.S. Person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax.

Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Lender this is not a U.S. Person shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under 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:

(1) in the case of a 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 Loan Document, executed copies of IRS Form 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 Loan Document, IRS Form 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;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit F hereto to the effect that such Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN-E; or

(4) to the extent a Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G hereto or Exhibit H hereto, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Lender is a partnership and one or more direct or indirect partners of such Lender are claiming the portfolio interest exemption, such Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit I hereto on behalf of each such direct and indirect partner;

(C) any Lender this is not a U.S. Person shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies 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

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall 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 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 Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) If any party 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 4.3 (including by the payment of additional amounts pursuant to this Section 4.3), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 4.3 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party 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 (f) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

SECTION 4.4 Payments, Computations; Proceeds of Collateral, Etc. The parties hereto agree as follows:

(a) Unless otherwise expressly provided in a Loan Document, all payments by the Borrower pursuant to each Loan Document shall be made without setoff, deduction or counterclaim not later than 1:00 p.m. on the date due in same day or immediately available funds to the Administrative Agent for the pro rata account of the Lenders entitled to receive such payment. Funds received after 1:00 p.m. on any day shall be deemed to have been received by the Administrative Agent or the Lenders on the next succeeding Business Day. All interest and fees shall be computed on the basis of the actual number of days (including the first day but excluding the last day) occurring during the period for which such interest or fee is payable over a year comprised of 360 days. Payments due on other than a Business Day shall be made on the next succeeding Business Day and such extension of time shall be included in computing interest and fees in connection with that payment.

(b) All amounts received as a result of the exercise of remedies under the Loan Documents (including from the proceeds of collateral securing the Obligations) or under applicable law shall be applied upon receipt to the Obligations as follows: (i) first, to the payment in full in cash of all interest (including interest accruing after the commencement of a proceeding in bankruptcy, insolvency or similar law, whether or not permitted as a claim under such law) and fees owing under the Loan Documents, and all costs and expenses owing to the Administrative Agent and the Lenders pursuant to the terms of the Loan Documents, until paid in full in cash, (ii) second, after payment in full in cash of the amounts specified in clause (b)(i), to the payment of the principal amount of the Loans then outstanding, (iii) third, after payment in full in cash of the amounts specified in clauses (b)(i) and (b)(ii), to the payment of all other Obligations owing to the Administrative Agent and the Lenders, and (iv) fourth, after payment in full in cash of the amounts specified in clauses (b)(i) through (b)(iii), and following the Termination Date, to the Borrower or any other Person lawfully entitled to receive such surplus.

SECTION 4.5 Setoff. The Administrative Agent and each Lender shall, upon the occurrence and during the continuance of any Event of Default, have the right to appropriate and apply to the payment of the Obligations owing to it (whether or not then due), and (as security for such Obligations) the Borrower hereby grants to the Administrative Agent and each Lender a continuing security interest in, any and all balances, credits, deposits, accounts or moneys of the Borrower then or thereafter maintained with or on behalf of the Administrative Agent or any such Lender, as applicable. The Administrative Agent and each Lender agrees promptly to notify the Borrower after any such appropriation and application made by the Administrative Agent or any such Lender; provided that, the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Administrative Agent and each Lender under this Section 4.5 are in addition to other rights and remedies (including other rights of setoff under applicable law or otherwise) which the Administrative Agent and such Lender may have.

SECTION 4.6 LIBO Rate Not Determinable. If prior to the commencement of any Interest Period, adequate and reasonable means do not exist for ascertaining the LIBO Rate for such Interest Period, then the Administrative Agent shall give notice thereof to the Borrower as promptly as practicable. In the event of any such determination, the Loans shall, until the Administrative Agent has advised the Borrower that the circumstances giving rise to such notice no longer exist, bear interest at the interest rate in effect for the immediately preceding Interest Period.

ARTICLE V
CONDITIONS TO MAKING THE LOANS

SECTION 5.1 Credit Extensions. The obligation of each Lender to make a New Loan and the Continuing Lender to cause its Continuing Loan to remain outstanding hereunder shall be subject to the execution and delivery of this Agreement by the parties hereto, the delivery of a Loan Request as requested pursuant to Section 2.4, and the satisfaction of each of the conditions precedent set forth below in this Article V.

SECTION 5.1.1 Secretary's Certificate, Etc. The Administrative Agent shall have received from Holdings, the Borrower and each Subsidiary party to a Loan Document, (i) a copy of a good standing certificate, dated a date reasonably close to the Restatement Date, for each such Person and (ii) a certificate, dated as of the Restatement Date, duly executed and delivered by such Person's Secretary or Assistant Secretary, managing member or general partner, as applicable, as to:

(a) resolutions of each such Person's Board of Directors (or other managing body, in the case of other than a corporation) then in full force and effect authorizing the execution, delivery and performance of each Loan Document to be executed by such Person and the transactions contemplated hereby and thereby;

(b) the incumbency and signatures of those of its officers, managing member or general partner, as applicable, authorized to act with respect to each Loan Document to be executed by such Person; and

(c) the full force and validity of each Organic Document of such Person and copies thereof;

upon which certificates the Administrative Agent may conclusively rely until it shall have received a further certificate of the Secretary, Assistant Secretary, managing member or general partner, as applicable, of any such Person cancelling or amending the prior certificate of such Person.

SECTION 5.1.2 Restatement Date Certificate. The Administrative Agent shall have received a Restatement Date Certificate, dated as of the Restatement Date, and duly executed and delivered by an Authorized Officer of the Borrower, in which certificate the Borrower shall agree and acknowledge that the statements made therein shall be deemed to be true and correct representations and warranties of the Borrower as of such date, and, at the time such certificate is delivered, such statements shall in fact be true and correct, and such statements shall include that (i) the representations and warranties set forth in each Loan Document shall, in each case, be true and correct in all material respects (except for any such representations qualified by materiality or Material Adverse Effect, which shall be true and correct in all respects), (ii) no Default shall have then occurred and be continuing, or would result from the Loan to be advanced on the Restatement Date and (iii) all of the conditions set forth in this Article V have been satisfied (other than to the extent satisfaction of any such conditions are subject to the satisfaction of the Administrative Agent, any Lender or any of their respective advisors or representatives). All documents and agreements required to be appended to the Restatement Date Certificate, if any, shall be in form and substance reasonably satisfactory to the Administrative Agent, shall have been executed and delivered by the requisite parties, and shall be in full force and effect.

SECTION 5.1.3 Payment of Outstanding Indebtedness, Etc. On the Restatement Date, all Indebtedness identified in Schedule 8.2(b), together with all interest, all prepayment premiums and all other amounts due and payable with respect thereto, shall have been paid in full from the proceeds of the Loans and the commitments and obligations in respect of such Indebtedness (other than any continuing reimbursement and indemnification obligations under the agreements governing such Indebtedness) shall have been terminated, and all Liens securing payment of any such Indebtedness shall have been released and the Administrative Agent shall have received all Uniform Commercial Code Form UCC-3 termination statements or other instruments (including customary payoff letters) as may be suitable or appropriate in connection therewith.

SECTION 5.1.4 Delivery of Note. Each Lender shall have received a Note duly executed and delivered by an Authorized Officer of the Borrower.

SECTION 5.1.5 Financial Information, Etc. The Administrative Agent shall have received:

(a) audited consolidated financial statements of Holdings and its Subsidiaries for each of the fiscal years ended December 31, 2013 and December 31, 2014;

(b) audited consolidated financial statements of the Target and its Subsidiaries for each of the fiscal years ended December 31, 2012, December 31, 2013 and December 31, 2014;

(c) unaudited consolidated balance sheets of Holdings and its Subsidiaries for each fiscal quarter ended after December 31, 2014, together with the related consolidated statement of operations, shareholder's equity and cash flows for the quarterly periods then ended;

(d) unaudited consolidated balance sheets of the Target and its Subsidiaries for each fiscal quarter ended after December 31, 2014, together with the related statement of operations, shareholder's equity and cash flows for the quarterly periods then ended;

(e) unaudited pro forma combined statements of operations of Holdings, the Borrower and the Target for (x) the fiscal year ended December 31, 2014 and (y) the fiscal quarter ended March 31, 2015; and

(f) unaudited pro forma combined balance sheet of Holdings, the Borrower and the Target for the fiscal quarter ended March 31, 2015.

SECTION 5.1.6 Compliance Certificate. The Administrative Agent shall have received an initial pro forma Compliance Certificate, dated as of the Restatement Date, duly executed (and with all schedules thereto duly completed) and delivered by the chief financial or accounting Authorized Officer of the Borrower.

SECTION 5.1.7 Solvency, Etc. The Administrative Agent shall have received a solvency certificate duly executed and delivered by the chief financial or accounting Authorized Officer of the Borrower, dated as of the Restatement Date, in form and substance reasonably satisfactory to the Administrative Agent.

SECTION 5.1.8 Guarantee. The Administrative Agent shall have received executed counterparts of the Guarantee, dated as of the Restatement Date, duly executed and delivered by Holdings and each Subsidiary.

SECTION 5.1.9 Security Agreements. The Administrative Agent shall have received executed counterparts of the Security Agreement, dated as of the Restatement Date, duly executed and delivered by Holdings, the Borrower and each Subsidiary, together with:

(a) certificates (in the case of Capital Securities that are securities (as defined in the UCC)) evidencing all of the issued and outstanding Capital Securities owned by Holdings, the Borrower or any Subsidiary in the Borrower and the Subsidiaries, which certificates in each case shall be accompanied by undated instruments of transfer duly executed in blank, or, in the case of Capital Securities that are uncertificated securities (as defined in the UCC), confirmation and evidence satisfactory to the Administrative Agent that the security interest therein has been transferred to and perfected by the Administrative Agent in accordance with Articles 8 and 9 of the UCC and all laws otherwise applicable to the perfection of the pledge of such Capital Securities;

(b) financing statements suitable in form for naming Holdings, the Borrower and each Subsidiary as a debtor and the Administrative Agent as the secured party, or other similar instruments or documents to be filed under the UCC of all jurisdictions as may be necessary or, in the opinion of the Administrative Agent, desirable to perfect the security interests of the Lenders pursuant to the Security Agreement;

(c) UCC Form UCC-3 termination statements, if any, necessary to release all Liens and other rights of any Person (i) in any assets of Holdings, the Borrower or any Subsidiary, and (ii) securing any of the Indebtedness identified in Schedule 8.2(b), together with such other UCC Form UCC-3 termination statements as the Administrative Agent may reasonably request from Holdings, the Borrower or any Subsidiary;

(d) landlord access agreements and bailee letters in form and substance satisfactory to the Administrative Agent from each landlord to and mortgagee of Holdings, the Borrower or any Subsidiary; and

(e) evidence that all deposit accounts, lockboxes, disbursement accounts, investment accounts or other similar accounts of Holdings, the Borrower and each Subsidiary are Controlled Accounts.

SECTION 5.1.10 Intellectual Property Security Agreements. The Administrative Agent shall have received a Patent Security Agreement, a Copyright Security Agreement and a Trademark Security Agreement, as applicable, each dated as of the Restatement Date, duly executed and delivered by the Borrower or any Subsidiary that, pursuant to the Security Agreement, is required to provide such intellectual property security agreements to the Lenders.

SECTION 5.1.11 [Intentionally Omitted.]

SECTION 5.1.12 Opinions of Counsel. The Administrative Agent shall have received opinions, dated the Restatement Date and addressed to the Lenders, from:

(a) Morrison & Foerster LLP, counsel to Holdings and the Borrower, in form and substance satisfactory to the Lenders;

(b) Calfee, Halter & Griswold LLP, Ohio counsel to Holdings and the Borrower, in form and substance satisfactory to the Lenders; and

(c) Holland & Hart LLP, Nevada counsel to Holdings and the Borrower, in form and substance satisfactory to the Lenders.

SECTION 5.1.13 Insurance. The Administrative Agent shall have received certified copies of the insurance policies (or binders in respect thereof), from one or more insurance companies satisfactory to the Administrative Agent, evidencing coverage required to be maintained pursuant to each Loan Document, with the Administrative Agent, on behalf of the Lenders, named as loss payee or additional insured, as applicable.

SECTION 5.1.14 Closing Fees, Expenses, Etc. The Administrative Agent and each Lender shall have received for its own account all fees, costs and expenses due and payable pursuant to Section 11.3.

SECTION 5.1.15 Anti-Terrorism Laws. The Administrative Agent shall have received, as applicable, all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the U.S.A. Patriot Act.

SECTION 5.1.16 Satisfactory Legal Form. All documents executed or submitted pursuant hereto by or on behalf of Holdings, the Borrower or any Subsidiary shall be reasonably satisfactory in form and substance to the Administrative Agent and its counsel, and the Administrative Agent and its counsel shall have received all information, approvals, resolutions, opinions, documents or instruments as the Lenders or their counsel may reasonably request.

SECTION 5.1.17 Convertible Notes. Holdings shall have received net proceeds of at least $62,800,000 from its issuance of the Convertible Notes. The Convertible Notes Documents and the purchase agreement for the Convertible Notes shall be reasonably satisfactory to the Administrative Agent in form and substance.

SECTION 5.1.18 Acquisition. The Acquisition Agreement shall have been duly executed and delivered by the respective parties thereto on the date hereof and shall be in full force and effect on the date hereof and the Restatement Date, all conditions precedent to the consummation of the Acquisition shall have been satisfied and not waived (except such waivers as are not adverse to the interests of the Lenders, as determined by each Lender in its sole discretion) on the Restatement Date, neither the Target nor the Borrower shall have consented to any action that requires their consent under the Acquisition Agreement (except such consents as are not adverse to the interests of the Lenders, as determined by each Lender in its sole discretion) and the Acquisition shall be consummated concurrently with the funding of the Loans. The Administrative Agent shall have received a copy of the Acquisition Agreement, the terms of which shall not have not been amended, supplemented, modified or waived after the date hereof in any respect that is adverse to the interests of the Lenders, as determined by each Lender in its sole discretion.

SECTION 5.1.19 Perfection Certificates. The Administrative Agent shall have received duly completed Perfection Certificates with respect to Holdings, the Borrower and the Target, each dated as of the Restatement Date, duly executed with all attachments contemplated thereby and delivered by the applicable party.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES

In order to induce the Administrative Agent and the Lenders to enter into this Agreement and to make the Loans hereunder, the Borrower represents and warrants to each Lender as set forth in this Article VI (it being understood and agreed that (i) the representations and warranties made on the Restatement Date are deemed to be made concurrently with the making of the New Loans and the consummation of the Acquisition and (ii) references to Holdings, the Borrower and each Subsidiary in this Article VI include the Target).

SECTION 6.1 Organization, Etc. Holdings and each of its Subsidiaries (a) is validly organized and existing and in good standing under the laws of the jurisdiction of its incorporation or organization, (b) is duly qualified to do business and is in good standing as a foreign entity in each jurisdiction where the nature of its business requires such qualification, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect, (c) has full power and authority and holds all requisite governmental licenses, permits and other approvals to enter into and perform its Obligations under each Loan Document to which it is a party and (d) has full power and authority and holds all requisite material governmental licenses, permits and other approvals to own and hold under lease its property and to conduct its business substantially as currently conducted by it.

SECTION 6.2 Due Authorization, Non-Contravention, Etc. The execution, delivery and performance by Holdings and each of its Subsidiaries of each Loan Document executed or to be executed by it are in each case within such Person's powers, have been duly authorized by all necessary action, and do not:

(a) contravene (i) Holdings', the Borrower's or any Subsidiary's Organic Documents, (ii) any court decree or order binding on or affecting Holdings, the Borrower or any Subsidiary or (iii) any law or governmental regulation binding on or affecting Holdings, the Borrower or any Subsidiary; or

(b) result in (i) or require the creation or imposition of any Lien on Holdings', the Borrower's or any Subsidiary's properties (except as permitted by this Agreement) or (ii) a default under any contract, agreement, or instrument binding on or affecting Holdings, the Borrower or any Subsidiary.

SECTION 6.3 Government Approval, Regulation, Etc. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or other Person (other than those that have been, or on the Restatement Date will be, duly obtained or made and which are, or on the Restatement Date will be, in full force and effect) is required for the due execution, delivery or performance by Holdings, the Borrower or any Subsidiary of any Loan Document to which it is a party.

SECTION 6.4 Validity, Etc. Each Loan Document to which Holdings or any of its Subsidiaries is a party constitutes the legal, valid and binding obligations of such Person enforceable against such Person in accordance with its respective terms (except, in any case, as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by principles of equity).

SECTION 6.5 Financial Information. The financial statements of Holdings and its Subsidiaries furnished to the Administrative Agent pursuant to Section 5.1.5 have been prepared in accordance with GAAP, consistently applied, and present fairly the consolidated financial condition of the Persons covered thereby as at the dates thereof and the results of their operations for the periods then ended. The projections and pro forma financial information (the "Projections") included in such materials are based upon good faith estimates and assumptions believed by the Borrower to be reasonable at the time made; it being recognized by the Administrative Agent and the Lenders that such Projections as to future events are not to be viewed as fact and that actual results during the period or periods covered by the Projections may differ from such projected results and such differences may be material and adverse.

SECTION 6.6 No Material Adverse Change. Except as set forth on Schedule 6.6, there has been no material adverse change in the business, financial performance or condition, operations (including the results thereof), assets, properties or prospects of Holdings, the Borrower or any Subsidiary since December 31, 2014.

SECTION 6.7 Litigation, Labor Matters and Environmental Matters.

(a) Except as described on Schedule 6.7(a), there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened against or affecting Holdings or any of its Subsidiaries (i) as to which there is a reasonable likelihood of an adverse determination and that, if adversely determined, would reasonably be expected, individually or in the aggregate, to result in liabilities to Holdings, the Borrower and/or any Subsidiary in excess of $500,000 or (ii) that would reasonably be likely to adversely affect this Agreement or the transactions contemplated hereby in any material respect.

(b) Except as described on Schedule 6.7(b), there are no labor controversies pending against or, to the knowledge of the Borrower, threatened against or affecting Holdings or any of its Subsidiaries (i) that would reasonably be expected, individually or in the aggregate, to result in liabilities to Holdings, the Borrower and/or any Subsidiary in excess of $500,000 or (ii) that would reasonably be likely to result in a Material Adverse Effect or adversely affect this Agreement or the transaction contemplated hereby in any material respect.

(c) None of Holdings or any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any Permit under or in connection with any Environmental Law ("Environmental Permit") where such failure to comply would reasonably be expected, individually or in the aggregate, to result in liabilities to Holdings or any of its Subsidiaries in excess of $500,000, (ii) is or has been subject to any Environmental Liability reasonably expected to be in excess of $500,000, individually or in the aggregate, (iii) has received written notice of any Environmental Liability that would reasonably be expected, individually or in the aggregate, to result in liabilities to Holdings or any of its Subsidiaries in excess of $500,000, or (iv) knows of any basis for any Environmental Liability that would reasonably be expected, individually or in the aggregate, to result in liabilities to Holdings, the Borrower and/or any Subsidiary in excess of $500,000.

SECTION 6.8 Subsidiaries. Holdings has no Subsidiaries except those Subsidiaries which are identified in Schedule 6.8 (which Schedule also identifies the direct and indirect owners of the Capital Securities of such Subsidiaries) or which are permitted to have been organized or acquired after the Restatement Date in accordance with Section 8.5 or Section 8.7.

SECTION 6.9 Ownership of Properties. Holdings and its Subsidiaries own (i) in the case of owned real property, good and marketable fee title to, and (ii) in the case of owned personal property, good and valid title to, or, in the case of leased real or personal property, valid and enforceable leasehold interests (as the case may be) in, all of its properties and assets, tangible and intangible, of any nature whatsoever, free and clear in each case of all Liens or claims, except for Liens permitted pursuant to Section 8.3, except defects in title which are not material.

SECTION 6.10 Taxes. Holdings and each of its Subsidiaries has filed all tax returns and reports required by law to have been filed by it and has paid all Taxes due and owing, except (i) any such Taxes which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books and (ii) any Taxes that do not exceed, individually or in the aggregate, $500,000.

SECTION 6.11 Benefit Plans, Etc. None of Holdings or any of its Subsidiaries or any of their respective ERISA Affiliates sponsors, maintains, contributes to, is required to contribute to, or has any actual or potential liability with respect to, any Benefit Plan. None of Holdings or any of its Subsidiaries is a party to any collective bargaining agreement, and none of the employees of Holdings or any of its Subsidiaries are subject to any collective bargaining agreement. Each “employee benefit plan” as defined in section 3(3) of ERISA that provides retirement benefits and that is sponsored by Holdings or any of its ERISA Affiliates intended to be tax qualified under section 401 or 501 of the Code has a determination letter or opinion letter from the Internal Revenue Service on which it is entitled to rely, and no assets of any such plan are invested in Capital Securities of Holdings or the Borrower. Each employee benefit plan, program or arrangement sponsored, maintained, contributed to or required to be contributed to by Holdings or any of its Subsidiaries has complied in all material respects with its terms and applicable law.

SECTION 6.12 Accuracy of Information. None of the information heretofore or contemporaneously furnished in writing to the Administrative Agent or any Lender by or on behalf of Holdings or any of its Subsidiaries in connection with any Loan Document or any transaction contemplated hereby, taken as a whole, contains any untrue statement of a material fact, or omits to state any material fact necessary to make any information not misleading.

SECTION 6.13 Regulations U and X. None of Holdings or any of its Subsidiaries is engaged in the business of extending credit for the purpose of buying or carrying margin stock, and no proceeds of the Loans will be used to purchase or carry margin stock or otherwise for a purpose which violates, or would be inconsistent with, F.R.S. Board Regulation U or Regulation X. Terms for which meanings are provided in F.R.S. Board Regulation U or Regulation X or any regulations substituted therefor, as from time to time in effect, are used in this Section 6.13 with such meanings.

SECTION 6.14 Solvency. Both immediately before and after giving effect to the making of the New Loans, Holdings and its Subsidiaries, taken as a whole, on a consolidated basis, are Solvent.

SECTION 6.15 Intellectual Property.

(a) Schedule 6.15(a) sets forth a complete and accurate list as of the Restatement Date of all (i) Patents, (ii) registered and material unregistered Trademarks (including domain names) and any pending registrations for Trademarks and (iii) any other registered Intellectual Property, in each case owned or licensed by Holdings, the Borrower or any of the Subsidiaries. For each item of Intellectual Property listed on Schedule 6.15(a), the Borrower has, where relevant, indicated (A) the countries in each case in which such item is registered, (B) the application numbers, (C) the registration or patent numbers, (D) with respect to the Patents, the expected expiration date of the issued Patents, (E) the owner of such item of Intellectual Property and (F) with respect to Intellectual Property owned by any third party, the agreement pursuant to which that Intellectual Property is licensed to Holdings, the Borrower or any Subsidiary.

(b) With respect to all Intellectual Property listed on Schedule 6.15(a):

(i) Holdings, the Borrower or a Subsidiary owns or has a valid license to such Intellectual Property free and clear of any and all Liens other than Liens permitted pursuant to Section 8.3 and all such Intellectual Property is in full force and effect, and have not expired, lapsed or been forfeited, cancelled or abandoned;

(ii) each of Holdings, the Borrower and the Subsidiaries, as applicable, has taken commercially reasonable actions to maintain and protect such Intellectual Property and, to the Borrower's knowledge, there are no unpaid maintenance or renewal fees payable by Holdings, the Borrower or any of the Subsidiaries that are currently overdue for any of such registered Intellectual Property;

(iii) except as described on Schedule 6.15(b), there is no proceeding challenging the validity or enforceability of any such Intellectual Property, none of Holdings, the Borrower or any of the Subsidiaries is involved in any such proceeding with any Person and none of the Intellectual Property is the subject of any Other Administrative Proceeding;

(iv) to the knowledge of the Borrower, (A) such Intellectual Property is valid, enforceable and subsisting and (B) no event has occurred, and nothing has been done or omitted to have been done, that would affect the validity or enforceability of such Intellectual Property; and

(v) except as otherwise indicated on Schedule 6.15(a), each of Holdings, the Borrower and each Subsidiary is the sole and exclusive owner of all right, title and interest in and to all such Intellectual Property that is owned by it.

(c) Except as described on Schedule 6.15(c), the Borrower has not given notice to any third party alleging that such third party is committing any act of Infringement of any Intellectual Property listed on Schedule 6.15(a).

(d) With respect to each license agreement listed on Schedule 6.15(a), such license agreement (i) is in full force and effect and is binding upon and enforceable against Holdings, the Borrower and the Subsidiaries party thereto and all other parties thereto in accordance with its terms, (ii) has not been amended or otherwise modified and (iii) has not suffered a default or breach thereunder. To the Borrower's knowledge, none of Holdings, the Borrower or any of the Subsidiaries has taken any action that would permit any other Person party to any such license agreement to have, and no such Person otherwise has, any defenses, counterclaims or rights of setoff thereunder.

(e) Except as set forth on Schedule 6.15(e), none of Holdings, the Borrower or any of the Subsidiaries has received written notice from any third party alleging that the conduct of its business (including the development, manufacture, use, sale or other commercialization of any Product) Infringes any Intellectual Property of that third party and, to the knowledge of the Borrower, the conduct of its business and the business of Holdings and the Subsidiaries (including the development, manufacture, use, sale or other commercialization of any Product) does not Infringe any Intellectual Property of any third party.

(f) Holdings, the Borrower and the Subsidiaries have used commercially reasonable efforts and precautions to protect their respective commercially significant unregistered Intellectual Property.

SECTION 6.16 Material Agreements. Set forth on Schedule 6.16 is a complete and accurate list as of the Restatement Date of all Material Agreements, with an adequate description of the parties thereto, subject matter thereof and amendments and modifications thereto. Each such Material Agreement (i) is in full force and effect and is binding upon and enforceable against (a) Holdings and each of its Subsidiaries party thereto, as the case may be, and (b) to the knowledge of the Borrower, all other parties thereto, in each case in accordance with its terms (except, in each case, as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by principles of equity), and (ii) no material breach or default thereunder exists on the part of Holdings or any of its Subsidiaries or, to the knowledge of the Borrower, any other party thereto.

SECTION 6.17 Permits. Holdings and its Subsidiaries have all Permits, including Environmental Permits, necessary or required for the ownership, operation and conduct of their business and the distribution of the Products, except where the failure to do so would not reasonably be expected to be material to the business of Holdings and its Subsidiaries, taken as a whole. All such Permits are validly held and there are no defaults thereunder.

Regulatory Matters.

(a) Set forth on Schedule 6.18(a) is a complete and accurate list as of the Restatement Date of all material Regulatory Authorizations relating to Holdings, the Borrower or any Subsidiary and the Products (on a per Product basis). All such Regulatory Authorizations are (i) legally and beneficially owned exclusively by Holdings, the Borrower or one of the Subsidiaries, free and clear of all Liens other than Liens permitted pursuant to Section 8.3, and (ii) validly registered and on file with the applicable Governmental Authority or Notified Body, in compliance with all filing and maintenance requirements (including any fee requirements) thereof, and are in good standing, valid and enforceable with the applicable Governmental Authority or Notified Body. No proceeding is pending against Holdings or any of its Subsidiaries or, to the Borrower's knowledge, threatened to revoke or amend any of the Regulatory Authorizations nor are there facts or circumstances of which the Borrower is aware which form a basis upon which a Governmental Authority or Notified Body reasonably could seek to revoke or amend any Regulatory Authorization. All required notices, registrations and listings, supplemental applications or notifications, reports (including field alerts, medical device reports or other reports of adverse experiences) and other required filings with respect to the Products have been filed with the FDA and all other applicable Governmental Authorities and Notified Bodies.

(a) Except as set forth on Schedule 6.18(b) and without limiting the generality of any other representations and warranties made by the Borrower, (i) the Products comply in all material respects with (A) all applicable laws, rules, regulations, orders, injunctions and decrees of the FDA and other applicable Governmental Authorities, including all applicable requirements of state authorities and the FD&C Act and (B) all Product Authorizations and other Regulatory Authorizations; (ii) Holdings, the Borrower, the Subsidiaries and their respective suppliers have not received any notification from any Governmental Authority asserting that any 361 Product lacks a required Product Authorization; (iii) there is no pending regulatory action, investigation or inquiry (other than non-material routine or periodic inspections or reviews) against Holdings, the Borrower or any of the Subsidiaries or any of their respective suppliers with respect to the Products, and to the Borrower's knowledge there is no basis for any adverse regulatory action against Holdings, the Borrower or any of the Subsidiaries or, to the knowledge of the Borrower, their respective suppliers with respect to the Products; and (iv) without limiting the foregoing, (A) no product recalls, safety alerts, corrections, withdrawals, marketing suspensions, removals or the like have been voluntarily initiated within the five years preceding the Restatement Date or requested, demanded or ordered by any Governmental Authority with respect to any Products, and there is no basis for the issuance of any such product recalls, safety alerts, corrections, withdrawals, marketing suspensions, removals or the like by any Person with respect to any Products and (B) no criminal, injunctive, seizure, detention or civil penalty actions have at any time been commenced or threatened in writing by any Governmental Authority with respect to or in connection with any Products, there are no consent decrees (including plea agreements) which relate to any Products, and there is no basis for the commencement for any criminal injunctive, seizure, detention or civil penalty actions by any Governmental Authority relating to the Products or for the issuance of any consent decrees. None of Holdings, the Borrower, any of the Subsidiaries or, to the Borrower's knowledge, any of their respective suppliers is employing or utilizing the services of any individual who has been debarred or temporarily suspended under any applicable law, rule or regulation.

(b) Except as set forth in Schedule 6.18(c), in all material respects with respect to Products, (i) all design, manufacturing, storage, distribution, packaging, labeling, recordkeeping and other supply activities by Holdings, the Borrower, the Subsidiaries and, to the Borrower's knowledge, their respective suppliers relating to such Products have been conducted, and are currently being conducted, in compliance with the applicable requirements of the FD&C Act and other requirements of the FDA and all other Governmental Authorities, including current good manufacturing practices, cGTPs and quality system regulations, (ii) none of Holdings, the Borrower, any of the Subsidiaries, or, to the knowledge of the Borrower, any of their respective suppliers has received written notice or threat of commencement of action by any Governmental Authority to withdraw its approval of or to enjoin production of the Products at any facility and (iii) all applicable post-approval and post-clearance procedures and activities have been carried out, and have been carried out in accordance with the requirements of the Regulatory Authorizations and all applicable laws, rules and regulations. No Product sold by or in the inventory of Holdings, the Borrower or any of the Subsidiaries is adulterated or misbranded, all labeling, packaging (including inserts), product information, advertising and promotional materials and activities are in compliance in all material respects with applicable FDA and other Governmental Authority requirements, and the Products are in compliance with all classification, registration, listing, marking, tracking and audit requirements of the FDA and any other Governmental Authority.

(c) Except as set forth in Schedule 6.18(d), all activities of Holdings, the Borrower, the Subsidiaries and, to the Borrower's knowledge, their respective suppliers related to the procurement, use, and transplantation of tissue, including allograft bone tissue, have been conducted, and are currently being conducted in material compliance with the applicable requirements of the National Organ Transplant Act.

(d) The Borrower has made available to the Administrative Agent complete and accurate copies of all Product Authorizations and regulatory dossiers relating thereto, all medical device reports and communications to or from the FDA and other relevant Governmental Authorities and Notified Bodies, including inspection reports, warning letters, and material reports, studies and other correspondence, other than opinions of counsel that are attorney-client privileged, with respect to regulatory matters relating to Holdings, the Borrower or any of the Subsidiaries, the conduct of their business and the Products.

(e) All studies, tests and preclinical and clinical trials conducted relating to the Products, in all material respects, by or on behalf of Holdings, the Borrower and the Subsidiaries and, to the knowledge of the Borrower, their respective licensees, licensors and third party services providers and consultants, have been conducted, and are currently being conducted, in accordance with experimental protocols, procedures and controls pursuant to, where applicable, current good clinical practices and current good laboratory practices and other applicable laws, rules regulations. All results of such studies, tests and trials, and all other material information related to such studies, tests and trials, have been made available to the Administrative Agent. The summaries and descriptions of any of the foregoing provided to the Administrative Agent are accurate and contain no material omissions. None of Holdings, the Borrower, any of the Subsidiaries, or, to the knowledge of the Borrower, any of their respective licensees, licensors or third party services providers or consultants, has received from the FDA or other applicable Governmental Authority any notices or correspondence requiring the termination, suspension, material modification or clinical hold of any studies, tests or clinical trials in any material respect with respect to or in connection with the Products.

(f) There has been no material untrue statement of fact and no fraudulent statement made by Holdings, the Borrower, any of the Subsidiaries, or, to the knowledge of the Borrower, any of their respective agents or representatives to the FDA or any other Governmental Authority, and there has been no failure to disclose any material fact required to be disclosed to the FDA or any other Regulatory Agency.

(g) The transactions contemplated by the Loan Documents (or contemplated by the conditions to effectiveness of any Loan Document) will not impair Holdings', the Borrower's or any of the Subsidiaries' ownership of or rights under (or the license or other right to use, as the case may be) any Regulatory Authorizations relating to the Products in any material manner.

SECTION 6.19 Transactions with Affiliates. Except as set forth on Schedule 6.19, (i) other than any transaction between Holdings, the Borrower or any Subsidiaries, none of Holdings, the Borrower or any Subsidiary has entered into, renewed, extended or been a party to, any transaction (including the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any of its Affiliates during the two-year period immediately prior to the Restatement Date and (ii) no such transaction is in existence as of the date hereof or the Restatement Date.

SECTION 6.20 Investment Company Act. None of Holdings, the Borrower or any Subsidiary is an "investment company" or is "controlled" by an "investment company," as such terms are defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

SECTION 6.21 OFAC. Except as set forth on Schedule 6.21, none of Holdings or any of its Subsidiaries or, to the knowledge of the Borrower, any Related Party (a) is currently the subject of any Sanctions, (b) is located, organized or residing in any Designated Jurisdiction or (c) is or has been (within the previous five years) engaged in any transaction with any Person who is now or was then the subject of Sanctions or who is located, organized or residing in any Designated Jurisdiction. No Loan, nor the proceeds from any Loan, has been or will be used, directly or indirectly, to lend, contribute or provide to, or has been or will be otherwise made available to fund, any activity or business in any Designated Jurisdiction or to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, or in any other manner that will result in any violation by Holdings or any of its Subsidiaries or, to the knowledge of the Borrower, any other Person (including the Lenders and their Affiliates) of Sanctions.

SECTION 6.22 Holdings. Holdings (i) is a holding company with no activities (other than activities customarily carried out or required of a publicly-owned passive holding company, including the entry into customary and ordinary course insurance programs and agreements concerning the Capital Securities of Holdings), (ii) has no operations, assets (other than Capital Securities of the Borrower and Subsidiaries) or liabilities (other than Obligations under the Loan Documents, the Convertible Notes Documents and liabilities arising in the ordinary course) and (iii) is not party to any contracts or agreements, in each case other than (a) the Convertible Notes Documents, (b) the Acquisition Agreement, (c) employment and employee benefit contracts, (d) customary contracts with accountants, lawyers and other advisors and (e) activities, operations, assets, liabilities, contracts and agreements that do not exceed, and would not reasonably be expected to result in liabilities to Holdings, the Borrower and any Subsidiaries that exceed, $500,000 individually or $1,000,000 in the aggregate.

SECTION 6.23 Deposit and Disbursement Accounts. Set forth on Schedule 6.23 is a complete and accurate list as of the Restatement Date of all banks and other financial institutions at which Holdings, the Borrower or any Subsidiary maintains deposit accounts, lockboxes, disbursement accounts, investment accounts or other similar accounts, such Schedule correctly identifies the name, address and telephone number of each bank or financial institution, the name in which each such account is held, the type of each such account, and the complete account number for each such account, and each such account is a Controlled Account.

ARTICLE VII
AFFIRMATIVE COVENANTS

The Borrower covenants and agrees with the Lenders that until the Termination Date has occurred, the Borrower and Holdings will, and will cause the Subsidiaries to, perform or cause to be performed the obligations set forth below.

SECTION 7.1 Financial Information, Reports, Notices, Etc. The Borrower will furnish the Administrative Agent copies of the following financial statements, reports, notices and information:

(a) as soon as available and in any event within 30 days after the end of each calendar month, in each case with supporting detail and certified as complete and correct by the chief financial or accounting Authorized Officer of the Borrower (subject to normal year-end audit adjustments), for each of (1) the Borrower, (2) Target and (3) Holdings and its consolidated Subsidiaries, (i) unaudited reports of the Consolidated EBITDA and Revenue Base for such calendar month and the Liquidity at the end of such calendar month and (ii) unaudited reports of (x) the Revenue Base and Consolidated EBITDA for the period commencing at the end of the previous Fiscal Year and ending with the end of such calendar month, and including in comparative form the figures for the corresponding calendar month in, and the year to date portion of, the immediately preceding Fiscal Year and (y) the Liquidity for the corresponding calendar month in the preceding Fiscal Year, in comparative form;

(b) as soon as available and in any event within 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, an unaudited consolidated balance sheet of Holdings, the Borrower and the Subsidiaries as of the end of such Fiscal Quarter and consolidated statements of income and cash flow of Holdings, the Borrower and the Subsidiaries for such Fiscal Quarter and for the period commencing at the end of the previous Fiscal Year and ending with the end of such Fiscal Quarter, and including (in each case) in comparative form the figures for the corresponding Fiscal Quarter in, and the year to date portion of, the immediately preceding Fiscal Year, certified as complete and correct by the chief financial or accounting Authorized Officer of the Borrower (subject to normal year-end audit adjustments); provided, that consolidated financial information in this clause (b) shall be deemed furnished to the Administrative Agent when Holdings files with the SEC a publicly available Quarterly Report on Form 10-Q containing such information;

(c) as soon as available and in any event within 90 days after the end of each Fiscal Year, a copy of the consolidated balance sheet of Holdings, the Borrower and the Subsidiaries, and the related consolidated statements of income and cash flow of Holdings, the Borrower and the Subsidiaries for such Fiscal Year, setting forth in comparative form the figures for the immediately preceding Fiscal Year, audited (without any Impermissible Qualification) by independent public accountants acceptable to the Administrative Agent (for the avoidance of doubt, the current independent public accountant of Holdings and the Borrower shall be considered acceptable to the Administrative Agent), which shall include a calculation of the financial covenants set forth in Section 8.4 and stating that, in performing the examination necessary to deliver the audited financial statements of the Borrower, no knowledge was obtained of any Event of Default; provided, that information in this clause (c) shall be deemed furnished to the Administrative Agent when Holdings files with the SEC a publicly available Annual Report on Form 10-K containing such information;

(d) concurrently with the delivery of the financial information pursuant to clauses (a), (b) or (c), a Compliance Certificate, executed by the chief financial or accounting Authorized Officer of the Borrower, (i) showing compliance with the financial covenants set forth in Section 8.4 and stating that no Default has occurred and is continuing (or, if a Default has occurred, specifying the details of such Default and the action that Holdings, the Borrower or any of the Subsidiaries has taken or proposes to take with respect thereto), (ii) stating that no Subsidiary has been formed or acquired since the delivery of the last Compliance Certificate (or, if a Subsidiary has been formed or acquired since the delivery of the last Compliance Certificate, a statement that such Subsidiary has complied with Section 7.8); (iii) stating that no real property has been acquired by Holdings, the Borrower or any of the Subsidiaries since the delivery of the last Compliance Certificate (or, if any real property has been acquired since the delivery of the last Compliance Certificate, a statement that the Borrower has complied with Section 7.8 with respect to such real property); and (iv) listing any new Material Agreements entered into, and any amendments or terminations of Material Agreements, in each case since the last Compliance Certificate delivered hereunder;

(e) concurrently with the delivery of the financial information pursuant to clauses (b) or (c), copies of the unaudited consolidating balance sheets and unaudited consolidating statements of income and cash flow for Holdings and each of its Subsidiaries, prepared by the management of Holdings and certified as complete and correct by the chief financial or accounting Authorized Officer of the Borrower;

(f) as soon as possible and in any event within three days after the Borrower obtains knowledge of the occurrence of a Default, a statement of an Authorized Officer of the Borrower setting forth details of such Default and the action which Holdings, the Borrower or any of the Subsidiaries has taken or proposes to take with respect thereto;

(g) as soon as possible and in any event within ten days after the Borrower obtains knowledge of (i) the occurrence of any material adverse development with respect to any litigation, action, proceeding or labor controversy described in Schedule 6.7(a) or Schedule 6.7(b) or (ii) the commencement of any litigation, action, proceeding or labor controversy of the type and materiality described in Section 6.7, notice thereof and, to the extent the Administrative Agent requests, copies of all documentation relating thereto; provided, that information in this clause (f) shall be deemed furnished to the Administrative Agent when Holdings files with the SEC a publicly available Quarterly Report on Form 10-Q or Annual Report on Form 10-K containing such information;

(h) as soon as possible and in any event within ten days after the Borrower obtains knowledge of any return, recovery, dispute or claim related to Product or inventory that involves more than $500,000;

(i) as soon as possible and in any event within ten days after the Borrower obtains knowledge of (i) any claim that Holdings, the Borrower, any of the Subsidiaries or one of their ERISA Affiliates has actual or potential liability under a Benefit Plan, (ii) any effort to unionize the employees of Holdings, the Borrower or any Subsidiary or (iii) correspondence with the Internal Revenue Service regarding the qualification of a retirement plan under Section 401(a) of the Code;

(j) as soon as possible and in any event within ten days after receipt thereof, copies of all “management letters” (or equivalent) submitted to Holdings, the Borrower or any of the Subsidiaries by the independent public accountants referred to in clause (b) in connection with each audit made by such accountants;

(k) as soon as possible and in any event within ten days after the sending or filing thereof, copies of all reports, notices, prospectuses and registration statements which Holdings, the Borrower or any of the Subsidiaries files with the SEC or any national securities exchange (to the extent they are not publicly available on EDGAR);

(l) as soon as possible and in any event within ten days upon receipt thereof, copies of all subpoenas, requests for information and other notices regarding any active or potential investigation of, or claim or litigation against, Holdings, the Borrower or any of the Subsidiaries by any Governmental Authority, and the results of any inspections of any manufacturing facilities of Holdings, the Borrower or any of the Subsidiaries or any third party suppliers of Holdings, the Borrower or any of the Subsidiaries by any Governmental Authority (including any Form FDA 483s);

(m) such other financial and other information as the Administrative Agent may from time to time reasonably request (including information and reports in such detail as the Administrative Agent may request with respect to the terms of and information provided pursuant to the Compliance Certificate).

SECTION 7.2 Maintenance of Existence; Compliance with Contracts, Laws, Etc. Holdings and each of its Subsidiaries will (a) preserve and maintain its legal existence (except as otherwise permitted by Section 8.7), (b) perform in all material respects its obligations under Material Agreements to which Holdings, the Borrower or any of the Subsidiaries is a party, and (c) comply in all material respects with all applicable material laws, rules, regulations and orders, including the payment (before the same become delinquent), of all Taxes, imposed upon Holdings, the Borrower or any of the Subsidiaries or upon their property except to the extent being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on the books of Holdings, the Borrower or any of the Subsidiaries, as applicable.

SECTION 7.3 Maintenance of Properties. Each of Holdings, the Borrower and the Subsidiaries will maintain, preserve, protect and keep its and their respective properties in good repair, working order and condition (ordinary wear and tear excepted), and make necessary repairs, renewals and replacements so that the business carried on by Holdings, the Borrower or any of the Subsidiaries may be properly conducted at all times, unless Holdings, the Borrower or any of the Subsidiaries determines in good faith that the continued maintenance of such property is no longer economically desirable, necessary or useful to the business of Holdings, the Borrower or any of the Subsidiaries or the Disposition of such property is otherwise permitted by Section 8.7 or Section 8.8.

SECTION 7.4 Insurance. Each of Holdings, the Borrower and each of the Subsidiaries will maintain:

(a) insurance on its property with financially sound and reputable insurance companies against business interruption, loss and damage in at least the amounts (and with only those deductibles) customarily maintained, and against such risks as are typically insured against in the same general area, by Persons of comparable size engaged in the same or similar business as Holdings, the Borrower and the Subsidiaries; and

(b) all worker's compensation, employer's liability insurance or similar insurance as may be required under the laws of any state or jurisdiction in which it may be engaged in business.

Without limiting the foregoing, all insurance policies required pursuant to this Section 7.4 shall (i) name the Administrative Agent (for its benefit and the benefit of each Lender) as mortgagee and loss payee (in the case of property insurance) and additional insured (in the case of liability insurance), as applicable, and provide that no cancellation or modification of the policies will be made without at least 30 days' prior written notice to the Administrative Agent and (ii) be in addition to any requirements to maintain specific types of insurance contained in the other Loan Documents.

SECTION 7.5 Books and Records. Each of Holdings, the Borrower and each of the Subsidiaries will keep books and records in accordance with GAAP which accurately reflect all of its business affairs and transactions and permit the Administrative Agent or any of its representatives, at reasonable times and intervals upon reasonable notice to the Borrower, to visit Holdings', the Borrower's or any of the Subsidiaries' offices, to discuss Holdings', the Borrower's or any of the Subsidiaries' financial or other matters with its officers and employees, and its independent public accountants (and the Borrower hereby authorizes such independent public accountant to discuss Holdings', the Borrower's and any of the Subsidiaries' financial and other matters with the Administrative Agent or its representatives whether or not any representative of Holdings, the Borrower or any of the Subsidiaries is present) and to examine (and photocopy extracts from) any of its books and records. The Borrower shall pay any fees of such independent public accountant incurred in connection with the Administrative Agent's exercise of its rights pursuant to this Section 7.5.

SECTION 7.6 Environmental Law Covenant. Each of Holdings, the Borrower and each of the Subsidiaries will (i) use and operate all of its and their businesses, facilities and properties in material compliance with all Environmental Laws, and keep and maintain all Environmental Permits and remain in compliance therewith, and (ii) promptly notify the Administrative Agent of, and provide the Administrative Agent with copies of all material claims, complaints, notices or inquiries relating to, any actual or alleged non-compliance with any Environmental Laws or Environmental Permits or any actual or alleged Environmental Liabilities. Holdings, the Borrower and each of the Subsidiaries will promptly resolve, remedy and mitigate any such non-compliance or Environmental Liabilities, and shall keep the Administrative Agent informed as to the progress of same.

SECTION 7.7 Use of Proceeds. The Borrower will apply the proceeds of the Loans in accordance with Schedule 7.7.

SECTION 7.8 Future Guarantors, Security, Etc. Holdings, the Borrower and each Subsidiary will execute any documents, financing statements, agreements and instruments, and take all further action that may be required under applicable law, or that the Administrative Agent may reasonably request, in order to effectuate the transactions contemplated by the Loan Documents and in order to grant, preserve, protect and perfect the validity and first priority (subject to Liens permitted by Section 8.3) of the Liens created or intended to be created by the Loan Documents (including by obtaining landlord access agreements in form and substance reasonably satisfactory to the Administrative Agent in respect of any leased real property). Prior to or upon acquiring or organizing any new Subsidiary, the Borrower shall cause such Subsidiary to execute a supplement (in form and substance reasonably satisfactory to the Administrative Agent) to the Guarantee, Security Agreement and each other applicable Loan Document in favor of the Administrative Agent and the Lenders. The Borrower will promptly notify the Administrative Agent of any subsequently acquired real property and will provide the Administrative Agent with a description of such real property, the acquisition date thereof and the purchase price therefor. In addition, from time to time, each of Holdings, the Borrower and each of the Subsidiaries will, at its cost and expense, promptly secure the Obligations by pledging or creating, or causing to be pledged or created, perfected Liens with respect to such of its assets and properties as the Administrative Agent shall designate, it being agreed that it is the intent of the parties that the Obligations shall be secured by, among other things, substantially all the assets of Holdings, the Borrower and the Subsidiaries (including real property and personal property acquired subsequent to the Restatement Date). Such Liens will be created under the Loan Documents in form and substance reasonably satisfactory to the Administrative Agent, and Holdings, the Borrower and each of the Subsidiaries shall deliver or cause to be delivered to the Administrative Agent all such instruments and documents (including mortgages, legal opinions, title insurance policies and lien searches) as the Administrative Agent shall reasonably request to evidence compliance with this Section 7.8.

SECTION 7.9 Obtaining of Permits, Etc. With respect to Products, Holdings and each of its Subsidiaries will obtain, maintain and preserve, and take all necessary action to timely renew all material Permits and accreditations which are necessary for the conduct of its business.

SECTION 7.10 Product Licenses. Holdings and each of its Subsidiaries shall (i) maintain each material Permit, including each Regulatory Authorization, from, or file any notice or registration in, each jurisdiction in which Holdings or any of its Subsidiaries are required to obtain any Permit or Regulatory Authorization or to file any notice or registration, in order to sell or distribute the Products (excluding Products in development (other than those requiring an IDE) or discontinued Products) and (ii) upon request of the Administrative Agent, promptly provide evidence of same.

SECTION 7.11 Maintenance of Regulatory Authorizations, Contracts, Intellectual Property, Etc. With respect to the Products, Holdings and each of its Subsidiaries will (i) maintain in full force and effect all Regulatory Authorizations (including the Product Authorizations) and material contract rights, authorizations or other rights necessary for the operations of its business; (ii) notify the Administrative Agent, promptly after learning thereof, of any Product recalls, safety alerts, corrections, withdrawals, marketing suspensions, removals or the like conducted, to be undertaken or issued, by Holdings or any of its Subsidiaries or their respective suppliers whether or not at the request, demand or order of any Governmental Authority or otherwise with respect to any Product, or any basis for undertaking or issuing any such action or item; (iii) maintain in full force and effect, and pay all costs and expenses relating to, all material Intellectual Property owned or controlled by Holdings, the Borrower or any of the Subsidiaries and all Material Agreements; (iv) notify the Administrative Agent, promptly after learning thereof, of any Infringement or other material violation by any Person of its Intellectual Property; (v) use commercially reasonable efforts to pursue and maintain in full force and effect legal protection for all material new Intellectual Property developed or controlled by Holdings or any of its Subsidiaries; and (vi) notify the Administrative Agent, promptly after learning thereof, of any claim by any Person that the conduct of Holdings' or any of its Subsidiaries' business (including the development, manufacture, use, sale or other commercialization of any Product) Infringes any Intellectual Property of that Person.

SECTION 7.12 Inbound Licenses. Holdings and each of its Subsidiaries will, promptly after entering into or becoming bound by any material inbound license or agreement (other than over-the-counter software that is commercially available to the public): (i) provide written notice to the Administrative Agent of the material terms of such license or agreement with a description of its anticipated and projected impact on Holdings' and its Subsidiaries' business and financial condition; and (ii) take such commercially reasonable actions as the Administrative Agent may reasonably request to obtain the consent of, or waiver by, any Person whose consent or waiver is necessary for the Administrative Agent to be granted and perfect a valid security interest in such license or agreement and to fully exercise its rights under any of the Loan Documents in the event of a disposition or liquidation of the rights, assets or property that is the subject of such license or agreement.

SECTION 7.13 Cash Management. Holdings and each of its Subsidiaries will:

(a) maintain a current and complete list of all accounts (of the type initially set forth on Schedule 6.23) and promptly deliver any updates to such list to the Administrative Agent; execute and maintain an account control agreement for each such account, in form and substance reasonably acceptable to the Administrative Agent (each such account, a "Controlled Account"); and maintain each such account as a cash collateral account, with all cash, checks and other similar items of payment in such account securing payment of the Obligations (and in which Holdings, the Borrower and the Subsidiaries shall have granted a Lien to the Administrative Agent and the Lenders); provided that any accounts with an end-of-day balance less than $50,000 individually, or $100,000 in the aggregate (or such other interim balance, on deposit for no more than three Business Days, used exclusively for the purposes of making payroll in the ordinary course of business), used exclusively for payroll, payroll taxes or employee benefits, to the extent legal requirements prohibit the granting of a Lien thereon, need not be Controlled Accounts;

(b) deposit promptly, and in any event no later than two Business Days after the date of receipt thereof, all cash, checks, drafts or other similar items of payment relating to or constituting payments made in respect of any and all accounts and other rights and interests into Controlled Accounts; and

(c) at any time after the occurrence and during the continuance of an Event of Default, at the request of the Administrative Agent, promptly cause all payments constituting proceeds of accounts to be directed into lockbox accounts under agreements in form and substance satisfactory to the Administrative Agent.

SECTION 7.14 [Intentionally Omitted.]

SECTION 7.15 [Intentionally Omitted.]

SECTION 7.16 Board Observation Rights.

(a) Holdings and the Subsidiaries shall permit up to two people representing the Lenders (the "Observers") to attend and observe (but not vote) at all meetings of Holdings' (or the Borrower's or any Subsidiary's, as applicable) board of directors or any committee thereof, whether in person, by telephone or otherwise as requested by any Observer. Holdings and the Subsidiaries shall notify the Observers in writing at least five Business Days in advance (or, if a shorter notice period is reasonably necessary given the circumstances, as soon as possible and in all circumstances at least 24 hours in advance) of (i) the date and time for each general or special meeting of any such board of directors or any committee thereof and (ii) the adoption of any resolutions or actions by any such board of directors or any committee thereof by written consent (describing, in reasonable detail, the nature and substance of such action). The general meetings of Holdings' board of directors shall take place no less than three times per year. Holdings and the Subsidiaries shall concurrently deliver to the Observers all notices and any materials delivered to any such board of directors or any committee thereof in connection with a meeting or action to be taken by written consent, including a draft of any material resolutions or actions proposed to be adopted by written consent. The Observers shall be free prior to such meeting or adoption by written consent to contact the applicable board of directors and/or committee and discuss the pending actions to be taken. As long as Holdings is listed on the NYSE MKT, New York Stock Exchange or any other stock exchange which requires that such board of directors or committees have the ability to exclude the Observers in order to be in compliance with applicable stock exchange rules and policies, any such board of directors or committee thereof may meet in executive session without the Observers present at any time. In the event that Holdings ceases to be listed on a stock exchange which requires, or the stock exchange on which Holdings is listed no longer requires, that such board of directors or committees have the ability to exclude the Observers in order to be in compliance with applicable stock exchange rules and policies, any such board of directors or committee thereof may meet in executive session without the Observers present to the extent such board of directors or committee determines in good faith that each of the issues to be discussed at such session is not appropriate to be discussed with the Observers because (i) such issue directly involves the Loan Documents and discussion thereof would result in a conflict of interest with the Lenders with respect thereto or (ii) the discussion of such issue in the presence of the Observers would result in the disclosure of trade secrets or the loss of attorney-client privilege. In the event Holdings or the Borrower excludes the Observers from any meeting or portion thereof or withholds any information or materials related thereto, Holdings and the Borrower shall promptly provide to the Observers a general description, which shall be true and correct in all material respects, of the matters discussed during such meeting or portion thereof at which the Observers were excluded and any such withheld information or materials.

(b) Holdings (or the Borrower or a Subsidiary, as applicable) shall pay the Observers' reasonable out-of-pocket expenses (including the cost of travel, meals and lodging) in connection with the attendance of such meetings.

(c) Notwithstanding anything in this Section 7.16 to the contrary, in the event neither ROS nor any of its Affiliates is a Lender under this Agreement, the number of Observers pursuant to this Section 7.16 shall decrease from two people to one person.

ARTICLE VIII
NEGATIVE COVENANTS

The Borrower covenants and agrees with each Lender that until the Termination Date has occurred, Holdings, the Borrower and the Subsidiaries will perform or cause to be performed the obligations set forth below.

SECTION 8.1 Business Activities. None of Holdings, the Borrower or any of the Subsidiaries will engage in any business activity except those business activities engaged in on the date of this Agreement and activities reasonably related thereto.

SECTION 8.2 Indebtedness. None of Holdings, the Borrower or any of the Subsidiaries will create, incur, assume or permit to exist any Indebtedness, other than:

(a) Indebtedness in respect of the Obligations;

(b) until the Restatement Date, Indebtedness that is to be repaid in full as further identified in Schedule 8.2(b);

(c) Indebtedness existing as of the Restatement Date which is identified in Schedule 8.2(c), and refinancing of such Indebtedness in a principal amount not in excess of that which is outstanding on the Restatement Date (as such amount has been reduced following the Restatement Date);

(d) unsecured Indebtedness in respect of performance, surety or appeal bonds provided in the ordinary course of business in an aggregate amount at any time outstanding not to exceed $1,000,000;

(e) purchase money Indebtedness and Capitalized Lease Liabilities in an aggregate amount at any time outstanding not to exceed $1,000,000;

(f) Permitted Subordinated Indebtedness;

(g) Indebtedness of Holdings under the Convertible Notes Documents;

(h) Indebtedness of any Subsidiary, Holdings or the Borrower owing to Holdings, the Borrower or any Subsidiary; and

(i) other Indebtedness of Holdings, the Borrower and the Subsidiaries in an aggregate amount at any time outstanding not to exceed $1,000,000;

provided that, no Indebtedness otherwise permitted by clauses (c), (f) or (i) shall be assumed, created or otherwise incurred if a Default has occurred and is then continuing or would result therefrom.

SECTION 8.3 Liens. None of Holdings, the Borrower or any of the Subsidiaries will create, incur, assume or permit to exist any Lien upon any of its property (including Capital Securities of any Person), revenues or assets, whether now owned or hereafter acquired, except:

(a) Liens securing payment of the Obligations;

(b) until the Restatement Date, Liens securing payment of Indebtedness of the type described in clause (b) of Section 8.2;

(c) Liens existing as of the Restatement Date and disclosed in Schedule 8.3(c) securing Indebtedness described in clause (c) of Section 8.2, and refinancings of such Indebtedness; provided that, no such Lien shall encumber any additional property and the amount of Indebtedness secured by such Lien is not increased from that existing on the Restatement Date (as such Indebtedness may have been permanently reduced subsequent to the Restatement Date);

(d) Liens securing payment of Permitted Subordinated Indebtedness that are (i) subordinate to the Liens securing payment of the Obligations and all other Indebtedness owing from Holdings, the Borrower or the Subsidiaries to the Administrative Agent and the Lenders and (ii) subject to a written subordination agreement satisfactory to the Administrative Agent in its sole discretion;

(e) Liens securing Indebtedness of Holdings, the Borrower or the Subsidiaries permitted pursuant to Section 8.2(e) (provided that (i) such Liens shall be created within 180 days of the acquisition of the assets financed with such Indebtedness and (ii) such Liens do not at any time encumber any property other than the property so financed);

(f) Liens in favor of carriers, warehousemen, mechanics, materialmen and landlords granted in the ordinary course of business for amounts not overdue or being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(g) Liens incurred or deposits made in the ordinary course of business in connection with worker's compensation, unemployment insurance or other forms of governmental insurance or benefits, or to secure performance of tenders, statutory obligations, bids, leases or other similar obligations (other than for borrowed money) entered into in the ordinary course of business or to secure obligations on surety and appeal bonds or performance bonds;

(h) judgment Liens in existence for less than 45 days after the entry thereof or with respect to which execution has been stayed or the payment of which is covered in full (subject to a customary deductible) by insurance maintained with responsible insurance companies and which do not otherwise result in an Event of Default under Section 9.1.6;

(i) easements, rights-of-way, zoning restrictions, minor defects or irregularities in title and other similar encumbrances not interfering in any material respect with the value or use of the property to which such Lien is attached; and

(j) Liens for Taxes not at the time delinquent or thereafter payable without penalty or being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books.

SECTION 8.4 Financial Covenants.

(a) Minimum Revenue Base. The Revenue Base for any Fiscal Quarter shall not be less than the amount set forth below for such Fiscal Quarter:

Fiscal Quarter Ending	Minimum Revenue Base
September 30, 2015	$ 17,500,000
December 31, 2015	$ 20,000,000
March 31, 2016	$ 20,000,000
June 30, 2016	$ 20,000,000
September 30, 2016	$ 25,000,000
December 31, 2016	$ 25,000,000
March 31, 2017	$ 25,000,000
June 30, 2017	$ 25,000,000
September 30, 2017	$ 27,500,000
December 31, 2017	$ 27,500,000
March 31, 2018	$ 27,500,000
June 30, 2018	$ 27,500,000
September 30, 2018	$ 30,000,000
December 31, 2018	$ 30,000,000
March 31, 2019	$ 30,000,000
June 30, 2019	$ 30,000,000
September 30, 2019	$ 30,000,000
December 31, 2019	$ 30,000,000
March 31, 2020	$ 30,000,000
June 30, 2020	$ 30,000,000

(b) Minimum Liquidity. At all times prior to January 1, 2017, the Liquidity shall not be less than $2,500,000. At all times after January 1, 2017, the Liquidity shall not be less than $5,000,000. Holdings and its Subsidiaries incorporated or organized under the laws of the United States of America, or any state or other political subdivision thereof shall maintain an amount equal to the amount required under this Section 8.4.2, along with their other cash and Cash Equivalent Investments, in Controlled Accounts.

(c) Consolidated Senior Leverage Ratio. The Consolidated Senior Leverage Ratio shall not be greater than the amount set forth below at any time, in each case, other than as set forth in the definition thereof, with respect to the most recent period of four Fiscal Quarters then ended (starting at the time that the financial statements for the most recent four Fiscal Quarters ended September 30, 2016 are required to have been delivered hereunder (or have been so delivered, if earlier)):

Four Fiscal Quarters Ended	Consolidated Senior Leverage Ratio
September 30, 2016	7.50:1.00
December 31, 2016	7.50:1.00
March 31, 2017	5.00:1.00
June 30, 2017	5.00:1.00
September 30, 2017	5.00:1.00
December 31, 2017	5.00:1.00
March 31, 2018	5.00:1.00
June 30, 2018	5.00:1.00
September 30, 2018	5.00:1.00
December 31, 2018	5.00:1.00
March 31, 2019	2.50:1.00
June 30, 2019	2.50:1.00
September 30, 2019	2.50:1.00
December 31, 2019	2.50:1.00
March 31, 2020	2.50:1.00
June 30, 2020	2.50:1.00

SECTION 8.5 Investments. None of Holdings or any of its Subsidiaries will purchase, make, incur, assume or permit to exist any Investment in any other Person, except:

(a) Investments existing on the Restatement Date and identified in Schedule 8.5(a);

(b) Cash Equivalent Investments;

(c) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(d) Investments consisting of any deferred portion of the sales price received by Holdings, the Borrower or any of the Subsidiaries in connection with any Disposition permitted under Section 8.8;

(e) Investments constituting (i) accounts receivable arising, (ii) trade debt granted, or (iii) deposits made in connection with the purchase price of goods or services, in each case in the ordinary course of business;

(f) loans and advances to officers, directors, or employees of Holdings, the Borrower or any Subsidiary in the ordinary course of business (including for travel, entertainment and relocation expenses) in an aggregate amount not to exceed $500,000 at any time outstanding;

(g) Investments by Holdings, the Borrower or any Subsidiary in Holdings, the Borrower or any Subsidiary;

(h) the purchase of the Target pursuant to the Acquisition Agreement; and

(i) other Investments in an aggregate amount not to exceed $1,000,000 over the term of this Agreement;

provided that,

(i) any Investment which when made complies with the requirements of the definition of the term "Cash Equivalent Investment" may continue to be held notwithstanding that such Investment if made thereafter would not comply with such requirements; and

(ii) no Investment otherwise permitted by clause (i) shall be permitted to be made if any Default has occurred and is continuing or would result therefrom.

SECTION 8.6 Restricted Payments, Etc. None of Holdings or any of its Subsidiaries will declare or make a Restricted Payment, or make any deposit for any Restricted Payment, other than Restricted Payments made by the Borrower or Subsidiaries to Holdings, the Borrower or any Subsidiaries.

SECTION 8.7 Consolidation, Merger; Permitted Acquisitions, Etc. Except as contemplated by the Acquisition Agreement, none of Holdings or any of its Subsidiaries will liquidate or dissolve, consolidate with, or merge into or with, any other Person, or purchase or otherwise acquire all or substantially all of the assets of any Person (or any division thereof), except that, so long as no Event of Default has occurred and is continuing (or would occur), any Subsidiary may liquidate or dissolve voluntarily into, and may merge with and into, the Borrower or any Subsidiary.

SECTION 8.8 Permitted Dispositions. None of Holdings or any of its Subsidiaries will Dispose of any of its assets (including accounts receivable and Capital Securities of the Borrower or Subsidiaries) to any Person in one transaction or series of transactions, except:

(a) Dispositions of inventory or obsolete, damaged, worn out or surplus property in the ordinary course of its business;

(b) Dispositions permitted by Section 8.7;

(c) Dispositions of overdue accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof;

(d) Dispositions of equipment to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are promptly, and in any event within 60 days from the date of such Disposition, applied to the purchase price of such replacement property;

(e) Dispositions of property by Holdings or any of its Subsidiaries to Holdings or to a wholly-owned Subsidiary; and

(f) other Dispositions of assets with an aggregate fair market value not to exceed $1,000,000 over the term of this Agreement.

SECTION 8.9 Modification of Certain Agreements. None of Holdings or any of its Subsidiaries will consent to any amendment, supplement, waiver or other modification of, or enter into any forbearance from exercising any rights with respect to, the terms or provisions contained in (i) any Organic Documents of Holdings or any of its Subsidiaries, if the result would have an adverse effect on the rights or remedies of the Administrative Agent or any Lender or (ii) any agreement governing any Permitted Subordinated Indebtedness, if the result would shorten the maturity date thereof or advance the date on which any cash payment is required to be made thereon or would otherwise change any terms thereof in a manner adverse to the Administrative Agent or any Lender.

SECTION 8.10 Transactions with Affiliates. None of Holdings or any of its Subsidiaries will enter into or cause or permit to exist any arrangement, transaction or contract (including for the purchase, lease or exchange of property or the rendering of services) with any of its Affiliates, unless such arrangement, transaction or contract (i) is on fair and reasonable terms no less favorable to Holdings or such Subsidiary than it could obtain in an arm's-length transaction with a Person that is not one of its Affiliates and (ii) is of the kind which would be entered into by a reasonably prudent Person in its position with a Person that is not one of its Affiliates.

SECTION 8.11 Restrictive Agreements, Etc. None of Holdings or any of its Subsidiaries will enter into any agreement prohibiting (i) the creation or assumption of any Lien upon its properties, revenues or assets, whether now owned or hereafter acquired, (ii) the ability of Holdings or any of its Subsidiaries to amend or otherwise modify any Loan Document or (iii) the ability of the Borrower or any Subsidiary to make any payments, directly or indirectly, to the Borrower or Holdings, including by way of dividends, advances, repayments of loans, reimbursements of management and other intercompany charges, expenses and accruals or other returns on investments. The foregoing prohibitions shall not apply to restrictions contained (x) in any Loan Document or (y) in the case of clause (i), any agreement governing any Indebtedness permitted by clause (e) of Section 8.2 as to the assets financed with the proceeds of such Indebtedness.

SECTION 8.12 Sale and Leaseback. None of Holdings or any of its Subsidiaries will directly or indirectly enter into any agreement or arrangement providing for the sale or transfer by it of any property (now owned or hereafter acquired) to a Person and the subsequent lease or rental of such property or other similar property from such Person.

SECTION 8.13 Product Agreements. None of Holdings or any its Subsidiaries will enter into any amendment with respect to any existing Product Agreement or enter into any new Product Agreement that contains (a) any provision which restricts or penalizes a security interest in, or the assignment of, any Product Agreements, upon the sale, merger or other disposition of all or a material portion of a Product to which such Product Agreement relates or (b) any other provision that has or is likely to adversely effect, in any material respect, any Product to which such agreement relates or to the Administrative Agent or any Lender's rights hereunder.

SECTION 8.14 Change in Name, Location, Executive Office, or Executive Management; Change in Fiscal Year.

None of Holdings or any of its Subsidiaries will (i) change its legal name or any trade name used to identify it in the conduct of its business or ownership of its properties without providing the Administrative Agent with at least 30 days' prior written notice of such change, (ii) change its jurisdiction of organization or legal structure, (iii) relocate its chief executive office, principal place of business or any office in which it maintains books or records relating to its business, (iv) change its federal taxpayer identification number or organizational number (or equivalent) without 30 days' prior written notice to the Administrative Agent, (v) replace its chief executive officer or chief financial officer without written notification to the Administrative Agent within 30 days thereafter or (vi) change its Fiscal Year or any of its Fiscal Quarters. Notwithstanding anything in this Section 8.14 to the contrary, Holdings hereby advises the Administrative Agent that Holdings' certificate of incorporation will be amended, effective on or about the Restatement Date, to change Holdings' legal name to "Xtant Medical Holdings, Inc."

SECTION 8.15 Benefit Plans. None of Holdings, the Borrower or any Subsidiary will (i) become the sponsor of, incur any responsibility to contribute to or otherwise incur actual or potential liability with respect to, any Benefit Plan, (ii) allow any "employee benefit plan" as defined in section 3(3) of ERISA that provides retirement benefits and that is sponsored by Holdings, the Borrower, any Subsidiary or any of their ERISA Affiliates intended to be tax qualified under section 401 or 501 of the Code to cease to be tax qualified, (iii) allow the assets of any tax qualified retirement plan to become invested in Capital Securities of Holdings, the Borrower or any Subsidiary or (iv) allow any employee benefit plan, program or arrangement sponsored, maintained, contributed to or required to be contributed to by Holdings, the Borrower or any Subsidiary to fail to comply in all material respects with its terms and applicable law.

SECTION 8.16 Holdings. Holdings shall not (i) engage in any activities (other than activities customarily carried out or required of a publicly-owned passive holding company, including the entry into customary and ordinary course insurance programs and agreements concerning the Capital Securities of Holdings), (ii) have any operations, own any assets (other than Capital Securities of the Borrower and Subsidiaries) or incur any liabilities (other than the Obligations under (or expressly permitted by) the Loan Documents) or (iii) be party to any contract or agreement, in each case other than (a) the Convertible Notes Documents, (b) the Acquisition Agreement, (c) employment and employee benefit contracts, (d) customary contracts with accountants, lawyers and other advisors, (e) activities, operations, assets, liabilities, contracts and agreements that do not exceed, and would not reasonably be expected to result in liabilities to Holdings or any of its Subsidiaries that exceed, $500,000 individually or, with respect to any such activities, operations, assets, liabilities, contracts or agreements entered into or incurred after the Restatement Date, $1,000,000 in the aggregate or (f) any other agreement entered into in connection with the Acquisition Agreement or the Convertible Notes Documents or pursuant thereto and listed on Schedule 8.16.

ARTICLE IX
EVENTS OF DEFAULT

SECTION 9.1 Listing of Events of Default. Each of the following events or occurrences described in this Article IX shall constitute an "Event of Default".

SECTION 9.1.1 Non-Payment of Obligations. The Borrower shall default in the payment or prepayment when due of (i) any principal of any Loan or (ii) any interest on any Loan or any fee described in Article III or any other monetary Obligation, and in the case of clause (ii) such default shall continue unremedied for a period of two Business Days after such amount was due.

SECTION 9.1.2 Breach of Warranty. Any representation or warranty made or deemed to be made by Holdings, the Borrower or any of the Subsidiaries in any Loan Document (including any certificates delivered pursuant to Article V) is or shall be incorrect when made or deemed to have been made in any material respect.

SECTION 9.1.3 Non-Performance of Certain Covenants and Obligations. Holdings, the Borrower or any Subsidiary shall default in the due performance or observance of any of its obligations under Section 7.1, Section 7.7, Section 7.15 or Article VIII.

SECTION 9.1.4 Non-Performance of Other Covenants and Obligations. Holdings, the Borrower or any Subsidiary shall default in the due performance and observance of any other covenant, obligation or agreement contained in any Loan Document executed by it, and such default shall continue unremedied for a period of 30 days after the earlier to occur of (i) notice thereof given to the Borrower by the Administrative Agent or (ii) the date on which Holdings, the Borrower or any Subsidiary has knowledge of such default.

SECTION 9.1.5 Default on Other Indebtedness. A default shall occur in the payment of any amount when due (subject to any applicable grace period), whether by acceleration or otherwise, of any principal or stated amount of, or interest or fees on, any Indebtedness (other than the Obligations) of Holdings, the Borrower or any of the Subsidiaries having a principal or stated amount, individually or in the aggregate, in excess of $1,000,000, or a default shall occur in the performance or observance of any obligation or condition with respect to such Indebtedness if the effect of such default is to accelerate the maturity of any such Indebtedness or such default shall continue unremedied for any applicable period of time sufficient to permit the holder or holders of such Indebtedness, or any trustee or agent for such holders, to cause or declare such Indebtedness to become due and payable or to require such Indebtedness to be prepaid, redeemed, purchased or defeased, or require an offer to purchase or defease such Indebtedness to be made, prior to its expressed maturity.

SECTION 9.1.6 Judgments. Any judgment or order for the payment of money individually or in the aggregate in excess of $1,000,000 (exclusive of any amounts fully covered by insurance (less any applicable deductible) and as to which the insurer has acknowledged its responsibility to cover such judgment or order) shall be rendered against Holdings, the Borrower or any of the Subsidiaries and such judgment shall not have been vacated or discharged or stayed or bonded pending appeal within 45 days after the entry thereof or enforcement proceedings shall have been commenced by any creditor upon such judgment or order.

SECTION 9.1.7 Change in Control. Any Change in Control shall occur.

SECTION 9.1.8 Bankruptcy, Insolvency, Etc. Holdings, the Borrower, or any of the Subsidiaries shall:

(a) become insolvent or generally fail to pay, or admit in writing its inability or unwillingness generally to pay, debts as they become due;

(b) apply for, consent to, or acquiesce in the appointment of a trustee, receiver, sequestrator or other custodian for any substantial part of the property of any thereof, or make a general assignment for the benefit of creditors;

(c) in the absence of such application, consent or acquiescence in or permit or suffer to exist the appointment of a trustee, receiver, sequestrator or other custodian for a substantial part of the property of any thereof, and such trustee, receiver, sequestrator or other custodian shall not be discharged within 60 days; provided that, Holdings, the Borrower and each Subsidiary hereby expressly authorizes the Administrative Agent to appear in any court conducting any relevant proceeding during such 60-day period to preserve, protect and defend its rights under the Loan Documents;

(d) permit or suffer to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law or any dissolution, winding up or liquidation proceeding, in respect thereof, and, if any such case or proceeding is not commenced by Holdings, the Borrower or any Subsidiary, such case or proceeding shall be consented to or acquiesced in by Holdings, the Borrower or such Subsidiary, as the case may be, or shall result in the entry of an order for relief or shall remain for 60 days undismissed; provided that, Holdings, the Borrower and each Subsidiary hereby expressly authorizes the Administrative Agent to appear in any court conducting any such case or proceeding during such 60-day period to preserve, protect and defend its rights under the Loan Documents; or

(e) take any action authorizing, or in furtherance of, any of the foregoing.

SECTION 9.1.9 Impairment of Security, Etc. Any Loan Document or any Lien granted thereunder shall (except in accordance with its terms), in whole or in part, terminate, cease to be effective or cease to be the legally valid, binding and enforceable obligation of Holdings, the Borrower or any Subsidiary thereto; Holdings, the Borrower or any Subsidiary shall, directly or indirectly, contest in any manner such effectiveness, validity, binding nature or enforceability; or, except as permitted under any Loan Document, any Lien securing any Obligation shall, in whole or in part, cease to be a perfected first priority Lien other than due to the Administrative Agent's failure to file any financing statement or continuation statement required to perfect such Lien.

SECTION 9.1.10 Key Permit Events. Any Key Permit or any of Holdings', the Borrower's or any Subsidiary's material rights or interests thereunder is terminated or amended in any manner adverse to Holdings, the Borrower or any Subsidiary in any material respect.

SECTION 9.1.11 Material Adverse Change. Any circumstance occurs that could reasonably be expected to have a Material Adverse Effect.

SECTION 9.1.12 Key Person Event. If any of Daniel Goldberger, John P. Gandolfo, or David Kirschman, or any replacement individual for any of the aforementioned individuals or such person's subsequent replacement, ceases to be employed full time by Holdings and the Borrower and actively working, unless within 90 days after such individual ceases to be employed full time and actively working, Holdings or the Borrower hire a replacement for such individual approved by the Administrative Agent, such approval not to be unreasonably withheld, delayed or conditioned.

SECTION 9.1.13 Regulatory Matters. If any of the following occurs: (i) the FDA, the EMA or any other Governmental Authority (A) issues a letter or other communication asserting that any Product lacks a required Product Authorization (including an assertion that a 361 Product fails to meet the criteria of 21 C.F.R. 1271.10) or (B) initiates enforcement action against, or issues a warning letter with respect to, Holdings, the Borrower or any of the Subsidiaries, or any of their Products or the manufacturing facilities therefor, that causes Holdings, the Borrower or such Subsidiary to discontinue marketing or withdraw any of its material Products, or causes a delay in the manufacture of any of its material Products, which discontinuance, withdrawal or delay could reasonably be expected to last for more than three months; (ii) a recall which could reasonably be expected to result in liability to Holdings, the Borrower and the Subsidiaries in excess of $500,000; or (iii) Holdings, the Borrower or any of the Subsidiaries enters into a settlement agreement with the FDA, the EMA or any other Governmental Authority that results in aggregate liability as to any single or related series of transactions, incidents or conditions in excess of $500,000.

SECTION 9.2 Action if Bankruptcy. If any Event of Default described in clauses (a) through (d) of Section 9.1.8 with respect to the Borrower shall occur, the Commitments (if not theretofore terminated) shall automatically terminate and the outstanding principal amount of the Loans and all other Obligations shall automatically be and become immediately due and payable, without notice or demand to any Person.

SECTION 9.3 Action if Other Event of Default. If any Event of Default (other than any Event of Default described in clauses (a) through (d) of Section 9.1.8) shall occur for any reason, whether voluntary or involuntary, and be continuing, the Administrative Agent may, by notice to the Borrower declare all or any portion of the outstanding principal amount of the Loans and other Obligations to be due and payable and/or the Commitments (if not theretofore terminated) to be terminated, whereupon the full unpaid amount of the Loans and other Obligations which shall be so declared due and payable shall be and become immediately due and payable, without further notice, demand or presentment, and the Commitments shall terminate.

ARTICLE X
THE ADMINISTRATIVE AGENT

SECTION 10.1 Administrative Agent; Actions, Etc.

SECTION 10.1.1 Appointments. The parties hereto agree as follows:

(a) Each Lender hereby appoints ROS as the administrative agent (the "Administrative Agent") for the Lenders and for purposes of this Agreement and each other Loan Document, and the Borrower acknowledges and consents to such appointment. Each Lender authorizes the Administrative Agent to act on its behalf under this Agreement and each other Loan Document and to exercise such powers hereunder and thereunder as are specifically delegated to it or required of it by the terms hereof and thereof or as directed from time to time by the Lenders, together with such powers as may be incidental thereto (including the prosecution and defense of claims for and on behalf of the Lenders, the enforcement of rights and remedies, including foreclosure in respect of collateral, Liens and claims, the waiver of Defaults or obligations of the Borrower, the release of Liens on assets Disposed of in accordance with the terms of the Loan Documents and the delivery of notices, etc. to the Borrower); provided, however, that in no event may the Administrative Agent take any action on behalf of any Lender that, pursuant to Section 11.1, requires the express individual consent of such Lender, unless such Lender has so consented.

(b) For purposes of this Agreement and the other Loan Documents, the Administrative Agent may act as the "Collateral Agent", "Security Agent", "Documentation Agent" or in any similar capacity as the Lenders may determine to be necessary to protect the Lenders' interests under or pursuant to the Loan Documents or otherwise.

(c) Solely with respect to actions or omissions of the Administrative Agent acting in its capacity as the Administrative Agent, the Borrower hereby indemnifies (which indemnity shall survive any termination of this Agreement) and holds harmless the Administrative Agent from and against any and all obligations, losses, damages, claims, costs or expenses of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against the Administrative Agent under or pursuant to this Agreement or any other Loan Document by any Person (including attorneys' fees), except for any such obligation, losses, damages, claims or expenses resulting from the wilful misconduct or gross negligence of the Administrative Agent, as determined in a final non-appealable judgment by a court of competent jurisdiction.

(d) Solely with respect to actions or omissions of the Administrative Agent acting in its capacity as the Administrative Agent and solely to the extent that the Administrative Agent is not reimbursed by the Borrower pursuant to clause (b) above, each Lender (acting in its respective capacity as a Lender) hereby indemnifies (which indemnity shall survive any termination of this Agreement) and holds harmless the Administrative Agent, pro rata according to such Lender's Proportionate Share, from and against any and all obligations, losses, damages, claims, costs or expenses of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against the Administrative Agent under or pursuant to this Agreement or any other Loan Document by any Person (including attorneys' fees).

(e) The Administrative Agent shall not be required to take any action under any Loan Document, or to prosecute or defend any suit in respect of any Loan Document, unless it is indemnified hereunder to its satisfaction. If any indemnity in favor of the Administrative shall be or become, in the Administrative Agent's determination, inadequate, the Administrative Agent may call for additional indemnification from the Lenders and cease to do the acts indemnified against hereunder until such additional indemnity is given.

SECTION 10.1.2 Funding, Etc. In no event shall the Administrative Agent (acting in its capacity as the Administrative Agent) be liable or responsible for funding or advancing any obligation of any Lender or other Person owed or payable under or in connection with this Agreement, including in respect of any claims, damages, reimbursements, indemnities or otherwise.

SECTION 10.1.3 Exculpation. Neither ROS nor any of its directors, officers, employees, agents or Affiliates shall be liable to any Person for any action taken or omitted to be taken by it, whether in its capacity as (or in connection with its capacity as) the Administrative Agent under or in connection with any Loan Document, except for its own wilful misconduct or gross negligence, nor shall it be responsible for any recitals or warranties herein or therein, nor for the effectiveness, enforceability, validity or due execution of any Loan Document, nor for the creation, perfection or priority of any Liens purported to be created by any of the Loan Documents, or the validity, genuineness, enforceability, existence, value or sufficiency of any collateral security, nor to make any inquiry respecting the performance by any Guarantor of its Obligations. The Administrative Agent shall be entitled to rely upon advice of counsel concerning legal matters and upon any notice, consent, certificate, statement or writing which the Administrative Agent believes to be genuine and to have been presented by a proper Person.

SECTION 10.1.4 Successor. The Administrative Agent may resign as such at any time upon at least 30 days' prior notice to the Borrower and all the Lenders. If the Administrative Agent at any time shall resign, the Lenders may appoint another Lender as a successor Administrative Agent which shall thereupon become the Administrative Agent hereunder, provided that, so long as no Event of Default shall exist, the Borrower's consent to such successor shall be required (such consent not to be unreasonably withheld or delayed). If no successor Administrative Agent shall have been so appointed by the Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent's giving notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, which may be one of the Lenders (if such Lender consents to such appointment) 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, and having a combined capital and surplus of at least $250,000,000; provided that, if, such retiring Administrative Agent is unable to find a commercial banking institution which is willing to accept such appointment and which meets the qualifications set forth above, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Lenders appoint a successor as provided for above. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall be entitled to receive from the retiring Administrative Agent such documents of transfer and assignment as such successor Administrative Agent may reasonably request, and shall thereupon succeed to and become vested with all rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents. After any retiring Administrative Agent's resignation hereunder as the Administrative Agent, the provisions of this Article X shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent under the Loan Documents, and Section 11.3 and Section 11.4 shall continue to inure to its benefit.

SECTION 10.1.5 Loans, Etc. by ROS. ROS shall have the same rights and powers with respect to the Loans and other Obligations owing to it under or pursuant to the Loan Documents as any other Lender and may exercise all its rights and powers in respect thereof as if it were not the Administrative Agent. ROS and its Affiliates may generally engage in any kind of business with the Borrower or any Subsidiary or Affiliate of Holdings or any other Person (whether or not an Affiliate of Holdings or any other Person party hereto or to any other Loan Document) as if ROS was not the Administrative Agent hereunder. Without limiting the foregoing, no Person acting as the Administrative Agent hereunder shall have any fiduciary duty of any sort to the Borrower, any of its Subsidiaries or Affiliates, or to any other Person, merely as a result of its actions or involvement as the Administrative Agent. The Borrower, for itself and each of its Subsidiaries and Affiliates, hereby expressly waives to the fullest extent possible any claim (and any right to assert any claim) against the Administrative Agent (or Person acting as the Administrative Agent) or any of its Affiliates asserting that such acts or involvement of the Administrative Agent (or Person acting as the Administrative Agent) breaches any fiduciary or other duty or obligation owed to the Borrower or any of its Subsidiaries or Affiliates, or asserting that any such acts or involvement constitutes a conflict of interest by such Administrative Agent (or Person acting as the Administrative Agent) or any of its Affiliates with respect to the Borrower or any of its Subsidiaries or Affiliates.

SECTION 10.1.6 Credit Decisions. Each Lender acknowledges that it has, independently of the Administrative Agent and each other Lender, and based on such Lender's review of the financial information of the Borrower, the Loan Documents (the terms and provisions of which being satisfactory to such Lender) and such other documents, information and investigations as such Lender has deemed appropriate, made its own credit decision to extend its portion of the Loans. Each Lender also acknowledges that it will, independently of the Administrative Agent and each other Lender, and based on such other documents, information and investigations as it shall deem appropriate at any time, continue to make its own credit decisions as to exercising or not exercising from time to time any rights and privileges available to it under the Loan Documents.

SECTION 10.1.7 Copies, etc. The Administrative Agent shall give prompt notice to each Lender of each notice or request required or permitted to be given to the Administrative Agent by the Borrower pursuant to the terms of the Loan Documents (unless concurrently delivered to the Lenders by the Borrower). The Administrative Agent will distribute to each Lender each document or instrument received for its account and copies of all other communications received by the Administrative Agent from the Borrower for distribution to the Lenders by the Administrative Agent in accordance with the terms of the Loan Documents.

SECTION 10.1.8 Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely upon any certification, notice or other communication (including any thereof by telephone, telecopy, telegram or cable) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person, and upon advice and statements of legal counsel, independent accountants and other experts selected by the Administrative Agent. As to any matters not expressly provided for by the Loan Documents, the Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, thereunder in accordance with instructions given by the Lenders, and such instructions of such Lenders and any action taken or failure to act pursuant thereto shall be binding on all Lenders.

SECTION 10.1.9 Defaults. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of a Default unless the Administrative Agent has received a written notice from a Lender or the Borrower specifying such Default and stating that such notice is a "Notice of Default". In the event that the Administrative Agent receives such a notice of the occurrence of a Default, the Administrative Agent shall give prompt notice thereof to the Lenders. The Administrative Agent shall (subject to Section 11.1) take such action with respect to such Default as shall be directed by the Lenders; provided that, unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable in the best interest of the Lenders except to the extent that this Agreement expressly requires that such action be taken, or not be taken, only with the consent or upon the authorization of all the Lenders.

SECTION 10.2 Administrative Agent Appointed Attorney-in-Fact. Each Lender hereby irrevocably authorizes, constitutes and appoints the Administrative Agent as its true and lawful attorney-in-fact, with full power and authority, in the place and stead of such Lender and in the name of such Lender or otherwise, to take any action and to execute any instrument which the Administrative Agent may deem necessary or advisable in connection with any Loan Document (but subject to the terms of such Loan Document), including any Security Agreement or the security interests created and the collateral pledged thereunder, including without limitation:

(a) to execute and deliver for and on its behalf any Loan Documents or other agreements, instruments any notices related thereto or to the security interests created thereunder;

(b) to execute and deliver any other agreements or other instruments relating to any Loan Documents that are required to be delivered on the Restatement Date; and

(c) to take any and all other actions and measures on behalf of such Lender which the Administrative Agent deems necessary or appropriate in connection with this Agreement, the Security Agreement, the collateral pledged under such Security Agreement, and the other Loan Documents, in each case in order to consummate the transactions contemplated hereby and thereby in such manner as described therein.

Each Lender hereby acknowledges, consents and agrees that the power of attorney granted pursuant to this Section 10.2 is irrevocable and coupled with an interest.

SECTION 10.3 Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain a register for the recordation of the names and addresses of the Lenders and principal amounts (and stated interest) of the Loans owing to each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

ARTICLE XI
MISCELLANEOUS PROVISIONS

SECTION 11.1 Waivers, Amendments, Etc. The provisions of each Loan Document may from time to time be amended, modified or waived, if such amendment, modification or waiver is in writing and consented to by the Administrative Agent (acting on behalf of the Lenders) and the Borrower.

No failure or delay on the part of any Lender in exercising any power or right under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right. No notice to or demand on Holdings, the Borrower or any of the Subsidiaries in any case shall entitle it or any of them to any notice or demand in similar or other circumstances. No waiver or approval by any Lender under any Loan Document shall, except as may be otherwise stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval hereunder shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

SECTION 11.2 Notices; Time. All notices and other communications provided under any Loan Document shall be in writing or by facsimile and addressed, delivered or transmitted, if to the Borrower or a Lender, to the applicable Person at its address or facsimile number set forth on Schedule 11.2 hereto, or at such other address or facsimile number as may be designated by such party in a notice to the other parties. Any notice, if mailed and properly addressed with postage prepaid or if properly addressed and sent by pre-paid courier service, shall be deemed given when received; any notice, if transmitted by facsimile, shall be deemed given when the confirmation of transmission thereof is received by the transmitter. Unless otherwise indicated, all references to the time of a day in a Loan Document shall refer to New York City time.

SECTION 11.3 Payment of Costs and Expenses. The Borrower agrees to pay on demand all reasonable expenses of the Administrative Agent (including the reasonable fees and out-of-pocket expenses of Covington & Burling LLP, counsel to the Administrative Agent and each Lender, and of local counsel, if any, who may be retained by or on behalf of the Administrative Agent or any such Lender) in connection with:

(a) the negotiation, preparation, execution and delivery of each Loan Document, including schedules and exhibits, and any amendments, waivers, consents, supplements or other modifications to any Loan Document as may from time to time hereafter be required, whether or not the transactions contemplated hereby are consummated;

(b) the filing or recording of any Loan Document (including any financing statements) and all amendments, supplements, amendment and restatements and other modifications to any thereof, searches made following the Restatement Date in jurisdictions where financing statements (or other documents evidencing Liens in favor of the Administrative Agent or any Lender) have been recorded and any and all other documents or instruments of further assurance required to be filed or recorded by the terms of any Loan Document; and

(c) the preparation and review of the form of any document or instrument relevant to any Loan Document.

The Borrower further agrees to pay, and to hold the Administrative Agent and each Lender harmless from all liability for, any stamp or other taxes which may be payable in connection with the execution or delivery of each Loan Document, the Loans or the issuance of the Note. The Borrower also agrees to reimburse the Administrative Agent and each Lender upon demand for all reasonable out-of-pocket expenses (including reasonable attorneys' fees and legal expenses of counsel to the Administrative Agent and each Lender) incurred by the Administrative Agent and each Lender in connection with (x) the negotiation of any restructuring or "work-out" with the Borrower, whether or not consummated, of any Obligations and (y) the enforcement of any Obligations.

SECTION 11.4 Indemnification. In consideration of the execution and delivery of this Agreement by the Administrative Agent and each Lender, the Borrower hereby indemnifies, agrees to defend, exonerates and holds the Administrative Agent and each Lender and each of their respective officers, directors, employees and agents (collectively, the "Indemnified Parties") free and harmless from and against any and all actions, causes of action, suits, losses, costs, liabilities, obligations and damages, and expenses incurred in connection therewith (irrespective of whether any such Indemnified Party is a party to the action for which indemnification hereunder is sought), including reasonable attorneys' and professionals' fees and disbursements, whether incurred in connection with actions between the parties hereto or the parties hereto and third parties (collectively, the "Indemnified Liabilities"), including, without limitation, Indemnified Liabilities arising out of or relating to (i) the entering into and performance of its obligations under any Loan Document by any of the Indemnified Parties (including any action brought by or on behalf of the Borrower as the result of any determination by the Lenders pursuant to Article V not to fund any Loan), and (ii) any Environmental Liability. If and to the extent that the foregoing indemnification may be unenforceable for any reason, the Borrower agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. No Indemnified Party shall have a right to indemnification for Indemnified Liabilities resulting from its wilful misconduct or gross negligence, as determined in a final non-appealable judgment by a court of competent jurisdiction.

SECTION 11.5 Survival. The obligations of the Borrower under Section 4.1, Section 4.2, Section 4.3, Section 11.3 and Section 11.4, shall in each case survive any assignment by any Lender and the occurrence of the Termination Date. The representations and warranties made by the Borrower in each Loan Document shall survive the execution and delivery of such Loan Document.

SECTION 11.6 Severability. Any provision of any Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such provision and such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of such Loan Document or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 11.7 Headings. The various headings of each Loan Document are inserted for convenience only and shall not affect the meaning or interpretation of such Loan Document or any provisions thereof.

SECTION 11.8 Execution in Counterparts, Effectiveness, Etc. This Agreement may be executed by the parties hereto in several counterparts, each of which shall be an original and all of which shall constitute together but one and the same agreement. This Agreement shall become effective when counterparts hereof executed on behalf of the Borrower, the Administrative Agent and the Lenders, shall have been received by the Administrative Agent. Delivery of an executed counterpart of a signature page to this Agreement by email (e.g. “pdf” or “tiff”) or telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 11.9 Governing Law; Entire Agreement. EACH LOAN DOCUMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK). The Loan Documents constitute the entire understanding among the parties hereto with respect to the subject matter thereof and supersede any prior agreements, written or oral, with respect thereto.

SECTION 11.10 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided that, the Borrower may not assign or transfer its rights or obligations hereunder without the consent of the Administrative Agent; provided further that, unless an Event of Default has occurred and is continuing, no Lender may assign or otherwise transfer its rights or obligations hereunder (i) in an aggregate principal amount less than $1,000,000, other than to an Affiliate of a Lender, and (ii) to any industry competitor of Holdings or its Subsidiaries.

SECTION 11.11 Other Transactions. Nothing contained herein shall preclude any Lender, from engaging in any transaction, in addition to those contemplated by the Loan Documents, with the Borrower or any of its Affiliates in which the Borrower or such Affiliate is not restricted hereby from engaging with any other Person.

SECTION 11.12 Forum Selection and Consent to Jurisdiction. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, ANY LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE ADMINISTRATIVE AGENT, ANY LENDER OR THE BORROWER IN CONNECTION HEREWITH OR THEREWITH SHALL BE BROUGHT AND MAINTAINED IN THE COURTS OF THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK IN THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; PROVIDED THAT, ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT THE ADMINISTRATIVE AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. THE BORROWER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK AT THE ADDRESS FOR NOTICES SPECIFIED IN SECTION 11.2. THE BORROWER HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT THE BORROWER HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, THE BORROWER HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THE LOAN DOCUMENTS.

SECTION 11.13 Waiver of Jury Trial. THE ADMINISTRATIVE AGENT, THE LENDERS AND THE BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, EACH LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE ADMINISTRATIVE AGENT, THE LENDERS OR THE BORROWER IN CONNECTION THEREWITH. THE BORROWER ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER LOAN DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDERS ENTERING INTO THE LOAN DOCUMENTS.

SECTION 11.14 Confidentiality. Subject to the provisions of Section 11.15, the Receiving Party shall keep confidential and shall not publish or otherwise disclose any Confidential Information furnished to it by the Disclosing Party, except to those of the Receiving Party's employees, advisors or consultants who have a need to know such information to assist such Receiving Party in the performance of such Receiving Party's obligations or in the exercise of such Receiving Party's rights hereunder and who are subject to reasonable obligations of confidentiality (collectively, "Recipients"). Notwithstanding anything to the contrary set forth herein, ROS may disclose this Agreement and the terms and conditions hereof and any information related hereto to (i) its Affiliates, (ii) potential and actual permitted assignees of any of ROS' rights hereunder (including the right to receive any payments hereunder) and (iii) potential and actual investors in, or lenders to, ROS (including, in each of the foregoing cases, such Person's employees, advisors or consultants); provided that each such recipient shall be subject to reasonable obligations of confidentiality.

SECTION 11.15 Exceptions to Confidentiality. The Receiving Party's obligations set forth in this Agreement shall not extend to any Confidential Information of the Disclosing Party:

(a) that is or hereafter becomes part of the public domain (other than as a result of a disclosure by the Receiving Party or its Recipients in violation of this Agreement);

(b) that is received from a third party without restriction on disclosure and without, to the knowledge of the Receiving Party, breach of any agreement between such third party and the Disclosing Party;

(c) that the Receiving Party can demonstrate by competent evidence was already in its possession without any limitation on disclosure prior to its receipt from the Disclosing Party;

(d) that is generally made available to third parties by the Disclosing Party without restriction on disclosure;

(e) that the Receiving Party can demonstrate by competent evidence was independently developed by the Receiving Party without the use of Confidential Information; or

(f) that is, in the opinion of counsel to the Receiving Party, required to be disclosed pursuant to Law or Judgment binding upon the Receiving Party or pursuant to the requirement or request of any Governmental Authority; provided that, unless otherwise prohibited by Law, the Receiving Party shall notify the Disclosing Party of such disclosure prior thereto and the Receiving Party shall use its commercially reasonable best efforts (i) to limit the Confidential Information being disclosed to the extent possible and (ii) to require the Person receiving such Confidential Information to agree to be subject to confidentiality obligations that are substantially similar to the obligations set forth herein or, if not practicable, such other confidentiality obligations as may be reasonably practicable.

SECTION 11.16 Remedies. Each party hereto agrees that the unauthorized disclosure of any Confidential Information by the Receiving Party in violation of this Agreement will cause severe and irreparable damage to the Disclosing Party. In the event of any violation of Sections 11.14 or 11.15 hereof, the Receiving Party agrees that the Disclosing Party shall be authorized and entitled to obtain from any court of competent jurisdiction injunctive relief, whether preliminary or permanent, without the necessity of proving irreparable harm or monetary damages or posting any bond, as well as any other relief permitted by applicable Law.

[*Signature Page Follows*]

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

BACTERIN INTERNATIONAL, INC.,
as the Borrower

By: /s/ John P. Gandolfo
Name: John P. Gandolfo
Title: Chief Financial Officer

ROS ACQUISITION OFFSHORE LP,
as the Administrative Agent and as a Lender

By ROS Acquisition Offshore GP Ltd.,
its General Partner
By OrbiMed Advisors LLC,
its investment manager

By: /s/ Samuel D. Isaly
Name: Samuel D. Isaly
Title: Managing Member

ORBIMED ROYALTY OPPORTUNITIES II, LP,
as a Lender

By OrbiMed ROF II LLC,
its General Partner

By OrbiMed Advisors LLC,
its Managing Member

By: /s/ Samuel D. Isaly
Name: Samuel D. Isaly
Title: Managing Member

Exhibit 10.3

TERMINATION OF ROYALTY AGREEMENT

This TERMINATION OF ROYALTY AGREEMENT, dated as of July 27, 2015 (this "Termination"), is made by and between ROS Acquisition Offshore LP, a Cayman Islands Exempted Limited Partnership ("ROS"), and Bacterin International, Inc., a Nevada corporation ("Bacterin"). Unless otherwise defined herein or the context otherwise requires, terms used in this Termination have the meanings provided in the Royalty Agreement (as defined below).

WHEREAS, Bacterin and ROS are party to that certain Royalty Agreement, dated as of August 24, 2012, as amended as of August 12, 2013 (and as further amended, supplemented or otherwise modified from time to time, the "Royalty Agreement") pursuant to which Bacterin is obligated to make certain Royalty Payments to ROS;

WHEREAS, Bacterin, ROS and the other parties thereto are party to that certain Amended And Restated Credit Agreement, dated as of the date hereof (as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement") to provide financing for the benefit of Bacterin; and

WHEREAS, Bacterin and ROS desire to terminate the Royalty Agreement on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, the parties hereto hereby agree as follows:

Section 1. Termination. Effective as of the Restatement Date (as defined in the Credit Agreement), the Royalty Agreement and all obligations, liabilities and responsibilities of either party thereunder shall be terminated and deemed discharged (except for any obligations that survive such termination in accordance with the terms of the Royalty Agreement). Notwithstanding anything to the contrary in the preceding sentence, if the Restatement Date does not occur on or before July 31, 2015, this Termination shall be deemed null and void and the Royalty Agreement and all obligations, liabilities and responsibilities thereunder shall remain in full force and effect.

Section 2. Governing Law. THIS TERMINATION AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS TERMINATION SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK).

Section 3. Forum Selection and Consent to Jurisdiction. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS TERMINATION, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ROS OR ANY GUARANTOR IN CONNECTION HEREWITH, SHALL BE BROUGHT AND MAINTAINED IN THE COURTS OF THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK IN THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; PROVIDED THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT THE OPTION OF ROS, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. BACTERIN IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK AT THE ADDRESS FOR NOTICES SPECIFIED IN SECTION 11.2 OF THE CREDIT AGREEMENT. BACTERIN HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT BACTERIN HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, BACTERIN HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS TERMINATION.

Section 4. Counterparts. This Termination may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original and all of which shall together constitute but one and the same agreement. Delivery of an executed counterpart of a signature page to this Termination by email (e.g. “pdf” or “tiff”) or telecopy shall be effective as delivery of a manually executed counterpart of this Termination.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, each of the parties hereto has caused this Termination of Royalty Agreement to be duly executed and delivered by its Authorized Officer as of the date first above written.

BACTERIN INTERNATIONAL, INC.

By: /s/ John P. Gandolfo
Name: John P. Gandolfo
Title: Chief Financial Officer

ROS ACQUISITION OFFSHORE LP,
as the Administrative Agent

By ROS Acquisition Offshore GP Ltd.,
its General Partner
By OrbiMed Advisors LLC,
its investment manager

By: /s/ Samuel D. Isaly
Name: Samuel D. Isaly
Title: Managing Member

Exhibit 10.4

SECURITIES PURCHASE AGREEMENT

Bacterin International Holdings, Inc.
600 Cruiser Lane
Belgrade, Montana 59714

Ladies and Gentlemen:

Each of the undersigned (each, an "**Investor**") hereby confirms its agreement with you as follows:

1. This Securities Purchase Agreement (the "**Agreement**") is made as of the Effective Date between Bacterin International Holdings, Inc., a Delaware corporation (the "**Company**"), and the Investor listed on the signature pages hereto. The Company proposes to enter into similar securities purchase agreements with certain other investors (the "**Other Investors**") each of which is a private investment fund for which OrbiMed Advisors LLC acts as investment adviser, and expects to complete sales of the Securities (as defined below) to them. The Investor and the Other Investors are hereinafter sometimes collectively referred to as the "**Investors**," and this Agreement and the securities purchase agreements executed by the Other Investors are hereinafter sometimes collectively referred to as the "**Agreements.**"

2. The Company is proposing to issue and sell to Leerink Partners LLC, as initial purchaser (the "**Initial Purchaser**"), for resale by the Initial Purchaser to certain investors (the "**Offering**") up to $65,000,000 aggregate principal amount of its Convertible Senior Notes due 2021 (the "**Securities"**), which are convertible into shares of the Company's common stock, par value $0.000001 per share (the "**Common Stock**"), which will be issued pursuant to an indenture, to be dated as of July 31, 2015 (the "**Indenture**"), between the Company and Wilmington Trust, National Association, as trustee (the "**Trustee**"). **The Securities will be entitled to the benefits of a Registration Rights Agreement (the "Registration Rights Agreement"), to be entered into among the Company, the Initial Purchaser and the Investor, pursuant to which the Company will agree, among other thing, to file and cause to become effective under the Securities Act of 1933, as amended (the "Securities Act"), a registration statement covering the resale of the Securities and the Common Stock issuable upon conversion of the Securities.** The Securities are being offered by the Initial Purchaser to qualified institutional buyers ("**QIBs"**) within the meaning of Rule 144A under the Securities Act and certain Securities are being offered directly by the Company pursuant hereto to investors that are either QIBs or institutional accredited investors as defined in Rule 501 of the Securities Act.

3. The Securities shall have the terms described in the preliminary offering memorandum dated July 13, 2015 relating to the offering of the Securities (as supplemented by the final pricing term sheet (the "**Final Term Sheet**") dated July 27, 2015 (the "**Effective Date**") sent to the Investor prior to the effectiveness of this Agreement, the "**Offering Memorandum**").

4. The Company and the Investor agree that, upon the terms and subject to the conditions set forth herein, the Investor will purchase from the Company and the Company will issue and sell to the Investor the aggregate principal amount of Securities set forth below on the Investor's signature page for the aggregate purchase price set forth below on such Investor's signature page. The Securities shall be purchased pursuant to the Terms and Conditions for Purchase of Securities attached hereto as Annex A and incorporated herein by reference as if fully set forth herein. The Securities purchased by the Investor will be delivered by electronic book-entry through the facilities of the Depository Trust Company ("DTC") pursuant to the Investor's instructions and will be released by the Trustee, at the written request of the Company, to such Investor at the Closing.

Aggregate Principal Amount of Securities the Investor Agrees to Purchase:

$33,190,000

Aggregate Purchase Price of such Securities: $33,190,000

Please confirm that the foregoing correctly sets forth the agreement between us by signing in the space provided below for that purpose.

AGREED AND ACCEPTED BY:

Bacterin International Holdings, Inc.,a Delaware Corporation	Name of Investor: ROS Acquisition Offshore LP
By: _____	By: /s/ Samuel D Isaly
Name:	Print Name: Samuel D. Isaly
Title:	Title: Managing Member
	Address: 601 Lexington Avenue, 5th Floor
	New York, NY 10022
	Tax ID No.:
	Settlement Contact Name: J. Christopher LiPuma
	Telephone:
	Email Address:

If you are a registered investment company, please provide information relating to your Custodial Agent.

Name of Custodial Agent: Merrill Lynch

Address: 600 California St., Floor 8
San Francisco, CA 94108

Tax ID No.:

Settlement Contact Name: Peter Miller

Telephone:

Email Address:

Name in which electronic book-entry should be made (if different)

DTC Account:

DTC Internal Account:

Aggregate Principal Amount of Securities the Investor Agrees to Purchase:

$18,810,000

Aggregate Purchase Price of such Securities : $18,810,000

Please confirm that the foregoing correctly sets forth the agreement between us by signing in the space provided below for that purpose.

AGREED AND ACCEPTED BY:

Bacterin International Holdings, Inc.,a Delaware Corporation	Name of Investor: OrbiMed Royal Opportunities II, LP
By: _____	By: /s/ Samuel D Isaly
Name:	Print Name: Samuel D. Isaly
Title:	Title: Managing Member
	Address: 601 Lexington Avenue, 5th Floor
	New York, NY 10022
	Tax ID No.:
	Settlement Contact Name: J. Christopher LiPuma
	Telephone:
	Email Address:

If you are a registered investment company, please provide information relating to your Custodial Agent.

Name of Custodial Agent:	Merrill Lynch
Address:	600 California St., Floor 8 San Francisco, CA 94108
Tax ID No.:	
Settlement Contact Name:	Peter Miller
Telephone:	
Email Address:	

Name in which electronic book-entry should be made (if different)

DTC Account:	
DTC Internal Account:	

ANNEX A TO THE SECURITIES PURCHASE AGREEMENT
TERMS AND CONDITIONS FOR PURCHASE OF SECURITIES

1. *Authorization and Sale of Securities.* The Company is proposing to sell up to $65,000,000 aggregate principal amount of the Securities, including the Securities sold directly to the Investors.

2. Agreement to Sell and Purchase the Securities.

2.1 Upon the terms and subject to the conditions hereinafter set forth, at the Closing (as defined in Section 3), the Company will sell to the Investor, and the Investor will purchase from the Company, the aggregate principal amount of Securities set forth on such Investor's signature page hereto at the purchase price set forth on such signature page.

2.2 The Company has entered into a purchase agreement with the Initial Purchaser, dated the date hereof (the "**Initial Purchaser Purchase Agreement**") pursuant to which it will sell to the Initial Purchaser Securities for resale by the Initial Purchaser to certain investors that are QIBs and the Company also intends to enter into agreements similar to this Agreement with certain other investors (the "**Other Investors**"), each of which is a private investment fund for which OrbiMed Advisors LLC acts as investment adviser, and the Company expects to complete sales of Securities to them. (The Investor and the Other Investors are hereinafter sometimes collectively referred to as the "**Investors,"** and this Agreement and the securities purchase agreements executed by the Other Investors are hereinafter sometimes collectively referred to as the "**Agreements.**") Capitalized terms used but not defined herein have the meanings given to them in the Initial Purchaser Purchase Agreement.

2.3 The Investor acknowledges that the Company intends to pay the Initial Purchaser a fee in respect of the resale by the Initial Purchaser of the Securities sold to it by the Company to QIBs, all pursuant to the terms of the Initial Purchaser Purchase Agreement.

3. Closings and Delivery of Securities and Funds.

3.1 The completion of the purchase and sale of the Securities (the "**Closing")** shall occur on or around July 31, 2015 (the "**Closing Date"**), at the offices of the Company's counsel, which shall be the Closing Date for the sales pursuant to the Initial Purchaser Purchase Agreement. At the Closing, (i) the Company shall cause the Trustee to deliver to the Investor the Accepted Securities (as defined below) to the DTC account specified by the Investor and agreed by the Company, and (ii) the aggregate purchase price for the Accepted Securities (as defined below) shall be delivered by or on behalf of the Investor to the Company.

3.2 The Company's obligation to issue and sell Accepted Securities to any Investor shall be subject to the following conditions, any one or more of which may be waived by the Company: (a) completion of the purchases and sales of $65,000,000 aggregate principal amount of Securities under the Initial Purchaser Purchase Agreement and the Agreements, (b) the accuracy of the representations and warranties made by the Investors, (c) the fulfillment of those undertakings of the Investors to be fulfilled prior to the Closing, and (d) completion of the proposed acquisition described in the Offering Memorandum.

3.3 The Investor's obligation to accept delivery of the Securities and to pay for the Securities shall be subject to the following conditions: (a) completion of the sale of the Securities under the Initial Purchaser Purchase Agreement; (b) each of the representations and warranties of the Company made in Section 2 of the Initial Purchaser Purchase Agreement shall be accurate in all material respects as of the Closing Date; (c) delivery of an officer's certificate dated as of the Closing Date regarding the accuracy in material respects of the Company's representations and warranties and addressing such other matters as are customarily addressed in closing certificates; (d) delivery to the Investor a copy of the Indenture duly executed by the Company and the Trustee; (e) delivery to the Investor of customary legal opinions in form and substance reasonably satisfactory to counsel to the Investor; (f) delivery to the Investor of a customary secretary's certificate in form reasonably acceptable to the Investor; (g) the offering of the Notes shall have been completed, or shall be completed concurrently with the consummation of the issuance and sale of the Securities pursuant hereto, pursuant to the terms of the Initial Purchaser Purchase Agreement; (h) the Acquisition Agreement shall have been executed and delivered in the form last provided to the Investor prior to the execution of this Agreement, with no amendments thereto or modifications or waivers thereof not theretofore consented to in writing by the Investor; (i) the Company's credit facility with ROS Acquisition Offshore LP shall have been amended and restated in the form last provided to the Investor prior to the execution of this Agreement, with no material amendments thereto or modifications or waivers thereof not theretofore consented to in writing by the Investor; (j) there shall have been no amendments or modifications or waivers to the Initial Purchaser Purchase Agreement not consented to in writing by the Investor; (k) the fulfillment in all material respects of those undertakings of the Company specified in Section 7 of the Initial Purchaser Purchase Agreement to be fulfilled prior to Closing; (l) the Company and the Initial Purchaser shall have executed and delivered the Registration Rights Agreement, and the Investor shall have received an original copy thereof, duly executed by the Company and the Initial Purchaser and (m) the Company shall have furnished to the Investor such further certificates and documents as the Investor may reasonably request.

3.4 At the Closing, the Investor shall remit by wire transfer the amount of funds equal to the aggregate purchase price for the Accepted Securities being purchased by such Investor to the following account designated by the Company:

Bank Name:	[ ]
ABA No.:	[ ]
G LA	[ ]
For Credit to Account No.:	[ ]
A/C Name:	[ ]

4. Representations, Warranties and Covenants of the Company.

The Company hereby represents and warrants to, and covenants with, the Investor that:

4.1 The Company has full right, power, authority and capacity to enter into this Agreement and the Registration Rights Agreement and to consummate the transactions contemplated hereby and thereby, and has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the Registration Rights Agreement.

4.2 The Company has all requisite corporate power and authority to issue and sell the Securities and the Common Stock issuable upon conversion of the Securities. The Securities have been duly authorized by the Company, and when duly executed, authenticated, issued and delivered as provided in the indenture related to the Securities (assuming due authentication of the Securities by the Trustee) and paid for as provided in this Agreement will constitute valid and binding obligations of the Company, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity; and the Securities and the Common Stock issuable upon conversion of the Securities will conform to the descriptions thereof in the Offering Memorandum. The Common Stock issuable upon conversion of the Securities, when issued upon conversion of the Securities, in accordance with the terms of the Indenture, will be validly issued, fully paid and non-assessable, and the issuance of the Common Stock issuable upon conversion of the Securities will not be subject to any preemptive or similar rights.

4.3 The Company hereby makes to the Investor the representations and warranties made by the Company to the Initial Purchaser pursuant to Section 2 of the Initial Purchaser Purchase Agreement as if, for purposes of such representations and warranties, the Investor were a third party beneficiary thereof. The Company has furnished to the Investor a true and correct copy of the Initial Purchaser Purchase Agreement. The Company shall promptly notify the Investor of any proposed amendment or modification to Section 2 of the Initial Purchaser Purchase Agreement.

4.4 The Company hereby agrees, for the benefit of the Investor, to comply with Sections 5(h), (i), (j), (k), (l), (m), (n), (o), (q), (r) and (t) of the Initial Purchaser Purchase Agreement.

5. Representations, Warranties and Covenants of the Investor.

The Investor hereby represents and warrants to, and covenants with, the Company that:

5.1 (1) The Investor is (a) either a QIB as defined in Rule 144A under the Securities Act, or an institutional accredited investor as defined in Rule 501(a)(1), (a)(2), (a)(3), or (a)(7) under the Securities Act, as presently in effect, (b) aware that the sale to it is being made in reliance on a private placement exemption from registration under the Securities Act, and (c) acquiring the Securities for its own account or for the account of a QIB or an institutional accredited investor.

(2) The Investor understands and agrees on behalf of itself and on behalf of any investor account for which it is purchasing the Securities and Common Stock issuable upon conversion of the Securities, that the Securities and Common Stock issuable upon conversion of the Securities are being offered in a transaction not involving any public offering within the meaning of the Securities Act, that the Securities and Common Stock issuable upon conversion of the Securities have not been, and will not be, registered under the Securities Act and that (a) if it decides to offer, resell, pledge or otherwise transfer any of the Securities or Common Stock issued upon conversion of the Securities, such Securities and Common Stock may be offered, resold, pledged or otherwise transferred only (i) to a person whom the seller reasonably believes is a QIB in a transaction meeting the requirements of Rule 144A, (ii) pursuant to any other exemption from the registration requirements of the Securities Act, including Rule 144 under the Securities Act (if available), (iii) pursuant to an effective registration statement under the Securities Act, or (iv) to the Company, or one of its subsidiaries, in each of cases (i) through (iv) in accordance with any applicable securities laws of any state of the United States.

(3) The Investor understands that the Securities and Common Stock issued upon conversion of the Securities will, unless sold pursuant to a registration statement that has been declared effective under the Securities Act or in compliance with Rule 144, and will bear a legend that reflects the restricted nature of the securities.

(4) The Investor:

(a) is able to fend for itself in the transactions contemplated by the Offering Memorandum;

(b) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its prospective investment in the Securities; and

(c) has the ability to bear the economic risks of its prospective investment and can afford the complete loss of such investment.

(5) The Investor has received the Offering Memorandum and acknowledges that (a) it has conducted its own investigation of the Company and the terms of the Securities and, in conducting its examination, it has not relied on the Initial Purchaser or on any statements or other information provided by the Initial Purchaser concerning the Company or the terms of this offering, (b) it has had access to, and has had an adequate opportunity to review, (i) all information the Company has filed with and furnished to the Securities and Exchange Commission (the "**Commission**"), (ii) all information set forth in such filings, (iii) the information requested by the Investor regarding the Company's proposed acquisition of all of the capital stock of X-spine Systems, Inc. and the business and financial results of X-spine Systems, Inc., and (iv) such financial and other information as it deems necessary to make its decision to purchase the Securities, and (c) it has been offered the opportunity to ask questions of the Company, and received such answers thereto, as it deemed necessary in connection with the decision to purchase the Securities.

(6) The Investor understands that the Company, and others will rely upon the truth and accuracy of the foregoing representations, acknowledgements and agreements and agrees that if any of the representations and acknowledgements deemed to have been made by it by its purchase of the Securities are no longer accurate, the Investor shall promptly notify the Company. If the Investor is acquiring the Securities as a fiduciary or agent for one or more investor accounts, it represents that it has sole investment discretion with respect to each such account and it has full power to make the foregoing representations, acknowledgements and agreements on behalf of such account.

5.2 The Investor acknowledges that no action has been or will be taken in any jurisdiction outside the United States by the Company that would permit an offering of the Securities, or possession or distribution of offering materials in connection with the issue of the Securities (including any filing of a registration statement), in any jurisdiction outside the United States where action for that purpose is required. Each Investor outside the United States will comply with all applicable laws and regulations in each foreign jurisdiction in which it purchases, offers, sells or delivers Securities or has in its possession or distributes any offering material, in all cases at its own expense.

5.3 The Investor has full right, power, authority and capacity to enter into this Agreement and to consummate the transactions contemplated hereby and has taken all necessary action to authorize the execution, delivery and performance of this Agreement, and this Agreement constitutes a valid, binding and enforceable obligation of the Investor, except as the enforceability of the Agreement may be subject to or limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally.

5.4 The entry into and performance of this Agreement by the Investor and the consummation by the Investor of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of Investor, (ii) conflict with, or constitute a default under, or give to others any rights of termination, amendment, acceleration or cancellation of any agreement, indenture or instrument to which the Investor is party, or (iii) result in the violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to the Investor, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Investor to perform its obligations hereunder.

5.5 The Investor understands that nothing in the Offering Memorandum, this Agreement, information the Company has filed with and furnished to the Commission or any other materials presented to the Investor in connection with the purchase and sale of the Securities constitutes legal, tax or investment advice. The Investor has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Securities and has made its own assessment and has satisfied itself concerning the relevant tax and other economic considerations relevant to its investment in the Securities.

6. *Survival of Representations, Warranties and Agreements.* Notwithstanding any investigation made by any party to this Agreement, all covenants, agreements, representations and warranties made by the Company and the Investor herein shall survive the execution of this Agreement, the delivery to the Investor of the Securities being purchased and the payment therefor.

7. *Notices.* All notices, requests, consents and other communications hereunder shall be in writing, shall be delivered (A) if within the domestic United States, by first-class registered or certified mail, or nationally recognized overnight express courier, postage prepaid, or by facsimile, or (B) otherwise by International Federal Express or facsimile, and shall be deemed given (i) if delivered by first-class registered or certified mail, three business days after so mailed, (ii) if delivered by a nationally recognized overnight carrier, one business day after so mailed, (iii) if delivered by International Federal Express, two business days after so mailed and (iv) if delivered by facsimile, upon electronic confirmation of receipt and shall be delivered as addressed as follows:

(a) if to the Company, to:

Bacterin International Holdings, Inc.
600 Cruiser Lane
Belgrade, Montana 59714
Attention: General Counsel

(b) if to the Investor, at its address on the signature page hereto, or at such other address or addresses as may have been furnished to the Company in writing.

8. *Independent Nature of Investor's Obligations and Rights.* The obligations of the Investor under this Agreement are several and not joint with the obligations of any Other Investor, and no Investor shall be responsible in any way for the performance of the obligations of any Other Investor under the Agreements. The decision of each Investor to purchase the Securities pursuant to the Agreements has been made by such Investor independently of any Other Investor. Nothing contained in the Agreements, and no action taken by any Investor pursuant thereto, shall be deemed to constitute the Investors as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Investors are in any way acting in concert or as a group with respect to such obligations or with respect to the acquisition, disposition or voting of the Securities or the transactions contemplated by the Agreements. Each Investor acknowledges that no Other Investor has acted as agent for such Investor in connection with making its investment hereunder and that no Investor will be acting as agent of such Investor in connection with monitoring its investment in the Securities or enforcing its rights under this Agreement. Each Investor shall be entitled to independently protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any Other Investor to be joined as an additional party in any proceeding for such purpose. No consideration shall be offered or paid to any person to amend or consent to a waiver or modification of any provision of the Agreements unless the same consideration is also offered to all of the parties to the Agreements.

9. *Changes.* Except as contemplated herein, this Agreement may not be modified or amended except pursuant to an instrument in writing signed by the Company.

10. *Headings.* The headings of the various sections of this Agreement have been inserted for convenience or reference only and shall not be deemed to be part of this Agreement.

11. *Severability.* In case any provision contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

12. *Applicable Law; Venue.* This Agreement will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York. Each of the Company and the Investor agrees that any suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted only in any State or U.S. federal court in The City of New York and County of New York and waives any objection that such party may now or hereafter have to the laying of venue of any such suit, action or proceeding, and irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

13. *Waiver of Jury Trial*. Each of the Company and the Investor hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

14. *Counterparts.* This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

Exhibit 10.5

EXECUTION VERSION

$13,000,000

6.00% Convertible Senior Notes due 2021

BACTERIN INTERNATIONAL HOLDINGS, INC.

PURCHASE AGREEMENT

July 27, 2015

Leerink Partners LLC
One Federal Street, 37th Floor
Boston, Massachusetts 02110

Ladies and Gentlemen:

Bacterin International Holdings, Inc., a Delaware corporation (the "***Company***"), confirms its agreement with you, as the initial purchaser (the "***Initial Purchaser***"), with respect to (a) the sale to the Initial Purchaser, by the Company, of $13,000,000 in aggregate principal amount of the Company's 6.00% Convertible Senior Notes due 2021 (the "***Firm Notes***"), and (b) the grant, by the Company to the Initial Purchaser, of the right, exercisable by the Initial Purchaser pursuant to Section 3(b), to purchase, from the Company, up to an additional $9,750,000 of the Company's 6.00% Convertible Senior Notes due 2021 (the "***Additional Notes***" and, together with the Firm Notes, the "***Notes***"). The Notes will be issued pursuant to an Indenture (the "***Indenture***") to be entered into between the Company and Wilmington Trust, National Association, as trustee (the "***Trustee***"). The Notes and the OrbiMed Notes (as defined below) will be convertible into shares of the Company's common stock, $0.000001 par value per share (the "***Common Stock***"), as described in the Pricing Disclosure Package and the Offering Memorandum (as defined below) (the "***Underlying Common Stock***"), and will be entitled to the benefits of a Registration Rights Agreement (the "***Registration Rights Agreement***"), to be entered into among the Company, the Initial Purchaser and the OrbiMed Purchasers (as defined below), pursuant to which the Company will agree, among other thing, to file and cause to become effective under the Securities Act of 1933, as amended (the "***Securities Act***"), a registration statement covering the resale of the Notes, the OrbiMed Notes and the Underlying Common Stock.

Concurrently with the offer and sale of the Notes, the Company will sell $52,000,000 aggregate principal amount of its 6.00% Convertible Senior Notes due 2021 (the "***OrbiMed Notes***") to certain funds managed by OrbiMed Advisors LLC (the "***OrbiMed Purchasers***") in a transaction or series of transactions that is exempt from the registration requirements of the Securities Act in reliance upon Section 4(a)(2) under the Securities Act, as described in the Pricing Disclosure Package and the Offering Memorandum (the "***Concurrent Offering***"). The OrbiMed Notes will constitute the same series of securities as the Notes, and the issuance and sale of the OrbiMed Notes to the OrbiMed Purchasers will be consummated on the Closing Date (as defined below).

The Company intends to use a portion of the net proceeds from the offer and sale of the Notes and the OrbiMed Notes to acquire (the "***Proposed Acquisition***") all of the outstanding shares of capital stock of X-spine Systems Inc., an Ohio corporation (the "***Target***") in the manner described in the Pricing Disclosure Package and the Offering Memorandum, pursuant to that certain stock purchase agreement, dated the date hereof, by and among the Company as purchaser, Target and the sellers named herein (the "***Acquisition Agreement***"). Unless otherwise noted, references in Section 2 of this Agreement to the subsidiaries of the Company will be deemed to include the Target and its subsidiaries, provided that any representations made with respect to the Target and its subsidiaries on the date of this Agreement (but not on the Closing Date or any Option Closing Date pursuant to Section 7(o)(i)) will be deemed made to the Company's knowledge. In connection with the Proposed Acquisition, the Company's subsidiary, Bacterin International, Inc., will enter into the Amended and Restated Credit Agreement, dated as of the date hereof, among Bacterin International, Inc., as borrower, ROS Acquisition Offshore LP, as administrative agent, and the Lenders named therein (the "***New Credit Facility Agreement***").

1. *Purchase and Resale of the Notes*. The Notes will be offered and sold to the Initial Purchaser without registration under the Securities Act in reliance on an exemption pursuant to Section 4(a)(2) under the Securities Act. The Company has prepared a preliminary offering memorandum, dated July 13, 2015 (the "***Preliminary Offering Memorandum***"), a pricing term sheet substantially in the form attached hereto as Schedule I (the "***Pricing Term Sheet***") setting forth the terms of the Notes omitted from the Preliminary Offering Memorandum and certain other information and an offering memorandum, dated July 27, 2015 (the "***Offering Memorandum***"), setting forth information regarding the Company and the Notes. The Preliminary Offering Memorandum, as supplemented and amended as of the Applicable Time (as defined below), together with the Pricing Term Sheet and any of the documents listed on Schedule II(A) are collectively referred to as the "***Pricing Disclosure Package***." The Company hereby confirms that it has authorized the use of the Pricing Disclosure Package and the Offering Memorandum in connection with the offering and resale of the Notes by the Initial Purchaser. "***Applicable Time***" means 8:00 a.m., New York City time, on the business day immediately following the date of this Agreement.

Any reference to the Preliminary Offering Memorandum, the Pricing Disclosure Package or the Offering Memorandum will be deemed to refer to and include the Company's most recent Annual Report on Form 10-K and all other documents (or portions thereof, if applicable) filed, after the end of the fiscal period covered by such Annual Report, with the United States Securities and Exchange Commission (the "***Commission***") pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), on or prior to the date of the Preliminary Offering Memorandum, the Pricing Disclosure Package or the Offering Memorandum, as the case may be, and incorporated by reference therein. Any reference to the Preliminary Offering Memorandum, Pricing Disclosure Package or the Offering Memorandum, as the case may be, as amended or supplemented, as of any specified date, shall be deemed to include any documents (or portions thereof, as applicable) filed with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of the Preliminary Offering Memorandum, Pricing Disclosure Package or the Offering Memorandum, as the case may be, and prior to such specified date and incorporated by reference therein. All documents filed under the Exchange Act and so deemed to be included in the Preliminary Offering Memorandum, Pricing Disclosure Package or the Offering Memorandum, as the case may be, or any amendment or supplement thereto are hereinafter called the "***Exchange Act Reports***." Any reference herein to an "amendment" or "supplement" to the Preliminary Offering Memorandum, the Pricing Disclosure Package or the Offering Memorandum, or any similar reference, will be deemed to include the filing of any Exchange Act Report that is incorporated by reference therein.

You have advised the Company that you will offer and resell (the "***Exempt Resales***") the Notes purchased by you hereunder on the terms set forth in each of the Pricing Disclosure Package and the Offering Memorandum, as amended or supplemented, solely to persons whom you reasonably believe to be "qualified institutional buyers" as defined in Rule 144A under the Securities Act ("***QIBs***"), which persons are referred to herein as "***Eligible Purchasers***."

2. *Representations, Warranties and Agreements of the Company*. The Company represents, warrants and agrees as follows:

(a) When the Notes are issued and delivered pursuant to this Agreement, and when the OrbiMed Notes are issued pursuant to the Concurrent Offering, such Notes and OrbiMed Notes will not be of the same class (within the meaning of Rule 144A under the Securities Act) as securities of the Company that are listed on a national securities exchange registered under Section 6 of the Exchange Act or that are quoted in a U.S. automated inter-dealer quotation system.

(b) Assuming the accuracy of your representations and warranties in Section 3(c), the purchase and resale of the Notes pursuant hereto (including pursuant to the Exempt Resales) are exempt from the registration requirements of the Securities Act. The Concurrent Offering is exempt from the registration requirements of the Securities Act.

(c) No form of general solicitation or general advertising within the meaning of Regulation D under the Securities Act (including, but not limited to, advertisements, articles, notices or other communications published in any newspaper, magazine or similar medium or broadcast over television or radio, or any seminar or meeting whose attendees have been invited by any general solicitation or general advertising) (each, a "***General Solicitation***") was used by the Company, any of its affiliates or any of its representatives (other than you, as to whom the Company makes no representation) in connection with the offer and sale of the Notes or with the Concurrent Offering, other than any General Solicitation with the prior consent of the Initial Purchaser; any such General Solicitation the use of which has been previously consented to by the Initial Purchaser is listed on Schedule III.

(d) Each of the Preliminary Offering Memorandum, the Pricing Disclosure Package and the Offering Memorandum, each as of its respective date, contains all the information specified in, and meeting the requirements of, Rule 144A(d)(4) under the Securities Act.

(e) None of the Company or any other person acting on its behalf has sold or issued any securities that would be integrated with the offering of the Notes contemplated by this Agreement, or with the Concurrent Offering, pursuant to the Securities Act, the rules and regulations thereunder or the interpretations thereof by the Commission in a manner that would require the registration, under the Securities Act, of the offer and sale of the Notes contemplated by this Agreement (including, without limitation, the Exempt Resales) or the Concurrent Offering.

(f) The Preliminary Offering Memorandum, the Pricing Disclosure Package and the Offering Memorandum have been prepared by the Company for use by the Initial Purchaser in connection with the Exempt Resales. No order or decree preventing the use of the Preliminary Offering Memorandum, the Pricing Disclosure Package or the Offering Memorandum, or any order asserting that the transactions contemplated by this Agreement are subject to the registration requirements of the Securities Act has been issued, and no proceeding for that purpose has commenced or is pending or, to the knowledge of the Company, is contemplated.

(g) The Offering Memorandum will not, as of its date or as of the Closing Date (as defined below), contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided*, *however*, that no representation or warranty is made as to information contained in or omitted from the Offering Memorandum in reliance upon and in conformity with written information furnished to the Company through the Initial Purchaser by or on behalf of the Initial Purchaser specifically for inclusion therein, which information is specified in Section 8(e).

(h) The Pricing Disclosure Package did not, as of the Applicable Time, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided*, *however*, that no representation or warranty is made as to information contained in or omitted from the Pricing Disclosure Package in reliance upon and in conformity with written information furnished to the Company through the Initial Purchaser by or on behalf of the Initial Purchaser specifically for inclusion therein, which information is specified in Section 8(e).

(i) The Company has not made any offer to sell or solicitation of an offer to buy the Notes or the OrbiMed Notes that would constitute a "free writing prospectus" (if the offering of the Notes and the OrbiMed Notes was made pursuant to a offering registered under the Securities Act), as defined in Rule 405 under the Securities Act (a "***Free Writing Offering Document***") without the prior consent of the Initial Purchaser; the Free Writing Offering Documents the use of which has been previously consented to by the Initial Purchaser consist of the Pricing Term Sheet and the other documents, if any, listed on Schedule II.

(j) Each Free Writing Offering Document listed in Schedule II(B) hereto, when taken together with the Pricing Disclosure Package, did not, as of the Applicable Time, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided*, *however*, that no representation or warranty is made as to information contained in or omitted from such Free Writing Offering Document listed in Schedule II(B) hereto in reliance upon and in conformity with written information furnished to the Company through the Initial Purchaser by or on behalf of the Initial Purchaser specifically for inclusion therein, which information is specified in Section 8(e).

(k) The Exchange Act Reports, when they were or are filed with the Commission, conformed or will conform in all material respects to the applicable requirements of the Exchange Act and the applicable rules and regulations of the Commission thereunder. The Exchange Act Reports did not and will not, when filed with the Commission, contain an untrue statement of material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(l) Each of the Company and its subsidiaries has been duly organized, is validly existing and in good standing as a corporation, partnership or limited liability company, as applicable, under the laws of its jurisdiction of organization and is duly qualified to do business and in good standing as a foreign corporation or other business entity in each jurisdiction in which its ownership or lease of property or the conduct of its businesses requires such qualification, except where the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to (i) have a material adverse effect on the condition (financial or otherwise), results of operations, stockholders' equity, properties, business or prospects of the Company and its subsidiaries taken as a whole or (ii) materially interfere with the consummation of the transactions contemplated hereby, the Concurrent Offering or the Proposed Acquisition (collectively, a "***Material Adverse Effect***"). Each of the Company and its subsidiaries has all power and authority necessary to own or hold its properties and to conduct the businesses in which it is engaged. As of the date of this Agreement, the Company has no subsidiaries (excluding, for this purpose, the Target and its subsidiaries) other than Bacterin International, Inc. and no "significant subsidiaries" (as defined in Rule 405 under the Securities Act) (excluding, for this purpose, the Target and its subsidiaries) other than Bacterin International, Inc. As of the Closing Date and each Option Closing Date, if any, the Company will have no subsidiaries other than Bacterin International, Inc., the Target, X-spine Sales Corporation and Xtant Medical, Inc. and no "significant subsidiaries" (as defined in Rule 405 under the Securities Act) other than Bacterin International, Inc. and the Target.

(m) The Company has an authorized capitalization as set forth in each of the Pricing Disclosure Package and the Offering Memorandum, and all of the issued shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable. All of the issued shares of capital stock or other ownership interest of each subsidiary of the Company have been duly authorized and validly issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims, except for such liens, encumbrances, equities or claims as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(n) The Company has all requisite corporate power and authority to execute, deliver and perform its obligations under the Indenture. The Indenture has been duly and validly authorized by the Company, and upon its execution and delivery and, assuming due authorization, execution and delivery by the Trustee, will constitute the valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium, and other laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law). No qualification of the Indenture under the Trust Indenture Act of 1939 (the "***Trust Indenture Act***") is required in connection with the offer and sale of the Notes contemplated hereby or in connection with the Exempt Resales or the Concurrent Offering. The Indenture will conform to the description thereof in each of the Pricing Disclosure Package and the Offering Memorandum.

(o) The Company has all requisite corporate power and authority to execute, issue, sell and perform its obligations under the Notes and the OrbiMed Notes. The Notes and the OrbiMed Notes have been duly authorized by the Company and, when duly executed by the Company in accordance with the terms of the Indenture, assuming due authentication of the Notes and the OrbiMed Notes by the Trustee, upon delivery to the Initial Purchaser or the OrbiMed Purchasers, as applicable, against payment therefor in accordance with the terms hereof or with the terms of the Concurrent Offering, as applicable, will be validly issued and delivered and will constitute valid and binding obligations of the Company entitled to the benefits of the Indenture and the Registration Rights Agreement, enforceable against the Company in accordance with their terms, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium, and other laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law). The Notes and the OrbiMed Notes will conform in all material respects to the description thereof in each of the Pricing Disclosure Package and the Offering Memorandum.

(p) The Company has all requisite corporate power and authority to execute, deliver and perform its obligations under the Registration Rights Agreement. The Registration Rights Agreement has been duly and validly authorized by the Company, and upon its execution and delivery and, assuming due authorization, execution and delivery by the other parties thereto, will constitute the valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium, and other laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(q) The Company has all the requisite corporate power and authority to issue the Underlying Common Stock issuable upon conversion of the Notes and the OrbiMed Notes. The Underlying Common Stock has been duly and validly authorized by the Company and, and when issued upon conversion of the Notes or OrbiMed Notes, as applicable, in accordance with the terms of the Indenture, will be validly issued, fully paid and non-assessable, and the issuance of the Underlying Common Stock will not be subject to any preemptive or similar rights. The Underlying Common Stock will conform in all material respects to the description thereof in each of the Pricing Disclosure Package and the Offering Memorandum.

(r) The Company has all requisite corporate power to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly and validly authorized, executed and delivered by the Company.

(s) The issue and sale of the Notes and the OrbiMed Notes, the issuance of the Underlying Common Stock upon conversion of the Notes and the OrbiMed Notes, the execution, delivery and performance by the Company of the Notes and the OrbiMed Notes, the Indenture, the Registration Rights Agreement and this Agreement, the application of the proceeds from the sale of the Notes and the OrbiMed Notes as described under "Use of Proceeds" in each of the Pricing Disclosure Package and the Offering Memorandum, the consummation of the transactions contemplated hereby and thereby, and the Concurrent Offering and the Proposed Acquisition, will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, impose any lien, charge or encumbrance upon any property or assets of the Company or its subsidiaries, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, license, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which any of them is bound or to which any of their respective properties or assets is subject (including, without limitation, the Acquisition Agreement), (ii) result in any violation of the provisions of the charter or by-laws (or similar organizational documents) of the Company or any of its subsidiaries, or (iii) result in any violation of any statute or any judgment, order, decree, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their respective properties or assets, except, with respect to clauses (i) and (iii), conflicts or violations that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(t) No consent, approval, authorization or order of, or filing, registration or qualification with any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their respective properties or assets is required for the issue and sale of the Notes and the OrbiMed Notes, the issuance of the Underlying Common Stock upon conversion of the Notes and the OrbiMed Notes, the execution, delivery and performance by the Company of the Notes and the OrbiMed Notes, the Indenture, the Registration Rights Agreement and this Agreement, the application of the proceeds from the sale of the Notes and the OrbiMed Notes as described under "Use of Proceeds" in each of the Pricing Disclosure Package and the Offering Memorandum, the consummation of the transactions contemplated hereby and thereby, and the Concurrent Offering and the Proposed Acquisition, except for such consents, approvals, authorizations, orders, filings, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Notes by the Initial Purchaser, each of which has been obtained and is in full force and effect, and, in the case of the Proposed Acquisition, except as described in the Pricing Disclosure Package and the Offering Memorandum.

(u) The historical consolidated financial statements (including the related notes and supporting schedules) included or incorporated by reference in the Pricing Disclosure Package and the Offering Memorandum (including, without limitation, the historical financial statements of the Target) present fairly in all material respects the financial condition, results of operations and cash flows of the entities purported to be shown thereby, at the dates and for the periods indicated, and have been prepared in conformity with accounting principles generally accepted in the United States applied on a consistent basis throughout the periods involved. The interactive data in eXtensible Business Reporting Language, if any, included or incorporated by reference in the Pricing Disclosure Package and the Offering Memorandum fairly present the information called for in all material respects and have been prepared in accordance with the Commission's rules and guidelines applicable thereto.

(v) All pro forma financial statements or data included or incorporated by reference in the Pricing Disclosure Package or the Offering Memorandum comply with the requirements of Regulation S-X of the Securities Act, including, without limitation, Article 11 thereof, and the assumptions used in the preparation of such pro forma financial statements and data are reasonable, the pro forma adjustments used therein are appropriate to give effect to the transactions or circumstances described therein and the pro forma adjustments have been properly applied to the historical amounts in the compilation of those statements and data; the other financial and statistical data set forth or incorporated by reference in the Pricing Disclosure Package or the Offering Memorandum are accurately and fairly presented and prepared on a basis consistent with the financial statements and books and records of the Company.

(w) EKS&H LLLP, who have certified certain financial statements of the Company, whose report is included or incorporated by reference in the Pricing Disclosure Package and the Offering Memorandum, are independent registered public accountants with respect to the Company and its subsidiaries within the meaning of the Securities Act and the applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board.

(x) McGladrey LLP, who have certified certain financial statements of the Target, whose report is included or incorporated by reference in the Pricing Disclosure Package and the Offering Memorandum, are independent registered public accountants with respect to the Target and its subsidiaries within the meaning of the Securities Act and the applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board.

(y) Battelle Rippe Kingston LLP, who have certified certain financial statements of the Target, whose report is included or incorporated by reference in the Pricing Disclosure Package and the Offering Memorandum, are independent registered public accountants with respect to the Target and its subsidiaries within the meaning of the Securities Act and the applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board.

(z) The Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) of the Exchange Act) that complies with the requirements of the Exchange Act and that has been designed by, or under the supervision of, the Company's principal executive and principal financial officers, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States. The Company maintains internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of the Company's financial statements in conformity with accounting principles generally accepted in the United States and to maintain accountability for its assets, (iii) access to the Company's assets is permitted only in accordance with management's general or specific authorization, (iv) the recorded accountability for the Company's assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences and (v) the interactive data in eXtensible Business Reporting Language, if any, included or incorporated by reference in the Pricing Disclosure Package and the Offering Memorandum fairly present the information called for in all material respects and are prepared in accordance with the Commission's rules and guidelines applicable thereto. As of the date of the most recent balance sheet of the Company and its consolidated subsidiaries reviewed or audited by EKS&H LLLP and the audit committee of the board of directors of the Company, there were no material weaknesses in the Company's internal controls.

(aa) (i) The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act), (ii) such disclosure controls and procedures are designed to ensure that the information required to be disclosed by the Company and its subsidiaries in the reports they file or submit under the Exchange Act is accumulated and communicated to management of the Company and its subsidiaries, including their respective principal executive officers and principal financial officers, as appropriate, to allow timely decisions regarding required disclosure to be made; and (iii) such disclosure controls and procedures are effective in all material respects to perform the functions for which they were established.

(bb) Since the date of the most recent balance sheet of the Company and its consolidated subsidiaries reviewed or audited by EKS&H LLLP and the audit committee of the board of directors of the Company, (i) the Company has not been advised of or become aware of (A) any significant deficiencies in the design or operation of internal controls, that could adversely affect the ability of the Company or any of its subsidiaries to record, process, summarize and report financial data, or any material weaknesses in internal controls, and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of the Company and each of its subsidiaries; and (ii) there have been no significant changes in internal controls or in other factors that could significantly affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses.

(cc) There is and has been no failure on the part of the Company and any of its directors or officers, in their capacities as such, to comply with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith.

(dd) Since the date of the latest audited financial statements included or incorporated by reference in the Pricing Disclosure Package and the Offering Memorandum, neither the Company nor any of its subsidiaries has (i) sustained any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or court or governmental action, order or decree, (ii) issued or granted any securities (other than pursuant to (x) employee benefit plans, qualified stock option plans, other employee compensation plans or non-employee director compensation programs (collectively, "***Compensation Plans***") in existence on the date hereof and described in the Pricing Disclosure Package and the Offering Memorandum, (y) options, warrants or rights outstanding on the date hereof, or (z) in connection with the Proposed Acquisition in the manner described in the Pricing Disclosure Package and the Offering Memorandum), (iii) incurred any liability or obligation, direct or contingent, other than liabilities and obligations that were incurred in the ordinary course of business, (iv) entered into any transaction not in the ordinary course of business (other than as described in the Pricing Disclosure Package (without giving effect to any supplements or amendments thereto after the execution and delivery of this Agreement) and the Offering Memorandum), or (v) declared or paid any dividend on its capital stock, and, since such date, there has not been any change in the capital stock, partnership or limited liability company interests, as applicable, or long-term debt of the Company or any of its subsidiaries (other than as described in the Pricing Disclosure Package (without giving effect to any supplements or amendments thereto after the execution and delivery of this Agreement) and the Offering Memorandum) or any adverse change, or any development involving a prospective adverse change, in or affecting the condition (financial or otherwise), results of operations, stockholders' equity, properties, management, business or prospects of the Company and its subsidiaries, taken as a whole, in each case except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ee) The Company and each of its subsidiaries has good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them, in each case free and clear of all liens, encumbrances and defects, except such liens, encumbrances and defects as are described in the Pricing Disclosure Package and the Offering Memorandum and such as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company or any of its subsidiaries. All assets held under lease by the Company or any of its subsidiaries are held by them under valid, subsisting and enforceable leases, with such exceptions as do not materially interfere with the use made and proposed to be made of such assets by the Company or any of its subsidiaries.

(ff) The Company and each of its subsidiaries have, and have operated in compliance with, such permits, licenses, patents, franchises, certificates of need, exemptions, clearances and other approvals or authorizations of governmental or regulatory authorities ("***Permits***") as are necessary under applicable law to own their properties and conduct their businesses in the manner described in the Pricing Disclosure Package and the Offering Memorandum, except for any of the foregoing that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company and each of its subsidiaries have fulfilled and performed all of its obligations with respect to the Permits, and no event has occurred that allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other impairment of the rights of the holder or any such Permits, except for any of the foregoing that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company, nor any of its subsidiaries has received written notice of any revocation, termination or modification of any such Permits or otherwise has any reason to believe that any such Permits will be revoked, terminated or modified or not be renewed in the ordinary course.

(gg) The Company and its subsidiaries own, or have obtained valid and enforceable licenses for, or other rights to use, the inventions, patent applications, patents, trademarks (both registered and unregistered), tradenames, service names, copyrights, trade secrets and other proprietary information described in the Preliminary Memorandum and the Final Memorandum as being owned or licensed by them or which are necessary for the conduct of their respective businesses as currently conducted or as proposed to be conducted (including the commercialization of products or services described in the Pricing Disclosure Package or the Offering Memorandum as under development), except where the failure to own, license or have such rights could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (collectively, "***Intellectual Property***"); except as disclosed in Pricing Disclosure Package and the Offering Memorandum, and except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) there are no third parties who have or, to the Company's knowledge, will be able to establish rights to any Intellectual Property, except for, and to the extent of, the ownership rights of the owners of the Intellectual Property which the Pricing Disclosure Package and the Offering Memorandum disclose is licensed to the Company or any of its subsidiaries; (ii) to the Company's knowledge, there is no infringement by third parties of any Intellectual Property; (iii) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the Company's or its subsidiaries' rights in or to any Intellectual Property, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (iv) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the validity, enforceability or scope of any Intellectual Property, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (v) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others that the Company or any of its subsidiaries infringes or otherwise violates (or would, upon the commercialization of any product or service described in the Preliminary Memorandum and the Final Memorandum as under development, infringe or violate) any patent, trademark, tradename, service name, copyright, trade secret or other proprietary rights of others, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (vi) the Company and its subsidiaries have complied with the terms of each agreement pursuant to which Intellectual Property has been licensed to the Company or any of its subsidiaries, and all such agreements are in full force and effect; (vii) to the Company's knowledge, there is no patent or patent application that contains claims that interfere with the issued or pending claims of any of the Intellectual Property or that challenges the validity, enforceability or scope of any of the Intellectual Property; and (viii) to the Company's knowledge, there is no prior art that may render any patent application within the Intellectual Property unpatentable that has not been disclosed to the U.S. Patent and Trademark Office.

(hh) There are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or of which any property or assets of the Company or any of its subsidiaries is the subject that could, individually or in the aggregate, reasonably be expected to (i) have a Material Adverse Effect, except as described in the Pricing Disclosure Package, or (ii) have a material adverse effect on the performance by the Company of this Agreement, the Indenture, the Notes, the OrbiMed Notes or the Registration Rights Agreement or on the consummation of any of the transactions contemplated hereby thereby, or the Concurrent Offering or the Proposed Acquisition. To the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or others.

(ii) Neither the Company nor any of its subsidiaries (i) is in violation of its charter or by-laws (or similar organizational documents), (ii) is in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant, condition or other obligation contained in any indenture, mortgage, deed of trust, loan agreement, license or other agreement or instrument to which it is a party or by which it is bound or to which any of its properties or assets is subject, or (iii) is in violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over it or its property or assets or has failed to obtain any license, permit, certificate, franchise or other governmental authorization or permit necessary to the ownership of its property or to the conduct of its business, except in the case of clauses (ii) and (iii), to the extent any such default, violation or failure could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(jj) The Company and its subsidiaries and their respective properties, assets and operations are in compliance with, and the Company and each of its subsidiaries hold all permits, authorizations and approvals required under, Environmental Laws (as defined below), except to the extent that failure to so comply or to hold such permits, authorizations or approvals could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the Company' knowledge, there are no past, present or reasonably anticipated future events, conditions, circumstances, activities, practices, actions, omissions or plans that, individually or in the aggregate, could reasonably be expected to give rise to any material costs or liabilities to the Company or any of its subsidiaries under, or to interfere with or prevent compliance by the Company or any of its subsidiaries with, Environmental Laws; Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, neither the Company nor any of its subsidiaries (i) is the subject of any investigation, (ii) has received any notice or claim, (iii) is a party to or affected by any pending or, to the Company's knowledge, threatened action, suit or proceeding, (iv) is bound by any judgment, decree or order or (v) has entered into any agreement, in each case relating to any alleged violation of any Environmental Law or any actual or alleged release or threatened release or cleanup at any location of any Hazardous Materials (as defined below) (as used herein, "***Environmental Law***" means any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, decree, judgment, injunction, permit, license, authorization or other binding requirement, or common law, relating to health, safety or the protection, cleanup or restoration of the environment or natural resources, including those relating to the distribution, processing, generation, treatment, storage, disposal, transportation, other handling or release or threatened release of Hazardous Materials, and "***Hazardous Materials***" means any material (including, without limitation, pollutants, contaminants, hazardous or toxic substances or wastes) that is regulated by or may give rise to liability under any Environmental Law).

(kk) The Company and each of its subsidiaries have filed all federal, state, local and foreign tax returns required to be filed through the date hereof, subject to permitted extensions, and have paid all taxes due, and no tax deficiency has been determined adversely to the Company or any of its subsidiaries, nor does the Company have any knowledge of any tax deficiencies that have been, or could reasonably be expected to be asserted against the Company and each of its subsidiaries, that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ll) Neither the Company nor any of its subsidiaries is, and, after giving effect to the offer and sale of the Notes and the OrbiMed Notes and the application of the proceeds therefrom as described under "Use of Proceeds" in each of the Pricing Disclosure Package and the Offering Memorandum, none of them will be, an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder.

(mm) The Company and its affiliates have not taken, directly or indirectly, any action designed to or that has constituted or that could reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company in connection with the offering of the Notes or the OrbiMed Notes.

(nn) Neither the Company nor any of its subsidiaries, nor, to the knowledge of the Company, after due inquiry, any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its subsidiaries, has in the course of its actions for, or on behalf of, the Company or any of its subsidiaries: (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official, "foreign office" (as defined in the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (collectively, the "***FCPA***")) or employee from corporate funds; (iii) violated or is in violation of any provision of the FCPA, the Bribery Act 2010 of the United Kingdom, as amended, or any other applicable anti-corruption or anti-bribery laws or statutes; or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any domestic government official, foreign official or employee; and the Company and its subsidiaries and, to the knowledge of the Company, the Company's affiliates have conducted their respective businesses in compliance with the FCPA, the Bribery Act 2010 of the United Kingdom, as amended, and any other applicable anti-corruption or anti-bribery laws or statutes, and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(oo) The operations of the Company and its subsidiaries are and have been conducted at all times in compliance in all material respects with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "***Money Laundering Laws***") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(pp) Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, after due inquiry, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries (i) is currently subject to or the target of any sanctions administered or enforced by the Office of Foreign Assets Control of the U.S. Treasury Department, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "***Sanctions***"); or (ii) located, organized or resident in a country that is the subject of Sanctions (including, without limitation, Cuba, Iran, North Korea, Sudan, and Syria); and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person, or in any country or territory, that currently is the subject or target of Sanctions or in any other manner that will result in a violation by any person (including any person participating in the transaction whether as an underwriter, advisor, investor or otherwise) of Sanctions. The Company and its subsidiaries have not knowingly engaged in for the past five years, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any individual or entity, or in any country or territory, that at the time of the dealing or transaction is or was the subject or target of Sanctions.

(qq) There are no contracts or other documents that would be required to be described in a registration statement filed under the Securities Act or filed as exhibits to a registration statement of the Company pursuant to Item 601(b)(10) of Regulation S-K that have not been described in the Pricing Disclosure Package and the Offering Memorandum. The statements made in the Pricing Disclosure Package and the Offering Memorandum, insofar as they purport to constitute summaries of the terms of the contracts and other documents that are so described, constitute accurate summaries of the terms of such contracts and documents in all material respects.

(rr) No relationship, direct or indirect, that would be required to be described in a registration statement of the Company pursuant to Item 404 of Regulation S-K, exists between or among the Company and its subsidiaries, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company and its subsidiaries, on the other hand, that has not been described in the Pricing Disclosure Package and the Offering Memorandum.

(ss) No labor disturbance by or dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(tt) None of the transactions contemplated by this Agreement (including, without limitation, the use of the proceeds from the sale of the Notes and the OrbiMed Notes), will violate or result in a violation of Section 7 of the Exchange Act, or any regulation promulgated thereunder, including, without limitation, Regulations T, U and X of the Board of Governors of the Federal Reserve System.

(uu) The Company and each of its subsidiaries carry, or are covered by, insurance from insurers of recognized financial responsibility in such amounts and covering such risks as is adequate for the conduct of their respective businesses and the value of their respective properties and as is customary for companies engaged in similar businesses in similar industries. All policies of insurance of the Company and its subsidiaries are in full force and effect; the Company and each of its subsidiaries are in compliance with the terms of such policies in all material respects; and neither the Company nor any of its subsidiaries has received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance. Except as disclosed in the Pricing Disclosure Package and the Offering Memorandum, and except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, there are no claims by the Company or any of its subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; and neither the Company nor any such subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(vv) (i) Each "employee benefit plan" (within the meaning of Section 3(3) of the Employee Retirement Security Act of 1974, as amended ("***ERISA***")) for which the Company or any member of its "Controlled Group" (defined as any organization which is a member of a controlled group of corporations within the meaning of Section 414 of the Internal Revenue Code of 1986, as amended (the "***Code***")) would have any liability (each a "***Plan***") has been maintained in compliance with its terms and with the requirements of all applicable statutes, rules and regulations including ERISA and the Code; (ii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any Plan excluding transactions effected pursuant to a statutory or administrative exemption; (iii) with respect to each Plan subject to Title IV of ERISA (A) no "reportable event" (within the meaning of Section 4043(c) of ERISA) has occurred or is reasonably expected to occur, (B) no Plan is or is reasonably expected to be "at risk" status (within the meaning of Section 430 of the Code or Section 303 of ERISA) (C) there has been no filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan or the receipt by the Company or any of its ERISA Affiliates from the PBGC or the plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, (D) no conditions contained in Section 303(k)(1)(A) of ERISA for imposition of a lien shall have been met with respect to any Plan and (E) neither the Company or any member of its Controlled Group has incurred, or reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the Pension Benefit Guaranty Corporation in the ordinary course and without default) in respect of a Plan (including a "multiemployer plan", within the meaning of Section 4001(c)(3) of ERISA) ("***Multiemployer Plan***"); (iv) no Multiemployer Plan is, or is expected to be, "insolvent" (within the meaning of Section 4245 of ERISA), in "reorganization" (within the meaning of Section 4241 of ERISA), or in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 304 of ERISA); and (v) each Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

(ww) No subsidiary of the Company is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock or other ownership interests, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's property or assets to the Company or any other subsidiary of the Company, except as described in the Pricing Disclosure Package and the Offering Memorandum.

(xx) Immediately after the consummation of the issuance of the Notes and the OrbiMed Notes, the Company will be Solvent. As used in this paragraph, the term "***Solvent***" means, with respect to a particular date, that on such date (i) the present fair market value (or present fair saleable value) of the assets of the Company are not less than the total amount required to pay the probable liabilities of the Company on its total existing debts and liabilities (including contingent liabilities) as they become absolute and matured, (ii) the Company is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and commitments as they mature and become due in the normal course of business, (iii) assuming the sale of the Notes and the OrbiMed Notes as contemplated by the Pricing Disclosure Package and the Offering Memorandum, the Company is not incurring debts or liabilities beyond its ability to pay as such debts and liabilities mature, (iv) the Company is not engaged in any business or transaction, and is not about to engage in any business or transaction, for which its property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which the Company is engaged, and (v) the Company is not a defendant in any civil action that would result in a judgment that the Company is or would become unable to satisfy. In computing the amount of such contingent liabilities at any time, it is intended that such liabilities will be computed at the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

(yy) Neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that could give rise to a valid claim against any of them or the Initial Purchaser for a brokerage commission, finder's fee or like payment in connection with the offering and sale of the Notes or the OrbiMed Notes.

(zz) Neither the Company nor any of its subsidiaries is in violation of or has received notice of any violation with respect to any federal or state law relating to discrimination in the hiring, promotion or pay of employees, nor any applicable federal or state wage and hour laws, nor any state law precluding the denial of credit due to the neighborhood in which a property is situated, the violation of any of which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(aaa) The statements set forth in each of the Pricing Disclosure Package and the Offering Memorandum under the caption "Description of Notes," insofar as they purport to constitute a summary of the terms of the Indenture, the Notes, the OrbiMed Notes and the Registration Rights Agreement, and under the captions "Certain U.S. Federal Income Tax Considerations" and "Plan of Distribution," insofar as they purport to summarize the provisions of the laws and documents referred to therein, are accurate summaries in all material respects.

(bbb) Except as described in the Pricing Disclosure Package and the Offering Memorandum, and except, in each case, where such event could not, individually or in the aggregate, reasonably be expect to have a Material Adverse Effect, the Company and each of its subsidiaries: (i) has not received any unresolved U.S. Food and Drug Administration ("***FDA***") or similar governmental agency or body ("***Governmental Authority***") written notice of inspectional observations, Form 483, written notice of adverse filing, warning letter, untitled letter or other similar correspondence or notice from the FDA, or any other court or arbitrator or federal, state, local or foreign governmental or regulatory authority, alleging or asserting material noncompliance with the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), or received any written requests or requirements to make material changes to the Company products by the FDA or any other Governmental Authority, (ii) is and has been in compliance with applicable health care laws, including, the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), 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 Law (42 U.S.C. § 1320a-7b(a)), the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h), 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 the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) ("***HIPAA***"), the exclusion laws (42 U.S.C. § 1320a-7), Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, and the regulations promulgated pursuant to such laws, and comparable state laws, and all other foreign, federal, state and local laws relating to the regulation of the Company and its subsidiaries (collectively, ***"Health Care Laws"***), (iii) has not engaged in activities which are, as applicable, cause for false claims liability, civil penalties, or mandatory or permissive exclusion from Medicare, Medicaid, or any other state health care program or federal health care program, (iv) possesses all Permits and supplements or amendments thereto required by any such Health Care Laws and/or to carry on its businesses as currently conducted as described in the Pricing Disclosure Package and the Offering Memorandum ("***Authorizations***"), and such Authorizations are valid and in full force and effect and neither the Company nor any of its subsidiaries is in violation of any term of any such Authorizations, (v) has not received written notice of any ongoing claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any Governmental Authority alleging that any product, operation or activity is in material violation of any Health Care Laws or Authorizations and has no knowledge that any such Governmental Authority has threatened any such claim, litigation, arbitration, action, suit, investigation or proceeding, (vi) has not received written notice that any Governmental Authority has taken, is taking or intends to take action to limit, suspend, modify or revoke any Authorizations and has no knowledge that any such Governmental Authority has threatened such action, (vii) has filed, obtained, maintained or submitted all reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments thereto as required by any Health Care Laws or Authorizations and all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete, correct and not misleading on the date filed (or were corrected or supplemented by a subsequent submission), (viii) has not, either voluntarily or involuntarily, initiated, conducted, or issued or caused to be initiated, conducted or issued, any recall, market withdrawal or replacement, safety alert, post sale warning, "dear doctor" letter, or other notice or action relating to the alleged lack of safety, efficacy or regulatory compliance of any product or any alleged product defect or violation and, to the Company's knowledge, there are no facts which are reasonably likely to cause, and the Company has not received any written notice from the FDA or any other Governmental Authority regarding, a material recall, market withdrawal or replacement of any Company product sold or intended to be sold by the Company, a material change in the marketing classification or a material adverse change in the labeling of any such Company products, or a termination or suspension of the manufacturing, marketing, or distribution of such Company products, (ix) is not a party to any corporate integrity agreement, deferred prosecution agreement, monitoring agreement, consent decree, settlement order, or similar agreements, or has any reporting obligations pursuant to any such agreement, plan or correction or other remedial measure entered into with any Governmental Authority, (x) has not, nor has any officer, director, employee, agent or, to the knowledge of the Company, any distributor of the Company, made an untrue statement of a material fact or a fraudulent statement to the FDA or any other Governmental Authority, failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority, or committed an act, made a statement, or failed to make a statement, in each such case, related to the business of the Company that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities", set forth in 56 Fed. Reg. 46191 (September 10, 1991) or for the FDA or any other Governmental Authority to invoke any similar policy, (xi) has not, nor has any officer, director, employee, or, to the knowledge of the Company, any agent or distributor of the Company, been debarred or convicted of any crime or engaged in any conduct for which debarment is mandated by 21 U.S.C. § 335a(a) or any similar law or authorized by 21 U.S.C. § 335a(b) or any similar law applicable in other jurisdictions in which Company products or Company product candidates are sold or intended by the Company to be sold, and (xii) neither the Company, its subsidiaries nor their officers, directors, employees, agents or contractors has been or is currently debarred, suspended or excluded from participation in the Medicare and Medicaid programs or any other state or federal health care program.

(ccc) The preclinical tests and clinical trials conducted or sponsored by, or on behalf of the Company and its subsidiaries were and, if still pending, are being conducted in all material respects in accordance with protocols filed with the appropriate regulatory authorities for each such test or trial, as the case may be, and with standard medical and scientific research procedures and applicable laws, regulations and Authorizations, including without limitation, those of the FDA; each description of the results of such tests and trials contained in the Pricing Disclosure Package or the Offering Memorandum is accurate and complete in all material respects and fairly presents the data derived from such tests and trials, and the Company and its subsidiaries have no knowledge of any other studies or tests the results of which are inconsistent with, or otherwise call into question, the results described or referred to in the Pricing Disclosure Package or the Offering Memorandum; and neither the Company nor any of its subsidiaries has received any notices or other correspondence from the Food and Drug Administration, the U.S. Department of Health and Human Services or any committee thereof or from any other U.S. or foreign government or drug or medical device regulatory agency requiring the termination, suspension or modification of any clinical trials.

(ddd) The Company has all requisite corporate power and authority to execute, deliver and perform its obligations under the Acquisition Agreement. The Acquisition Agreement has been duly authorized, executed and delivered by the Company and is a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium, and other laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law). The Company is not in default under, nor has the Company materially breached or violated, the Acquisition Agreement in any manner. To the Company's knowledge, no other party to the Acquisition Agreement is in default thereunder and no other party to such agreement has materially breached or violated such agreement in any manner.

Any certificate signed by any officer of the Company and delivered to the Initial Purchaser or counsel for the Initial Purchaser in connection with the offering of the Notes or the OrbiMed Notes shall be deemed a representation and warranty by the Company, as to matters covered thereby, to the Initial Purchaser.

3. *Purchase of the Notes by the Initial Purchaser, Agreements to Sell, Purchase and Resell.*(a)

(a) The Company hereby agrees, on the basis of the representations, warranties, covenants and agreements of the Initial Purchaser contained herein and subject to all the terms and conditions set forth herein, to issue and sell to the Initial Purchaser and, upon the basis of the representations, warranties and agreements of the Company herein contained and subject to all the terms and conditions set forth herein, the Initial Purchaser agrees to purchase from the Company, at a purchase price of 96% of the principal amount thereof plus interest, if any, accrued from the Closing Date to, but excluding, the date of payment, the total principal amount of Firm Notes. The Company shall not be obligated to deliver any of the securities to be delivered hereunder except upon payment for all of the securities to be purchased as provided herein.

(b) In addition, the Company hereby agrees, on the basis of the representations and warranties, covenants and agreements of the Initial Purchaser contained herein and subject to all the terms and conditions set forth herein, to issue and sell to the Initial Purchaser, and the Initial Purchaser shall have the right to purchase, up to $9,750,000 aggregate principal amount of Additional Notes, with the same terms and CUSIP number as the Firm Notes, at a purchase price of 96% of the principal amount thereof plus interest, if any, accrued from the Closing Date to, but excluding, the date of payment, provided that no such Additional Notes may be issued and sold unless they will be fungible with, and constitute the same series as, the Firm Notes for U.S. federal income tax purposes. The Initial Purchaser may exercise this right in whole or from time to time in part by giving written notice to the Company not later than 30 days after the date of this Agreement. Any exercise notice shall specify the principal amount of Additional Notes to be purchased by the Initial Purchaser and the date on which such Additional Notes are to be purchased. Unless otherwise agreed to by the Company, each purchase date must be at least one business day after the written notice is given and may not be earlier than the closing date for the Firm Notes nor later than ten business days after the date of such notice. Each day, if any, that Additional Notes are to be purchased is herein referred to as an "***Option Closing Date***."

(c) The Initial Purchaser hereby represents and warrants to the Company that it will offer the Notes for sale upon the terms and conditions set forth in this Agreement and in the Pricing Disclosure Package. The Initial Purchaser hereby represents and warrants to, and agrees with, the Company, on the basis of the representations, warranties and agreements of the Company, that the Initial Purchaser: (i) is a QIB with such knowledge and experience in financial and business matters as are necessary in order to evaluate the merits and risks of an investment in the Notes; (ii) is purchasing the Notes pursuant to a private sale exempt from registration under the Securities Act; and (iii) in connection with the Exempt Resales, will solicit offers to buy the Notes only from, and will offer to sell the Notes only to, the Eligible Purchasers in accordance with this Agreement and on the terms contemplated by the Pricing Disclosure Package.

(d) The Initial Purchaser has not used, authorized use of, referred to or distributed, and, before the Closing Date or the completion of the distribution of the Notes, whichever is later, will not, use, authorize use of, refer to or distribute, any material in connection with the offering and sale of the Notes other than (i) the Preliminary Offering Memorandum, the Pricing Disclosure Package, and the Offering Memorandum, (ii) any written communication that contains either (x) no "issuer information" (as defined in Rule 433(h)(2) under the Securities Act) or (y) "issuer information" that was included or incorporated by reference in the Preliminary Offering Memorandum or any Free Writing Offering Document listed on Schedule II hereto, (iii) the Free Writing Offering Documents listed on Schedule II hereto, (iv) any written communication prepared by such Initial Purchaser and approved by the Company in writing, or (v) any written communication relating to or that contains the terms of the Notes or the OrbiMed Notes or other information that was included or incorporated by reference in the Preliminary Offering Memorandum, the Pricing Disclosure Package or the Offering Memorandum.

The Initial Purchaser understands that the Company and, for purposes of the opinions to be delivered to the Initial Purchaser pursuant to Sections 7(c) and 7(g) hereof, counsel to the Company and counsel to the Initial Purchaser will rely upon the accuracy and truth of the foregoing representations, warranties and agreements, and the Initial Purchaser hereby consents to such reliance.

4. *Delivery of the Notes and Payment Therefor*. Delivery to the Initial Purchaser of and payment for the Notes shall be made at the office of Latham & Watkins LLP at John Hancock Tower, 27th Floor, 200 Clarendon Street, Boston, MA 02116, at 10:00 A.M., New York City time, on July 31, 2015 (the "***Closing Date***"). The place of closing for the Notes and the Closing Date may be varied by agreement between the Initial Purchaser and the Company.

Payment for any Additional Notes shall be made to the Company against delivery of such Additional Notes for the account of the Initial Purchaser at 10:00 a.m., New York City time, on the Option Closing Date for such Additional Notes.

The Notes will be delivered to the Initial Purchaser, or the Trustee as custodian for The Depository Trust Company ("***DTC***"), against payment by or on behalf of the Initial Purchaser of the purchase price therefor by wire transfer in immediately available funds, by causing DTC to credit the Notes to the account of the Initial Purchaser at DTC. The Notes will be evidenced by one or more global securities in definitive form and will be registered in the name of Cede & Co. as nominee of DTC. The Notes to be delivered to the Initial Purchaser shall be made available to the Initial Purchaser in New York City for inspection and packaging not later than 10:00 A.M., New York City time, on the business day next preceding the Closing Date or the Option Closing Date, as the case may be.

5. *Agreements of the Company*. The Company agrees with the Initial Purchaser as follows:

(a) The Company will furnish to the Initial Purchaser, without charge, within one business day of the date of the Offering Memorandum, such number of copies of the Offering Memorandum as may then be amended or supplemented as it may reasonably request.

(b) The Company will prepare the Offering Memorandum in a form approved by the Initial Purchaser and will not make any amendment or supplement to the Pricing Disclosure Package or to the Offering Memorandum of which the Initial Purchaser shall not previously have been advised or to which they shall reasonably object after being so advised.

(c) The Company consents to the use of the Pricing Disclosure Package and the Offering Memorandum in accordance with the securities or Blue Sky laws of the jurisdictions in which the Notes are offered by the Initial Purchaser and by all dealers to whom Notes may be sold, in connection with the offering and sale of the Notes.

(d) If, at any time prior to completion of the distribution of the Notes by the Initial Purchaser to Eligible Purchasers, any event occurs or information becomes known that, in the judgment of the Company or in the opinion of counsel for the Initial Purchaser, should be set forth in the Pricing Disclosure Package or the Offering Memorandum so that the Pricing Disclosure Package or the Offering Memorandum, as then amended or supplemented, does not include any untrue statement of material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it is necessary to supplement or amend the Pricing Disclosure Package or the Offering Memorandum in order to comply with any law, the Company will forthwith prepare an appropriate supplement or amendment thereto, and will expeditiously furnish to the Initial Purchaser and dealers a reasonable number of copies thereof.

(e) The Company will not make any offer to sell or solicitation of an offer to buy the Notes or the OrbiMed Notes that would constitute a Free Writing Offering Document without the prior consent of the Initial Purchaser, which consent shall not be unreasonably withheld or delayed. If at any time following issuance of a Free Writing Offering Document any event occurred or occurs as a result of which such Free Writing Offering Document conflicts with the information in the Preliminary Offering Memorandum, the Pricing Disclosure Package or the Offering Memorandum or, when taken together with the information in the Preliminary Offering Memorandum, the Pricing Disclosure Package or the Offering Memorandum, includes an untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances then prevailing, not misleading, as promptly as practicable after becoming aware thereof, the Company will give notice thereof to the Initial Purchaser and, if requested by the Initial Purchaser, will prepare and furnish without charge to the Initial Purchaser a Free Writing Offering Document or other document which will correct such conflict, statement or omission.

(f) The Company will, promptly from time to time, take such action as the Initial Purchaser may reasonably request to qualify the Notes and the Underlying Common Stock for offering and sale under the securities or Blue Sky laws of such jurisdictions as the Initial Purchaser may request and to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as may be necessary to complete the distribution of the Notes and the Underlying Common Stock; *provided*, *however*, that, in connection therewith, the Company will not be required to (i) qualify as a foreign corporation in any jurisdiction in which it would not otherwise be required to so qualify, (ii) file a general consent to service of process in any such jurisdiction, or (iii) subject itself to taxation in any jurisdiction in which it would not otherwise be subject.

(g) For a period commencing on the date hereof and ending on the 90th day after the date of the Offering Memorandum, the Company agrees not to, directly or indirectly, (i) offer for sale, sell or otherwise dispose of (or enter into any transaction or device that is designed to, or would be expected to, result in the disposition by any person at any time in the future of) any shares of Common Stock or securities convertible into or exchangeable for shares of Common Stock (other than the shares of Common Stock issued pursuant to Compensation Plans existing on the date hereof and disclosed in the Pricing Disclosure Package or pursuant to options, warrants or rights outstanding as of the date hereof and not issued under one of those plans), or sell or grant options, rights or warrants with respect to any shares of Common Stock or securities convertible into or exchangeable for shares of Common Stock (other than the grant of options and other equity awards pursuant to Compensation Plans existing on the date hereof and disclosed in the Pricing Disclosure Package), (ii) enter into any swap or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of such shares of Common Stock, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise, (iii) file or cause to be filed a registration statement, including any amendments, with respect to the registration of Common Stock or securities convertible, exercisable or exchangeable into Common Stock (other than any registration statement on Form S-8 and any resale registration statement filed pursuant to the Registration Rights Agreement) or (iv) publicly disclose the intention to do any of the foregoing, in each case without the prior written consent of the Initial Purchaser and to cause each person or entity referred to in Schedule IV hereto to furnish to the Initial Purchaser, prior to the date of this Agreement, a letter or letters, substantially in the form of Exhibit A hereto (the "***Lock-Up Agreements***"). Notwithstanding anything to the contrary in the preceding sentence, the Company may issue shares of Common Stock pursuant to the Acquisition Agreement (in the form last provided to the Initial Purchaser prior to the execution of this Agreement, with no amendments thereto or modifications or waivers thereof not theretofore approved in writing by the Initial Purchaser) and in the manner described in the Pricing Disclosure Package and the Offering Memorandum.

(h) So long as any of the Notes, the OrbiMed Notes or the Underlying Common Stock are outstanding, the Company will furnish at its expense to the Initial Purchaser, and, upon request, to the holders of the Notes, the OrbiMed Notes or the Underlying Common Stock and prospective purchasers of the Notes, the OrbiMed Notes or the Underlying Common Stock the information, if any, required by Rule 144A(d)(4) under the Securities Act.

(i) The Company will apply the net proceeds from the sale of the Notes and the OrbiMed Notes in accordance with the description set forth in the Pricing Disclosure Package and the Offering Memorandum under the caption "Use of Proceeds."

(j) The Company and its affiliates will not take, directly or indirectly, any action designed to or that has constituted or that reasonably could be expected to cause or result in the stabilization or manipulation of the price of any security of the Company in connection with the offering of the Notes and the OrbiMed Notes.

(k) The Company will use its best efforts to permit the Notes to be eligible for clearance and settlement through DTC.

(l) The Company will not, and will not permit any of its "affiliates" (as defined in Rule 144 under the Securities Act) to, resell any of the Notes or OrbiMed Notes that have been acquired by any of them, except for Notes or OrbiMed Notes purchased by the Company or any of its affiliates and resold in a transaction registered under the Securities Act or pursuant to Rule 144.

(m) The Company agrees not to sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any "security" (as defined in the Securities Act) that would be integrated with the sale of the Notes, or with the Concurrent Offering, in a manner that would require the registration under the Securities Act of the offer and sale of the Notes to the Initial Purchaser, the Exempt Resales or the Concurrent Offering. The Company will take any reasonable precautions designed to insure that any offer or sale, direct or indirect of any Notes, the OrbiMed Notes or any substantially similar security issued by the Company, within six months subsequent to the date on which the distribution of the Notes and the OrbiMed Notes has been completed, is made under restrictions and other circumstances reasonably designed not to affect the status of the offer and sale of the Notes contemplated by this Agreement, or of the Concurrent Offering, as transactions exempt from the registration provisions of the Securities Act, including any sales pursuant to Rule 144A under, or Regulation D of, the Securities Act.

(n) In connection with any offer or sale of the Notes and the OrbiMed Notes, the Company will not engage, and will cause its affiliates and any person acting on its behalf (other than, in any case, the Initial Purchaser and any of its affiliates, as to whom the Company makes no covenant) not to engage in any form of general solicitation or general advertising (within the meaning of Regulation D of the Securities Act), other than any General Solicitation with the prior consent of the Initial Purchaser and listed on Schedule IV hereto, or any "public offering" within the meaning of Section 4(a)(2) of the Securities Act in connection with any offer or sale of the Notes or with the Concurrent Offering. Before making, preparing, using, authorizing or distributing any General Solicitation, the Company will furnish to the Initial Purchaser a copy of such communication for review and will not make, prepare, use, authorize, approve or distribute such communications to which the Initial Purchaser objects.

(o) The Company agrees to comply with all agreements set forth in the representation letters of the Company to DTC relating to the approval of the Notes by DTC for "book entry" transfer.

(p) The Company will do and perform all things required or necessary to be done and performed under this Agreement by it prior to the Closing Date, and to satisfy all conditions precedent to the Initial Purchaser's obligations hereunder to purchase the Notes.

(q) The Company agrees to reserve and keep available at all times, free of preemptive rights, a sufficient number of Underlying Common Stock to enable the Company to satisfy any obligations to issue Underlying Common Stock upon conversion of the Notes and the OrbiMed Notes.

(r) On and after the date hereof to, and including, the Closing Date, the Company will not do or authorize any act that would result in an adjustment of the conversion rate of the Notes or the OrbiMed Notes.

(s) The Company will not permit any waiver or other modification or supplement to be made to any lock-up agreement referred to in Section 2.2(c)(xiii) of the Acquisition Agreement without the prior written consent of the Initial Purchaser.

(t) No later than the date hereof, the Company will publicly disclose all material non-public information provided by or on behalf of the Company to persons solicited to purchase Notes in the offering contemplated hereby or will otherwise notify those persons that such information is no longer material.

6. *Expenses*. Whether or not the transactions contemplated by this Agreement are consummated or this Agreement is terminated, the Company agrees, to pay all costs, expenses, fees and taxes in connection with: (a) the preparation of the Preliminary Offering Memorandum, the Pricing Disclosure Package and the Offering Memorandum Preliminary Memorandum, and any amendments or supplements to the foregoing, and the printing and furnishing of copies of each thereof to the Initial Purchaser and to dealers (including costs of mailing and shipment), (b) the registration, issue, sale and delivery of the Notes, the OrbiMed Notes and the Underlying Common Stock including any stock or transfer taxes and stamp or similar duties payable upon the sale, issuance or delivery of the Notes, the OrbiMed Notes or the Underlying Common Stock, and all other costs related to the preparation, issuance, execution, authentication and delivery of the Notes, the OrbiMed Notes and the Underlying Common Stock, (c) the costs and expenses of Company to satisfy its obligations under the Registration Rights Agreement, (d) the qualification of the Notes, the OrbiMed Notes and the Underlying Common Stock for offering and sale under state or foreign laws and the determination of their eligibility for investment under state or foreign law (including the related legal fees and filing fees and other disbursements of counsel for the Initial Purchaser) and the printing and furnishing of copies of any blue sky surveys or legal investment surveys to the Initial Purchaser and to dealers, (e) any listing of the Underlying Common Stock on any securities exchange or qualification of the Underlying Common Stock for quotation on The NASDAQ Global Market, (f) the fees and disbursements of any transfer agent or registrar for the Shares, (g) the costs and expenses of the Company relating to presentations or meetings undertaken in connection with the marketing of the offering and sale of the Notes, the OrbiMed Notes and the Underlying Common Stock to prospective investors and the Initial Purchaser's sales forces, including, without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations, travel, lodging and other expenses incurred by the officers of the Company and any such consultants, and the cost of any aircraft chartered in connection with the road show, (h) to the extent applicable, the fees payable by the Company, if any, to investment rating agencies with respect to the rating of the Notes or the Affiliate Notes; (i) the costs and charges of the Trustee and any transfer agent, registrar or depositary; (j) the costs and expenses of qualifying the Notes for inclusion in the book-entry settlement system of DTC, (k) the fees, disbursements and expenses of the Company's counsel and the Company's accountants in connection with the issuance and sale of the Notes and the OrbiMed Notes, (l) the reasonable fees and expenses of the Initial Purchaser's legal counsel incurred in connection with the transactions contemplated hereby, (m) the Concurrent Offering, and (n) the performance of the Company's other obligations hereunder.

7. *Conditions to Initial Purchaser's Obligations*. The obligations of the Initial Purchaser hereunder are subject to the accuracy, as of the date hereof, as of the Closing Date and, if applicable, on each Option Closing Date, of the representations and warranties of the Company contained herein, to the performance by the Company of its obligations hereunder, and to each of the following additional terms and conditions:

(a) The Initial Purchaser shall not have discovered and disclosed to the Company on or prior to the Closing Date or such Option Closing Date, as applicable, that the Pricing Disclosure Package, any Free Writing Offering Document or the Offering Memorandum, or any amendment or supplement thereto, contains an untrue statement of a fact which, in the Initial Purchaser's opinion is material or omits to state a fact which, in the opinion of the Initial Purchaser, is material and is necessary in order to make the statements therein, in the light of the circumstances then prevailing, not misleading.

(b) All corporate proceedings and other legal matters incident to the authorization, form and validity of this Agreement, the Notes, the OrbiMed Notes, the Indenture, the Registration Rights Agreement, the Pricing Disclosure Package and the Offering Memorandum, and all other legal matters relating to this Agreement and the transactions contemplated hereby or the Concurrent Offering shall be reasonably satisfactory in all material respects to counsel for the Initial Purchaser, and the Company shall have furnished to such counsel all documents and information that they may reasonably request to enable them to pass upon such matters.

(c) Morrison & Foerster LLP shall have furnished to the Initial Purchaser its written opinion, as counsel to the Company, addressed to the Initial Purchaser and dated the Closing Date or such Option Closing Date, as applicable, in form and substance satisfactory to the Initial Purchaser.

(d) Sheridan Ross P.C. shall have furnished to the Initial Purchaser its written opinion, as special intellectual property counsel to the Company, addressed to the Initial Purchaser and dated the Closing Date or such Option Closing Date, as applicable, in form and substance satisfactory to the Initial Purchaser.

(e) Hogan Lovells LLP shall have furnished to the Initial Purchaser its written opinion, as special regulatory counsel to the Company, addressed to the Initial Purchaser and dated the Closing Date or such Option Closing Date, as applicable, in form and substance satisfactory to the Initial Purchaser.

(f) Jill Gilpin shall have furnished to the Initial Purchaser her written opinion, as General Counsel of the Company, addressed to the Initial Purchaser and dated the Closing Date or such Option Closing Date, as applicable, in form and substance satisfactory to the Initial Purchaser.

(g) The Initial Purchaser shall have received from Latham & Watkins LLP, counsel for the Initial Purchaser, such opinion or opinions and negative assurance letter, dated the Closing Date or such Option Closing Date, as applicable, with respect to the issuance and sale of the Notes, the Pricing Disclosure Package, the Offering Memorandum and other related matters as the Initial Purchaser may reasonably require, and the Company shall have furnished to such counsel such documents and information as such counsel reasonably requests for the purpose of enabling them to pass upon such matters.

(h) The Company shall have furnished or caused to be furnished to the Initial Purchaser, a "comfort letter," dated as of the date of the execution of this Agreement, from EKS&H LLLP, independent registered public accountants for the Company, in form and substance satisfactory to the Initial Purchaser, addressed to the Initial Purchaser, covering such matters as are ordinarily covered by accountants' "comfort letters" to underwriters in connection with registered public offerings.

(i) The Company shall have furnished or caused to be furnished to the Initial Purchaser, a "bring-down" comfort letter, dated as of the Closing Date or such Option Closing Date, as applicable, from EKS&H LLLP, independent registered public accountants for the Company, reconfirming, as of a date no more than three days before the Closing Date or such Option Closing Date, as applicable, the matters covered by the letter referred to in Section 7(h) above and containing such other information as are ordinarily covered by accountants' "bring-down comfort letters" to underwriters in connection with registered public offerings.

(j) The Company shall have furnished or caused to be furnished to the Initial Purchaser, a "comfort letter," dated as of the date of the execution of this Agreement, from McGladrey LLP, independent certified accountants for the Target, in form and substance satisfactory to the Initial Purchaser, addressed to the Initial Purchaser, covering such matters as are ordinarily covered by accountants' "comfort letters" to underwriters in connection with registered public offerings.

(k) The Company shall have furnished or caused to be furnished to the Initial Purchaser, a "bring-down" comfort letter, dated as of the Closing Date or such Option Closing Date, as applicable, from McGladrey LLP, independent registered public accountants for the Target, reconfirming, as of a date no more than three days before the Closing Date or such Option Closing Date, as applicable, the matters covered by the letter referred to in Section 7(j) above and containing such other information as are ordinarily covered by accountants' "bring-down comfort letters" to underwriters in connection with registered public offerings.

(l) The Company shall have furnished or caused to be furnished to the Initial Purchaser, a "comfort letter," dated as of the date of the execution of this Agreement, from Battelle Rippe Kingston LLP, independent certified accountants for the Target, in form and substance satisfactory to the Initial Purchaser, addressed to the Initial Purchaser, covering such matters as are ordinarily covered by accountants' "comfort letters" to underwriters in connection with registered public offerings.

(m) The Company shall have furnished or caused to be furnished to the Initial Purchaser, a "bring-down" comfort letter, dated as of the Closing Date or such Option Closing Date, as applicable, from Battelle Rippe Kingston LLP, independent registered public accountants for the Target, reconfirming, as of a date no more than three days before the Closing Date or such Option Closing Date, as applicable, the matters covered by the letter referred to in Section 7(l) above and containing such other information as are ordinarily covered by accountants' "bring-down comfort letters" to underwriters in connection with registered public offerings.

(n) Except as described in the Pricing Disclosure Package and the Offering Memorandum (exclusive of any amendment or supplement thereto), (i) neither the Company nor any of its subsidiaries shall have sustained, since the date of the latest audited financial statements included or incorporated by reference in the Pricing Disclosure Package and the Offering Memorandum, any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, or (ii) since such date, there shall not have been any change in the capital stock or long-term debt of the Company or any of its subsidiaries or any change, or any development involving a prospective change, in or affecting the condition (financial or otherwise), results of operations, stockholders' equity, properties, management, business or prospects of the Company and its subsidiaries, taken as a whole, the effect of which, in any such case described in clause (i) or (ii), is, individually or in the aggregate, in the judgment of the Initial Purchaser, so material and adverse as to make it impracticable or inadvisable to proceed with the offering, sale or the delivery of the Notes being delivered on the Closing Date or such Option Closing Date, as applicable, on the terms and in the manner contemplated in the Pricing Disclosure Package and the Offering Memorandum.

(o) The Company shall have furnished or caused to be furnished to the Initial Purchaser a certificate, dated as of the Closing Date or such Option Closing Date, as applicable, of the Chief Executive Officer and Chief Financial Officer of the Company, as to such matters as the Initial Purchaser may reasonably request, including, without limitation, a statement:

(i) that the representations, warranties and agreements of the Company in Section 2 of this Agreement are true and correct on and as of the Closing Date or such Option Closing Date, as applicable, and that the Company has complied with all its agreements contained herein and satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date or such Option Closing Date, as applicable;

(ii) that they have examined the Pricing Disclosure Package and the Offering Memorandum, and, in their opinion, (A) the Pricing Disclosure Package, as of the Applicable Time, and the Offering Memorandum, as of its date and as of the Closing Date or such Option Closing Date, as applicable, did not and do not contain any untrue statement of a material fact and did not and do not omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and (B) since the date of the Pricing Disclosure Package and the Offering Memorandum, no event has occurred which should have been set forth in a supplement or amendment to the Pricing Disclosure Package and the Offering Memorandum; and

(iii) To the effect of Section 7(n) (provided that no representation with respect to the judgment of the Initial Purchaser need to be made) and Section 7(n).

(p) Subsequent to the earlier of the Applicable Time and the execution and delivery of this Agreement, there shall not have occurred any of the following: (i) a downgrading in any rating accorded to the Company's debt securities or preferred stock by any "nationally recognized statistical rating organization" (as defined in Section 3(a)(62) of the Exchange Act) or (ii) any public announcement by such an organization that it has under surveillance or review, with possible negative implications, its rating of any of the Company's debt securities or preferred stock.

(q) The Notes shall be eligible for clearance and settlement through DTC.

(r) The Company and the Trustee shall have executed and delivered the Indenture, and the Initial Purchaser shall have received an original copy thereof, duly executed by the Company and the Trustee.

(s) The Company and the OrbiMed Purchasers shall have executed and delivered the Registration Rights Agreement, and the Initial Purchaser shall have received an original copy thereof, duly executed by the Company and the OrbiMed Purchasers.

(t) Subsequent to the earlier of the Applicable Time and the execution and delivery of this Agreement there shall not have occurred any of the following: (i)(A) trading in securities generally on any securities exchange that has registered with the Commission under Section 6 of the Exchange Act (including the New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or The NASDAQ Capital Market) or (B) trading in any securities of the Company on any exchange or in the over-the-counter market, shall have been suspended or materially limited or the settlement of such trading generally shall have been materially disrupted or minimum prices shall have been established on any such exchange or such market by the Commission, by such exchange or by any other regulatory body or governmental authority having jurisdiction, (ii) a general moratorium on commercial banking activities shall have been declared by federal or state authorities, (iii) the United States shall have become engaged in hostilities, there shall have been an escalation in hostilities involving the United States or there shall have been a declaration of a national emergency or war by the United States, or (iv) there shall have occurred such a material adverse change in general economic, political or financial conditions, including, without limitation, as a result of terrorist activities after the date hereof (or the effect of international conditions on the financial markets in the United States shall be such), or any other calamity or crisis either within or outside the United States, in each case, as to make it, in the judgment of the Initial Purchaser, impracticable or inadvisable to proceed with the offering, sale or delivery of the Notes being delivered on the Closing Date or such Option Closing Date, as applicable, on the terms and in the manner contemplated in the Offering Memorandum or that, in the judgment of the Initial Purchaser, could materially and adversely affect the financial markets or the markets for the Notes or the OrbiMed Notes.

(u) The Lock-Up Agreements shall be in full force and effect on the Closing Date or such Option Closing Date, as applicable.

(v) There shall exist no event or condition which would constitute a default or an event of default under the Indenture.

(w) The Concurrent Offering shall have been completed, or shall be completed concurrently with the consummation of the issuance and sale of the Firm Notes pursuant hereto, in the manner described in the Pricing Disclosure Package and the Offering Memorandum.

(x) The Acquisition Agreement shall have been executed and delivered in the form last provided to the Initial Purchaser prior to the execution of this Agreement, with no amendments thereto or modifications or waivers thereof not theretofore approved in writing by the Initial Purchaser.

(y) The Proposed Acquisition shall have been completed, or shall be completed substantially simultaneously with the consummation of the issuance and sale of the Firm Notes pursuant hereto, in the manner described in the Pricing Disclosure Package and the Offering Memorandum and pursuant to the Acquisition Agreement.

(z) The New Credit Facility Agreement shall have been executed and delivered in the form last provided to the Initial Purchaser prior to the execution of this Agreement, with no amendments thereto or modifications or waivers thereof not theretofore approved in writing by the Initial Purchaser.

(aa) The Company shall not have waived its right to receive any, and shall have received (and forwarded to the Initial Purchaser copies of) all, lock-up agreements referred to in Section 2.2(c)(xiii) of the Acquisition Agreement; each such lock-up agreement shall be in full force and effect; and no provision of any such lock-up agreement shall have been waived or otherwise modified or supplemented without the prior written consent of the Initial Purchaser.

(bb) The Company shall have furnished to the Initial Purchaser such further certificates and documents as the Initial Purchaser may reasonably request.

All opinions, letters, evidence and certificates mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Initial Purchaser.

8. *Indemnification and Contribution*.

(a) The Company, hereby agrees to indemnify and hold harmless the Initial Purchaser, its affiliates, directors, officers and employees and each person, if any, who controls the Initial Purchaser within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof (including, but not limited to, any loss, claim, damage, liability or action relating to purchases and sales of the Notes or the OrbiMed Notes), to which the Initial Purchaser, affiliate, director, officer, employee or controlling person may become subject, under the Securities Act or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon, (i) any untrue statement or alleged untrue statement of a material fact contained (A) in any Free Writing Offering Document, the Preliminary Offering Memorandum, the Pricing Disclosure Package or the Offering Memorandum, or in any amendment or supplement to the foregoing, (B) in any Blue Sky application or other document prepared or executed by the Company (or based upon any written information furnished by the Company) specifically for the purpose of qualifying any or all of the Notes or the OrbiMed Notes under the securities laws of any state or other jurisdiction (any such application, document or information being hereinafter called a "***Blue Sky Application***"), or (C) in any materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of the offering of the Notes or the OrbiMed Notes ("***Marketing Materials***"), including any road show or investor presentations made to investors by the Company (whether in person or electronically) or (ii) the omission or alleged omission to state in any Free Writing Offering Document, the Preliminary Offering Memorandum, the Pricing Disclosure Package or the Offering Memorandum, or in any amendment or supplement to the foregoing, or in any Blue Sky Application or in any Marketing Materials, any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and shall reimburse the Initial Purchaser and each such affiliate, director, officer, employee or controlling person promptly upon demand for any legal or other expenses reasonably incurred by the Initial Purchaser, affiliate, director, officer, employee or controlling person in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred; *provided*, *however*, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement or omission or alleged omission made in any Preliminary Offering Memorandum, the Pricing Disclosure Package or the Offering Memorandum, or in any such amendment or supplement to the foregoing, or in any Blue Sky Application or in any Marketing Materials, in reliance upon and in conformity with written information concerning the Initial Purchaser furnished to the Company through the Initial Purchaser by or on behalf of the Initial Purchaser specifically for inclusion therein, which information consists solely of the information specified in Section 8(e). The foregoing indemnity agreement is in addition to any liability that the Company may otherwise have to the Initial Purchaser or to any affiliate, director, officer, employee or controlling person of the Initial Purchaser.

(b) The Initial Purchaser hereby agrees to indemnify and hold harmless the Company, its officers and employees, each of its directors, and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof, to which the Company, such director, officer, employee or controlling person may become subject, under the Securities Act or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon, (i) any untrue statement or alleged untrue statement of a material fact contained (A) in any Free Writing Offering Document, Preliminary Offering Memorandum, the Pricing Disclosure Package or the Offering Memorandum, or in any amendment or supplement to the foregoing, (B) in any Blue Sky Application, or (C) in any Marketing Materials, or (ii) the omission or alleged omission to state in any Free Writing Offering Document, Preliminary Offering Memorandum, the Pricing Disclosure Package or the Offering Memorandum, or in any amendment or supplement to the foregoing, or in any Blue Sky Application or in any Marketing Materials any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, but in each case only to the extent that the untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information concerning the Initial Purchaser furnished to the Company through the Initial Purchaser by or on behalf of the Initial Purchaser specifically for inclusion therein, which information is limited to the information set forth in Section 8(e). The foregoing indemnity agreement is in addition to any liability that the Initial Purchaser may otherwise have to the Company or any such director, officer, employee or controlling person.

(c) Promptly after receipt by an indemnified party under this Section 8 of notice of any claim or the commencement of any action, the indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under this Section 8, notify the indemnifying party in writing of the claim or the commencement of that action; *provided*, *however*, that the failure to notify the indemnifying party shall not relieve it from any liability that it may have under paragraphs (a) or (b) above except to the extent it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; *provided*, *further*, that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under paragraphs (a) or (b) above. If any such claim or action shall be brought against an indemnified party, and it shall notify the indemnifying party thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it wishes, jointly with any other similarly notified indemnifying party, to assume the defense thereof with counsel reasonably satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, the indemnifying party shall not be liable to the indemnified party under this Section 8 for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable costs of investigation; *provided*, *however*, that the Initial Purchaser shall have the right to employ counsel to represent jointly the Initial Purchaser and its affiliates, directors, officers, employees and controlling persons who may be subject to liability arising out of any claim in respect of which indemnity may be sought by the Initial Purchaser against the Company under this Section 8, if (i) the Company and the Initial Purchaser shall have so mutually agreed; (ii) the Company has failed within a reasonable time to retain counsel reasonably satisfactory to the Initial Purchaser; (iii) the Initial Purchaser and its affiliates, directors, officers, employees and controlling persons shall have reasonably concluded, based on the advice of counsel, that there may be legal defenses available to them that are different from or in addition to those available to the Company; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the Initial Purchaser or its affiliates, directors, officers, employees or controlling persons, on the one hand, and the Company, on the other hand, and representation of both sets of parties by the same counsel would present a conflict due to actual or potential differing interests between them, and in any such event the fees and expenses of such separate counsel shall be paid by the Company and the Company shall no longer have the right to assume the defense of any such claim or action. No indemnifying party shall (x) without the prior written consent of the indemnified parties (which consent shall not be unreasonably withheld), settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding and does not include a statement as to, or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party, or (y) be liable for any settlement of any such action effected without its written consent (which consent shall not be unreasonably withheld), but if settled with the consent of the indemnifying party or if there be a final judgment of the plaintiff in any such action, the indemnifying party agrees to indemnify and hold harmless any indemnified party from and against any loss or liability by reason of such settlement or judgment. Notwithstanding anything to the contrary in the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by Section 8(a) or (b) hereof, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request or disputed in good faith the indemnified party’s entitlement to such reimbursement prior to the date of such settlement.

(d) If the indemnification provided for in this Section 8 shall for any reason be unavailable to or insufficient to hold harmless an indemnified party under Section 8(a) or (b) in respect of any loss, claim, damage or liability, or any action in respect thereof, referred to therein, then each indemnifying party shall, in lieu of indemnifying such indemnified party, contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability, or action in respect thereof, (i) in such proportion as shall be appropriate to reflect the relative benefits received by the Company, on the one hand, and the Initial Purchaser, on the other, from the offering of the Notes, 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 the Initial Purchaser, on the other, with respect to the statements or omissions that resulted in such loss, claim, damage or liability, or action in respect thereof, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Initial Purchaser, on the other, with respect to such offering shall be deemed to be in the same proportion as the total net proceeds from the offering of the Notes purchased under this Agreement (before deducting expenses) received by the Company, on the one hand, and the total discounts and commissions received by the Initial Purchaser with respect to the Notes purchased under this Agreement, on the other hand, bear to the total gross proceeds from the offering of the Notes under this Agreement as set forth on the cover page of the Offering Memorandum (excluding, for the avoidance of doubt, the OrbiMed Notes in each case). The relative fault shall be determined by reference to whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or the Initial Purchaser, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Initial Purchaser agree that it would not be just and equitable if contributions pursuant to this Section 8(d) were to be determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, damage or liability, or action in respect thereof, referred to above in this Section 8(d) shall be deemed to include, for purposes of this Section 8(d), any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding anything to the contrary in this Section 8(d), the Initial Purchaser shall not be required to contribute any amount in excess of the amount by which the total initial purchaser discounts and commissions received by the Initial Purchaser with respect to the offering of the Notes exceeds the amount of any damages that the Initial Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged 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.

(e) The Initial Purchaser confirms, and the Company acknowledges and agrees, that the statements with respect to the offering of the Notes by the Initial Purchaser set forth under the caption "Plan of Distribution—Stabilization," and in the first, second and fourth sententences under "Plan of Distribution—Electronic Distribution," in the Pricing Disclosure Package and the Offering Memorandum constitute the only information concerning the Initial Purchaser furnished in writing to the Company by or on behalf of the Initial Purchaser specifically for inclusion in the Preliminary Offering Memorandum, the Pricing Disclosure Package and the Offering Memorandum, or in any amendment or supplement to the foregoing, or in any Blue Sky Application or in any Marketing Materials.

9. *Termination*. The obligations of the Initial Purchaser hereunder may be terminated by the Initial Purchaser by notice given to and received by the Company prior to delivery of and payment for the Notes (or, with respect to the obligation of the Initial Purchaser to purchase any Additional Notes on an Option Closing Date, prior to the delivery of and payment for such Additional Notes) if, prior to such time, any of the events described in Sections 7(n), (t) or (p) shall have occurred, or if the Initial Purchaser shall decline to purchase the Notes for any reason permitted under this Agreement.

10. *Reimbursement of Initial Purchaser's Expenses*. If (a) the Company for any reason fails to tender the Notes for delivery to the Initial Purchaser, or (b) the Initial Purchaser declines to purchase the Notes for any reason permitted under this Agreement, the Company agrees that it shall reimburse the Initial Purchaser for all reasonable out-of-pocket expenses (including fees and disbursements of counsel for the Initial Purchaser) incurred by the Initial Purchaser in connection with this Agreement and the proposed purchase of the Notes, and the Company shall, upon demand, pay the full amount thereof to the Initial Purchaser.

11. *Notices, etc*. All statements, requests, notices and agreements hereunder shall be in writing, and:

(a) if to the Initial Purchaser, shall be delivered or sent by hand delivery, mail, overnight courier or facsimile transmission to Leerink Partners LLC, One Federal Street, 37th Floor, Boston, Massachusetts 02110, Email: jack.fitzgerald@leerink.com, Attention: General Counsel; and

(b) if to the Company, shall be delivered or sent by mail, telex, overnight courier or facsimile transmission to Bacterin International, Inc., 600 Cruiser Lane, Belgrade, Montana 59714, Email: jgandolfo@bacterin.com, Attention: Chief Financial Officer.

Any such statements, requests, notices or agreements shall take effect at the time of receipt thereof.

12. *Persons Entitled to Benefit of Agreement*. This Agreement shall inure to the benefit of and be binding upon the Initial Purchaser, the Company, and their respective successors. This Agreement and the terms and provisions hereof are for the sole benefit of only those persons, except that (a) the representations, warranties, indemnities and agreements of the Company contained in this Agreement shall also be deemed to be for the benefit of affiliates, directors, officers and employees of the Initial Purchaser and each person or persons, if any, controlling the Initial Purchaser within the meaning of Section 15 of the Securities Act and (b) the indemnity by the Initial Purchaser in Section 8 will inure to the benefit of the Company's officers, employees, directors and controlling persons to the extent provided in such Section 8. Nothing in this Agreement is intended or shall be construed to give any person, other than the persons referred to in this Section 12, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

13. *Survival*. The respective indemnities, rights of contribution, representations, warranties and agreements of the Company and the Initial Purchaser contained in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall survive the delivery of and payment for the Notes or the OrbiMed Notes and shall remain in full force and effect, regardless of any termination of this Agreement or any investigation made by or on behalf of any of them or any person controlling any of them.

14. *Definition of the Terms "Business Day", "Affiliate", and "Subsidiary"*. For purposes of this Agreement, (a) "business day" means any day on which the New York Stock Exchange, Inc. is open for trading, and (b) "affiliate" and "subsidiary" have the meanings set forth in Rule 405 under the Securities Act.

15. *Governing Law & Venue*. **This Agreement and any claim, controversy or dispute arising under or related to this Agreement shall be governed by and construed in accordance with the laws of the State of New York.** Each of the Company and the Initial Purchaser agrees that any suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted only in any State or U.S. federal court in The City of New York and County of New York and waives any objection that such party may now or hereafter have to the laying of venue of any such suit, action or proceeding, and irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

16. *Waiver of Jury Trial*. Each of the Company and the Initial Purchaser hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

17. *No Fiduciary Duty.* The Company acknowledges and agrees that in connection with this offering, or any other services the Initial Purchaser may be deemed to be providing hereunder, notwithstanding any preexisting relationship, advisory or otherwise, between the parties or any oral representations or assurances previously or subsequently made by the Initial Purchaser: (a) no fiduciary or agency relationship between the Company and any other person, on the one hand, and the Initial Purchaser, on the other, exists; (b) the Initial Purchaser is not acting as advisor, expert or otherwise, to the Company, including, without limitation, with respect to the determination of the purchase price of the Notes or the OrbiMed Notes, and such relationship between the Company, on the one hand, and the Initial Purchaser, on the other, is entirely and solely commercial, based on arms-length negotiations; (c) any duties and obligations that the Initial Purchaser may have to the Company shall be limited to those duties and obligations specifically stated herein; (d) the Initial Purchaser and its affiliates may have interests that differ from those of the Company; and (e) the Company has consulted its own legal and financial advisors to the extent it deemed appropriate. The Company hereby waives any claims that the Company may have against the Initial Purchaser with respect to any breach of fiduciary duty in connection with the Notes or the OrbiMed Notes.

18. *Counterparts*. This Agreement may be executed in one or more counterparts and, if executed in more than one counterpart, the executed counterparts shall each be deemed to be an original but all such counterparts shall together constitute one and the same instrument.

19. *Headings*. The headings herein are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

[*Remainder of Page Intentionally Left Blank; Signature Pages Follow*]

If the foregoing correctly sets forth the agreement between the Company and the Initial Purchaser, please indicate your acceptance in the space provided for that purpose below.

Very truly yours,

BACTERIN INTERNATIONAL HOLDINGS, INC.

By: /s/ John P. Gandolfo
Name: John P. Gandolfo
Title: CFO

Accepted:

LEERINK PARTNERS LLC

By: /s/ John I. Fitzgerald, Esq.
Name: John I. Fitzgerald, Esq.
Title: Managing Director

SCHEDULE I

BACTERIN INTERNATIONAL HOLDINGS, INC.
FORM PRICING TERM SHEET

PRICING TERM SHEET
Dated July 27, 2015

Bacterin International Holdings, Inc.
Offering of
$65,000,000 Aggregate Principal Amount of
6.00% Convertible Senior Notes due 2021

The information in this pricing term sheet supplements Bacterin International Holdings, Inc.'s preliminary offering memorandum, dated July 13, 2015 (the "Preliminary Offering Memorandum"), and supersedes the information in the Preliminary Offering Memorandum to the extent inconsistent with the information in the Preliminary Offering Memorandum. In all other respects, this pricing term sheet is qualified in its entirety by reference to the Preliminary Offering Memorandum. Terms used in this pricing term sheet without definition have the respective meanings given to them in the Preliminary Offering Memorandum. Unless the context requires otherwise, references in this pricing term sheet to the "Company," "we," "our" and "us" refer only to the Issuer (as defined below) and not to any of its subsidiaries.

Issuer	Xtant Medical Holdings, Inc., a Delaware corporation (on the Settlement Date, Bacterin International Holdings, Inc. will change its legal name to Xtant Medical Holdings, Inc.).
Ticker / Market for Common Stock	BONE / The OTCQX Marketplace ("OTCQX").
Trade Date	July 28, 2015.
Settlement Date	July 31, 2015.
Notes	6.00% Convertible Senior Notes due 2021 (the "Notes").
Aggregate Principal Amount of Notes Offered	$65,000,000 aggregate principal amount (or $74,750,000 aggregate principal amount if the initial purchaser fully exercises its option to purchase additional Notes). The Notes being offered include $52.0 million aggregate principal amount of Notes (the "Privately Placed Notes") that certain private investment funds (the "OrbiMed Purchasers") for which OrbiMed Advisors LLC serves as the investment manager have agreed to purchase from us.

Offering Price	100% of the principal amount, plus accrued interest, if any, from July 30, 2015.
Maturity	July 15, 2021, unless earlier converted or repurchased.
Annual Interest Rate	6.00%.
Interest Payment Dates	Following the first interest payment date, which will be on April 15, 2016, interest on the Notes will be payable semi-annually in arrears on January 15 and July 15 of each year.
Interest Record Dates	January 1 and July 1 (or, in the case of the first interest payment date, April 1, 2016).
Last Reported Sale Price per Share of the Issuer's Common Stock on the OTCQX on July 27, 2015	$3.17 per share.
Conversion Premium	22.5% above the Last Reported Sale Price per Share of the Issuer's Common Stock on the OTCQX on July 27, 2015.
Initial Conversion Price	Approximately $3.88 per share.
Initial Conversion Rate	257.5163 shares of common stock per $1,000 principal amount of Notes.
Net Proceeds after Expenses	We estimate that the net proceeds to us from this offering, after deducting the initial purchaser's fees and estimated offering expenses payable by us, will equal approximately $62.8 million (or approximately $72.2 million if the initial purchaser fully exercises its option to purchase additional Notes).
Use of Proceeds	We intend to use the net proceeds from this offering to fund the cash portion of the purchase price payable in connection with the proposed acquisition and for general corporate purposes. See "Use of Proceeds" in the Preliminary Offering Memorandum.
Sole Initial Purchaser	Leerink Partners LLC
Listing	The Notes will not be listed on any securities exchange.

CUSIP/ISIN Numbers for the Notes 98420P AA8 / US98420PAA84.

Increase in the Conversion Rate for Conversions in Connection with a Make-Whole Fundamental Change The following table sets forth the number of additional shares that will be added to the conversion rate per $1,000 principal amount of Notes for each stock price and effective date set forth below:

	Stock Price									
Effective Date	$3.17	$3.50	$3.88	$5.00	$6.00	$8.00	$12.00	$16.00	$24.00	$30.00
July 30, 2015	57.9401	50.7543	44.2036	31.3500	24.3350	15.9788	8.1033	4.4119	1.0613	0.0000
July 15, 2016	57.9401	48.5743	42.0258	29.4560	22.7667	14.9413	7.6433	4.1981	1.0217	0.0000
July 15, 2017	57.9401	46.1857	39.4871	27.0720	20.7383	13.5750	7.0533	3.9606	1.0129	0.0000
July 15, 2018	57.9401	43.5600	36.4381	23.9400	18.0050	11.6775	6.1950	3.6238	1.0975	0.0000
July 15, 2019	57.9401	40.4714	32.4124	19.4720	14.0833	8.9475	4.8458	2.9538	1.0896	0.0000
July 15, 2020	57.9401	36.3086	26.1057	12.4080	8.2217	5.0950	2.8525	1.8056	0.7650	0.0000
July 15, 2021	57.9401	28.1971	0.2165	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The exact stock price and effective date may not be set forth in the table above, in which case:

- If the stock price is between two stock prices in the table above or the effective date is between two effective dates in the table above, then the number of additional shares will be determined by a straight-line interpolation between the number of additional shares set forth for the higher and lower stock prices and the earlier and the later effective dates, as applicable, based on a 365- or 366-day year, as applicable.

- If the stock price is greater than $30.00 (subject to adjustment in the same manner as the stock prices set forth in the column headings of the table above), then no additional shares will be added to the conversion rate.

- If the stock price is less than $3.17 (subject to adjustment in the same manner as the stock prices set forth in the column headings of the table above), then no additional shares will be added to the conversion rate.

Notwithstanding the foregoing, in no event will the conversion rate be increased as a result of the provisions described above to exceed 315.4564 shares of common stock per $1,000 principal amount of Notes, subject to adjustment in the same manner, at the same time and for the same events for which we must adjust the conversion rate as described in the Preliminary Offering Memorandum under the caption “Description of Notes—Conversion Rights—Conversion Rate Adjustments.”

This communication is intended for the sole use of the person to whom it is provided by the sender.

You should rely only on the information contained or incorporated by reference in the Preliminary Offering Memorandum, as supplemented by this pricing term sheet, in making an investment decision with respect to the Notes.

Neither this pricing term sheet nor the Preliminary Offering Memorandum constitutes an offer to sell or a solicitation of an offer to buy any Notes in any jurisdiction where it is unlawful to do so, where the person making the offer is not qualified to do so or to any person who cannot legally be offered the Notes.

The offer and sale of the Notes and the shares of common stock issuable upon conversion of the Notes has not been registered under the Securities Act of 1933, as amended (the "Securities Act"), or the securities laws of any jurisdiction. As a result, the Notes and the shares of common stock issuable upon the conversion of the Notes may not be offered or sold except pursuant to an effective registration statement under the Securities Act or pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act, and, in each case, in compliance with all other applicable securities laws. Accordingly, the initial purchaser is offering the Notes that it purchases from us only to "qualified institutional buyers" (as defined under Rule 144A under the Securities Act), and we are selling the Privately Placed Notes to the OrbiMed Purchasers pursuant to Section 4(a)(2) of the Securities Act.

ANY DISCLAIMERS OR OTHER NOTICES THAT MAY APPEAR BELOW ARE NOT APPLICABLE TO THIS COMMUNICATION AND SHOULD BE DISREGARDED. SUCH DISCLAIMERS OR OTHER NOTICES WERE AUTOMATICALLY GENERATED AS A RESULT OF THIS COMMUNICATION BEING SENT VIA BLOOMBERG OR ANOTHER EMAIL SYSTEM.

SCHEDULE II

A. Documents forming part of the Pricing Disclosure Package (other than the Preliminary Offering Memorandum and Pricing Term Sheet):

Supplement to the Preliminary Offering Memorandum, dated July 22, 2015.

B. Other Free Writing Offering Documents:

The slide presentation of the Company, dated July 2015, used in connection with the offer and sale of the Notes.

Schedule III

GENERAL SOLICITATION

1. Press release of the Company, dated July 27, 2015, relating to the pricing of the offering of the Notes.

Schedule IV

LIST OF PERSONS SUBJECT TO LOCK-UP

1. Each person that is, or will become in connection with the Proposed Acquisition, a “director” or “officer” (as those terms are used for purposes of Section 16 of the Exchange Act) of the Company.
2. OrbiMed Advisors LLC.
3. Each OrbiMed Purchaser.

Exhibit A

Form of Lock-Up Agreement

LOCK-UP LETTER AGREEMENT

July ___, 2015

Leerink Partners LLC
One Federal Street, 37th Floor
Boston, Massachusetts 02110

Ladies and Gentlemen:

The undersigned understands that you (the "***Initial Purchaser***") propose to enter into a Purchase Agreement (the "***Purchase Agreement***") providing for the purchase by the Initial Purchaser of senior convertible notes (the "***Notes***") of Bacterin International Holdings, Inc., a Delaware corporation (the "***Company***"), and related guarantees (such guarantees, together with the Notes, the "***Securities***"). The Initial Purchaser proposes to reoffer the Securities in Exempt Resales (as such term is defined in the Purchase Agreement) (the "***Offering***").

In consideration of the execution of the Purchase Agreement by the Initial Purchaser, and for other good and valuable consideration, the undersigned hereby irrevocably agrees that, without the prior written consent of Leerink Partners LLC, the undersigned will not, directly or indirectly, (1) offer for sale, sell, pledge, or otherwise dispose of (or enter into any transaction or device that is designed to, or could be expected to, result in the disposition by any person at any time in the future of) any shares of the Company's common stock, $0.000001 par value per share (the "***Common Stock***") (including, without limitation, shares of Common Stock that may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the Securities and Exchange Commission and shares of Common Stock that may be issued upon exercise of any options or warrants) or securities convertible into or exercisable or exchangeable for Common Stock, (2) enter into any swap or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of shares of Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise, (3) make any demand for or exercise any right or cause to be filed a registration statement, including any amendments thereto, with respect to the registration of any shares of Common Stock or securities convertible into or exercisable or exchangeable for Common Stock or any other securities of the Company, or (4) publicly disclose the intention to do any of the foregoing for a period commencing on the date hereof and ending on the 90th day after the date of the Purchase Agreement (such period, the "***Lock-Up Period***").

Notwithstanding anything to the contrary in the foregoing paragraph, the undersigned may transfer shares of Common Stock:

(a) as a *bona fide* gift, by will or intestate succession or by operation of law (including pursuant to a qualified domestic order or in connection with a divorce settlement), provided the recipient thereof agrees in writing with the Initial Purchaser to be bound by the terms of this Lock-Up Agreement;

(b) to any trust for the direct or indirect benefit of the undersigned or the immediate family of the undersigned, provided that such trust and the trustee thereof agree in writing with the Initial Purchaser to be bound by the terms of this Lock-Up Agreement;

(c) to the Company in a transaction that is exempt from Section 16(b) of the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), to satisfy the payment of taxes due by the undersigned in connection with the vesting of restricted stock, or the cashless exercise of employee stock options, that were granted to the undersigned pursuant to equity incentive plans of the Company that are described in the offering memorandum for the Offering or the documents incorporated by reference therein, provided that (x) any Form 4 or Form 5 or other public announcement or filing relating to such transfer made after the Lock-Up Period shall indicate that the transfer was made to the Company to satisfy tax requirements; and (y) if such transfer is in connection with the exercise of any employee stock option, such option would have expired during the Lock-Up Period had it not been exercised;

(d) to a corporation, partnership, limited liability company or other entity that controls or is controlled by, or is under common control or management with, the undersigned, or is wholly owned by the undersigned and/or by members of the undersigned's immediate family, provided the recipient thereof agrees in writing with the Initial Purchaser to be bound by the terms of this Lock-Up Agreement;

(e) if the undersigned is not an individual, in distributions solely to limited or general partners, members or stockholders of the undersigned, provided the recipient thereof agrees in writing with the Initial Purchaser to be bound by the terms of this Lock-Up Agreement;

provided, *however*, that, as a condition to any transfer pursuant to clause (1), (2), (3), (4) and (5) above, such transfer shall not be required (whether pursuant to Section 16 or Section 13 of the Exchange Act or otherwise) to be publicly reported or disclosed, and the undersigned shall not otherwise publicly report or disclose such transfer, during the Lock-Up Period. For purposes hereof, "immediate family" means any relationship by blood, marriage or adoption, not more remote than first cousin.

In furtherance of the foregoing, the Company and its transfer agent are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Lock-Up Letter Agreement.

It is understood that, if the Company notifies the Initial Purchaser that it does not intend to proceed with the Offering, if the Purchase Agreement does not become effective on or before August 31, 2015, or if the Purchase Agreement (other than the provisions thereof that survive termination) shall terminate or be terminated prior to payment for and delivery of the Securities, then the undersigned will be released from its obligations under this Lock-Up Letter Agreement.

The undersigned understands that the Company and the Initial Purchaser will proceed with the Offering in reliance on this Lock-Up Letter Agreement.

Whether or not the Offering actually occurs depends on a number of factors, including market conditions. Any Offering will only be made pursuant to the Purchase Agreement, the terms of which are subject to negotiation between the Company and the Initial Purchaser.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Lock-Up Letter Agreement and that, upon request, the undersigned will execute any additional documents necessary in connection with the enforcement hereof. Any obligations of the undersigned shall be binding upon the heirs, personal representatives, successors and assigns of the undersigned.

Very truly yours,

By: _____

Name:
Title:

Exhibit 23.1

Consent of Independent Auditor

To the Board of Directors of
Bacterin International Holdings, Inc.:

We consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333-194944, No. 333-189830 and No. 333-175469) and Form S-8 (No. 333-172891, No. 333-187563, and No. 333-191248) of Bacterin International Holdings, Inc. of our report dated February 19, 2015, relating to our audit of the consolidated financial statements of X-spine Systems, Inc. as of and for the year ended December 31, 2014, included in this Current Report on Form 8-K.

/s/ McGladrey LLP

Dayton, Ohio
July 27, 2015

Exhibit 23.2

Consent of Independent Auditor

To the Board of Directors of
Bacterin International Holdings, Inc.:

We consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333-194944, No. 333-189830 and No. 333-175469) and Form S-8 (No. 333-172891, No. 333-187563, and No. 333-191248) of Bacterin International Holdings, Inc. of our report dated January 27, 2014, relating to our audit of the consolidated financial statements of X-spine Systems, Inc. as of and for the year ended December 31, 2013, included in this Current Report on Form 8-K.

/s/ Battelle Rippe Kingston LLP

Dayton, Ohio
July 27, 2015

Exhibit 99.1

FOR IMMEDIATE RELEASE

Bacterin to Purchase the Outstanding Common Stock of X-spine Systems, Inc., Creating Xtant Medical

Combines Bacterin's strength in orthobiologics with X-spine's expertise in hardware offering complementary product lines focused on orthopedic and spine surgical procedures.

- Pro forma revenue and EBITDA for the combined company for the 12 months ended December 31, 2014 was approximately $77.5 million and $3.9 million, respectively.
- Strategic combination to offer complementary product lines to more comprehensively serve customers for a wide range of orthopedic and spine surgical procedures.
- Expands distribution footprint to over 300 field sales representatives, and over 50 national accounts and regional health system/IDN contracts.
- Bacterin International Holdings, Inc. to be renamed Xtant Medical Holdings, Inc.
- A management call will be held tomorrow morning at 8:00 AM ET.

Belgrade, Mont. — July 27, 2015 — Bacterin International Holdings, Inc. (OTCQX: BONE), a leader in the development of revolutionary bone graft material, announced today that it intends to purchase the outstanding shares of privately held X-spine Systems, Inc., a global medical device manufacturer of leading products for spinal surgery, headquartered in Miamisburg, Ohio, in exchange for approximately 4.24 million shares of Bacterin common stock and approximately $60 million in cash, subject to customary working capital adjustments, and including the extinguishment of approximately $13 million of X-spine debt. The transaction will position the combined company as a comprehensive supplier for spine surgery procedures that offers both hardware and biologics through a more substantial national distribution footprint.

"This transaction joins two strong and growing organizations and reinforces the strategic initiatives outlined earlier this year to expand our product offerings, strengthen customer relationships and expand our distribution capabilities. We are excited to leverage further our combined operating platform and exceptional talent to drive, significant and ongoing value for our stockholders. With the addition of X-spine, we will have a stronger financial profile with over $80 million of revenue and positive EBITDA," said Dan Goldberger, Bacterin's CEO.

X-spine has numerous products for the treatment of spinal disease, with an emphasis on less-invasive treatments for the degenerative spine, X-spine’s state-of-the art spinal implants and instrumentation are highly complementary to Bacterin’s leading orthobiologics portfolio. The great majority of spinal procedures using X-spine’s product portfolio could use an orthobiologic that Bacterin currently offers.

"We look forward to broadening our success through a combination with Bacterin and accessing their outstanding portfolio of regenerative medicine products. This transaction will increase the scope of our organization with a new, diversified portfolio of products focused on the orthopedic and spine markets. Furthermore, we will be able to offer those diversified products to our established customer base, representing an accessible revenue growth opportunity for the combined business. I look forward to working with Dan and his team to open the next chapter of our mutual success," said Dr. David Kirschman, X-spine Systems' president and CEO.

Transaction Details
The transaction will be funded by an amended and restated $42 million senior secured debt facility with OrbiMed and $65 million of convertible senior notes. OrbiMed has also entered into a definitive agreement to purchase $53 million of convertible senior notes.

William Blair & Company, L.L.C. served as financial advisor to Bacterin in conjunction with the transaction.

New Company Name and Additions to Management Team
Concurrent with the closing, Bacterin International Holdings, Inc. will change its name to Xtant Medical Holdings, Inc. Dr. David Kirschman, currently X-spine CEO, will join the management team and serve as Executive Vice President and Chief Scientific Officer of Xtant Medical Holdings, Inc. He will also be President of X-spine Systems, the hardware subsidiary. Dr. Kirschman will also be appointed to the Xtant Medical Holdings, Inc. Board of Directors.

Conference Call Details
Bacterin will host a conference call to discuss the transaction on Tuesday, July 28, 2015 at 8:00AM ET. Management will reference a presentation, which will be available in the investor section of Bacterin's website and on the website of the Securities and Exchange Commission, at www.sec.gov.

Conference date: July 28, 2015, 8:00 AM ET
Conference dial-in: 877-269-7756
International dial-in: 201-689-7817
Conference Call Name: Bacterin's Management Update Call
Webcast Registration: CLICK HERE

About Bacterin International Holdings, Inc.
Bacterin International Holdings, Inc. (OTCQX: BONE) develops, manufactures and markets biologics products to domestic and international markets. Bacterin's proprietary methods optimize the growth factors in human allografts to promote bone growth, subchondral repair and dermal growth. These products are used in a variety of applications including enhancing fusion in spine surgery, relief of back pain, promotion of bone growth in foot and ankle surgery, promotion of cranial healing following neurosurgery and subchondral repair in knee and other joint surgeries. For further information, please visit www.bacterin.com.

About X-spine Systems Inc.
X-spine is a medical device manufacturer that provides class-leading products for the treatment of spinal disease. With an emphasis on less-invasive treatments for the degenerative spine, X-spine offers state-of-the art spinal implants and instrumentation to an expanding global market. For more information, please visit www.x-spine.com.

# # #

Important Cautionary Notes Regarding Pro Forma Financial Information and Forward-looking Statements
This press release contains certain disclosures that may be deemed forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 that are subject to significant risks and uncertainties. Forward-looking statements include statements that are predictive in nature, that depend upon or refer to future events or conditions, or that include words such as "continue," "efforts," "expects," "anticipates," "intends," "plans," "believes," "estimates," "projects," "forecasts," "strategy," "will," "goal," "target," "prospects," "potential," "optimistic," "confident," "likely," "probable" or similar expressions or the negative thereof. Statements of historical fact also may be deemed to be forward-looking statements. You are cautioned not to place undue reliance on forward-looking statements that speak only as of the date on which they are made. Forward-looking statements reflect management’s current estimates, projections, expectations and beliefs, and are subject to risks and uncertainties outside of our control that may cause actual results to differ materially from what is indicated in those forward-looking statements. We assume no duty to update the forward-looking statements.

These statements by their nature involve risks and uncertainties, and actual results may differ materially depending on a variety of important factors, including, among others, the occurrence of the risks described in the "Risk Factors" section included as an exhibit to our Current Report on Form 8-K filed with the U.S. Securities and Exchange Commission on July 27, 2015. In addition to those factors, the following factors, among others could cause our actual results to differ materially from forward-looking or actual performance: the possibility that conditions to closing the proposed X-spine acquisition are not satisfied on a timely basis or at all; the possibility that modifications to the terms of the transaction may be required; changes in the anticipated timing for closing the transaction; difficulty integrating our business and X-spine's businesses or realizing the projected benefits of the transaction; and diversion of management time on transaction and integration related issues. Annualized, pro forma, projected and estimated numbers used in this press release are used only for illustrative purposes and are not forecasts and may not reflect actual results.

This new release contains certain supplemental measures of performance, such as EBITDA, that are not required by, or presented in accordance with, generally accepted accounting principles in the United States ("GAAP"). Such measures should not be considered as replacements of GAAP. Further information with respect to and reconciliations of such measures to the nearest GAAP measure can be found at the end of this news release.

The unaudited pro forma financial information contained in this news release is included for informational purposes only and does not purport to reflect the results of operations or financial position that would have occurred had Bacterin and X-spine operated on a combined basis during the periods presented. The unaudited pro forma financial information should not be relied upon as being indicative of our financial condition or results of operations had the X-spine transaction occurred on the date assumed nor as a projection of our results of operations or financial position for any future period or date. The unaudited pro forma financial information should be read in conjunction with the historical financial statements and related notes of Bacterin and X-spine.

BACTERIN INTERNATIONAL HOLDINGS, INC.
Pro Forma, Combined Calculation of EBIDTA

stated in $000's	For the twelve months ended December 31, 2014	For the three months ended March 31, 2015
Loss From Operations Before Impairment	$ (365)	$ (890)
Non-Cash Compensation	$ 935	$ 230
Depreciation & Amortization	$ 3,284	$ 942
EBITDA	$ 3,854	$ 282

INVESTOR CONTACT:
Rich Cockrell
investorrelations@thecockrellgroup.com
877-889-1972

MEDIA CONTACT:
Melissa Christensen
mchristensen@metzgeralbee.com
720-833-5918

or

Doyle Albee
doyle@metzgeralbee.com
303-736-9156

Exhibit 99.2

Bacterin International Holdings Prices
$65 Million of 6.00% Convertible Senior Notes

BELGRADE, Mont.—(BUSINESS WIRE) — July 27, 2015 — Bacterin International Holdings, Inc. (OTCQX: BONE), a leader in the development of revolutionary bone graft material, has announced the pricing of $65 million aggregate principal amount of convertible senior unsecured notes due 2021 (the "Notes"). The Notes are being offered and sold to "qualified institutional buyers" (as defined in Rule 144A under the Securities Act of 1933, as amended). Bacterin has granted the investment banking firm serving as initial purchaser a 30-day option to purchase up to an additional $9.75 million aggregate principal amount of Notes.

The Notes will be unsecured, unsubordinated obligations of the company, and will bear interest at a rate of 6.00% per year. Following the first interest payment date, which will be on April 15, 2016, interest on the Notes will be payable semiannually in arrears on January 15 and July 15 of each year. At any time prior to the close of business on the second business day immediately preceding the maturity date, holders of the Notes may convert their Notes into shares of Bacterin common stock (together with cash in lieu of fractional shares) at an initial conversion rate of 257.5163 shares per $1,000 principal amount of Notes (which represents an initial conversion price of approximately $3.88 per share).

Bacterin estimates that the net proceeds of the offering will be approximately $62.8 million (or approximately $72.2 million if the initial purchaser's option to purchase additional Notes is exercised in full), after deducting the initial purchaser's discounts and commissions and estimated offering expenses payable by Bacterin. Bacterin intends to use the net proceeds of the offering to fund the cash portion of the purchase price for its acquisition of X-spine Systems, Inc., announced previously, and for general corporate purposes.

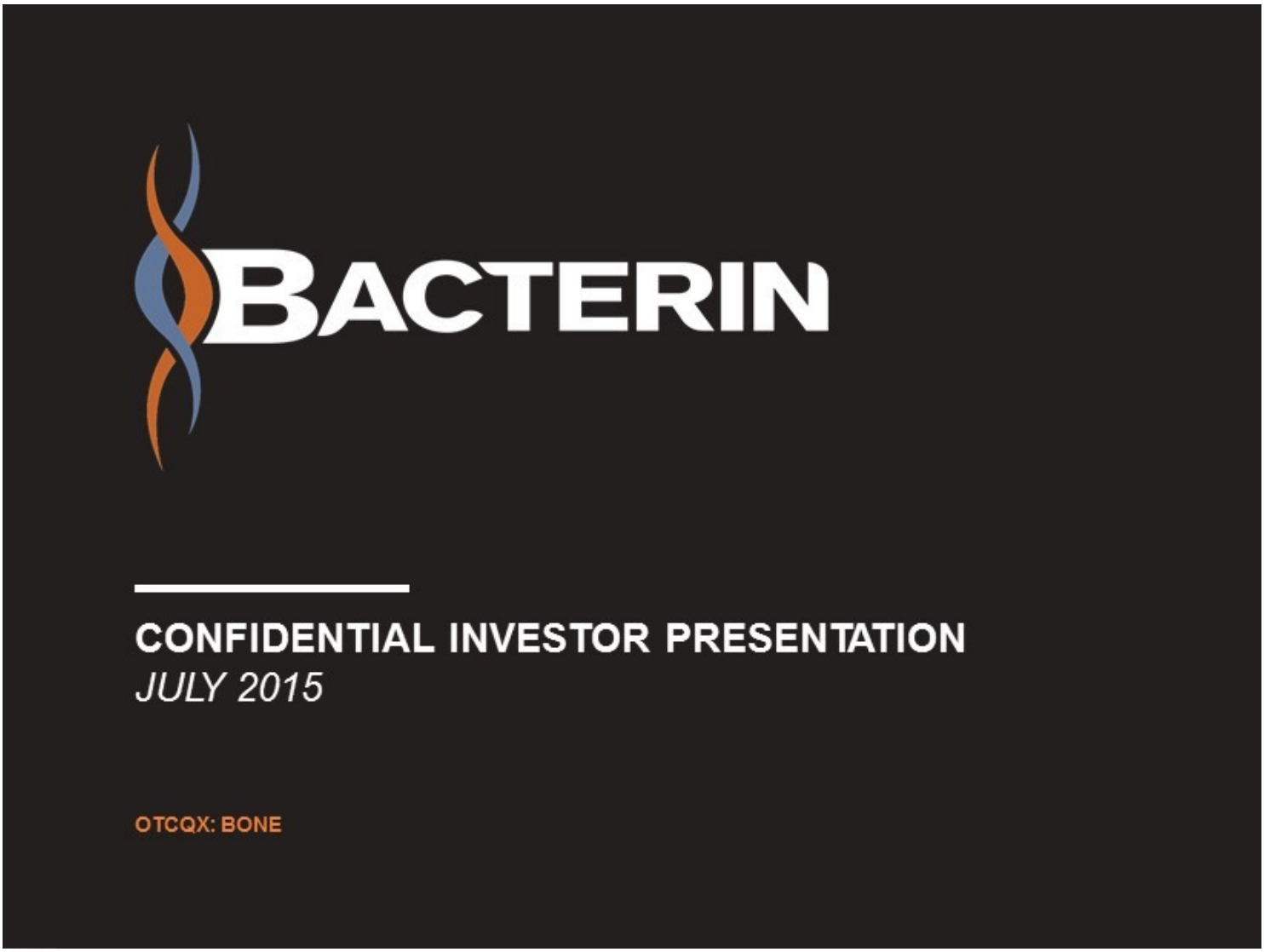
This announcement is neither an offer to sell nor a solicitation of an offer to buy any of these securities and shall not constitute an offer, solicitation or sale in any jurisdiction in which such offer, solicitation or sale is unlawful. Any offer of the securities will be made only by means of a private offering memorandum. The offer and sale of the Notes and the shares of common stock issuable upon conversion of the Notes have not been registered under the Securities Act or any state securities laws, and, unless so registered, the Notes and the shares issuable upon conversion of the Notes may not be offered or sold in the United States or to U.S. persons except pursuant to an exemption from the registration requirements of the Securities Act and applicable state laws.

About Bacterin International Holdings

Bacterin International Holdings, Inc. (OTCQX: BONE) develops, manufactures and markets biologics products to domestic and international markets. Bacterin's proprietary methods optimize the growth factors in human allografts to promote bone growth, subchondral repair and dermal growth. These products are used in a variety of applications including enhancing fusion in spine surgery, relief of back pain, promotion of bone growth in foot and ankle surgery, promotion of cranial healing following neurosurgery and subchondral repair in knee and other joint surgeries.

Important Cautions Regarding Forward-looking Statements

This news release contains certain disclosures that may be deemed forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 that are subject to significant risks and uncertainties. Forward-looking statements include statements that are predictive in nature, that depend upon or refer to future events or conditions or that include words such as "continue," "efforts," "expects," "anticipates," "intends," "plans," "believes," "estimates," "projects," "forecasts," "strategy," "will," "goal," "target," "prospects," "potential," "optimistic," "confident," "likely," "probable" or similar expressions or the negative thereof. Statements of historical fact also may be deemed to be forward-looking statements. We caution that these statements by their nature involve risks and uncertainties, and actual results may differ materially depending on a variety of important factors, including, among others: the ability of the Company's sales force to achieve expected results, the Company's ability to meet its existing and anticipated contractual obligations, including financial covenant and other obligations contained in the Company's secured lending facility; the Company's ability to manage cash flow; the Company's ability to develop, market, sell and distribute desirable applications, products and services and to protect its intellectual property; the ability of the Company's customers to pay and the timeliness of such payments; the Company's ability to obtain financing as and when needed; changes in consumer demands and preferences; the Company's ability to attract and retain management and employees with appropriate skills and expertise; the impact of changes in market, legal and regulatory conditions and in the applicable business environment, including actions of competitors; and other factors. In addition to those factors, the following factors, among others, could cause our actual results to differ materially from forward-looking or actual performance: the possibility that conditions to closing the proposed X-spine acquisition are not satisfied on a timely basis or at all; the possibility that modifications to the terms of the transaction may be required; changes in the anticipated timing for closing the transaction; difficulty integrating our business and X-spine’s businesses or realizing the projected benefits of the transaction; and diversion of management time on transaction and integration-related issues. Additional risk factors are listed in the Company's Current Report on Form 8-K to be filed on July 28, 2015. The Company undertakes no obligation to release publicly any revisions to any forward-looking statements to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events, except as required by law.


BACTERIN
CONFIDENTIAL INVESTOR PRESENTATION
JULY 2015
OTCQX: BONE

IMPORTANT CAUTIONS

Regarding Forward Looking Statements

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These statements by their nature involve risks and uncertainties, and actual results may differ materially depending on a variety of important factors, including, among others, the occurrence of the risks described in the "Risk Factors" section of our most recent quarterly report on Form 10-Q filed with the U.S. Securities and Exchange Commission. In addition to those factors, the following factors, among others could cause our actual results to differ materially from forward-looking or actual performance: the possibility that conditions to closing the proposed X-spine acquisition are not satisfied on a timely basis or at all; the possibility that modifications to the terms of the transaction may be required; changes in the anticipated timing for closing the transaction; difficulty integrating our business and X-spine's businesses or realizing the projected benefits of the transaction; and diversion of management time on transaction and integration related issues. Annualized, pro forma, projected and estimated numbers used in this presentation are used only for illustrative purposes and are not forecasts and may not reflect actual results.

This presentation contains certain supplemental measures of performance, such as EBITDA, that are not required by, or presented in accordance with, generally accepted accounting principles in the United States ("GAAP"). Such measures should not be considered as replacements of GAAP. Further information with respect to and reconciliations of such measures to the nearest GAAP measure can be found at the end of this presentation.

Any market or industry data contained in this presentation are based on a variety of sources, including internal data and estimates, independent industry publications, government publications, reports by market research firms or other published independent sources. Industry publications and other published sources generally state that the information contained therein has been obtained from third-party sources believed to be reliable, but there can be no assurance as to the accuracy or completeness of such information. Our internal data and estimates are based upon information obtained from trade and business organizations and other contacts in the markets in which we operate and our management's understanding of industry conditions, and such information has not been verified by any independent sources. Accordingly, investors should not place undue reliance on such data and information.

CONVERTIBLE DEBT OFFERING SUMMARY

- **$65 MILLION SENIOR UNSECURED CONVERTIBLE DEBT OFFERING, 15% OVERALLOTMENT OPTION**
- **6% - 8% COUPON**
- **22.5% - 27.5% CONVERSION PREMIUM**
- **6-YEAR TERM, NON-CALLABLE**
- **ACQUISITION OF X-SPINE & GENERAL CORPORATE PURPOSES**

ORBIMED INTENDS TO PURCHASE **$33 MILLION** OF THE AGGREGATE PRINCIPAL AMOUNT

BACTERIN INTERNATIONAL INC.

Company Overview

- LARGE & GROWING PORTFOLIO OF PROPRIETARY ORTHO-BIOLOGIC PRODUCTS
- PARTICIPANT IN $3B US REGENERATIVE MEDICINE MARKET
- PRODUCTS POSITIONED FOR A VARIETY OF ORTHOPEDIC APPLICATIONS, PARTICULARLY SPINE
- INVESTING IN CLINICAL SUPPORT & PRODUCT DEVELOPMENT
- ESTABLISHED & GROWING DISTRIBUTION CHANNEL TO ORTHOPEDIC SURGEONS & NEUROSURGEONS

FOUNDED

1998

Q1 2015 REVENUE

$9.5M

ACTIVE ORTHOPEDIC DISTRIBUTORS

115

US DBM MARKET SHARE*

6.8%

*BioMed GPS

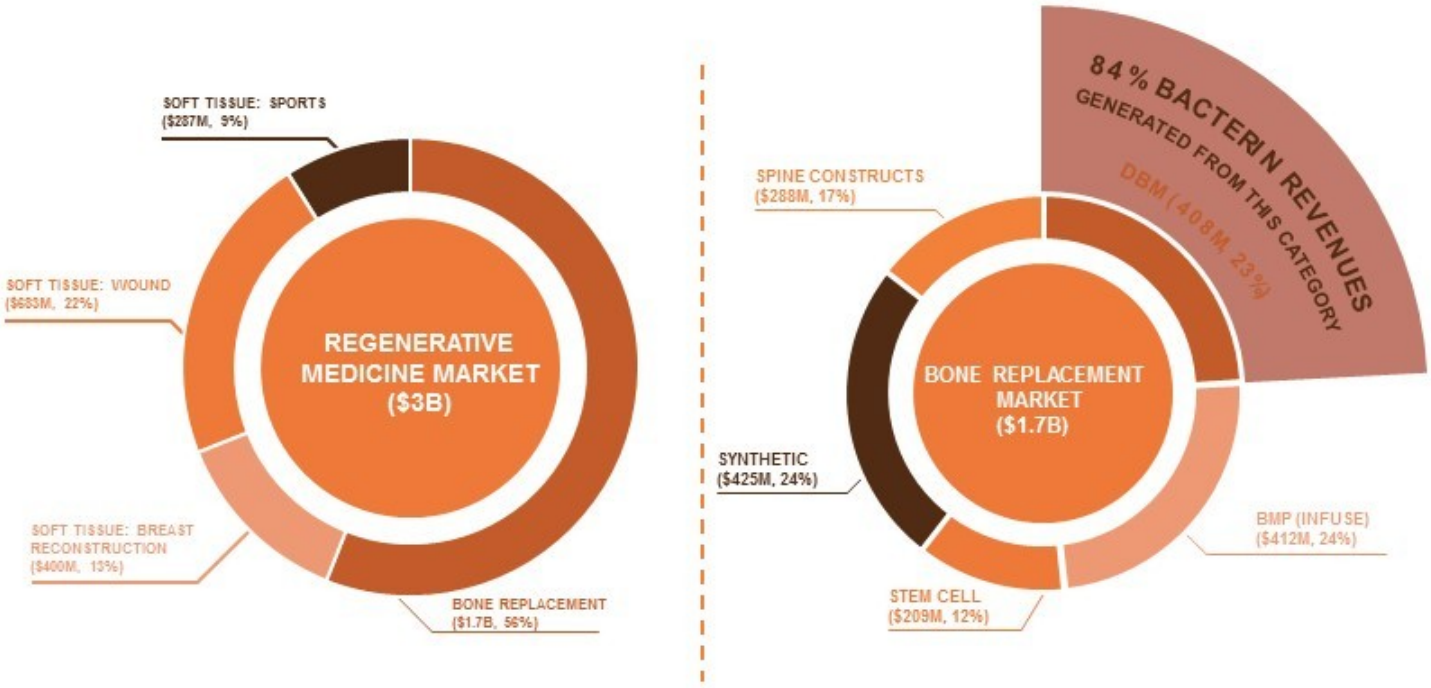
REVENUE PERFORMANCE

Quarterly Revenue Growth

6TH CONSECUTIVE QUARTER OF YEAR-OVER-YEAR GROWTH

REGENERATIVE MEDICINE & BONE REPLACEMENT MARKETS

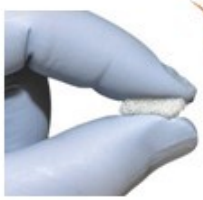
Large Market Opportunity



SOURCE: BioMed GPS, 2014; company reports

KEY PRODUCT LINES

Growing Portfolio of Proprietary Regenerative Medicine Products



65%

OsteoSponge

- 1st allograft to market as a compressible DBM scaffold
- Patented processing technology
- 100%, human demineralized bone matrix
- Ideal scaffold for bone regeneration

17%

OsteoSelect® DBM PUTTY

- Proven to contain growth factors for regeneration
- Engineered to withstand graft migration
- Indicated for use in spine

2%

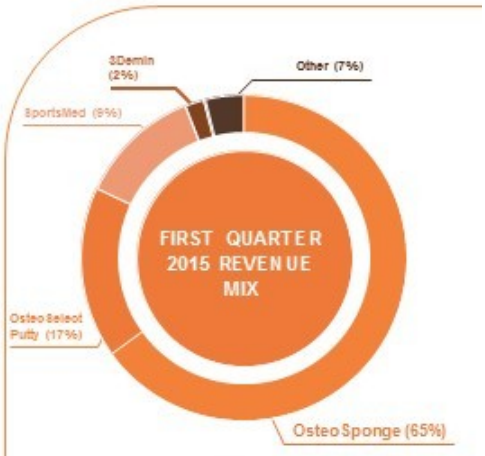
3Demin® BOATS & STRIPS

- Launched November 2014
- Demineralized cortical fibers
- Ability to process in various shapes and sizes
- Designed for re-constructive/complex spine procedures

9%

SportsMed

- Most commonly used for ACL repair
- Growing market as lifestyles become more active, sports more aggressive



SOURCE: Company reports

X·spine℠

A global developer and manufacturer of implants, surgical instruments, biologics and biomaterials for surgery of the spine

X-SPINE SYSTEMS, INC.

Company Overview

- LARGE & GROWING PORTFOLIO OF PROPRIETARY SPINE HARDWARE PRODUCTS
- INVESTING IN CLINICAL SUPPORT & PRODUCT DEVELOPMENT
- ESTABLISHED COMMERCIAL ORGANIZATION IN A $6.9B US SPINE HARDWARE INDUSTRY
- DRIVING GROWTH IN DISTRIBUTION CHANNEL TO ORTHOPEDIC SURGEONS & NEUROSURGEONS

FOUNDED

2004

Q1 2015 REVENUE

$12.2M

Q1 2015 EBITDA

$1.6M

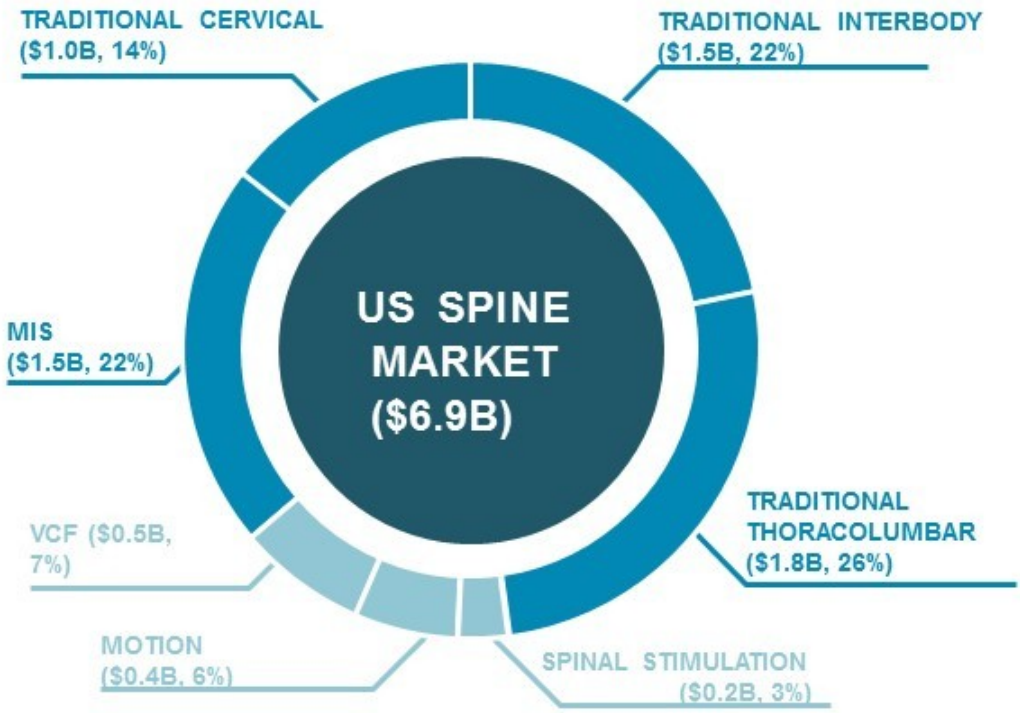
ACTIVE ORTHOPEDIC DISTRIBUTORS

150

OPERATING PERFORMANCE

US SPINE MARKETS

Commercial Organization in $6.9 Billion US Spine Market



SOURCE: iData Research

Market Participant Non-participant

KEY PRODUCT LINES

Growing Portfolio of Proprietary Regenerative Medicine Products

AXLE — 21%

A minimally invasive, modular interspinous fusion system with angled spikes that allows for adequate L5-S1 engagement and other variations in patient anatomy.

IRIX-C — 26%

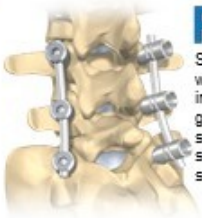
Standalone zero profile cervical & lumbar integrated fusion system with titanium teeth and locking screws.

SILEX — 7%

A distinctive sacroiliac joint fusion system designed to promote fusion using titanium plasma-coated anchor implants fenestrated for bone graft introduction along with cannulated titanium locking implants.

CALIX PC — 13%

Frictional titanium plasma-coated PEEK implants. Provide additional bio-mechanical performance and end-plate visualization.



FORTEX Pedicle Screw System — 10%

Simplicity of design paired with comprehensive instrumentation creates a gold-standard pedicle screw system. Available in standard or reduction screws.

SOURCE: Company reports

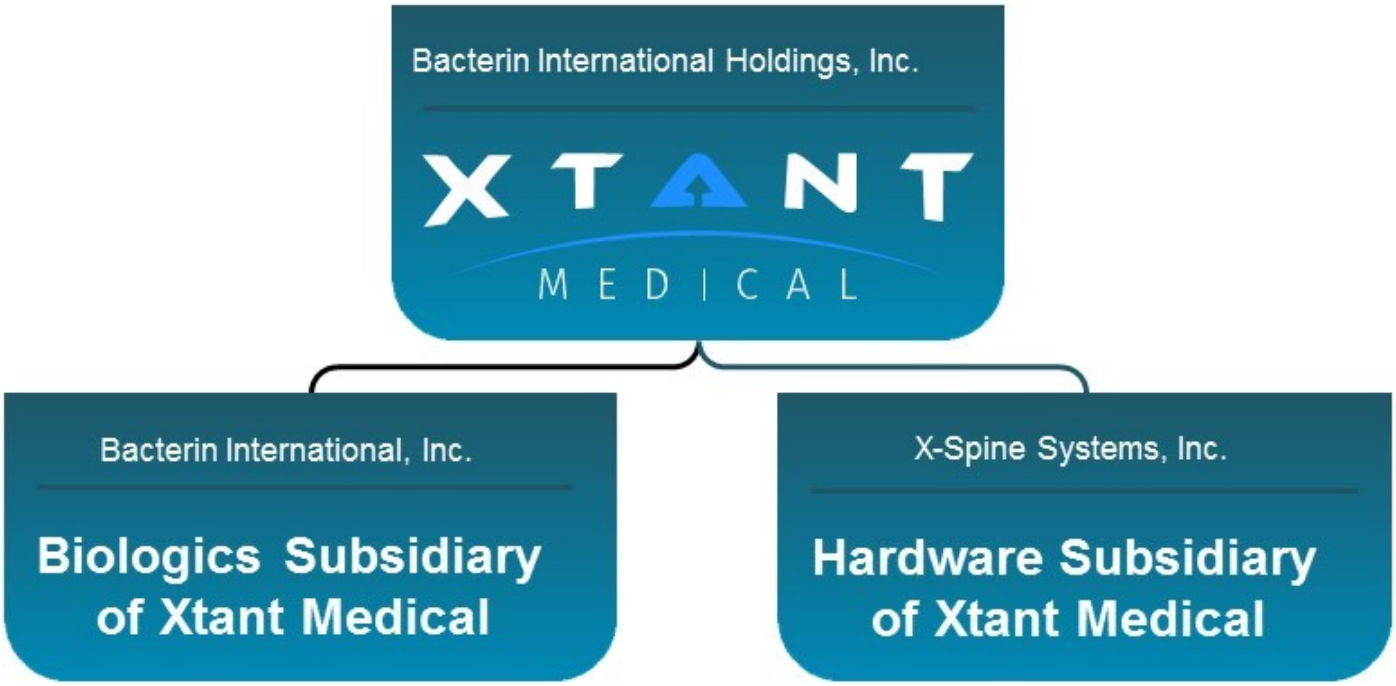
XTANT

MEDICAL

A combination of biologic implants & surgical instruments for distribution into the regenerative medicine & spine markets

NEW CORPORATE STRUCTURE

Transformative Combination of Two Complementary Companies



STRATEGIC RATIONALE

Broader Catalog Of Products For Spine Surgeons

- Biologics plus hardware is a powerful combination
- Average revenue per procedure expected to increase
- Scale of product o ferings makes the combined company more attractive to customers & distributors
- Creates an innovation engine with expertise in hardware and biologics that can now cross-pollinate

Expansion of Sales Distribution Network

- X-Spine & Bacterin share some hospital customers with minimal to no overlap in products
- 250 plus combined distributor partners
- 50 plus combined national accounts & regional hospital group contracts

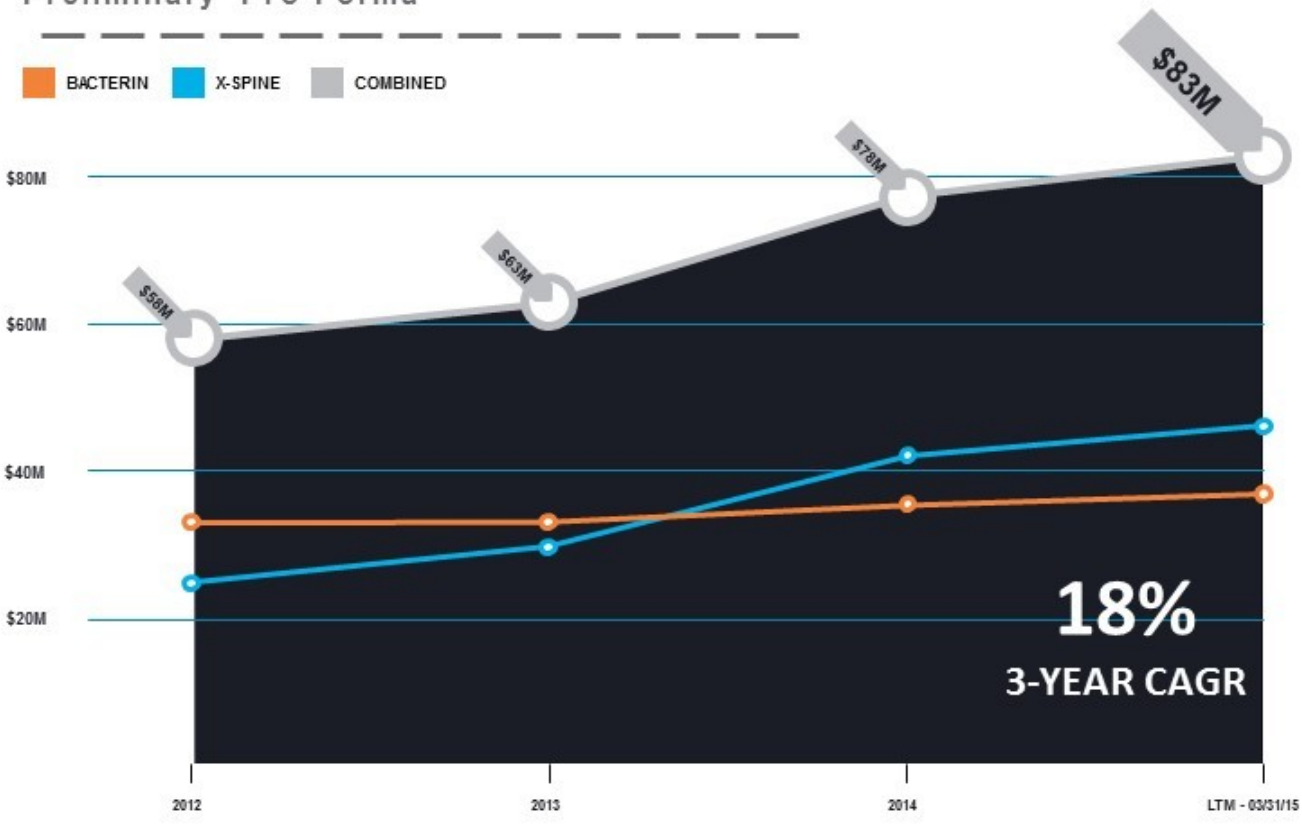
Enhanced Revenue Growth & Improved Margins

- Accretive to revenues, gross margins, & EBITDA at close
- Gross margins are anticipated to expand through economies of scale and better absorption

SOURCE: Company reports

COMBINED REVENUE PERFORMANCE

Preliminary Pro Forma



COMBINED DISTRIBUTION CHANNEL & SALES ASSETS

Opportunity to Introduce Bacterin Products Into X-Spine Cities and Vice Versa

X-SPINE REVENUE IS GENERATED BY

150 ACTIVE SALES AGENTS & RESELLERS

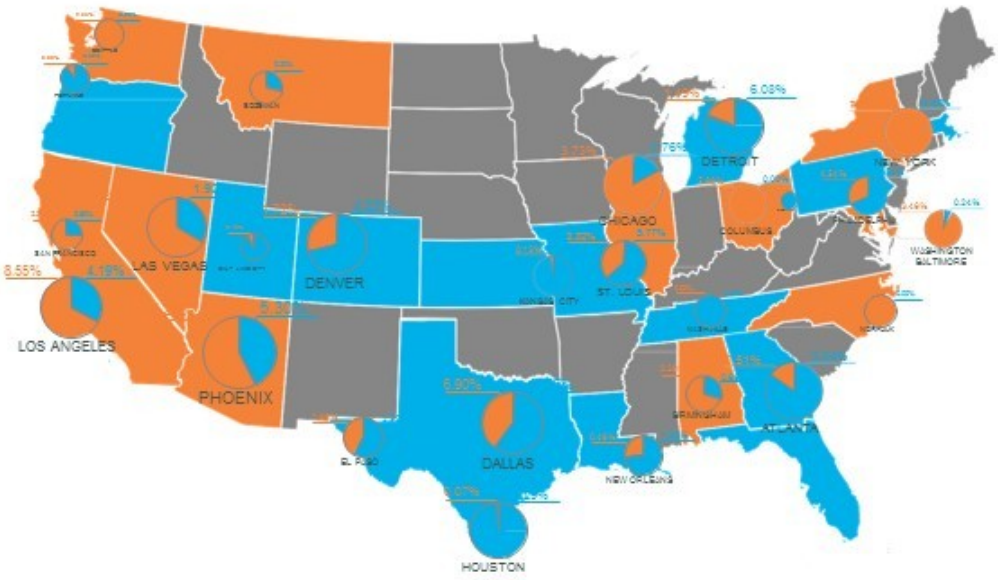
BACTERIN REVENUE IS GENERATED BY

115 SALES AGENTS **+ 40** DIRECT SALES EMPLOYEES

+10 SELLING ASSETS

Management has identified **only 4 common channels** in the existing network

- Primary call point for all channels is Orthopedic Surgeons and Neurosurgeons performing Spine procedures.
- Management plans to make the entire catalog available to all Assets over time.



SOURCE: Company reports

POTENTIAL CROSS-SELLING OPPORTUNITIES

Annualized Q1 2015

*SOURCE: COMPANY REPORTS • ACTUAL RESULTS MAY DIFFER FROM PRESENTATION

FINANCIAL OVERVIEW

KEY FINANCIAL DRIVERS

Company Overview

- **STRONG REVENUE GROWTH IN BASE BUSINESS, AUGMENTED BY X-SPINE**
- **ENHANCED OPERATING LEVERAGE**
  - •Gross margin expansion
  - •Leveraging corporate expenses
- **ACCELERATES PATH TO PROFITABILITY**
- **GENERATING POSITIVE CASH FLOW**

COMBINED OPERATING PERFORMANCE

Preliminary Pro Forma Summary P&L (000's) • Year End 2014 & Q1 2015

(000's)	BACTERIN		X-SPINE		COMBINED	
	2014	Q1 2015	2014	Q1 2015	2014	Q1 2015
Revenue	$35,332	$9,503	$42,213	$12,225	$77,659	$21,807
Gross Profit	$22,297	$6,031	$27,724	$7,935	$50,812	$14,237
Gross Margin	*63%*	*63%*	*65%*	*65%*	*65%*	*65%*
Profit (Loss) from Operations	($6,265)	($1,733)	$4,987	$843	($8,321)	($1,927)
EBITDA	($3,465)	($1,268)	$7,318	$1,550	$5,110	$282
EBITDA Margin	*(10%)*	*(13%)*	*17%*	*13%*	*7%*	*1%*

TRANSACTION SUMMARY

ACQUISITION

Bacterin is acquiring X-spine Systems, Inc., a global developer and manufacturer of implants and surgical instruments for surgery of the spine.

FINANCIAL IMPACT

Immediately accretive to EBITDA, when excluding one-time, transaction related Items.

PURCHASE PRICE

- $60M cash to sellers
- $13M debt payof
- 4.25M shares of restricted common stock subject to 12 month lockup

FINANCING

- $65M Senior Unsecured Convertible Debt
- $18M Incremental Senior Secured Debt Facility
- Issuance of Bacterin Common Equity

DEBT OVERVIEW

Pro Forma Debt Summary

$42M

SENIOR SECURED DEBT FROM ORBIMED

- 15% Coupon
- 5 year term; 3 year no-call
- Rolling over existing $24M debt from Orbimed in addition to the new $18M
- 7.5% exit fee

$65M

SENIOR UNSECURED CONVERTIBLE DEBT

SOURCES & USES OF FUNDS

SOURCE OF FUNDS	AMOUNT	USE OF FUNDS	AMOUNT
GROSS PROCEEDS FROM SENIOR SECURED TERM LOAN	**$18M**	CASH PORTION OF PURCHASE PRICE TO SELLERS	**$60M**
GROSS PROCEEDS FROM SENIOR UNSECURED CONVERTIBLE NOTE	**$65M**	REPAYMENT OF X-SPINE OUTSTANDING DEBT	**$13M**
		ESTIMATED TRANSACTION FEES AND EXPENSES	**$5M**
		GENERAL WORKING CAPITAL PURPOSES	**$5M**
TOTAL GROSS PROCEEDS	**$83M**	**TOTAL USE OF PROCEEDS**	**$83M**

NOTE: Total senior secured debt at closing will be $42 million, which includes the rollover of the current outstanding $24MM term loan due Orbimed.

SUMMARY

- Significant cross-selling opportunities; diversifies product portfolio; expands customer base; increases revenue per procedure
- Improved top-line performance
- Accretive combination and EBITDA expansion
- Accelerates path to profitability
- R&D capabilities in both biologics & orthopedic hardware


BACTERIN
THANK YOU
OTCQX: BONE
600 Cruiser In
Belgrade, MT, USA 59714
1.406.388.0480
info@bacterin.com
Investor Relations
COCKRELL GROUP
1.877.889.1972
investorrelations@thecockrellgroup.com

BACTERIN RECONCILIATION OF EBITDA

For the period ending December 31st, 2014 & March 31st, 2015 respectively

(000's)	2014	Q1 2015
Loss From Operations Before Impairment	**($5,352)**	**($1,733)**
Non-Cash Compensation	$935	$230
Depreciation & Amortization	$952	$235
EBITDA	**($3,465)**	**($1,268)**

X-SPINE RECONCILIATION OF EBITDA

For the period ending December 31st, 2013 & 2014, March 31st 2015 respectively

(000's)	2013	2014	Q1 2015
Operating income	**$2,207**	**$4,987**	**$843**
Depreciation & Amortization	$1,895	$2,331	$707
EBITDA	**$4,102**	**$7,318**	**$1,550**

RISK FACTORS

Our business, financial condition, results of operations and cash flows could be materially adversely affected by any of these risks. The market or trading price of our securities could decline due to any of these risks. Please note that additional risks not presently known to us or that we currently deem immaterial may also impair our business and operations.

Risks Relating to the Offering of Our 6.00% Convertible Senior Notes due 2021 (the "notes")

We expect that the trading price of the notes will be significantly affected by the market price of our common stock, the general level of interest rates and our credit quality, each of which may be volatile.

The market price of our common stock, as well as the general level of interest rates and our credit quality, will likely significantly affect the trading price of the notes. Each may be volatile and could fluctuate in a way that adversely affects the trading price of the notes and our stock.

We cannot predict whether the market price of our common stock will rise or fall. The market price of our common stock will be influenced by a number of factors, including general market conditions, our operating results, leverage, ability to raise additional capital, product announcements and the successful completion of, and integration of, the acquisition of X-spine Systems, Inc. ("X-spine"). The market price of our common stock also could be affected by possible sales of common stock by investors who view the notes as an attractive means of equity participation in us and by hedging or arbitrage activity involving our common stock that we expect to develop as a result of the issuance of the notes. The hedging or arbitrage activity could, in turn, affect the trading prices of the notes.

We also cannot predict whether interest rates will rise or fall. During the term of the notes, interest rates will be influenced by a number of factors, most of which are beyond our control. However, if interest rates increase, the trading price of the notes will decrease, and if interest rates decrease, the trading price of the notes will increase.

In addition, our credit quality may vary substantially during the term of the notes and will be influenced by a number of factors, including variations in our cash flows and the amount of indebtedness we have outstanding. Any decrease in our credit quality is likely to negatively impact the trading price of the notes.

The notes will be effectively subordinated to our secured indebtedness to the extent of the value of the collateral securing such secured indebtedness and any liabilities of our subsidiaries.

The notes will be our senior, unsecured obligations, will rank equal in right of payment with our existing and future unsecured indebtedness that is not junior to the notes, and will be senior in right of payment to any of our existing and future indebtedness that is expressly subordinated to the notes. The notes, however, will be effectively subordinated to our existing and future secured indebtedness to the extent of the value of the collateral securing such indebtedness. As of March 31, 2015, on a consolidated basis, we had approximately $25.3 million of debt outstanding, $24.0 million of which was indebtedness of our operating subsidiary that was guaranteed by us and secured by a lien on substantially all of our and our subsidiary's assets. As of March 31, 2015, after giving pro forma effect to the issuance of the notes and the acquisition, including the amendment and restatement of our credit facility, on a consolidated basis, we would have had $108.3 million of debt outstanding, $42.0 million of which would have been indebtedness of our subsidiaries, guaranteed by us and our subsidiaries and secured by a lien on substantially all of our and our subsidiaries' assets. The indenture governing the notes will not prohibit or restrict us or our subsidiaries from incurring additional indebtedness, including a secured indebtedness, in the future. In the event of our bankruptcy, liquidation, dissolution or reorganization, or of a similar proceeding, any assets that we pledge as collateral for any of our other obligations will not be available to pay our obligations under the notes until we have paid such other obligations in full.

None of our subsidiaries will guarantee the notes. Accordingly, the notes will also be structurally subordinated to all existing and future indebtedness and other liabilities, including trade payables, and (to the extent we are not a holder thereof) preferred equity, if any, of our subsidiaries. In the event of a bankruptcy, liquidation, dissolution, reorganization or similar proceeding with respect to any of our subsidiaries, we, as a common equity owner of such subsidiary, and, therefore, the holders of the notes, will rank behind such subsidiary's creditors, including such subsidiary's trade creditors, and such subsidiary's preferred equity holders. In this regard, holders of the notes should be aware that Bacterin International Holdings, Inc., the issuer of the notes, has little or no assets of its own aside from its ownership interest in its wholly owned operating subsidiary, Bacterin International, Inc. and, following the acquisition, its ownership interest in X-spine. Even if we were a creditor of any of our subsidiaries, our rights as a creditor would be subordinated to any security interest of others in the assets of that subsidiary and any indebtedness of that subsidiary senior to that held by us. As of March 31, 2015, our subsidiary had indebtedness and other liabilities, including trade payables, of approximately $42.6 million, excluding intercompany liabilities. As of March 31, 2015, after giving pro forma effect to the issuance of the notes and the acquisition, including the amendment and restatement of our credit facility, our subsidiaries would have had indebtedness and other liabilities (including trade payables) of $123.9 million, excluding intercompany liabilities. The indenture governing the notes will not prohibit our subsidiaries from incurring additional indebtedness or issuing preferred equity.

We may rely on our subsidiaries for funds necessary to meet our financial obligations, including the notes.

We conduct substantially all of our activities through our subsidiaries. We may depend on those subsidiaries for dividends and other payments to generate the funds necessary to meet our financial obligations, including the payment of principal and interest on the notes. The ability of our subsidiaries to make payments to us may be restricted by, among other things, applicable state corporation or similar statutes and other laws and regulations. The earnings from, or other available assets of, our subsidiaries may be insufficient to enable us to pay principal or interest on the notes when due.

Servicing our debt requires a significant amount of cash, and we may not have sufficient cash flow from our business to pay our substantial debt.

Our ability to make scheduled payments of the principal of, to pay interest on or to refinance our indebtedness, including the notes, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business may not generate cash flow from operations in the future sufficient to service our debt and other fixed charges, fund working capital needs and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations.

Despite our current consolidated debt levels, we may still incur substantially more debt or take other actions which would intensify the risks discussed above.

Despite our current consolidated debt levels, we and our subsidiaries may be able to incur substantial additional debt in the future, including secured debt. The indenture governing the notes will permit us and our subsidiaries to incur additional indebtedness or to take a number of other actions that could diminish our ability to make payments on the notes.

The indenture that will govern the notes will contain limited protections against certain types of important corporate events and may not protect your investment upon the occurrence of those and other events.

The indenture for the notes will not:

- require us to maintain any financial ratios or specific levels of net worth, revenues, income, cash flows or liquidity;
- protect holders of the notes in the event that we experience significant adverse changes in our financial condition or results of operations;

- limit our ability to pledge assets to secure our existing or future debt;
- limit our ability to incur indebtedness that is equal in right of payment to the notes;
- limit our ability to incur indebtedness with a maturity date earlier than the maturity date of the notes;
- restrict the ability of our subsidiaries to issue securities or incur liability that would be structurally senior to our indebtedness;
- restrict our ability to purchase or prepay our securities; or
- restrict our ability to make investments or to purchase or pay dividends or make other payments in respect of our common stock or other securities ranking junior to the notes.

In addition, the indenture contains limited covenants or other provisions that afford protection to holders of the notes in the event of a fundamental change involving us. Accordingly, your rights under the notes may be substantially and adversely affected upon any fundamental change or if we or our subsidiaries take certain actions that could either increase the probability that we default on the notes or reduce the recovery that you may to receive upon any such default.

Past and future regulatory actions and other events may adversely affect the trading price and liquidity of the notes.

We expect that many investors in, and potential purchasers of, the notes will employ, or seek to employ, a convertible arbitrage strategy with respect to the notes. Investors would typically implement such a strategy by selling short the common stock underlying the notes and dynamically adjusting their short position while continuing to hold the notes. Investors may also implement this type of strategy by entering into swaps on our common stock in lieu of or in addition to short selling the common stock.

The Securities and Exchange Commission (the "SEC") and other regulatory and self-regulatory authorities have implemented various rules and taken certain actions, and may in the future adopt additional rules and take other actions, that may impact those engaging in short selling activity involving equity securities (including our common stock). These rules and actions include Rule 201 of SEC Regulation SHO, the adoption by the Financial Industry Regulatory Authority, Inc. and the national securities exchanges of a "limit up-limit down" program, the imposition of market-wide circuit breakers that halt trading of securities for certain periods following specific market declines, and the implementation of certain regulatory reforms required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Any governmental or regulatory action that restricts the ability of investors in, or potential purchasers of, the notes to effect short sales of our common stock or enter into swaps on our common stock could adversely affect the trading price and the liquidity of the notes.

In addition, if investors and potential purchasers seeking to employ a convertible arbitrage strategy are unable to borrow or enter into swaps on our common stock, in each case on commercially reasonable terms, the trading price and liquidity of the notes may be adversely affected.

The acquisition, which will be financed, in part, with shares of our common stock, and future sales of our common stock in the public market could lower the market price for our common stock and adversely impact the trading price of the notes.

The acquisition will be financed, in part, with shares of our common stock. In addition, in the future, we may sell additional shares of our common stock or equity-related securities to raise capital. In addition, as of June 30, 2015, 2,201,048 shares of our common stock are reserved for issuance upon the exercise of stock options and warrants and additional amounts will be reserved for issuance upon conversion of the notes. At June 30, 2015, we also have reserved 1,221,629 shares of common stock for issuance pursuant to a common stock agreement with Aspire Capital Fund, LLC. We cannot predict the size of future issuances or the effect, if any, that they, or the acquisition, may have on the market price for our common stock. The issuance and sale of substantial amounts of common stock or equity-related securities, or

the perception that such issuances and sales may occur, could adversely affect the trading price of the notes and the market price of our common stock and impair our ability to raise capital through the sale of additional equity securities.

We may not have the ability to raise the funds necessary to pay interest on the notes or to repurchase the notes upon a fundamental change.

The notes bear interest semi-annually at a rate of 6.00% per year. In addition, in certain circumstances, we are obligated to pay additional interest or special interest on the notes. In addition, if a fundamental change occurs, holders of the notes may require us to repurchase all or a portion of their notes in cash. Any of the cash payments described above could be significant, and we may not have enough available cash or be able to obtain financing so that we can make such payments when due. In addition, our ability to repurchase the notes, to pay additional interest or special interest on the notes, or to pay cash upon conversions of the notes may be limited by law or by agreements governing our existing or future indebtedness. For example, under the amended and restated credit facility that we entered into in connection with the offering of the notes, we are restricted from making any payment or distribution with respect to, or purchasing, redeeming, defeasing, retiring or acquiring, the notes, other than payments of scheduled interest on the notes, issuance of shares of common stock upon conversion of the notes, and payment of cash in lieu of fractional shares. Regardless of these restrictions, if we fail to pay interest on the notes or repurchase the notes when required, we will be in default under the indenture. A default under the indenture would be a default under our credit agreement and could also lead to a default under agreements governing our future indebtedness. If the repayment of the related indebtedness were to be accelerated, we may not have sufficient funds to repurchase the notes or make cash payments upon conversions of the notes.

The adjustment to the conversion rate for notes converted in connection with a make-whole fundamental change may not adequately compensate you for any value that your notes lose as a result of such transaction.

If a make-whole fundamental change occurs prior to the maturity date, we will, under certain circumstances, increase the conversion rate by a number of additional shares of our common stock for notes converted in connection with such make-whole fundamental change. The increase in the conversion rate will be determined based on the date on which the make-whole fundamental change becomes effective and either the average of the last reported sale prices per share of our common stock over the five trading day period immediately preceding the effective date of the make-whole fundamental change or the cash price paid per share of our common stock in the transaction. The adjustment to the conversion rate for notes converted in connection with a make-whole fundamental change may not adequately compensate you for any lost value of your notes as a result of such transaction.

In addition, if the average of the last reported sale price per share of our common stock over the five trading day period immediately preceding the effective date of the make-whole fundamental change or the cash price paid per share of our common stock in the make-whole fundamental change, as the case may be, is greater than $30.00 per share or less than $3.17 per share (in each case, subject to adjustment), no additional shares will be added to the conversion rate.

Moreover, in no event will the conversion rate be increased pursuant to the make-whole fundamental change provisions to exceed 315.4564 shares of common stock per $1,000 principal amount of notes, subject to adjustment in the same manner, at the same time and for the same events for which we must adjust the conversion rate.

Our obligation to increase the conversion rate upon the occurrence of a make-whole fundamental change could be considered a penalty, in which case the enforceability thereof would be subject to general principles of reasonableness of economic remedies.

The conversion rate of the notes may not be adjusted for all dilutive events.

We will adjust the conversion rate of the notes for certain events, including, among others:

- the issuance of certain share and cash dividends on our common stock;
- the issuance of certain rights or warrants;
- certain subdivisions and combinations of our capital stock;
- certain distributions of capital stock, indebtedness or assets; and
- certain tender or exchange offers.

We will not adjust the conversion rate for other events, such as for an issuance of our common stock for cash or in connection with an acquisition, that may dilute our common stock, thereby adversely affecting its market price.

Because the trading price of the notes depends on the market price our common stock, any event that dilutes our common stock and adversely affects the market price of our common stock will likely also adversely affect the trading price of the notes.

We will not be obligated to purchase the notes upon the occurrence of all significant transactions that are likely to affect the market price of our common stock and/or the trading price of the notes.

Because the term fundamental change is limited to certain specified transactions, it does not include all events that could adversely affect our financial condition or the market price of our common stock and the trading price of the notes. For example, we will not be required to purchase any notes upon the occurrence of certain transactions that would otherwise constitute a fundamental change, if at least 90% of the consideration received by holders of our common stock in the transaction consists of shares of common stock traded on the NASDAQ Stock Market or the New York Stock Exchange. Furthermore, certain other transactions, such as leveraged recapitalizations, refinancings, restructurings or certain acquisitions of other entities by us or our subsidiaries, would not constitute a fundamental change requiring us to purchase the notes or to increase the conversion rate, even though each of these transactions could increase the amount of our indebtedness or otherwise adversely affect our capital structure, which could adversely affect holders of the notes.

We have not registered the offer or the sale of the notes or the common stock issuable upon the conversion of the notes, which will limit your ability to resell the notes and any common stock issued upon the conversion of the notes.

The offer and sale of the notes and the shares of common stock issuable upon the conversion of the notes have not been registered under the Securities Act of 1933, as amended (the “Securities Act”) or any state securities laws. Unless the offer and sale of the notes and the shares of common stock issuable upon the conversion of the notes have been registered, they may not be transferred or resold except in a transaction exempt from, or not subject to, the registration requirements of the Securities Act and applicable state securities laws. Although we have agreed to file a shelf registration statement covering the resale of the notes and the shares of our common stock issuable upon conversion of the notes and to use our best efforts to cause that shelf registration statement to become effective no later than the 180th day after the original issuance date of the notes, we may not be able to satisfy these registration obligations on a timely basis. We are not eligible to use a registration statement on Form S-3 and must use a registration statement on Form S-1, which may be more time-consuming to prepare. In addition, the SEC staff may choose to review the shelf registration statement, in which case we will not be able to cause it to become effective unless and until we have addressed all of the SEC staff’s comments to the staff’s satisfaction. In addition, we are entitled to suspend use of the shelf registration statement under certain circumstances, and we may be required to suspend use of the registration statement even if we are not permitted to do so by the registration rights agreement. If the registration statement does not become effective, or if we suspend the use of the shelf registration statement, you may not be able to sell your notes or underlying shares, and the value of those notes and shares may decline. Furthermore, selling security holders who sell their notes or underlying shares pursuant to the shelf registration statement may be subject to restrictions and potential liability under the Securities Act.

An active trading market may never develop for the notes.

Prior to the offering of the notes, there has been no trading market for the notes, and we do not intend to apply to list the notes on any securities exchange or to have them quoted on any automated dealer quotation system. We have been informed by Leerink Partners LLC (the "initial purchaser") that it intends to make a market in the notes after the offering is completed. However, the initial purchaser may cease its market-making at any time without notice. In addition, the liquidity of the trading market in the notes, and the trading price of the notes, may be adversely affected by changes in the overall market for this type of security and by changes in our financial performance or prospects or in the prospects for companies in our industry generally. As a result, we cannot assure you that an active trading market will develop for the notes. If an active trading market does not develop or is not maintained, the trading price and the liquidity of the notes may be adversely affected. In that case, you may not be able to sell your notes at a particular time, if at all, or you may not be able to sell your notes at a favorable price.

Our common stock may not be approved for listing on the NASDAQ Global Market ("Nasdaq"), and if it is approved, the timing of such listing is uncertain. A failure to list our common stock on a national securities exchange could significantly harm the value and trading price of the notes.

Following the closing of the offering of the notes, we intend to apply to have our common stock listed on Nasdaq. There is no assurance that our common stock will meet the minimum listing criteria to be accepted for listing on Nasdaq. Even if our common stock meets Nasdaq's minimum listing criteria, Nasdaq may not accept our listing application for other reasons. If our common stock is approved for listing on Nasdaq, the timing of such listing is uncertain.

A failure to list our common stock on a national security exchange will reduce the liquidity of our common stock and, because the notes are convertible into shares of our common stock, could depress the trading price of the notes. In addition, the reduced liquidity could make it difficult for note investors, and potential note investors, to locate willing lenders of shares of our common stock, which could prevent them from employing a prevalent hedging strategy of shorting shares of our common stock in connection with an investment in the notes. This, in turn, could make an investment in the notes less attractive to certain investors and, accordingly, depress the trading price of the notes.

If securities analysts stop publishing research or reports about us or our business, or if they downgrade our common stock, the market price of our common stock and, consequently, the trading price of the notes, could decline.

The market for our common stock relies in part on the research and reports that industry or financial analysts publish about us or our business. We do not control these analysts. If any analyst who covers us downgrades our stock or lowers its future stock price targets or estimates of our operating results, our stock price could decline rapidly. Furthermore, if any analyst ceases to cover our company, we could lose visibility in the market. Each of these events could, in turn, cause the market price of our common stock to decline.

As a holder of notes, you will not be entitled to any rights with respect to our common stock, but you will be subject to all changes made with respect to our common stock.

If you hold notes, you will not be entitled to any rights with respect to our common stock (including, without limitation, voting rights and rights to receive any dividends or other distributions on our common stock) until the conversion date for those notes, but you will be subject to all changes affecting our common stock. For example, in the event that an amendment is proposed to our Certificate of Amendment of Restated Certificate of Incorporation or to our Amended and Restated Bylaws requiring stockholder approval and the record date for determining the stockholders of record entitled to vote on the amendment occurs before the date you are deemed the record owner of the shares of our common stock due upon conversion, you will not be entitled to vote on the amendment, although you will nevertheless be subject to any changes in the powers, preferences or special rights of our common stock.

The notes will not be convertible by a holder to the extent that the convertibility or conversion would result in that holder or any of its affiliates beneficially owning more than 9.99% of the then-outstanding shares of our common stock.

Notwithstanding anything to the contrary in the indenture or the notes, no note will be convertible by the holder thereof, and we will not effect any conversion of any note, in each case to the extent (and only to the extent) that such convertibility or conversion would result in such holder or any of its affiliates beneficially owning in excess of 9.99% of the then-outstanding shares of our common stock. For these purposes, beneficial ownership and all determinations and calculations (including, without limitation, with respect to calculations of percentage ownership) will be determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the rules and regulations promulgated thereunder.

We do not expect the notes to be rated, but if the notes are rated, they may receive a lower rating than anticipated, which would likely adversely affect the trading price of the notes.

We do not intend to seek a rating for the notes and believe it is unlikely that the notes will be rated. However, if one or more rating agencies rates the notes and assigns the notes a rating lower than the rating expected by investors, reduces its rating of the notes or announces its intention to put us on credit watch, the market price of our common stock and the trading price of the notes would likely decline.

Certain provisions in the indenture governing the notes could delay or prevent an otherwise beneficial takeover or takeover attempt of us.

Certain provisions in the notes and the indenture could make it more difficult or more expensive for a third party to acquire us. For example, if a takeover would constitute a fundamental change, holders of the notes will have the right to require us to repurchase their notes in cash. In addition, if a takeover constitutes a make-whole fundamental change, we may be required to increase the conversion rate for holders who convert their notes in connection with such takeover. In either case, and in other cases, our obligations under the notes and the indenture could increase the cost of acquiring us or otherwise discourage a third party from acquiring us or removing incumbent management.

The offering of the notes is conditioned upon the closing of the acquisition and the purchase of a portion of the notes by certain private investment funds for which OrbiMed Advisors LLC serves as the investment manager (the "OrbiMed purchasers"). Accordingly, we will not issue any of the notes if these conditions are not satisfied.

We are conducting the offering of the notes, in part, to raise a portion of the cash proceeds necessary to consummate the acquisition. Accordingly, both the acquisition and the offering of the notes are conditioned upon the consummation of the other. In addition, the offering of the notes is conditioned upon the purchase of $52 million in aggregate principal amount of the notes by the OrbiMed purchasers. These conditions may not be satisfied. For example, the acquisition is subject to customary closing conditions. If the conditions to the offering of the notes are not satisfied, we will not issue any notes.

The OrbiMed purchasers will own a significant portion of the notes and will be able to exert significant influence over certain amendments or waivers relating to the notes or the indenture.

Certain private investment funds for which OrbiMed Advisors LLC serves as the investment manager, whom we refer to as the OrbiMed purchasers, have agreed to purchase $52 million of the notes. Accordingly, the OrbiMed purchasers will initially own approximately 80.0% (or 69.6%, if the initial purchaser fully exercises its option to purchase additional notes) of the outstanding notes. Subject to certain exceptions, the indenture and the notes may be modified or amended, and past defaults under the indenture may be waived, with the consent of the holders of at least a majority of the aggregate principal amount of the notes then outstanding. Because the OrbiMed purchasers will initially own at least 80.0% of the outstanding notes, they will be able to exert significant influence over the outcome of any consents that we may solicit in connection with any indenture amendments or waivers. The OrbiMed purchasers may have interests that differ, or, in some cases, conflict with, your interests as holders of notes. Accordingly, the OrbiMed purchasers may exercise this influence in a manner with which you may disagree or that may be detrimental to you. Furthermore, even though the indenture will provide that certain provisions of the indenture may not be

amended, and certain defaults may not be waived, without the consent of each affected holder, the influence that the OrbiMed purchasers may exercise over other amendments or waivers may significantly and adversely affect your rights as a holder of notes.

The notes will initially be held in book-entry form and, therefore, holders of the notes must rely on the procedures and the relevant clearing systems to exercise their rights and remedies.

The notes will initially be held in book-entry form through The Depository Trust Company ("DTC"). Unless and until certificated notes are issued in exchange for book-entry interests in those notes, owners of the book-entry interests will not be considered owners or holders of notes. Instead, DTC, or its nominee, will be the sole holder of the notes. Payments of principal, interest and other amounts owing on or in respect of the notes in global form will be made to the paying agent, which will make payments to DTC. Thereafter, such payments will be credited to DTC participants' accounts that hold book-entry interests in the notes in global form and credited by such participants to indirect participants. Unlike record holders of the notes, owners of book-entry interests will not have the direct right to act upon our solicitations for consents or requests for waivers or other actions from holders of the notes. Instead, if a holder owns a book-entry interest, such holder will be permitted to act only to the extent such holder has received appropriate proxies to do so from DTC or, if applicable, a DTC participant. We cannot assure holders that the procedures implemented for the granting of such proxies will be sufficient to enable holders to vote on any requested actions on a timely basis.

You may be subject to tax if we make or fail to make certain adjustments to the conversion rate of the notes, even though you do not receive a corresponding cash distribution.

The conversion rate of the notes is subject to adjustment in certain circumstances, including share splits and combinations, the issuance of shares of common stock as dividends, the payment of cash dividends and certain other actions by us. If the conversion rate is adjusted as a result of a distribution that is taxable to our common stockholders, such as certain cash dividends, you may be deemed to have received a dividend subject to U.S. federal income tax without the receipt of any cash. In addition, a failure to adjust (or to adjust adequately) the conversion rate after an event that increases your proportionate interest in us could be treated as a deemed taxable dividend to you. If a make-whole fundamental change occurs prior to the maturity date of the notes, under some circumstances, we will increase the conversion rate for notes converted in connection with the make-whole fundamental change. Such increase may also be treated as a distribution subject to U.S. federal income tax as a dividend. If you are a non-U.S. holder, any deemed dividend would be subject to U.S. federal withholding tax at a 30% rate, or such lower rate as may be specified by an applicable treaty. In certain circumstances, if you are a U.S. holder or a non-U.S. holder, deemed dividends may be subject to back-up withholding tax at a 28% rate or withholding tax at a 30% rate under the Foreign Account Tax Compliance Act. Any of the foregoing withholding taxes may be withheld from interest and payments upon conversion or maturity of the notes or, if the withholding tax is paid on behalf of you by us or another withholding agent, may be set off against payments of cash on the notes or shares of common stock payable on the notes, if any, or sales proceeds subsequently paid or credited to you.

Risks Related to the Acquisition

Growth through an acquisition presents certain risks to our business and operations.

The acquisition of X-spine and any other acquisitions we may pursue present numerous risks, including the following:

- the possibility that the expected benefits of the transactions may not materialize in the timeframe expected, or at all, or may be more costly to achieve than anticipated;
- the acquired assets may not produce as expected;
- we may be unable to successfully develop the assets;
- there may be adverse stockholder reaction to the acquisitions;

- the integration of these transactions may divert the attention of our management and other key employees from ongoing business activities, including the pursuit of other opportunities that could be beneficial to us; and
- we may incur substantial costs in connection with these transactions.

Any one or more of these factors could negatively affect our business, financial condition or results of operations.

We have made certain assumptions relating to the acquisition that may prove to be materially inaccurate.

We have made certain assumptions relating to the acquisition that may be inaccurate. Accordingly, we may fail to realize the expected benefits of the acquisition, may incur higher-than-expected transaction and integration costs, may assume unknown liabilities and may experience general economic and business conditions that adversely affect the combined company following the acquisition. These assumptions relate to numerous matters, including:

- projections of X-spine's future results;
- our expected capital structure after the acquisition;
- the amount of goodwill and intangibles that will result from the acquisition;
- certain other purchase accounting adjustments that we expect will be recorded in our financial statements in connection with the acquisition;
- cost, cross-selling and balance sheet synergies;
- acquisition costs, including restructuring charges and transaction costs;
- our ability to maintain, develop and deepen relationships with X-spine's customers; and
- other financial and strategic risks of the acquisition.

There may be risks associated with the post-acquisition integration of X-spine, because X-spine has historically been operated as a privately owned company.

There may be risks associated with the post-acquisition integration of X-spine, because X-spine has historically been operated as a privately owned company. Public companies are subject to significant additional regulatory and reporting requirements. Senior management of public companies may be required to devote more of their time to meeting these additional requirements. X-spine's senior management has historically been actively involved in the revenue-generating activities of its operations. If these individuals are required to devote more time to the additional requirements of managing a public company, and we are unable to successfully transition some or all of their direct revenue-generating responsibilities to other suitable professionals, our business, results of operations and financial condition may suffer.

Our ability to use our net operating loss carry-forwards to offset future taxable income may become limited.

Section 382 of the Internal Revenue Code of 1986, as amended (the "Code"), imposes restrictions on the use of a corporation's net operating losses, as well as certain recognized built-in losses and other carryforwards, after an "ownership change" occurs. A Section 382 "ownership change" occurs if one or more stockholders or groups of stockholders who own at least 5% of our stock (including certain "public groups" deemed created for Section 382 purposes) increase their ownership by more than 50 percentage points over their lowest ownership percentage within a rolling three-year period. It is possible that the issuance of common stock upon conversion of the notes could result in an ownership change under Section 382, and there can be no assurance that this will not happen. If an "ownership change" occurs, Section 382 would impose an annual limit on the amount of pre-change net operating losses and other losses we can use to reduce our taxable income generally equal to the product of the total value of our outstanding equity immediately prior to the "ownership change" (subject to certain adjustments) and the applicable federal long-term tax-exempt interest rate for the month of the "ownership change."

Because U.S. federal net operating losses generally may be carried forward for up to 20 years, the annual limitation may effectively provide a cap on the cumulative amount of pre-ownership change losses, including certain recognized built-in losses that may be utilized. Such pre-ownership change losses in excess of the cap may be lost. In addition, if an ownership change were to occur, it is possible that the limitations imposed on our ability to use pre-ownership change losses and certain recognized built-in losses could cause a net increase in our U.S. federal income tax liability and U.S. federal income taxes to be paid earlier than otherwise would be paid if such limitations were not in effect. Further, if for financial reporting purposes the amount or value of these deferred tax assets is reduced, such reduction could negatively impact the book value of our common stock.

We may not be able to deduct all or a portion of the interest payments on the notes for U.S. federal income tax purposes.

The deduction for all or a portion of the interest paid or incurred on indebtedness classified as "corporate acquisition indebtedness" for U.S. federal income tax purposes may be disallowed. A convertible debt instrument may be classified as "corporate acquisition indebtedness" under the Code if the proceeds thereof are used, directly or indirectly, to finance an acquisition and certain other conditions are met. The notes may be treated as corporate acquisition indebtedness. Accordingly, the deduction for all or a portion of the interest paid or incurred on the notes may be disallowed. If we were not entitled to deduct interest on the notes, our after-tax operating results could be adversely affected.

Risks Related to our Business

We recently moved from the NYSE MKT to the OTCQX marketplace.

On April 8, 2015, we received a notice indicating that the NYSE MKT denied our appeal of their delisting determination. We were also notified that trading of our common stock would be suspended on the NYSE MKT. Beginning April 9, 2015, our common stock began trading on the OTCQX marketplace. As a result, some shareholders may sell their shares, and we may not be able to attract institutional investors in future financing transactions. In addition, because our common stock is no longer listed on a national securities exchange, we will not be eligible to utilize a Form S-3 registration statement (i) for a primary offering, if our public float is not at least $75.0 million as of a date within 60 days prior to the date of filing the Form S-3, or a re-evaluation date, whichever is later, and (ii) to register the resale of our securities by persons other than us (*i.e.*, a resale offering). Because we are unable to utilize a Form S-3 registration statement for primary and secondary offerings of our common stock, we will be required to file a Form S-1 registration statement, which could delay our ability to raise funds in the future, may limit the type of offerings of common stock we could undertake, and could increase the expenses of any offering, as, among other things, registration statements on Form S-1 are subject to SEC review and comments whereas take downs pursuant to a previously effective Form S-3 are not. In addition, we are no longer subject to NYSE MKT shareholder approval requirements, which formerly required us to obtain shareholder approval before issuing 20% or more of our common stock in an acquisition or financing transaction, unless the transaction satisfied certain pricing requirements or was considered a "public offering" by the NYSE MKT staff. Since we are no longer subject to such shareholder approval requirements, we could issue shares in excess of 20% of our outstanding shares in acquisitions or financing transactions without shareholder approval. Any such issuance would dilute the ownership of our current stockholders. In addition, we will no longer be subject to the NYSE MKT rules requiring us to meet certain corporate governance standards, which could decrease investor interest in our common stock.

We may not be able to meet financial or other covenant requirements in our credit facility, and we may not be able to successfully negotiate waivers to cure any covenant violations.

Our credit agreement with ROS Acquisition Offshore LP ("ROS"), an affiliate of OrbiMed Advisors LLC, our largest shareholder, contains representations, warranties, fees, affirmative and negative covenants, including a minimum cash balance and minimum revenue amounts by quarter, and default provisions, which include departures in key management, if not remedied within 90 days. A breach of any of these covenants could result in a default under these agreements. Upon the occurrence of an event of default under our debt agreements, our lender could elect to declare all amounts outstanding to be immediately due and payable and terminate all commitments to extend further credit. If our lender accelerates the repayment of borrowings, we

may not have sufficient assets to repay our indebtedness. Also, should there be an event of default, or should we need to obtain waivers following an event of default, we may be subject to higher borrowing costs and/or more restrictive covenants in future periods. In addition, to secure the performance of our obligations under the ROS facility, we pledged substantially all of our assets, including our intellectual property, to ROS. Our failure to comply with the covenants under the ROS credit facility could result in an event of default, the acceleration of our debt and the loss of our assets. We have negotiated an amended and restated credit agreement with ROS in connection with the acquisition, which contains covenants substantially similar to those in our current credit agreement.

In addition, the amended and restated credit agreement also contains financial covenants that require us to maintain revenue and liquidity at the levels set forth in the amended and restated credit agreement and ensure that our senior consolidated leverage ratio does not exceed the levels set forth in the amended and restated credit agreement.

We may need to use 50% of the net proceeds from future offerings to make a mandatory prepayment on our loan to ROS.

Subject to the discretion of our lender, our credit agreement with ROS includes an obligation on our part to use 50% of the net proceeds from equity offerings above $15 million in the aggregate to make a mandatory prepayment on our loan to ROS. We negotiated an amended and restated credit agreement with ROS in connection with the acquisition, and the $15 million threshold will increase to $50 million. This provision could reduce the net proceeds to us in future financing transactions, which may affect our ability to raise capital in the future.

We are not currently profitable and we will need to raise additional funds in the future; however, additional funds may not be available on acceptable terms, or at all.

We have substantial operating expenses associated with the sales and marketing of our products. The sales and marketing expenses are anticipated to be funded from operating cash flow. There can be no assurance that we will have sufficient access to liquidity or cash flow to meet our operating expenses and other obligations. If we do not increase our revenue or reduce our expenses, we will need to raise additional capital, which would result in dilution to our stockholders, or seek additional loans. The incurrence of indebtedness would result in increased debt service obligations and could require us to agree to operating and financial covenants that would restrict our operations. Financing may not be available in amounts or on terms acceptable to us, if at all. Any failure by us to raise additional funds on terms favorable to us, or at all, could result in our inability to pay our expenses as they come due, limit our ability to expand our business operations, and harm our overall business prospects.

We may not be able to raise capital or, if we can, it may not be on favorable terms. We may seek to raise additional capital through public or private equity financings, partnerships, joint ventures, disposition of assets, debt financings or restructuring, bank borrowing or other sources. To obtain additional funding, we may need to enter into arrangements that require us to relinquish rights to certain technologies, products and/or potential markets. If adequate funds are not otherwise available, we would be forced to curtail operations significantly, including reducing our sales and marketing expenses which could negatively impact product sales and we could even be forced to cease operations, liquidate our assets and possibly even seek bankruptcy protection.

The impact of United States healthcare reform legislation remains uncertain.

In 2010, federal legislation, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act (collectively “PPACA”), to reform the United States healthcare system was enacted into law. Certain aspects of the law were upheld by a Supreme Court decision announced in June 2012 and in June 2015. PPACA is far-reaching and is intended to expand access to health insurance coverage, improve quality and reduce costs over time. Among other things, the PPACA imposes a 2.3 percent excise tax on medical devices, which applies to United States sales of our medical device products, including our OsteoSelect® DBM putty. X-spine products also are subject to this excise tax. Due to multi-year pricing agreements and competitive pricing pressure in our industry, there can be no assurance that we will be able to pass the cost of the device tax on to our customers. Other provisions of the law, including Medicare

provisions aimed at improving quality and decreasing costs, comparative effectiveness research, an independent payment advisory board, and pilot programs to evaluate alternative payment methodologies, could meaningfully change the way healthcare is developed and delivered. We cannot predict the impact of this legislation or other healthcare programs and regulations that may ultimately be implemented at the federal or state level, the effect of any future legislation or regulation in the United States or internationally or whether any changes will have the effect of lowering prices for our products or reducing medical procedure volumes.

We cannot predict the impact of other healthcare programs and regulations that may ultimately be implemented at the federal or state level, the effect of any future legislation or regulation in the United States or internationally or whether any changes will have the effect of lowering prices for our products or reducing medical procedure volumes.

We are subject, directly and indirectly, to federal and state healthcare fraud and abuse laws, false claims laws, and physician payment transparency laws. Failure to comply with these laws may subject us to substantial penalties.

We are subject to federal and state healthcare laws and regulations pertaining to fraud and abuse, and physician payment transparency. These laws include:

- the federal Anti-Kickback Statute, which prohibits, among other things, persons from knowingly and willfully soliciting, receiving, offering or paying remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual for, or the purchase, order or recommendation of, any good or service for which payment may be made under federal healthcare programs, such as the Medicare and Medicaid programs. A person or entity does not need to have actual knowledge of the federal Anti-Kickback Statute or specific intent to violate it to have committed a violation. In addition, 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 Act;
- federal false claims laws which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid or other federal third-party payors that are false or fraudulent;
- federal criminal laws that prohibit executing a scheme to defraud any federal healthcare benefit program or making false statements relating to healthcare matters;
- the federal Physician Payment 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 Centers for Medicare & Medicaid Services, or CMS, information related to payments or other “transfers of value” made to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors) and teaching hospitals, and requires applicable manufacturers and group purchasing organizations to report annually to CMS ownership and investment interests held by the physicians described above and their immediate family members and payments or other “transfers of value” to such physician owners; and
- analogous state and foreign law equivalents of each of the above federal laws, such as anti-kickback and false claims laws which may apply to items or services reimbursed by any third-party payor, including commercial insurers; state laws that require device companies to comply with the industry’s voluntary compliance guidelines and the applicable compliance guidance promulgated by the federal government or otherwise restrict payments that may be made to healthcare providers and other potential referral sources; state laws that require device manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or marketing expenditures; and state laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

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 our relationships with customers,

physicians and other healthcare providers, some of whom have ownership interests in the company and recommend and/or use our products, could be subject to challenge under one or more of such laws. We are also exposed to the risk that our employees, independent contractors, principal investigators, consultants, vendors, and distributors may engage in fraudulent or other illegal activity. Misconduct by these parties could include, among other infractions or violations, intentional, reckless and/or negligent conduct or unauthorized activity that violates FDA regulations, manufacturing standards, federal and state healthcare fraud and abuse laws and regulations, laws that require the true, complete and accurate reporting of financial information or data or other commercial or regulatory laws or requirements. It is not always possible to identify and deter misconduct by our 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.

Because of the nature of our business, we are involved from time to time in lawsuits, claims, audits and investigations, including whistleblower actions by private parties and subpoenas from governmental agencies such as the Office of Inspector General of the Department of Health and Human Services ("OIG"). In February 2013, we received a subpoena from the OIG seeking documents in connection with an investigation into possible false or otherwise improper claims submitted to Medicare. The subpoena requested documents related to physician referral programs operated by the Company, which we believe refers to the Company's prior practice of compensating physicians for performing certain educational and promotional services on behalf of the Company during 2009 and 2010. We later learned that this subpoena resulted from a qui tam action that was dismissed without prejudice in 2013 after the Department of Justice declined to intervene.

If our operations are found to violate any of the laws described above or any other laws and regulations that apply to us, we may be subject to penalties, including civil and criminal penalties, damages, fines, the curtailment or restructuring of our operations, the exclusion from participation in federal and state healthcare programs and imprisonment, any of which could adversely affect our ability to market our products and materially adversely affect our business, results of operations and financial condition. 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.

Pricing pressure and cost containment measures could have a negative impact on our future operating results.

Pricing pressure has increased in our industry due to continued consolidation among healthcare providers, trends toward managed care, the shift towards government becoming the primary payor of healthcare expenses, and government laws and regulations relating to reimbursement and pricing generally. Pricing pressure, reductions in reimbursement levels or coverage or other cost containment measures could unfavorably affect our future operating results and financial condition.

Many competitive products exist and more will be developed, and we may not be able to successfully compete because we are smaller and have fewer financial resources.

Our business is in a very competitive and evolving field. Rapid new developments in this field have occurred over the past few years, and are expected to continue to occur. Other companies already have competing products available or may develop products to compete with ours. Many of these products have short regulatory timeframes and our competitors, many with more substantial development resources, may be able to develop competing products that are equal to or better than ours. This may make our products obsolete or undesirable by comparison and reduce our revenue. Our success will depend, in large part, on our ability to maintain a competitive position concerning our intellectual property, and to develop new technologies and new applications for our technologies. Many of our competitors have substantially greater financial and technical resources, as well as greater production and marketing capabilities, and our ability to compete remains uncertain.

The medical community and the general public may perceive synthetic materials and growth factors as safer, which could have a material adverse effect on our business.

Members of the medical community and the general public may perceive synthetic materials and growth factors as safer than our allograft-based bone tissue products. Our products may be incapable of competing successfully with synthetic bone graft substitutes and growth factors developed and commercialized by others, which could have a material adverse effect on our business, financial condition and results of operations.

Negative publicity concerning methods of human tissue recovery and screening of donor tissue in the industry in which we operate may reduce demand for our allografts and impact the supply of available donor tissue.

Media reports or other negative publicity concerning both improper methods of tissue recovery from donors and disease transmission from donated tissue may limit widespread acceptance of our allografts. Unfavorable reports of improper or illegal tissue recovery practices, 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 technologies. Potential patients may not be able to distinguish our allografts, technologies and the tissue recovery and the processing procedures from those of our competitors or others engaged in tissue recovery. In addition, families of potential donors may become reluctant to agree to donate tissue to for-profit tissue processors.

We are highly dependent on the availability of human donors; any disruptions could cause our customers to seek alternative providers or technologies.

We are highly dependent on our ability to obtain donor cadavers as the raw material for many of our products. The availability of acceptable donors is relatively limited and we compete with many other companies for this limited availability. The availability of donors is also impacted by regulatory changes, general public opinion of the donor process and our reputation for our handling of the donor process. In addition, due to seasonal changes in the mortality rates, some scarce tissues are at times in short supply. Any disruption in the supply of this crucial raw material could have significant consequences for our revenue, operating results and continued operations.

We will need to continue to innovate and develop new products to be desirable to our customers.

The markets for our products and services are characterized by rapid technological change, frequent new introductions, changes in customers' demands and evolving industry standards. Accordingly, we will need to continue to innovate and develop additional products. These efforts can be costly, subject to long development and regulatory delays and may not result in products approved for sale. These costs may hurt operating results and may require additional capital. If additional capital is not available, we may be forced to curtail development activities. In addition, any failure on our behalf to react to changing market conditions could create an opportunity for other market participants to capture a critical share of the market within a short period of time.

Our success will depend on our ability to engage and retain qualified technical personnel who are difficult to attract.

Our success will depend on our ability to attract and retain qualified technical personnel to assist in research and development, testing, product implementation, low-scale production and technical support. The demand for such personnel is high and the supply of qualified technical personnel is limited. A significant increase in the wages paid by competing employers could result in a reduction of our technical work force and increases in the wage rates that we must pay or both. If either of these events were to occur, our cost structure could increase and our growth potential could be impaired.

Loss of key members of our management whom we need to succeed could adversely affect our business.

We are highly dependent on the services of key members of our management team, and the loss of any of their services could have an adverse effect on our future operations. We do not currently maintain key-man life insurance policies insuring the life of any member of our management team.

We are highly dependent on the continued availability of our facilities and would be harmed if they were unavailable for any prolonged period of time.

Any failure in the physical infrastructure of our facilities or services could lead to significant costs and disruptions that could reduce our revenues and harm our business reputation and financial results. We are highly reliant on our Belgrade, Montana facilities. Any natural or man-made event that impacts our ability to utilize these facilities could have a significant impact on our operating results, reputation and ability to continue operations. The regulatory process for approval of facilities is time-consuming and our ability to rebuild facilities would take a considerable amount of time and expense and cause a significant disruption in service to our customers. Further, the FDA or some other regulatory agency could identify deficiencies in future inspections of our facilities or our supplies that could disrupt our business, reducing profitability.

Future revenue will depend on our ability to increase sales.

We currently sell our products through direct sales by our employees and indirectly through distributor relationships. We incurred increased sales and marketing expenses in building and expanding our direct sales force, and there can be no assurance that we will generate increased sales as a result of this effort.

There may be fluctuations in our operating results, which will impact our stock price.

Significant annual and quarterly fluctuations in our results of operations may be caused by, among other factors, our volume of revenues, the timing of new product or service announcements, releases by us and our competitors in the marketplace of new products or services, seasonality and general economic conditions. There can be no assurance that the level of revenues achieved by us in any particular fiscal period will not be significantly lower than in other comparable fiscal periods. Our expense levels are based, in part, on our expectations as to future revenues. As a result, if future revenues are below expectations, net income or loss may be disproportionately affected by a reduction in revenues, as any corresponding reduction in expenses may not be proportionate to the reduction in revenues.

Our revenues will depend upon prompt and adequate coverage and reimbursement from public and private insurers and national health systems.

Political, economic and regulatory influences are subjecting the healthcare industry in the United States to fundamental change. The ability of hospitals to pay fees for allograft bone tissue products depends in part on the extent to which reimbursement for the costs of such materials and related treatments will continue to be available from governmental health administration authorities, private health coverage insurers and other organizations. In the United States, healthcare providers who purchase our products generally rely on these third-party payors to pay for all or a portion of the cost of our products in the procedures in which they are employed. Because there is often no separate reimbursement for our products, the additional cost associated with the use of our products can impact the profit margin of the hospital or other health care facility where the surgery is performed. Some of our target customers may be unwilling to purchase our products if they are able to procure less expensive alternatives. In addition, major third-party payors of hospital services and hospital outpatient services, including Medicare, Medicaid and private healthcare insurers, annually revise their payment methodologies, which can result in stricter standards for reimbursement of hospital charges for certain medical procedures or the elimination of or reduction in reimbursement. Further, Medicare, Medicaid and private healthcare insurer cutbacks could create downward price pressure on our products.

Our operating results will be harmed if we are unable to effectively manage and sustain our future growth.

We might not be able to manage our future growth efficiently or profitably. Our business is unproven on a large scale and actual revenue and operating margins, or revenue and margin growth, may be less than expected. If we are unable to scale our production capabilities efficiently, we may fail to achieve expected operating margins, which would have a material and adverse effect on our operating results. Growth may also stress our ability to adequately manage our operations, quality of products, safety and regulatory compliance. In order to grow, we may be required to obtain additional financing, which may increase our indebtedness or result in dilution to our stockholders. Further, there can be no assurance that we would be able to obtain any additional financing.

The results of our clinical studies may not support our product candidate claims or may result in the discovery of adverse effects.

Our ongoing research and development, pre-clinical testing and clinical study activities are subject to extensive regulation and review by numerous governmental authorities both in the United States and abroad. We are currently conducting post-market clinical studies of some of our products to gather information about these products' performance or optimal use. Additionally, in the future we may conduct clinical studies to support clearance or approval of new products. Clinical studies must be conducted in compliance with FDA regulations and local regulations, and according to principles and standards collectively referred to as "Good Clinical Practices." Non-compliance could result in regulatory and legal enforcement action and also could invalidate the data. Even if our clinical studies are completed as planned, we cannot be certain that their results will support our product candidates and/or proposed claims or that the FDA or foreign authorities and notified bodies will agree with our conclusions regarding them. Success in pre-clinical studies and early clinical studies does not ensure that later clinical studies will be successful, and we cannot be sure that the results of the later studies will replicate those of earlier or prior studies. The clinical trial process may fail to demonstrate that our product candidates are safe and effective for the proposed indicated uses, which could cause us to abandon a product candidate and may delay development of others. Any delay or termination of our clinical studies will delay the filing of our product submissions and, ultimately, our ability to commercialize our product candidates and generate revenues. It is also possible that patient subjects enrolled in our clinical studies of our marketed products will experience adverse side effects that are not currently part of the product candidate's profile and, if so, these findings may result in lower market acceptance, which could have a material and adverse effect on our business, results of operations and financial condition.

We may be subject to future product liability litigation that could be expensive, and our insurance coverage may not be adequate in a catastrophic situation.

Although we are not currently subject to any product liability proceedings, we have no reserves for product liability disbursements, and we may incur material liabilities relating to product liability claims in the future, including product liability claims arising out of the use of our products. We currently carry product liability insurance, however, our insurance coverage and any reserves we may maintain in the future for product related liabilities may not be adequate and our business could suffer material adverse consequences.

U.S. governmental regulation could restrict the use of our tissue products or our procurement of tissue.

In the United States, the procurement and transplantation of allograft bone tissue is subject to federal law pursuant to the National Organ Transplant Act, or NOTA, a criminal statute which prohibits the purchase and sale of human organs used in human transplantation, including bone and related tissue, for "valuable consideration." NOTA permits reasonable payments associated with the removal, transportation, processing, preservation, quality control, implantation and storage of human bone tissue. We provide services in all of these areas in the United States, with the exception of removal and implantation, and receive payments for all such services. We make payments to certain of our clients and tissue banks for their services related to recovering allograft bone tissue on our behalf. If NOTA is interpreted or enforced in a manner which prevents us from receiving payment for services we render or which prevents us from paying tissue banks or certain of our clients for the services they render for us, our business could be materially and adversely affected.

We are engaged through our marketing employees, independent sales agents and sales representatives in ongoing efforts designed to educate the medical community as to the benefits of our products, and we intend to continue our educational activities. Although we believe that NOTA permits payments in connection with these educational efforts as reasonable payments associated with the processing, transportation and implantation of our products, payments in connection with such education efforts are not exempt from NOTA's restrictions and our inability to make such payments in connection with our education efforts may prevent us from paying our sales representatives for their education efforts and could adversely affect our business and prospects. No federal agency or court has determined whether NOTA is, or will be, applicable to every allograft bone tissue-based material which our processing technologies may generate. Assuming that NOTA applies to our processing of allograft bone tissue, we believe that we comply with NOTA, but there can be no assurance that more restrictive interpretations of, or amendments to, NOTA will not be adopted in the future which would call into question one or more aspects of our method of operations.

If we fail to maintain regulatory approvals and clearances, or are unable to obtain, or experience significant delays in obtaining, FDA clearances or approvals for our future products or product enhancements, our ability to commercially distribute and market these products could suffer.

Our products are subject to rigorous regulation by the FDA and numerous other federal, state and foreign governmental authorities. Certain of our products are regulated as medical devices by the FDA while others are regulated by the FDA as tissues. The process of obtaining regulatory clearances or approvals to market a medical device can be costly and time consuming, and we may not be able to obtain these clearances or approvals on a timely basis, if at all. In particular, the FDA permits commercial distribution of a new medical device only after the device has received clearance under Section 510(k) of the Federal Food, Drug and Cosmetic Act, or is the subject of an approved premarket approval application, or PMA, unless the device is specifically exempt from those requirements.

The FDA will clear marketing of a lower risk medical device through the 510(k) process if the manufacturer demonstrates that the new product is substantially equivalent to a legally marketed device that is not subject to the PMA process, which includes devices that were legally marketed prior to May 28, 1976 ("pre-amendments devices") for which the FDA has not called for a PMA, devices that have been reclassified from Class III to Class II or I, or devices that have been found substantially equivalent through the 510(k) process. High risk devices deemed to pose the greatest risk, such as life-sustaining, life-supporting, or implantable devices, or devices not deemed substantially equivalent to a previously cleared device, require the approval of a PMA. The PMA process is more costly, lengthy and uncertain than the 510(k) clearance process. A PMA application must be supported by extensive data, including, but not limited to, technical, preclinical, clinical trial, manufacturing and labeling data, to demonstrate to the FDA's satisfaction the safety and efficacy of the device for its intended use.

Our failure to comply with U.S. federal, state and foreign governmental regulations could lead to the issuance of warning letters or untitled letters, the imposition of injunctions, suspensions or loss of regulatory clearance or approvals, product recalls, termination of distribution, product seizures or civil penalties. In the most extreme cases, criminal sanctions or closure of our manufacturing facility are possible.

Modifications to our products may require new regulatory clearances or approvals or may require us to recall or cease marketing our products until clearances or approvals are obtained.

Modifications to our products may require new regulatory approvals or clearances, including 510(k) clearances, premarket approvals, or require us to recall or cease marketing the modified devices until these clearances or approvals are obtained. The FDA requires device manufacturers to initially make and document a determination of whether or not a modification requires a new approval, supplement or clearance. A manufacturer may determine that a modification could not significantly affect safety or efficacy and does not represent a major change in its intended use, so that no new 510(k) clearance is necessary. However, the FDA can review a manufacturer's decision and may disagree. The FDA may also on its own initiative determine that a new clearance or approval is required. We have made modifications to our products in the past and may make additional modifications in the future that we believe do not or will not require additional clearances or approvals. If the FDA disagrees and requires new clearances or approvals for the modifications, we may be required to recall and to stop marketing our products as modified, which could require us to redesign our products and harm our operating results. In these circumstances, we may be subject to significant enforcement actions.

If a manufacturer determines that a modification to an FDA-cleared device could significantly affect its safety or efficacy, or would constitute a major change in its intended use, then the manufacturer must file for a new 510(k) clearance or possibly a premarket approval application. Where we determine that modifications to our products require a new 510(k) clearance or premarket approval, we may not be able to obtain those additional clearances or approvals for the modifications or additional indications in a timely manner, or at all. Obtaining clearances and approvals can be a time consuming process, and delays in obtaining required future clearances or approvals would adversely affect our ability to introduce new or enhanced products in a timely manner, which in turn would harm our future growth.

There is no guarantee that the FDA will grant 510(k) clearance or PMA approval of our future products and failure to obtain necessary clearances or approvals for our future products would adversely affect our ability to grow our business.

Future products may require FDA clearance of a 510(k) or approval of a PMA. In addition, future products may require clinical trials to support regulatory approval and we may not successfully complete these clinical trials. The FDA may not approve or clear these products for the indications that are necessary or desirable for successful commercialization. Indeed, the FDA may refuse our requests for 510(k) clearance or premarket approval of new products. Failure to receive clearance or approval for our new products would have an adverse effect on our ability to expand our business.

Clinical trials can be long, expensive and ultimately uncertain which could jeopardize our ability to obtain regulatory approval and market our products.

Clinical trials are generally required to support a PMA application and are sometimes required for 510(k) clearance. Such trials generally require an investigational device exemption application, or IDE, approved in advance by the FDA for a specified number of patients and study sites, unless the product is deemed a nonsignificant risk device eligible for more abbreviated IDE requirements. Clinical trials are subject to extensive monitoring, recordkeeping and reporting requirements. Clinical trials must be conducted under the oversight of an institutional review board, or IRB, for the relevant clinical trial sites and must comply with FDA regulations, including but not limited to those relating to good clinical practices. To conduct a clinical trial, we also are required to obtain the patients' informed consent in form and substance that complies with both FDA requirements and state and federal privacy and human subject protection regulations. We, the FDA or the IRB could suspend a clinical trial at any time for various reasons, including a belief that the risks to study subjects outweigh the anticipated benefits. In addition, the commencement or completion of any clinical trial may be delayed or halted for numerous reasons, including, but not limited to patients not enrolling in clinical trials at the rate we expect, patients experiencing adverse side effects, third party contractors failing to perform in accordance with our anticipated schedule or consistent with good clinical practices, inclusive or negative interim trial results or our inability to obtain sufficient quantities of raw materials to produce our products. Clinical trials often take several years to execute. The outcome of any trial is uncertain and may have a significant impact on the success of our current and future products and future profits. Our development costs may increase if we have material delays in clinical trials or if we need to perform more or larger clinical trials than planned. If this occurs, our financial results and the commercial prospects for our products may be harmed. Even if a trial is completed, the results of clinical testing may not adequately demonstrate the safety and efficacy of the device or may otherwise not be sufficient to obtain FDA approval to market the product in the United States.

Even if our medical device products are cleared or approved by regulatory authorities, if we or our suppliers fail to comply with ongoing FDA or other foreign regulatory authority requirements, or if we experience unanticipated problems with our products, these products could be subject to restrictions or withdrawal from the market.

Any product that we market, and the manufacturing processes, reporting requirements, post-approval clinical data and promotional activities for such product, will be subject to continued regulatory review, oversight and periodic inspections by the FDA and other domestic and foreign regulatory bodies. In particular, we and our suppliers are required to comply with the FDA's current good manufacturing practice, or GMP requirements, known as the Quality System Regulation, or QSR, for medical devices, and International Standards Organization, or ISO, regulations for the manufacture of our products and other regulations which cover the methods and documentation of the design, testing, production, control, quality assurance, labeling, packaging, storage and shipping of any product. Regulatory bodies, such as the FDA, enforce these and other regulations through periodic inspections. The failure by us or one of our suppliers to comply with applicable statutes and regulations administered by the FDA and other regulatory bodies, or the failure to timely and adequately respond to any adverse inspectional observations or product safety issues, could result in, among other things, any of the following enforcement actions:

- untitled letters, warning letters, fines, injunctions, consent decrees and civil penalties;
- unanticipated expenditures to address or defend such actions;

- customer notifications for repair, replacement, refunds;
- recall, detention or seizure of our products;
- operating restrictions or partial suspension or total shutdown of production;
- refusing or delaying our requests for 510(k) clearance or premarket approval of new medical device products or modified medical device products;
- operating restrictions;
- withdrawing 510(k) clearances or PMA approvals that have already been granted;
- refusal to grant export approval for our products; or
- criminal prosecution.

If any of these actions were to occur it would harm our reputation and cause our product sales and profitability to suffer and may prevent us from generating revenue. Furthermore, our key component 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.

Even if regulatory clearance or approval of a product is granted, such clearance or approval may be subject to limitations on the intended uses for which the product may be marketed and reduce our potential to successfully commercialize the product and generate revenue from the product. If the FDA determines that our promotional materials, labeling, training or other marketing or educational activities constitute promotion of an unapproved use, it could request that we cease or modify our training or promotional materials or subject us to regulatory enforcement actions. It is also possible that other federal, state or foreign enforcement authorities might take action if they consider our training or other promotional materials to constitute promotion of an unapproved use, which could result in significant fines or penalties under other statutory authorities, such as laws prohibiting false claims for reimbursement.

In addition, we may be required to conduct costly post-market testing and surveillance to monitor the safety or effectiveness of our products, and we must comply with medical device reporting requirements, including the reporting of certain adverse events and malfunctions related to our products. Later discovery of previously unknown problems with our products, including unanticipated adverse events or adverse events of unanticipated severity or frequency, manufacturing problems, or failure to comply with regulatory requirements such as QSR, may result in changes to labeling, restrictions on such products or manufacturing processes, withdrawal of the products from the market, voluntary or mandatory recalls, a requirement to repair, replace or refund the cost of any medical device we manufacture or distribute, fines, suspension of regulatory approvals, product seizures, injunctions or the imposition of civil or criminal penalties which would adversely affect our business, operating results and prospects.

We face risks and uncertainties relating to an ongoing inspection and Warning Letter.

We received two warning letters from the FDA dated January 28, 2013 following inspections in July 2012 of two of our facilities, one concerning the facility located at 600 Cruiser Lane, Belgrade, Montana (“Site 600”) and one concerning the facility located at 664 Cruise Lane, Belgrade, Montana (“Site 664”). The Site 664 warning letter has been formally closed out by the FDA, while the Site 600 warning letter remains open. The Site 600 warning letter addressed issues regarding aspects of Bacterin’s quality system with a focus on OsteoSelect DBM Putty which is both a tissue and a device, and which is marketed pursuant to a section 510(k) clearance. We responded to this warning letter on February 2, 2013, and provided periodic response updates on March 20, 2013, April 15, 2013 and May 20, 2013. We developed and implemented a corrective action strategy that we believe addressed all of the FDA’s concerns. While we have implemented a corrective action strategy that we believe addresses all of the FDA’s concerns, there is a chance that the FDA will not agree with our proposed corrective actions. If the FDA does not agree with our proposed actions, they could issue another warning letter, request that we take additional actions, or take additional enforcement actions. The FDA conducted a re-inspection of Site 600 from July 8, 2013 to July 12, 2013, which evaluated the completion of the corrective actions and resulted in the issuance of an unrelated FDA-Form 483 on July 12,

2013. We responded to the FDA-Form 483 on August 1, 2013, and provided periodic response updates on August 13, 2013, September 26, 2013, October 31, 2013 and December 4, 2013. On October 29, 2013, we received an Establishment Inspection Report (EIR) for this re-inspection. At this time, we do not know whether or when the FDA will conduct an additional follow up inspection. In addition, from July 22, 2013 to August 2, 2013, the FDA conducted a tissue-focused inspection of Site 600 which resulted in an FDA-Form 483. We responded to the FDA-Form 483 on August 22, 2013. At this time, we do not know whether this inspection will lead to an enforcement action or when the FDA will close out this inspection.

If our products cause or contribute to a death or a serious injury, or malfunction in certain ways, we will be subject to medical device reporting regulations, which can result in voluntary corrective actions or agency enforcement actions.

Under the FDA medical device reporting regulations, medical device manufacturers are required to report to the FDA information that a device has or may have caused or contributed to a death or serious injury or has malfunctioned in a way that would likely cause or contribute to death or serious injury if the malfunction of the device or one of our similar devices were to recur. Under the FDA's reporting regulations applicable to human cells and tissue and cellular and tissue-based products, or HCT/Ps, we are required to report all adverse reactions involving a communicable disease if it is fatal, life threatening, or results in permanent impairment of a body function or permanent damage to body structure. If we fail to report these events to the FDA within the required timeframes, or at all, the FDA could take enforcement action against us. Any such adverse event involving our products also could result in future voluntary corrective actions, such as recalls or customer notifications, or agency action, such as inspection or enforcement action. Any corrective action, whether voluntary or involuntary, as well as defending ourselves in a lawsuit, would require the dedication of our time and capital, distract management from operating our business, and may harm our reputation and financial results.

We may implement a product recall or voluntary market withdrawal due to product defects or product enhancements and modifications, which would significantly increase our costs.

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 design or manufacture. In the case of the FDA, the authority to require a recall must be based on an FDA finding that there is a reasonable probability that the device would cause serious injury or death. In addition, foreign governmental bodies have the authority to require the recall of our products in the event of material deficiencies or defects in design or manufacture. Manufacturers may, under their own initiative, recall a product if any material deficiency in a device is found. A government-mandated or voluntary recall by us or one of our distributors could occur as a result of component failures, manufacturing errors, design or labeling defects or other deficiencies and issues. Recalls of any of our products would divert managerial and financial resources and have an adverse effect on our financial condition and results of operations. The FDA requires that certain classifications of recalls be reported to the FDA within 10 working days after the recall is initiated. Companies are required to maintain certain records of recalls, even if they are not reportable to the FDA. We may initiate voluntary recalls involving 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. A future recall announcement could harm our reputation with customers and negatively affect our sales. In addition, the FDA could take enforcement action for failing to report the recalls when they were conducted.

We may be subject to fines, penalties or injunctions if we are determined to be promoting the use of our products for unapproved or "off-label" uses.

Our promotional materials and training methods for physicians must comply with the FDA and other applicable laws and regulations. We believe that the specific surgical procedures for which our products are marketed fall within the scope of the surgical applications that have been cleared by the FDA. However, the FDA could disagree and require us to stop promoting our products for those specific procedures until we obtain FDA clearance or approval for them. In addition, if the FDA determines that our promotional materials or training constitutes promotion of an unapproved use, it could request that we modify our training or promotional materials or subject us to regulatory or enforcement actions, including the issuance of an untitled

letter, a warning letter, injunction, seizure, civil fine and criminal penalties. It is also possible that other federal, state or foreign enforcement authorities might take action if they consider our promotional or training materials to constitute promotion of an unapproved use, which could result in significant fines or penalties under other statutory authorities, such as laws prohibiting false claims for reimbursement. In that event, our reputation could be damaged and adoption of the products would be impaired.

If we or our suppliers fail to comply with ongoing FDA or other regulatory authority requirements pertaining to Human Tissue Products, these products could be subject to restrictions or withdrawal from the market.

Certain of our products are regulated as HCT/Ps and are not marketed pursuant to the FDA's medical device regulatory authority, and therefore are not subject to FDA clearance or approval. Although we have not obtained premarket approval for these products, they are nonetheless subject to regulatory oversight. Human tissues intended for transplantation have been regulated by the FDA since 1993. Over the course of several years, the FDA issued comprehensive regulations that address manufacturer activities associated with HCT/Ps. The first requires that companies that produce and distribute HCT/Ps register with the FDA. This set of regulations also includes the criteria that must be met in order for the HCT/P to be eligible for marketing solely under Section 361 of the PHS Act and the regulations in 21 CFR Part 1271, rather than under the drug or device provisions of the FD&C Act or the biological product licensing provisions of the PHS Act. The second set of regulations provides criteria that must be met for donors to be eligible to donate tissues and is referred to as the "Donor Eligibility" rule. The third rule governs the processing and distribution of the tissues and is often referred to as the "Current Good Tissue Practices" rule. The "Current Good Tissue Practices" rule covers all stages of allograft processing, from procurement of tissue to distribution of final allografts. Together these regulations are designed to ensure that sound, high quality practices are followed to reduce the risk of tissue contamination and of communicable disease transmission to recipients.

These regulations increased regulatory scrutiny within the industry in which we operate and have led to increased enforcement action which affects the conduct of our business. In addition, these regulations can increase the cost of tissue recovery activities. The FDA periodically inspects tissue processors to determine compliance with these requirements. Violations of applicable regulations noted by the FDA during facility inspections could adversely affect the continued marketing of our products. We believe we comply with all aspects of the Current Good Tissue Practices, although there can be no assurance that we will comply, or will comply on a timely basis, in the future. Entities that provide us with allograft bone tissue are responsible for performing donor recovery, donor screening and donor testing and our compliance with those aspects of the Current Good Tissue Practices regulations that regulate those functions are dependent upon the actions of these independent entities. If our suppliers fail to comply with applicable requirements, our products and our business could be negatively affected. If the FDA determines that we have failed to comply with applicable regulatory requirements, it can impose a variety of enforcement actions from public warning letters, fines, injunctions, consent decrees and civil penalties to suspension or delayed issuance of approvals, seizure of our products, total or partial shutdown of our production, withdrawal of approvals, and criminal prosecutions. If any of these events were to occur, it could materially adversely affect us.

In addition, the FDA could disagree with our conclusion that some of our HCT/Ps meet the criteria for marketing solely under Section 361 of the PHS Act, and therefore do not require approval or clearance of a marketing application. For our HCT/Ps that are not combined with another article, the FDA could conclude that the tissue is more than minimally manipulated, that the product is intended for a non-homologous use, or that the product has a systemic effect or is dependent on the metabolic activity of living cells for its effect. If the FDA were to draw these conclusions, it would likely require the submission and approval or clearance of a marketing application in order for us to continue to market the product. Such an action by the FDA could cause negative publicity, decreased or discontinued product sales, and significant expense in obtaining required marketing approval or clearance.

Other regulatory entities with authority over our products and operations include state agencies enforcing statutes and regulations covering tissue banking. Regulations issued by Florida, New York, California and Maryland will be particularly relevant to our business. Most states do not currently have tissue banking regulations. It is possible that others may make allegations against us or against donor recovery groups or tissue banks about non-compliance with applicable FDA regulations or other relevant statutes or regulations.

Allegations like these could cause regulators or other authorities to take investigative or other action, or could cause negative publicity for our business and the industry in which we operate.

Our products may be subject to regulation in the EU as well, should we enter that market. In the European Union, or EU, regulations, if applicable, differ from one EU member state to the next. Because of the absence of a harmonized regulatory framework and the proposed regulation for advanced therapy medicinal products in the EU, as well as for other countries, the approval process for human derived cell or tissue based medical products may be extensive, lengthy, expensive and unpredictable. Some of our products may be subject to EU member states' regulations that govern the donation, procurement, testing, coding, traceability, processing, preservation, storage, and distribution of human tissues and cells and cellular or tissue-based products. Some EU member states have their own tissue banking regulations.

Loss of AATB Accreditation would have a material adverse effect on us.

We are accredited with the American Association of Tissue Banks ("AATB"), a private non-profit organization that accredits tissue banks and sets industry standards. Although AATB accreditation is voluntary and not required by law, as a practical matter, many of our customers would not purchase our products if we failed to maintain our AATB accreditation. Although we make every effort to maintain our AATB accreditation, the accreditation process is somewhat subjective and lacks regulatory oversight. There can be no assurance that we will continue to remain accredited with the AATB.

Federal regulatory reforms may adversely affect our ability to sell our products profitably.

From time to time, legislation is drafted and introduced in Congress that could significantly change the statutory provisions governing the regulatory approval, manufacture and marketing of regulated products or the reimbursement thereof. 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 regulations or revisions or reinterpretations of existing regulations may impose additional costs or lengthen review times of future products. In addition, FDA regulations and guidance are often revised or reinterpreted by the agency in ways that may significantly affect our business and our products. It is impossible to predict whether legislative changes will be enacted or FDA regulations, guidance or interpretations changed, and what the impact of such changes, if any, may be.

For example, 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 products under development or impact our ability to modify our currently cleared products on a timely basis. For example, in 2011, the FDA initiated a review of the premarket clearance process in response to internal and external concerns regarding the 510(k) program, announcing 25 action items designed to make the process more rigorous and transparent. In addition, as part of the Food and Drug Administration Safety and Innovation Act of 2012, Congress enacted several reforms entitled the Medical Device Regulatory Improvements and additional miscellaneous provisions which will further affect medical device regulation both pre- and post-clearance or approval. The FDA has implemented, and continues to implement, these reforms, which could impose additional regulatory requirements upon us and delay our ability to obtain new 510(k) clearances, increase the costs of compliance or restrict our ability to maintain our current clearances. For example, the FDA recently issued guidance documents intended to explain the procedures and criteria the FDA will use in assessing whether a 510(k) submission meets a minimum threshold of acceptability and should be accepted for review. Under the "Refuse to Accept" guidance, the FDA conducts an early review against specific acceptance criteria to inform 510(k) submitters if the submission is administratively complete, or if not, to identify the missing element(s). Submitters are given the opportunity to provide the FDA with the identified information, but if the information is not provided within a defined time, the submission will not be accepted for FDA review. Any change in the laws or regulations that govern the clearance and approval processes relating to our current and future products could make it more difficult and costly to obtain clearance or approval for new products, or to produce, market and distribute existing products. Significant delays in receiving clearance or approval, or the failure to receive clearance or approval for our new products would have an adverse effect on our ability to expand our business.

Product pricing (and, therefore, profitability) is subject to regulatory control which could impact our revenue and financial performance.

The pricing and profitability of our products may become subject to control by the government and other third-party payors. The continuing efforts of governmental and other third-party payors to contain or reduce the cost of healthcare through various means may adversely affect our ability to successfully commercialize our products. In most foreign markets, the pricing and/or profitability of certain diagnostics and prescription pharmaceuticals are subject to governmental control. In the United States, we expect that there will continue to be federal and state proposals to implement similar governmental control, though it is unclear which proposals will ultimately become law, if any. Changes in prices, including any mandated pricing, could impact our revenue and financial performance.

Failure of our information technology systems could disrupt our business.

Our operations depend on the continued performance of our information technology systems. Despite security measures and other precautions we have taken, our information technology systems are potentially vulnerable to physical or electronic break-ins, computer viruses and similar disruptions. Sustained failure of our information technology systems could disrupt our business operations. In addition, some of our contracts impose obligations related to information we may have in physical or electronic formats, and any breach or failure of our information technology systems could result in breach of contract claims and other damages.

Failure to protect our intellectual property rights could result in costly and time-consuming litigation and our loss of any potential competitive advantage.

Our success will depend, to a large extent, on our ability to successfully obtain and maintain patents, prevent misappropriation or infringement of intellectual property, maintain trade secret protection, and conduct operations without violating or infringing on the intellectual property rights of third parties. There can be no assurance that our patented and patent-pending technologies will provide us with a competitive advantage, that we will be able to develop or acquire additional technology that is patentable, or that third parties will not develop and offer technologies which are similar to ours. Moreover, we can provide no assurance that confidentiality agreements, trade secrecy agreements or similar agreements intended to protect unpatented technology will provide the intended protection. Intellectual property litigation is extremely expensive and time-consuming, and it is often difficult, if not impossible, to predict the outcome of such litigation. A failure by us to protect our intellectual property could have a materially adverse effect on our business and operating results and our ability to successfully compete in this industry.

We may not be able to obtain or protect our proprietary rights relating to our products without resorting to costly and time-consuming litigation.

We may not be able to obtain, maintain and protect certain proprietary rights necessary for the development and commercialization of our products or product candidates. Our commercial success will depend in part on obtaining and maintaining patent protection on our products and successfully defending these patents against third-party challenges. Our ability to commercialize our products will also depend in part on the patent positions of third parties, including those of our competitors. The patent positions of pharmaceutical and biotechnology companies can be highly uncertain and involve complex legal and factual questions. Accordingly, we cannot predict with certainty the scope and breadth of patent claims that may be afforded to other companies' patents. We could incur substantial costs in litigation if we are required to defend against patent suits brought by third parties, or if we initiate suits to protect our patent rights.

In addition to the risks involved with patent protection, we also face the risk that our competitors will infringe on our trademarks. Any infringement could lead to a likelihood of confusion and could result in lost sales. There can be no assurance that we will prevail in any claims we make to protect our intellectual property.

Future protection for our proprietary rights is uncertain which may impact our ability to successfully compete in our industry.

The degree of future protection for our proprietary rights is uncertain. We cannot ensure that:

- we were the first to make the inventions covered by each of our patent applications;

- we were the first to file patent applications for these inventions;
- others will not independently develop similar or alternative technologies or duplicate any of our technologies;
- any of our pending patent applications will result in issued patents;
- any of our issued patents or those of our licensors will be valid and enforceable;
- any patents issued to us or our collaborators will provide a basis for commercially viable products or will provide us with any competitive advantages or will not be challenged by third parties;
- we will develop additional proprietary technologies that are patentable;
- the patents of others will not have a material adverse effect on our business rights; or
- the measures we rely on to protect the intellectual property underlying our products will be adequate to prevent third parties from using our technology, all of which could harm our ability to compete in the market.

Our success depends on our ability to avoid infringing on the intellectual property rights of third parties, which could expose us to litigation or commercially unfavorable licensing arrangements.

Our commercial success depends in part on our ability and the ability of our collaborators to avoid infringing patents and proprietary rights of third parties. Third parties may accuse us or our collaborators of employing their proprietary technology in our products, or in the materials or processes used to research or develop our products, without authorization. Any legal action against our collaborators or us claiming damages and/or seeking to stop our commercial activities relating to the affected products, materials and processes could, in addition to subjecting us to potential liability for damages, require our collaborators or us to obtain a license to continue to utilize the affected materials or processes or to manufacture or market the affected products. We cannot predict whether we or our collaborators would prevail in any of these actions or whether any license required under any of these patents would be made available on commercially reasonable terms, if at all. If we are unable to obtain such a license, we or our collaborators may be unable to continue to utilize the affected materials or processes or manufacture or market the affected products or we may be obligated by a court to pay substantial royalties and/or other damages to the patent holder. Even if we are able to obtain such a license, the terms of such a license could substantially reduce the commercial value of the affected product or products and impair our prospects for profitability. Accordingly, we cannot predict whether or to what extent the commercial value of the affected product or products or our prospects for profitability may be harmed as a result of any of the liabilities discussed above. Furthermore, infringement and other intellectual property claims, with or without merit, can be expensive and time-consuming to litigate and can divert management’s attention from our core business. We may be unable to obtain and enforce intellectual property rights to adequately protect our products and related intellectual property.

Others may claim an ownership interest in our intellectual property, which could expose us to litigation and have a significant adverse effect on our prospects.

A third-party may claim an ownership interest in our intellectual property. While we believe we own 100% of the right, title and interest in the patents for which we have applied and our other intellectual property, including that which we license from third parties, we cannot guarantee that a third-party will not, at some time, assert a claim or an interest in any of such patents or intellectual property. A successful challenge or claim by a third party to our patents or intellectual property could have a significant adverse effect on our prospects.

Litigation may result in financial loss and/or impact our ability to sell our products going forward.

We intend to vigorously defend any existing or future litigation that we may be involved in but there can be no assurance that we will prevail in these matters. An unfavorable judgment or settlement may result in a financial burden on us. An unfavorable judgment or settlement may also result in restrictions on our ability to sell certain products and therefore may impact future operating results. Moreover, costs, fees, expenses, settlement amounts, judgments or other liabilities associated with such matters, including the Taggart litigation

(for which our insurance carrier has offered to cover up to only 25% of such losses), may not be covered by our insurance and we may be have to pay out-of-pocket.

The market price of our common stock is extremely volatile, which may affect our ability to raise capital in the future and may subject the value of your investment to sudden decreases.

The market price for securities of biotechnology companies, including ours, historically has been highly volatile, and the market from time to time has experienced significant price and volume fluctuations that are unrelated to the operating performance of such companies. Fluctuations in the trading price or liquidity of our common stock may harm the value of your investment in our securities.

Factors that may have a significant impact on the market price and marketability of our securities include:

- announcements of technological innovations or new commercial products by us, our collaborative partners or our present or potential competitors;
- our issuance of debt, equity or other securities, which we need to pursue to generate additional funds to cover our operating expenses;
- our quarterly operating results;
- developments or disputes concerning patent or other proprietary rights;
- developments in our relationships with employees, suppliers or collaborative partners;
- acquisitions or divestitures;
- litigation and government proceedings;
- adverse legislation, including changes in governmental regulation;
- third-party reimbursement policies;
- changes in securities analysts' recommendations;
- short selling;
- changes in health care policies and practices;
- suspension of trading of our common stock;
- economic and other external factors; and
- general market conditions.

In the past, following periods of volatility in the market price of a company's securities, securities class action litigation has often been instituted. These lawsuits often seek unspecified damages, and as with any litigation proceeding, one cannot predict with certainty the eventual outcome of pending litigation. Furthermore, we may have to incur substantial expenses in connection with any such lawsuits and our management's attention and resources could be diverted from operating our business as we respond to any such litigation. We maintain insurance to cover these risks for us and our directors and officers, but our insurance is subject to high deductibles, and there is no guarantee that the insurance will cover any specific claim that we currently face or may face in the future, or that it will be adequate to cover all potential liabilities and damages.

If securities or industry analysts publish inaccurate or unfavorable research or reports about our business, our stock price and trading volume could decline.

The trading market for our common stock depends, in part, on the research and reports that securities or industry analysts publish about us or our business. We do not have any control over these analysts. If one or more of the analysts who covers us downgrades our common stock, changes their opinion of our shares or publishes inaccurate or unfavorable research about our business, our stock price would likely decline. If one or more of these analysts ceases coverage of us or fails to publish reports on us regularly, demand for our common stock could decrease and we could lose visibility in the financial markets, which could cause our stock price and trading volume to decline.

We do not anticipate, and may be prevented from, paying dividends in the foreseeable future.

We currently intend to retain our future earnings, if any, to support operations and to finance expansion and, therefore, we do not anticipate paying any cash dividends on our common stock in the foreseeable future. In addition, our amended and restated credit facility will preclude us from paying dividends.

We could issue "blank check" preferred stock without stockholder approval with the effect of diluting interests of then-current stockholders and impairing their voting rights, and provisions in our charter documents and under Delaware law could discourage a takeover that stockholders may consider favorable.

Our certificate of incorporation provides for the authorization to issue up to 5,000,000 shares of "blank check" preferred stock with designations, rights and preferences as may be determined from time to time by our board of directors. Our board of directors is empowered, without stockholder approval, to issue one or more series of preferred stock with dividend, liquidation, conversion, voting or other rights which could dilute the interest of, or impair the voting power of, our common stockholders. The issuance of a series of preferred stock could be used as a method of discouraging, delaying or preventing a change in control. For example, it would be possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change control of our company. In addition, we have a staggered board of directors and advanced notice is required prior to stockholder proposals, which might further delay a change of control.

Risks Related to X-spine's Business

Once the acquisition is completed, the combined company will be subject to the risks described above, as well as additional risks, such as those below, which arise from X-spine's business.

We have limited experience with X-spine's product lines.

X-spine's product lines are new to us, and we have limited experience with them. X-spine's business is concentrated on developing and manufacturing implants, surgical instruments, biologics and biomaterials for surgery of the spine, which business differs from ours. As a result, X-spine's business is comprised of different product lines with which we have limited experience.

We will depend on retaining X-spine management and employees.

We will also be highly dependent on the continued services of key members of X-spine's executive management team. The loss of any one of these individuals could disrupt X-spine's operations or strategic plans. Additionally, X-spine's future success will depend on, among other things, its ability to hire and retain the necessary qualified scientific, technical, sales, marketing and managerial personnel, for whom X-spine competes with numerous other companies, academic institutions and organizations. The loss of members of X-spine's management team, key advisors or personnel, or X-spine's inability to attract or retain other qualified personnel or advisors, could have a material adverse effect on X-spine's business, results of operations and financial condition.

X-spine's business depends, in part, on a key distributor arrangement.

X-spine's business is dependent, in part, on a key distributor arrangement. For the year ended December 31, 2014, net sales to this one distributor, Zimmer, exceeded 10% of X-spine's net sales. Net sales and trade receivables for this distributor at December 31, 2014 amounted to approximately $6,647,000 and $111,000, respectively.

X-spine's results of operations are directly dependent on the sales and marketing efforts of its distributors and other sales agents and employees. If X-spine's key distributor were to reduce its efforts or cease to do business with X-spine, X-spine's sales could be adversely affected. In such a situation, X-spine may need to seek alternative distributors or increase its reliance on existing direct sales employees, sales agent and other distributors, which it may be unable to do in a timely and efficient manner, if at all.

X-spine's business depends, in part, on a relationship with a key supplier, which is a related party.

X-spine relies on third-party suppliers to supply substantially all of its products. For X-spine to be successful, its suppliers must be able to provide it with products in substantial quantities, in compliance with regulatory requirements, in accordance with agreed-upon specifications, at acceptable costs and on a timely basis. If X-spine is unable to obtain sufficient quantities of high quality products to meet demand on a timely basis, it may lose customers, its reputation may suffer and its business may suffer.

Certain of X-spine's current shareholders own a controlling share of X-spine's largest supplier, Norwood Tool Company d/b/a Norwood Medical. In 2013 and 2014, products purchased from Norwood Medical accounted for approximately 35% and 22% of product purchases, respectively. X-spine's dependence on Norwood Medical exposes it to risks, including limited control over pricing, availability and delivery schedules. If Norwood Medical ceases to provide X-spine with sufficient quantities of products in a timely manner or on terms acceptable to X-spine, or ceases to manufacture products of acceptable quality, X-spine would have to seek alternate sources of supply. Because of the nature of X-spine's regulatory and quality control requirements, and the proprietary nature of its products, it cannot quickly engage additional or replacement suppliers. Any such disruption could harm X-spine's business, results of operations or financial condition.

The combined company will be required to maintain high levels of inventory, which could consume significant resources, reduce cash flows and lead to inventory impairment charges.

As a result of the need to maintain substantial levels of inventory to meet the needs of customers, we will be subject to the risk of inventory excess, obsolescence or shelf life expiration. Many spine hardware products come in sets, which feature a significant number of components in a variety of sizes so that the appropriate spinal implant may be selected by the surgeon based on the patient's needs. In order to market these products effectively, we often will be required to maintain and provide hospitals and independent sales agents with consigned sets that typically consist of spinal implants and instruments, including products to ensure redundancy and products of different sizes. In a typical surgery, not all of the implants in the set are used, and therefore certain sizes of implants placed in the set or purchased for replenishment inventory may become obsolete before they can be used. In addition, the use of our orthobiologics products will be limited by the sterilization expiration date, which ranges from one to five years. Therefore, the shelf life for these products may expire before they can be used. If a substantial portion of this inventory is deemed excess, becomes obsolete or expires, it could have a material and adverse effect on our earnings because of the resulting costs associated with the inventory impairment charges.

If the third parties on which the combined company will rely to conduct clinical studies and to assist with pre-clinical development do not perform as contractually required or expected, we may not be able to obtain regulatory clearance, approval or a CE Certificate of Conformity for or commercialize our products.

The combined company may rely on third parties, such as contract research organizations, medical institutions, clinical investigators and contract laboratories to assist in conducting our clinical studies. If these third parties do not successfully carry out their contractual duties, comply with applicable regulatory obligations or meet expected deadlines, or if these third parties need to 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, pre-clinical development activities or clinical studies may be extended, delayed, suspended or terminated. Under these circumstances the combined company may not be able to obtain regulatory clearance or approval or a CE Certificate of Conformity for, or successfully commercialize, our products on a timely basis, if at all, and our business, operating results and prospects may be adversely affected.

Exhibit 99.5

HISTORICAL CONSOLIDATED FINANCIAL STATEMENTS OF X-SPINE SYSTEMS, INC.

Independent Auditors' Report

To the Board of Directors
X-spine Systems, Inc.
Miamisburg, Ohio

Report on the Consolidated Financial Statements

We have audited the accompanying consolidated financial statements of X-spine Systems, Inc., which comprise the consolidated balance sheet as of December 31, 2014, and the related consolidated statements of income, retained earnings and cash flows for the year then ended and the related notes to the consolidated financial statements.

Management's Responsibility for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audit. We conducted our audit 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.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of X-spine Systems, Inc. as of December 31, 2014, 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.

Other Matter

The consolidated financial statements of X-spine Systems, Inc. as of and for the year ended December 31, 2013, were audited by other auditors whose report dated January 27, 2014 expressed an unmodified opinion on those statements.

/s/ McGladrey LLP
Dayton, Ohio
February 19, 2015

Battelle Rippe Kingston

INDEPENDENT AUDITORS' REPORT

To the Board of Directors
X-spine Systems, Inc.
Miamisburg, Ohio

Report on the Consolidated Financial Statements

We have audited the accompanying consolidated financial statements of X-spine Systems, Inc. which comprise the consolidated balance sheet as of December 31, 2013 and 2012, and the related consolidated statements of income, retained earnings, and cash flows for the years then ended and the related notes to the consolidated financial statements.

Management's Responsibility for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits 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. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a reasonable basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of X-spine Systems, Inc. as of December 31, 2013 and 2012, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Emphasis of a Matter

As discussed in Note 8, the 2012 consolidated financial statements have been restated to correct an error related to the accounting for patent royalty income. Our opinion is not modified with respect to this matter.

Battelle Rippe Kimpton LLP

Dayton, Ohio
January 27, 2014

X-spine Systems, Inc.

Consolidated Balance Sheets
December 31, 2014 and 2013

	2014	2013
Assets		
Current Assets		
Cash	$ 3,000	$ 99,817
Accounts receivable, net of allowance for doubtful accounts of $12,792 in 2014 and $137,148 in 2013	6,837,435	5,813,590
Inventories	12,475,745	8,182,877
Prepaid expense	169,585	126,467
Total current assets	19,485,765	14,222,751
Property and Equipment		
Surgical instruments	12,383,567	7,691,284
Machinery and equipment	1,077,108	981,067
Furniture and fixtures	665,456	656,209
Total at cost	14,126,131	9,328,560
Accumulated depreciation	(6,453,395)	(4,407,504)
Depreciated cost	7,672,736	4,921,056
Patents and trademarks, net of accumulated amortization of $1,559,774 in 2014 and $1,274,608 in 2013	693,166	746,415
Total assets	$ 27,851,667	$ 19,890,222
Liabilities and Shareholders' Equity		
Current Liabilities		
Outstanding checks	$ 1,018,596	$ —
Accounts payable, trade	4,255,645	2,807,838
Accrued liabilities	2,410,501	2,042,484
Notes payable – shareholders	—	10,000,000
Total current liabilities	7,684,742	14,850,322
Long-Term Liabilities		
Revolving line of credit	11,483,364	—
Shareholders' Equity		
Class A voting common stock, $500 stated value, 1,000 shares authorized, 200 shares issued and outstanding	100,000	100,000
Class B non-voting common stock, $20,000 stated value, 500 shares authorized, 50 shares issued and outstanding	1,000,000	1,000,000
Additional paid in capital	350,000	350,000
Retained earnings	7,233,561	3,589,900
Total shareholders' equity	8,683,561	5,039,900
Total liabilities and shareholders' equity	$ 27,851,667	$ 19,890,222

See Notes to Consolidated Financial Statements.

X-spine Systems, Inc.

Consolidated Statements of Income
Years Ended December 31, 2014 and 2013

	2014	2013
Revenue	$42,213,018	$ 29,564,099
Cost of revenue	14,488,855	9,910,426
Gross margin	27,724,163	19,653,673
General and administrative expense	22,737,072	17,446,787
Income from operations	4,987,091	2,206,886
Other Expense		
Interest expense	593,593	565,000
Income before city income tax expense	4,393,498	1,641,886
City income tax expense	112,337	32,176
Net income	$ 4,281,161	$ 1,609,710

See Notes to Consolidated Financial Statements.

X-spine Systems, Inc.

Consolidated Statements of Retained Earnings
Years Ended December 31, 2014 and 2013

	2014	2013
Balance, January 1,	$ 3,589,900	$ 2,817,690
Net income	4,281,161	1,609,710
Shareholders' distributions	(637,500)	(837,500)
Balance, December 31,	$ 7,233,561	$ 3,589,900

See Notes to Consolidated Financial Statements.

X-spine Systems, Inc.

Consolidated Statements of Cash Flows
Years Ended December 31, 2014 and 2013

	2014	2013
Cash Flows From Operating Activities		
Net income	$ 4,281,161	$ 1,609,710
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	2,045,891	1,569,371
Amortization	285,167	325,715
Increase (decrease) in cash arising from changes in assets and liabilities:		
Accounts receivable	(1,023,845)	(524,548)
Inventories	(4,292,868)	(1,659,836)
Prepaid expense	(43,118)	47,213
Accounts payable	1,447,807	(1,112,694)
Accrued liabilities	368,017	856,402
Net cash provided by operating activities	3,068,212	1,111,333
Cash Flows From Investing Activities		
Patent and trademark purchases	(231,918)	(241,470)
Purchase property and equipment	(4,797,571)	(1,937,927)
Net cash used in investing activities	(5,029,489)	(2,179,397)
Cash Flows From Financing Activities		
Net activity from outstanding checks	1,018,596	—
Net activity on revolving line of credit	1,483,364	—
Proceeds from notes payable to shareholders	—	2,000,000
Dividends paid	(637,500)	(837,500)
Net cash provided by financing activities	1,864,460	1,162,500
Net (decrease) increase in cash	(96,817)	94,436
Cash		
Beginning	99,817	5,381
Ending	$ 3,000	$ 99,817
Supplemental Disclosure of Cash Flow Information:		
Cash paid during the year for:		
Interest paid	$ 581,667	$ 565,000
Income taxes paid	$ 52,324	$ 47,663
Supplemental Disclosure of NonCash Financing Activities:		
Refinance of notes payable to shareholders	$ 10,000,000	$ —

See Notes to Consolidated Financial Statements.

X-spine Systems, Inc.

Notes To Consolidated Financial Statements

Note 1. Summary of Significant Accounting Policies

Organizational structure: The consolidated financial statements include the accounts of X-spine Sales Corporation (an interest charge domestic international sales corporation), which is a wholly owned subsidiary of X-spine Systems, Inc. (the "Company"). Significant intercompany balances and transactions have been eliminated in consolidation.

Nature of operations: The Company is engaged in the development, manufacturing and sale of medical devices for use in orthopedic spinal surgeries.

Basis of presentation: The accompanying consolidated financial statements are prepared in conformity with accounting principals generally accepted in the United States of America in accordance with the Financial Accounting Standards Board Accounting Standards Codification.

Use of estimates: The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions relating to the reporting of assets and liabilities and the disclosure of contingent assets and liabilities. Actual results could differ from those estimates.

Revenue recognition: The Company derives its revenues primarily from the sale of spinal surgery implants used in the treatment of spine disorders. The Company sells its products primarily through its direct sales force and independent distributors. Revenue is recognized when goods are shipped, title and risk of loss has transferred to the buyer, the price is fixed or determinable and recoverability is reasonably assured.

Accounts receivable: Accounts receivable are uncollateralized customer obligations due under normal trade terms requiring payment according to agreed-upon terms, in most cases within 30 days from the invoice date. Accounts receivable are stated at the amount billed to the customer.

The carrying amount of accounts receivable is reduced by a valuation allowance. The Company makes judgments as to its ability to collect outstanding receivables and provides allowance for a portion of receivables when collection becomes doubtful. Provisions are made based upon a specific review of all outstanding invoices, the overall quality and age of those invoices and management assessment of customer credit worthiness.

Inventories: Inventories are stated at the lower of cost or market, with cost determined under the first-in, first-out method. The Company reviews the components of inventory on a periodic basis for excess, obsolete and impaired inventory, and records a reserve for the identified items.

Inventory components at December 31 were as follows:

	2014	2013
Raw materials	$ 295,787	$ 93,176
Work in process	158,716	96,759
Finished goods	12,500,608	8,269,376
Inventory reserve	(479,366)	(276,434)
Total	$ 12,475,745	$ 8,182,877

Property and equipment: Property and equipment are carried at cost. Expenditures for maintenance and repairs are charged to operations as incurred. Expenditures which significantly extend the lives of assets and major improvements are capitalized. Impairment of asset value is recognized whenever events or changes in circumstances indicate that carrying amounts are not recoverable. Gain or loss on the disposition of property and equipment is reflected in current operations.

Note 1. Summary of Significant Accounting Policies – (continued)

Depreciation is computed by the straight-line method for financial reporting purposes over the estimated useful lives of the respective assets. Depreciation expense totaled approximately $2,046,000 and $1,569,000 in 2014 and 2013, respectively. Estimated useful lives are as follows:

Surgical instruments	5 years
Machinery and equipment	3 to 7 years
Furniture and fixtures	3 to 7 years

Patents and trademarks: The cost of patents and trademarks are being amortized on the straight-line method over their useful lives of seven years and tested for impairment whenever events or changes in circumstances indicate that carrying amounts are not recoverable. Amortization expense charged to operations was approximately $285,000 and $326,000 in 2014 and 2013, respectively.

Amortization expense subsequent to December 31, 2014 is as follows:

2015	$ 222,367
2016	186,941
2017	148,002
2018	96,826
2019	39,030

Shipping and handling costs: Shipping and handling costs for the sale of products are either expensed as incurred and are included in operating expenses or charged to the distributor and reimbursed to the Company. Shipping and handling costs for the years ended December 31, 2014 and 2013 amounted to approximately $837,000 and $484,000, respectively.

Cost of sales: Cost of sales includes amounts relating to the medical device excise tax effective January 1, 2013. Total expense for the years ended December 31, 2014 and 2013 amounted to approximately $676,000 and $467,000, respectively.

Research and development: Research and development expenses include salaries and associated costs, contractor and consultant fees, and supplies and materials. These costs include the Company's product development, regulatory and clinical functions and the costs for clinical studies and product development projects. The costs incurred with respect to internally developed technology and engineering services are included in research and development expense and are expensed as incurred. Research and development expenses were approximately $2,140,000 and $1,913,000 in 2014 and 2013, respectively.

Advertising costs: Advertising costs are expensed when incurred and totaled approximately $852,000 and $1,020,000 in 2014 and 2013, respectively.

Income taxes: The Company elected to be taxed under the provisions of Subchapter S of the Internal Revenue Code and, accordingly, is not liable for federal or state corporate income taxes. Instead, the shareholders include their respective portion of the Company's taxable income in their individual income tax returns. The Company makes periodic distributions to its shareholders. The Company is liable for city income taxes. No provisions were deemed necessary for 2014 and 2013 for uncertain tax positions. With few exceptions, the Company is no longer subject to income tax examinations by federal, state, local or foreign tax authorities for years before 2011.

Recently issued accounting pronouncement: In May 2014, the FASB issued ASU 2014-09, Revenue from Contracts with Customers (Topic 606), requiring an entity to recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers. The updated standard will replace most existing revenue recognition guidance in U.S. GAAP when it becomes effective and permits the use of either a full retrospective or retrospective with cumulative effect transition method. Early adoption is not permitted. The updated standard will be effective for annual reporting periods beginning after

Note 1. Summary of Significant Accounting Policies – (continued)

December 15, 2017, and interim periods within annual periods beginning after December 15, 2018. The Company has not yet selected a transition method and is currently evaluating the effect that the updated standard will have on the combined financial statements.

Subsequent events: The Company has evaluated subsequent events for potential recognition and/or disclosure through February 19, 2015, the date the consolidated financial statements were available to be issued.

Note 2. Concentrations

Financial instruments, which potentially subject the Company to concentrations of credit risk, consist primarily of cash that exceed federally insured limits and trade accounts receivable. The credit risk with regard to trade accounts receivable is minimized through the ongoing credit evaluations of its customers and the use of allowance for doubtful accounts to recognize potential credit losses when necessary. For the year ended December 31, 2014, net sales to one customer exceeded 10 percent of the Company's net sales. Net sales and trade receivables for the one customer at December 31, 2014 amounted to approximately $6,647,000 and $111,000, respectively. No customers accounted for more than 10 percent of the Company's net sales in 2013.

In 2014 and 2013, products purchased from the Company's largest supplier accounted for approximately 22% and 35% of product purchases, respectively.

Note 3. Related-Party Transactions

The supplier referred to in Note 2 is a related entity. Purchases from this entity totaled approximately $4,653,000 and $4,709,000 for the years ended December 31, 2014 and 2013, respectively. At December 31, 2014 and 2013, trade payables owed to this related party amounted to approximately $321,000 and $982,000, respectively.

The Company also had notes payable to two of the shareholders as described in Note 5.

The Company provides various support services to another related party based on a shared services agreement. The amounts of reimbursed costs related to these transactions were approximately $44,700 and $56,300 in 2014 and 2013, respectively.

Note 4. Leases

The Company leases office space and equipment under operating leases. Total rent expense for the years ended December 31, 2014 and 2013 was approximately $304,000 and $270,000, respectively.

Minimum future rental payments under non-cancellable operating leases having terms in excess of one year at December 31, 2014 are as follows:

2015	$ 303,840
2016	232,593
2017	18,852
2018	12,568

Note 5. Notes Payable

At December 31, 2013, the Company had notes payable with two shareholders for a combined amount of $10,000,000. The terms of these notes, which bore interest at 6%, required monthly interest payments with the principle balance due at the maturity of each note. These notes were settled in December 2014 through the Company obtaining the line of credit, as described in Note 6. Interest on these notes was approximately $582,100 and $565,000 in 2014 and 2013, respectively.

Note 6. Line of Credit

In December 2014, the Company obtained a line of credit for $15,000,000 to provide for normal working capital requirements and surgical instruments needs in addition to repaying the shareholder notes payable described previously in Note 5. The line of credit bears interest at LIBOR plus 2.5% (2.667% at December 31, 2014), is collateralized by all assets of the Company, and matures in December 2017. Borrowings against the line of credit were approximately $11,483,000 at December 31, 2014. The line of credit contains, among other things, covenants which require maintenance of certain financial ratios regarding cash flow leverage and fixed charge coverage, as defined in the agreements. Interest on the line of credit was approximately $11,500 in 2014.

Note 7. 401(k) Plan

The Company has a 401(k) defined contribution plan covering substantially all employees. Employer contributions to this plan consist of a 3% safe harbor contribution. The Company contributed a safe harbor contribution of approximately $169,000 and $161,000 in 2014 and 2013, respectively.

Note 8. Commitments and Contingencies

The Company is involved in certain legal matters which have arisen through the normal course of business. These cases are, in the opinion of management, ordinary matters incidental to the normal business conducted by the Company. Management does not believe that the ultimate resolution of these matters will have a material effect on the Company’s consolidated financial position, results of operations or cash flows.

Exhibit 99.6

X-spine Systems, Inc.

Consolidated Financial Report
for the Three Months Ended
March 31, 2015 and 2014

Contents

X-spine Systems, Inc.

Consolidated Balance Sheets (Unaudited)
March 31, 2015 and 2014

Assets	2015	2014
Current assets		
Cash	$ 3,000	$ 14,447
Accounts receivable, net of allowance for doubtful accounts of $391,516 and $45,998	6,389,952	5,843,600
Inventories	12,644,228	10,413,984
Prepaid expense	107,668	157,541
Total current assets	19,144,848	16,429,572
Property and equipment		
Surgical instruments	13,203,787	8,088,778
Machinery and equipment	1,027,973	1,039,258
Furniture and fixtures	825,197	656,209
Total at cost	15,056,957	9,784,245
Accumulated depreciation	(7,100,056)	(4,844,004)
Depreciated cost	7,956,901	4,940,241
Patents and trademarks, net of accumulated amortization of $1,622,744 and $1,343,607	667,753	724,352
Total assets	$27,769,502	$ 22,094,165

See Notes to Consolidated Financial Statements.

X-spine Systems, Inc.

Consolidated Balance Sheets (Unaudited) — (Continued)
March 31, 2015 and 2014

Liabilities and Shareholders' Equity	2015	2014
Current Liabilities		
Outstanding checks	$ 494,172	$ —
Accounts payable, trade	3,718,251	5,042,192
Accrued liabilities	2,184,938	1,667,491
Notes payable – shareholders	—	10,000,000
Total current liabilities	6,397,361	16,709,683
Long-Term Liabilities		
Revolving line of credit	11,950,057	—
Shareholders' Equity		
Class A voting common stock, $500 stated value, 1,000 shares authorized, 200 shares issued and outstanding	100,000	100,000
Class B non-voting common stock, $20,000 stated value, 500 shares authorized, 50 shares issued and outstanding	1,000,000	1,000,000
Additional paid-in capital	350,000	350,000
Retained earnings	7,972,084	3,934,482
Total shareholders' equity	9,422,084	5,384,482
Total liabilities and shareholders' equity	$ 27,769,502	$ 22,094,165

See Notes to Consolidated Financial Statements.

X-spine Systems, Inc.

Consolidated Statements of Income (Unaudited)
Three Months Ended March 31, 2015 and 2014

	2015	2014
Revenue	$ 12,225,247	$ 7,912,956
Cost of revenue	4,290,544	2,674,946
Gross margin	7,934,703	5,238,010
General and administrative expense	7,091,574	4,711,168
Income from operations	843,129	526,842
Other Expense		
Interest expense	79,674	150,000
Income before city income tax expense	763,455	376,842
City income tax expense	24,932	32,260
Net income	$ 738,523	$ 344,582

See Notes to Consolidated Financial Statements.

X-spine Systems, Inc.

Consolidated Statements of Retained Earnings (Unaudited)
Three Months Ended March 31, 2015 and 2014

	2015	2014
Balance, January 1	$ 7,233,561	$ 3,589,900
Net income	738,523	344,582
Balance, March 31	$ 7,972,084	$ 3,934,482

See Notes to Consolidated Financial Statements.

X-spine Systems, Inc.

Consolidated Statements of Cash Flows (Unaudited)
Three Months Ended March 31, 2015 and 2014

	2015	2014
Cash Flows From Operating Activities		
Net income	$ 738,523	$ 344,582
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	650,618	436,500
Amortization	63,000	69,000
Provisions for bad debts	391,516	(91,150)
Gain on disposal of assets	(6,829)	—
Increase (decrease) in cash arising from changes in assets and liabilities:		
Accounts receivable	55,967	61,140
Inventories	(168,483)	(2,231,107)
Prepaid expense	61,917	(31,074)
Accounts payable	(537,394)	2,234,354
Accrued liabilities	(225,563)	(374,993)
Net cash provided by operating activities	1,023,272	417,252
Cash Flows From Investing Activities		
Proceeds from the sale of assets	7,985	—
Patent and trademark purchases	(37,587)	(46,937)
Purchase property and equipment	(935,939)	(455,685)
Net cash used in investing activities	(965,541)	(502,622)
Cash Flows From Financing Activities		
Net activity from outstanding checks	(524,424)	—
Net activity on revolving line of credit	466,693	—
Net cash used in financing activities	(57,731)	—
Net change in cash	—	(85,370)
Cash		
Beginning	3,000	99,817
Ending	$ 3,000	$ 14,447
Supplemental Disclosure of Cash Flow Information:		
Cash paid during the year for:		
Interest	$ 65,958	$ 150,000

See Notes to Consolidated Financial Statements.

X-spine Systems, Inc.

Notes To Consolidated Financial Statements (Unaudited)

Note 1. Summary of Significant Accounting Policies

Organizational structure: The consolidated financial statements include the accounts of X-spine Sales Corporation (an interest charge domestic international sales corporation), which is a wholly owned subsidiary of X-spine Systems, Inc. (the "Company"). Significant intercompany balances and transactions have been eliminated in consolidation.

Nature of operations: The Company is engaged in developing, manufacturing and selling medical devices for use in orthopedic spinal surgeries.

Basis of presentation: The accompanying consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States of America for interim financial information. Accordingly, they may not include all of the information and disclosures required by accounting principles generally accepted in the United States of America for a complete financial statement presentation. The interim financial statements contained in this report should be read in conjunction with the Company's audited consolidated financial statements and footnote disclosures for the year ended December 31, 2014.

Use of estimates: The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions relating to the reporting of assets and liabilities and the disclosure of contingent assets and liabilities. Actual results could differ from those estimates.

Revenue recognition: The Company derives its revenues primarily from the sale of spinal surgery implants used in the treatment of spine disorders. The Company sells its products primarily through its direct sales force and independent distributors. Revenue is recognized when goods are shipped, title and risk of loss has transferred to the buyer, the price is fixed or determinable and recoverability is reasonably assured.

Accounts receivable: Accounts receivable are uncollateralized customer obligations due under normal trade terms requiring payment according to agreed-upon terms, in most cases within 30 days from the invoice date. Accounts receivable are stated at the amount billed to the customer.

The carrying amount of accounts receivable is reduced by a valuation allowance. The Company makes judgments as to its ability to collect outstanding receivables and provides allowance for a portion of receivables when collection becomes doubtful. Provisions are made based upon a specific review of all outstanding invoices, the overall quality and age of those invoices and management assessment of customer credit worthiness.

Inventories: Inventories are stated at the lower of cost or market, with cost determined under the first-in, first-out method. The Company reviews the components of inventory on a periodic basis for excess, obsolete and impaired inventory, and records a reserve for the identified items.

Inventory components at March 31, 2015 and 2014 were as follows:

	2015	2014
Raw materials	$ 306,364	$ 93,920
Work in process	313,966	464,999
Finished goods	12,593,264	10,206,499
Inventory reserve	(569,366)	(351,434)
Total	$ 12,644,228	$ 10,413,984

Property and equipment: Property and equipment are carried at cost. Expenditures for maintenance and repairs are charged to operations as incurred. Expenditures which significantly extend the lives of assets and major improvements are capitalized. Impairment of asset value is recognized whenever events or changes in circumstances indicate that carrying amounts are not recoverable. Gain or loss on the disposition of property and equipment is reflected in current operations.

Note 1. Summary of Significant Accounting Policies – (continued)

Depreciation is computed by the straight-line method for financial reporting purposes over the estimated useful lives of the respective assets. Depreciation expense totaled approximately $650,600 and $483,400 for the three months ended March 31, 2015 and 2014, respectively. Estimated useful lives are as follows:

Surgical instruments	5 years
Machinery and equipment	3 to 7 years
Furniture and fixtures	3 to 7 years

Patents and trademarks: The cost of patents and trademarks are being amortized on the straight-line method over their useful lives of seven years and tested for impairment whenever events or changes in circumstances indicate that carrying amounts are not recoverable. Amortization expense charged to operations was approximately $63,000 and $69,000 for the three months ended March 31, 2015 and 2014, respectively.

Shipping and handling costs: Shipping and handling costs for the sale of products are either expensed as incurred and are included in operating expenses or charged to the distributor and reimbursed to the Company. Shipping and handling costs for the three months ended March 31, 2015 and 2014 totaled approximately $218,600 and $144,200, respectively.

Cost of sales: Cost of sales includes amounts relating to the medical device excise tax effective January 1, 2013. Total expense for the three months ended March 31, 2015 and 2014 totaled approximately $192,700 and $120,200, respectively.

Research and development: Research and development expenses include salaries and associated costs, contractor and consultant fees, and supplies and materials. These costs include the Company’s product development, regulatory and clinical functions and the costs for clinical studies and product development projects. The costs incurred with respect to internally developed technology and engineering services are included in research and development expense and are expensed as incurred. Research and development expenses were approximately $534,600 and $513,800 for the three months ended March 31, 2015 and 2014, respectively.

Advertising costs: Advertising costs are expensed when incurred and totaled approximately $321,900 and $219,900 for the three months ended March 31, 2015 and 2014, respectively.

Income taxes: The Company elected to be taxed under the provisions of Subchapter S of the Internal Revenue Code and, accordingly, is not liable for federal or state corporate income taxes. Instead, the shareholders include their respective portion of the Company’s taxable income in their individual income tax returns. The Company makes periodic distributions to its shareholders. The Company is liable for city income taxes. No provisions were deemed necessary for uncertain tax positions. With few exceptions, the Company is no longer subject to income tax examinations by federal, state, local or foreign tax authorities for years before 2012.

Note 2. Concentrations

Financial instruments, which potentially subject the Company to concentrations of credit risk, consist primarily of cash that exceed federally insured limits and trade accounts receivable. The credit risk with regard to trade accounts receivable is minimized through the ongoing credit evaluations of its customers and the use of allowance for doubtful accounts to recognize potential credit losses when necessary. For the three months ended March 31, 2015, net sales to one customer exceeded 10 percent of the Company’s net sales. Net sales and trade receivables for the one customer at March 31, 2015 totaled approximately $2,294,000 and $164,600, respectively. For the three months ended March 31, 2014, no customers exceeded 10% of the Company’s net sales.

Note 2. Concentrations – (continued)

For the three months ended March 31, 2015, products purchased from the Company's largest supplier accounted for approximately 12% of product purchases. For the three months ended March 31, 2014, products purchased from the Company's largest supplier accounted for approximately 20% of product purchases.

Note 3. Related-Party Transactions

The supplier referred to in Note 2 is a related entity. Purchases from this entity totaled approximately $321,000 and $793,900 for the three months ended March 31, 2015 and 2014, respectively. At March 31, 2015 and 2014, trade payables owed to this related party totaled approximately $639,000 and $1,154,500, respectively.

The Company provides various support services to another related party based on a shared services agreement. The amounts of reimbursed costs related to these transactions were approximately $12,000 and $14,800 for the three months ended March 31, 2015 and 2014, respectively.

Note 4. Leases

The Company leases office space and equipment under operating leases. Total rent expense for the three months ended March 31, 2015 and 2014 was approximately $76,000 and $63,000, respectively.

Note 5. Notes Payable

At March 31, 2014, the Company had notes payable with two shareholders for a combined amount of $10,000,000. The terms of these notes, which bore interest at 6%, required monthly interest payments with the principal balance due at the maturity of each note. These notes were settled in December 2014 through the Company obtaining the line of credit, as described in Note 6. Interest on these notes was approximately $150,000 for the three months ended March 31, 2014.

Note 6. Line of Credit

The Company has a line of credit for $15,000,000 that bears interest at LIBOR plus 2.5% (2.679% at March 31, 2015), is collateralized by all assets of the Company, and matures in December 2017. Borrowings against the line of credit were approximately $11,950,000 at March 31, 2015. The line of credit contains, among other things, covenants which require maintenance of certain financial ratios regarding cash flow leverage and fixed charge coverage, as defined in the agreements. Interest on the line of credit was approximately $66,000 for the three months ended March 31, 2015.

Note 7. 401(k) Plan

The Company has a 401(k) defined contribution plan covering substantially all employees. Employer contributions to this plan consist of a 3% safe harbor contribution. The Company contributed a safe harbor contribution of approximately $60,000 and $43,000 during the three months ended March 31, 2015 and 2014, respectively.

Note 8. Commitments and Contingencies

The Company is involved in certain legal matters which have arisen through the normal course of business. These cases are, in the opinion of management, ordinary matters incidental to the normal business conducted by the Company. Management does not believe that the ultimate resolution of these matters will have a material effect on the Company's consolidated financial position, results of operations or cash flows.

Note 9. Subsequent Events

On April 13, 2015 the Company's Board of Directors declared a dividend of $2,780 per share due and payable to the shareholders of record on that date. The dividend, totaling $695,000 was paid on this date.

On June 12, 2015 the Company's Board of Directors declared a dividend of $1,160 per share due and payable to the shareholders of record on that date. The dividend, totaling $290,000 was paid on this date.

The Company has evaluated subsequent events for potential recognition and/or disclosure through July 17, 2015, the date the consolidated financial statements were available to be issued.

Exhibit 99.7

UNAUDITED PRO FORMA FINANCIAL STATEMENTS

The following unaudited pro forma financial statements have been prepared in accordance with guidelines specified by Article 11 of Regulation S-X. Specifically, the Unaudited Condensed Combined Statements of Operations for the twelve months ended December 31, 2014 and the three months ended March 31, 2015, have been prepared as if the offering of our 6.00% Convertible Senior Notes due 2021, the contemplated use of the estimated net proceeds therefrom, the entry by Bacterin International Holdings, Inc. ("Bacterin") into an amended and restated credit agreement (the "New Facility"), which replaces its existing credit agreement (the "Existing Facility"), the extinguishment of X-spine Systems, Inc.'s ("X-spine") existing revolving line of credit (the "X-spine Revolver") and the combination of Bacterin and X-spine occurred on January 1, 2014, and include all adjustments that (i) are deemed to be directly attributable to the contemplated transactions and (ii) are factually supportable. The Unaudited Condensed Combined Balance Sheet as of March 31, 2015 has been prepared as if these transactions occurred as of March 31, 2015 and include all adjustments that (a) are deemed to be directly attributable to the contemplated transactions, (b) have a continuing impact on our financial statements, and (c) are factually supportable.

The transactions are more fully described in Note 1 hereto. The pro forma adjustments are based upon various estimates and assumptions that our management believes are reasonable and appropriate given the currently available information. Use of different estimates and judgments could yield different results.

The unaudited pro forma financial statements do not reflect any future operating efficiencies, associated cost savings or possible integration costs that may occur related to the combination of Bacterin and X-spine.

The unaudited pro forma financial statements are included for informational purposes only and do not purport to reflect our results of operations or financial position that would have occurred had we operated as a public company or as a group of companies during the periods presented. The unaudited pro forma financial statements should not be relied upon as being indicative of our financial condition or results of operations had the transactions occurred on the date assumed nor as a projection of our results of operations or financial position for any future period or date.

The unaudited pro forma financial statements should be read in conjunction with the historical financial statements and related notes of Bacterin, appearing in Bacterin's public filings available on www.sec.gov, and X-spine, appearing elsewhere in this Current Report on Form 8-K.

BACTERIN INTERNATIONAL HOLDINGS, INC.

Unaudited Pro Forma Combined Statements of Operations

	For the Twelve Months Ended December 31, 2014				
	Bacterin	X-Spine Systems Inc.	Pro Forma Adjustments		Pro Forma
Revenue					
Tissue and medical device sales	$ 34,569,160	$ 42,144,675	$		$ 76,713,835
Royalties and other	762,652	68,343			830,995
Total revenue	35,331,812	42,213,018	0		77,544,830
Cost of sales	13,034,314	14,488,855			27,523,169
Gross profit	22,297,498	27,724,163	0		50,021,661
Operating expenses					
General and administrative	8,886,972	4,731,252			13,222,774
			(395,450)	(a)	
Sales and marketing	16,912,865	15,865,370			32,778,235
Research and development	1,443,018	2,140,450			3,583,468
Depreciation and amortization	271,748		395,450	(a)	4,630,917
			3,963,719	(b)	
Impairment of assets	912,549				912,549
Non-cash consulting expense	135,075		—		135,075
Total operating expenses	28,562,227	22,737,072	3,963,719		55,263,018
Income (loss) from operations	(6,264,729)	4,987,091	(3,963,719)		(5,241,357)
Other income (expense)					
Interest expense	(5,660,357)	(593,593)	(11,607,172)	(c)	(11,607,172)
			6,253,950	(d)	
Change in warrant derivative liability	1,736,053		—		1,736,053
Other income (expense)	(318,836)				(318,836)
Total other income (expense)	(4,243,140)	(593,593)	(5,353,222)		(10,189,955)
Net gain (loss) from operations before (provision) benefit for income taxes	$(10,507,869)	$ 4,393,498	$ (9,316,941)		$ (15,431,312)
Current		(112,337)			(112,337)
Deferred					
Net income (loss)	$(10,507,869)	$ 4,281,161	$ (9,316,941)		$ (15,543,649)
Net loss per share:					
Basic	$ (1.76)				$ (1.52)
Dilutive	$ (1.76)				$ (1.52)
Shares used in the computation:					
Basic	5,954,195		4,250,000	(e)	10,204,195
Dilutive	5,954,195		4,250,000	(e)	10,204,195

BACTERIN INTERNATIONAL HOLDINGS, INC.

Unaudited Pro Forma Combined Statements of Operations

	For the Three Months Ended March 31, 2015				
	Bacterin	X-Spine Systems Inc.	Pro Forma Adjustments		Pro Forma
Revenue					
Tissue and medical device sales	$ 9,277,047	$ 12,170,571	$		$ 21,447,618
Royalties and other	226,067	54,676			280,743
Total revenue	9,503,114	12,225,247			21,728,361
Cost of sales	3,472,477	4,290,544			7,763,021
Gross profit	6,030,637	7,934,703			13,965,340
Operating expenses					
General and administrative	2,425,167	1,623,661			3,914,271
			(134,557)	(a)	
Sales and marketing	4,713,672	4,859,570			9,573,242
Research and development	433,561	608,343			1,041,904
Depreciation and amortization	124,111	—	134,557	(a)	1,374,481
			1,115,813	(b)	
Non-cash consulting expense	66,796	—	—		66,796
Total operating expenses	7,763,307	7,091,574	1,115,813		15,970,694
Gain (loss) from operations	(1,732,670)	843,129	(1,115,813)		(2,005,354)
Other income (expense)					
Interest expense	(1,435,578)	(79,674)	(2,992,081)	(c)	(2,992,081)
			1,515,252	(d)	
Change in warrant derivative liability	(462,208)	—	—		(462,208)
Non-cash consideration associated stock agreement	(558,185)	—	—		(558,185)
Other income (expense)	11,837	—			11,837
Total other income (expense)	(2,444,134)	(79,674)	(1,476,829)		(4,000,637)
Net gain (loss) from operations before (provision) benefit for income taxes	$ (4,176,804)	$ 763,455	$ (2,592,642)		$ (6,005,991)
Benefit (provision) for income taxes					
Current		(24,932)	—		(24,932)
Deferred			—		—
Net income (loss)	$ (4,176,804)	$ 738,523	$ (2,592,642)		$ (6,030,923)
Net loss per share:					
Basic	$ (0.62)				$ (0.55)
Dilutive	$ (0.62)				$ (0.55)
Shares used in the computation:					
Basic	6,689,530		4,250,000	(e)	10,939,530
Dilutive	6,689,530		4,250,000	(e)	10,939,530

BACTERIN INTERNATIONAL HOLDINGS, INC.

Unaudited Pro Forma Combined Balance Sheet

	As of March 31, 2015					
	Bacterin	X-Spine Systems Inc.	Combined before Adj's	Pro Forma Adjustments		Pro Forma
Current Assets:						
Cash and cash equivalents	$ 2,899,557	$ 3,000	$ 2,902,557			$ 8,132,557
				5,230,000	(a)	
Trade accounts receivable	5,495,667	6,389,952	11,885,619			11,885,619
Inventories, net	9,710,580	12,644,228	22,354,808			22,354,808
Prepaid and other current assets	885,359	107,668	993,027	(223,410)	(b)	1,273,617
				72,000	(c)	
				432,000	(d)	
Total Current Assets	18,991,163	19,144,848	38,136,011	5,510,590		43,646,601
Non-current inventories	1,787,061	0	1,787,061			1,787,061
Property and equipment, net	4,503,132	7,956,901	12,460,033			12,460,033
Intangible assets, net	621,126	667,753	1,288,879	(667,753)	(e)	43,814,626
				43,193,500	(f)	
Goodwill	0	0	0	21,777,112	(f)	21,777,112
Other assets	1,502,333	0	1,502,333	(744,698)	(b)	2,773,635
				288,000	(c)	
				1,728,000	(d)	
Total Assets	$ 27,404,815	$ 27,769,502	$ 55,174,317	$ 71,084,751		$126,259,068
Liabilities and Equity						
Accounts payable	4,412,385	4,212,423	8,624,808			8,624,808
Accounts payable – related party	327,641	0	327,641			327,641
Accrued liabilities	2,645,346	2,184,938	4,830,284			4,830,284
Warrant derivative liability	1,782,579	0	1,782,579			1,782,579
Current portion of capital lease obligations	30,914	0	30,914			30,914
Current portion of royalty liability	1,109,750	0	1,109,750	(1,109,750)	(b)	0
Current portion of long-term debt	51,574	0	51,574			51,574
Current Liabilities	10,360,189	6,397,361	16,757,550	(1,109,750)		15,647,800
Capital lease obligation, less current portion	6,529	0	6,529			6,529
Long-term royalty liability, less current portion	6,228,293	0	6,228,293	(6,228,293)	(b)	(0)
Long-term debt, less current portion	21,281,052	0	21,281,052	42,000,000	(h)	43,261,478
				(24,000,000)	(h)	
				(700,000)	(b)	
				4,680,426	(b)	
Revolving line of credit	0	11,950,057	11,950,057	(11,950,057)	(g)	0
Convertible long-term debt	0	0	0	65,000,000	(i)	65,000,000
Long-Term Liabilities	27,515,874	11,950,057	39,465,931	68,802,076		108,268,007
Total Liabilities	$ 37,876,063	$ 18,347,418	$ 56,223,481	$ 67,692,326		$123,915,807
Preferred stock, par value	—	100,000	100,000	(100,000)	(j)	0
Common stock, par value	7	1,000,000	1,000,007	4	(k)	11
				(1,000,000)	(j)	
Additional paid-in capital	64,572,987	350,000	64,922,987	13,174,996	(k)	77,747,983
				(350,000)	(j)	
Accumulated deficit	(75,044,242)	7,972,084	(67,072,158)	(7,972,084)	(j)	(75,404,733)
				2,389,509	(l)	
				(2,750,000)	(m)	
Total stockholders' equity	(10,471,248)	9,422,084	(1,049,164)	3,392,425		2,343,261
Total Liabilities and Equity	$ 27,404,815	$ 27,769,502	$ 55,174,317	$ 71,084,751		$126,259,068

Bacterin International Holdings, Inc.
Notes to Unaudited Pro Forma Financial Statements

(1) Basis of Pro Forma Presentation

For purposes of pro forma presentation, the acquisition date of X-spine is assumed to be the following for each of the respective financial statements:

- For the purposes of the Unaudited Condensed Combined Statement of Operations for the twelve months ended December 31, 2014 and the three months ended March 31, 2015, the acquisition date has been assumed to be January 1, 2014; and
- For the purposes of the Unaudited Condensed Combined Balance Sheet as of March 31, 2015, the acquisition date has been assumed to be March 31, 2015.

In conjunction with the acquisition of X-spine, the following equity and debt instruments are anticipated to be issued or established:

- 4,250,000 shares of common stock of Bacterin;
- $42 million in long-term debt incurred pursuant to the New Facility, with a maturity July 2020, an annual interest rate of 14% plus LIBOR (minimum 1%); and
- $65 million in convertible debt with a maturity July 2021 (for purposes of pro forma presentation the annual interest rate is assumed to be 7%).

The incurrence of the $42 million in long-term debt will replace the Existing Facility of $24 million for an incremental increase of $18 million.

For purposes of these unaudited pro forma condensed combined financial statements, it has been assumed that the proceeds associated with long-term debt and convertible long-term debt instruments have been received as of the acquisition date(s). These instruments are subject to investor acceptance.

The unaudited pro forma condensed combined financial statements have been prepared assuming that the acquisition is accounted for using the acquisition method of accounting. Accordingly, the assets acquired and liabilities of X-spine have been adjusted to their fair values as of March 31, 2015.

Fair Value as of March 31, 2015

X-spine tangible assets		$ 27,101,749
X-spine tangible liabilities		(6,397,361)
X-spine revolving line of credit		(11,950,057)
Net tangible assets		8,754,331
Goodwill		21,777,112
Identifiable intangible assets		
Tradename	$ 4,543,300	
Technology	28,698,700	
Non-compete	40,500	
Customer relationship	9,911,000	43,193,500
Cash	60,549,943	
Stock (4,250,000 shares of common stock)	13,175,000	
Consideration – stock and cash		$ 73,724,943

(1) Basis of Pro Forma Presentation – (continued)

A fair market value of $8.8 million has been assigned to net tangible assets acquired. The difference between the fair market value of the net tangible assets and the consideration given have been allocated between (i) identifiable intangible assets (technology, trademarks, customer relationships and non-compete agreements) which will be amortized over three (3) to fourteen (14) years and (ii) goodwill, which in accordance with the ASC No. 805 Business Combinations, will not be amortized but instead will be tested for impairment at least annually and whenever events or circumstances have occurred that may indicate a possible impairment.

Acquisition-related costs are estimated to be $2.8 million for the period ended March 31, 2015.

(2) Pro Forma Presentation Adjustments and Assumptions

The adjustments included in the column under the heading “Pro Forma Adjustments” in the unaudited pro forma condensed combined financial statements are as follows:

Pro Forma Adjustments to the Condensed Combined Balance Sheet

a) To record cash and cash equivalents, which is the excess of consideration given less net term debt, convertible debt and equity issued.

b) To eliminate the long-term debt discount, royalty liability and debt penalty fee associated with the extinguishment of the Existing Facility.

c) To record that portion of the third party fees incurred in conjunction with the acquisition of X-spine associated with the issuance with the New Facility.

d) To record that portion of the third party fees incurred in conjunction with the acquisition of X-spine associated with the fair market value of the convertible notes classified as part of long-term debt.

e) To eliminate the historical intangible assets of X-spine.

f) To record the identifiable intangible assets and goodwill associated with the acquisition of X-spine.

g) To record the extinguishment of the X-spine Revolver which will be paid off with the incurrence of new debt associated with the acquisition of X-spine.

h) To record the entry into the New Facility associated with the acquisition of X-spine and the extinguishment of the Existing Facility.

i) To record the issuance of the fair market value of the convertible notes classified as part of long-term debt.

j) To eliminate the sellers’ portion of Stockholders’ equity.

k) To record the values associated with common stock and additional paid-in capital associated with the approximately 4,250,000 shares of common stock issued to sellers as part of the consideration for X-spine.

l) To record the gain associated with the extinguishment of the Existing Facility.

m) To record that portion of the third party fees incurred in conjunction with the acquisition of X-spine.

(2) Pro Forma Presentation Adjustments and Assumptions – (continued)

Pro Forma Adjustments to the Condensed Combined Statements of Operations

a) To reclassify amortization and depreciation from General and administrative expense to Depreciation and amortization expense which is the financial reporting presentation used by Bacterin for the three months ended March 31, 2015 and for the twelve months ended December 31, 2014.

b) To record amortization of Identifiable intangible assets expense for the three months ended March 31, 2015 and for the twelve months ended December 31, 2014.

c) To record the interest expense associated with the entry into the New Facility and the issuance of convertible debt securities associated with the acquisition of X-spine for the three months ended March 31, 2015 and for the twelve months ended December 31, 2014.

d) To reverse out the interest expense associated with the Existing Facility and the X-spine Revolver which has been extinguished with the issuance of the New Facility and of the new convertible debt associated with the acquisition of X-spine for the three months ending March 31, 2015 and for the twelve months ending December 31, 2014.

e) To reflect the shares of common stock issued as consideration for the acquisition.