

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

Dextera Surgical Inc.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 17-12913 (\_\_\_\_)

**Bidding Procedures Hearing Date:**

**Objection Deadline:**

**DEBTOR'S MOTION FOR ORDERS (A)(I) AUTHORIZING AND APPROVING BIDDING PROCEDURES, AND STALKING HORSE PAYMENT; (II) AUTHORIZING AND APPROVING THE DEBTOR'S ENTRY INTO THE STALKING HORSE APA; (III) APPROVING NOTICE PROCEDURES; (IV) SCHEDULING AN AUCTION AND SALE HEARING; AND (V) APPROVING PROCEDURES FOR ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND DETERMINING CURE AMOUNTS AND (B)(I) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL CLAIMS, LIENS, RIGHTS, INTERESTS, AND ENCUMBRANCES; (II) APPROVING THE STALKING HORSE APA; AND (III) AUTHORIZING THE DEBTOR TO ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Dextera Surgical Inc., the above-captioned debtor and debtor in possession ("Dextera") or the "Debtor") hereby moves this Court (this "Motion") for the entry of an order (the "Bidding Procedures Order"), in the form attached hereto as **Exhibit B**, pursuant to sections 105(a), 363, 365, 503, and 507 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6003, 6004, 6006, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2002-1, 6004-1 and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), (A)(i) authorizing and approving certain bidding procedures substantially in the form of Exhibit 1 to the Bidding Procedures Order (the "Bidding

<sup>1</sup> The last four digits of the Debtor's federal tax identification number are 7832. The Debtor's address is 900 Saginaw Drive, Redwood City, CA 94063.

Procedures”), and the stalking horse protection (the “Stalking Horse Payment”) to be granted in connection with the Debtor’s sale (the “Sale”) of substantially all of its assets (the “Purchased Assets”) pursuant to that certain Asset Purchase Agreement, dated as of December 11, 2017, which is attached hereto as **Exhibit A** (as amended or modified, the “Stalking Horse APA”)², by and between the Debtor and Aesculap, Inc. (the “Stalking Horse Bidder”); (ii) authorizing and approving the Debtor’s entry into (but not consummation of) the Stalking Horse APA; (iii) approving the form and manner of notice of the Sale of the Purchased Assets; (iv) scheduling an auction (the “Auction”) and hearing (the “Sale Hearing”) to consider approval of the Sale; and (v) approving certain procedures for assumption and assignment of executory contracts and unexpired leases (the “Executory Contracts and Leases”) and for determining cure amounts with respect to such Executory Contracts and Leases, and (B)(i) authorizing the Sale of the Purchased Assets free and clear of any and all claims, liens, rights, interests, and encumbrances (other than Permitted Liens and Encumbrances) to the Stalking Horse Bidder or the party otherwise submitting the highest or otherwise best offer pursuant to the Bidding Procedures (in either case, the “Successful Bidder”); (ii) approving the Stalking Horse APA or such other asset purchase agreement entered into with the Successful Bidder in accordance with the Bidding Procedures (the “Successful Bidder APA”); and (iii) authorizing the Debtor to assume and assign certain Executory Contracts and Leases. In support of this Motion, the Debtor relies on the *Declaration of Julian Nikolchev in Support of Dextera Surgical Inc.’s First-Day Motions* (the “First Day Declaration”), which was filed concurrently herewith, and respectfully represents as follows:

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning stated in the Stalking Horse APA.

## **JURISDICTION AND VENUE**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and pursuant to Local Rule 9013-1(f), the Debtor consents to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105(a), 363, 365, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6003, 6004, 6006, 9007, 9008 and 9014, and Local Rules 2002-1, 6004-1 and 9006-1.

## **BACKGROUND**

### **A. General Background**

3. On the date hereof (the "Petition Date"), the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code (the "Chapter 11 Case"). Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor is continuing to manage its financial affairs as a debtor in possession.

4. No trustee, examiner, or official committee of unsecured creditors has been appointed in the Chapter 11 Case.

5. Information regarding the Debtor's history and business operations, capital structure and primary secured indebtedness, and the events leading up to the commencement of this Chapter 11 Case can be found in the First Day Declaration.

**B. Background Related to the Debtor's Business and the Sale Process**

6. Founded in 1997, Dexter is an innovative medical device company that designs and manufactures proprietary stapling devices that enable the advancement of minimally invasive surgical procedures. With increasing demand for minimally invasive surgery, Dexter has designed a disruptive product in the MicroCutter5/80™, the world's first and only five-millimeter surgical stapler that articulates to 80 degrees in each direction. As the smallest-profile articulating stapler available today, the MicroCutter 5/80 may reduce the amount of dissection and tissue handling required to position the stapler in confined spaces, enabling access to difficult-to-reach anatomy. Dexter Surgical also markets the only automated anastomosis devices for coronary artery bypass graft surgery on the market today: the C-Port® Distal Anastomosis Systems and PAS-Port® Proximal Anastomosis System. These products, sold by Dexter under the Cardica brand name, have demonstrated long-term reliable clinical performance for more than a decade. In addition, Dexter has focused on building strategic partnerships that support the commercialization of its products while improving its supply chain to make it more efficient and cost effective.

7. To preserve going-concern value and enable Dexter to execute its business plan, Dexter has been pursuing potential merger or acquisition partners, or potential major investors, for approximately one year. Starting in the fourth quarter of 2016, Dexter made extensive efforts with its investment bank to identify merger or acquisition partners or potential investors. Dexter's CEO personally contacted a number of investors and companies active in the medical device industry and related fields, who he believed might have an interest in merging with, acquiring, or investing in Dexter. As part of that process, Dexter's CEO spoke directly with many potentially interested parties, both at in-person meetings and by telephone.

8. In addition, on December 21, 2016, Dextera engaged JMP Securities LLC (“JMP”) to solicit interest from third parties with respect to a possible merger, consolidation, tender or exchange offer, or sale or exclusive license of all or a majority of Dextera’s assets or outstanding equity interests.

9. JMP drafted marketing materials and contacted potentially interested parties as detailed below (the “Prepetition Marketing Process”). In consultation with Dextera’s management, JMP prepared a short “teaser” summarizing Dextera’s business and the opportunity presented, public information books that included SEC filings, press releases, research reports, and corporate presentations, as well as a financial forecast model and other information. Based on prior industry relationships and additional research, JMP compiled a list of potential strategic and healthcare-focused financial buyers who might be interested in investing in or acquiring Dextera. Dextera also built a comprehensive online data room to facilitate due diligence requests from potential investors or buyers.

10. In early January 2017, JMP initiated the Prepetition Marketing Process, contacting and distributing the “teaser” to 49 potential investors or purchasers. Four parties that executed non-disclosure agreements were given additional information and one was provided access to a confidential data room established by JMP, with various potentially interested parties conducting interviews with Dextera management (collectively, “Diligence Information”). The Diligence Information provided prospective investors or buyers with detailed information on, among other topics, Dextera’s business, strategy, growth opportunities, technology, legal and regulatory matters, and historical and projected financial performance.

11. As the Prepetition Marketing Process continued, a process letter was sent to 24 parties, at the time establishing a bid deadline of March 31, 2017. The deadline did not result in

acceptable proposals so JMP continued to engage with potential parties during the rest of the spring and summer of 2017 to explore potential transactions.

12. During early October, JMP made further contacts to 13 of the parties it had previously contacted. On October 11, 2017, one of those parties, the Stalking Horse Bidder, submitted a term sheet for an out of court acquisition of substantially all of the assets of Dextera. After further discussions between Dextera and JMP, on the one hand, and the Stalking Horse Bidder on the other hand, the parties determined that an asset sale in a chapter 11 bankruptcy case was required. The parties executed a non-binding term sheet for such an asset sale dated November 9, 2017, and thereafter negotiated the terms of an asset purchase agreement. That process was completed just prior to the Petition Date when, on December 11, 2017, the parties executed the Stalking Horse APA. In the Stalking Horse APA, the Stalking Horse Bidder has committed to acquire substantially all of the Debtor's assets in a sale (the "Sale") pursuant to section 363 of the Bankruptcy Code. The transaction is conditioned upon approval by this Court and is subject to higher or otherwise better competing offers, as described more fully below.

13. The timeline and specific dates proposed herein will provide the Debtor sufficient time to expose its business and assets again to potential overbidders, conduct an auction if any qualified overbids are presented, and bring before the Court for approval the Sale to the Successful Bidder, and will permit the Sale to close consistent with the liquidity available to the Debtor. If the timeline proposed in the Sale Motion is not approved, or if there are material delays in that timeline, the Debtor will run out of cash, will be unable to continue operations, and therefore will be unable to satisfy the conditions to the closing of the Stalking Horse APA or an asset purchase agreement executed by a winning bidder other than the Stalking Horse Bidder.

**RELIEF REQUESTED**

14. By this Motion, the Debtor seeks entry of an order, pursuant to sections 105(a), 363, 365, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 6004 and 6006, and Local Rule 6004-1: (a) authorizing and approving (i) the Bidding Procedures attached to the Bidding Procedures Order as **Exhibit 2**, and (ii) the Stalking Horse Payment to the extent payable pursuant to the Stalking Horse APA; (b) authorizing and approving the Debtor's entry into (but not consummation of) the Stalking Horse APA; (c) approving the form and manner of notice of the Sale of the Purchased Assets (the "Sale Notice"), substantially in the form attached as **Exhibit 3** to the Bidding Procedures Order; (d) establishing January 19, 2018 at 5:00 p.m. (Prevailing Eastern Time) as the deadline for the submission of Qualified Bids (the "Bid Deadline") and scheduling (i) the Auction, if necessary, for January 22, 2018 at 10:00 a.m. (Prevailing Eastern Time) and (ii) the Sale Hearing no later than January 23, 2018; and (e) approving certain procedures (the "Assumption Procedures") for the assumption and assignment of the Debtor's Executory Contracts and Leases and the form and manner of notice of assumption and assignment and related cure amounts (the "Cure Notice"), substantially in the form attached as **Exhibit 4** to the Bidding Procedures Order.

15. The Debtor further requests the Court enter an order at the Sale Hearing, in the form attached hereto as **Exhibit C** (the "Sale Order"): (a) authorizing the Sale of the Purchased Assets, free and clear of any and all claims, liens, rights, interests, and encumbrances (other than Permitted Liens and Encumbrances) to the Stalking Horse Bidder or the Successful Bidder, as applicable; (b) approving the Stalking Horse APA or the Successful Bidder APA, as applicable, and (c) authorizing the Debtor to assume and assign the Executory Contracts and Leases that are designated to be assumed by the Debtor pursuant to section 365(b) of the Bankruptcy Code and

assigned to the Stalking Horse Bidder or other Successful Bidder, if any, pursuant to section 365(f) of the Bankruptcy Code (collectively, the “Assigned Contracts”) in connection with the Sale of the Purchased Assets.

**A. The Proposed Sale to the Stalking Horse Bidder**

16. The following is a summary of the material provisions of the Stalking Horse APA:<sup>3</sup>

<b><u>Term</u></b>	<b><u>Description</u></b>
<b>Seller</b>	Dextera Surgical Inc.  (see introductory paragraph of Stalking Horse APA)
<b>Buyer - Stalking Horse Bidder</b>	Aesculap, Inc. (together with its permitted successors, designees and assigns)  (see introductory paragraph of Stalking Horse APA)
<b>Purchase Price</b>	The Purchase Price is composed of the following: <ul style="list-style-type: none"> <li>a) \$17,300,000 in cash, <i>plus</i></li> <li>b) assumption of the Assumed Liabilities.</li> </ul> (see § 3.1 of Stalking Horse APA)

<sup>3</sup> The brief description of the Stalking Horse APA is for the convenience of the Court and parties in interest. In the event of any inconsistency or ambiguity between the terms of the Stalking Horse APA and the Motion, the Stalking Horse APA shall control.



<u>Term</u>	<u>Description</u>
<b>Indemnification Escrow</b>	<p>At closing, \$2 million of the cash purchase price will be deposited with an escrow agent (the "<u>Indemnification Escrow</u>"), which fund shall be available to the Stalking Horse Bidder to satisfy any amounts owed under the Stalking Horse APA, including for indemnification claims made against the Debtor for breaches of representations, warranties, or other covenants of the Stalking Horse APA (collectively, "<u>Indemnification Obligations</u>"), for a period of two (2) years following the closing. The Indemnification Escrow shall be the Stalking Horse Bidder's sole remedy on account of money damages for Indemnification Obligations, and any funds remaining in the Indemnification Escrow shall revert to the Debtor. Claims for Indemnification Obligations must be made against the Indemnification Escrow within the two-year period following the closing of the Stalking Horse APA.</p> <p>(see § 3.1(b), Article X of Stalking Horse APA)</p>
<b>Purchased Assets</b>	<p>All of the Debtor's properties and assets of every kind and description, wherever located, whether real, personal or mixed, tangible or intangible, owned, leased, licensed, used or held for use in or relating to the Business, other than the Excluded Assets.</p> <p>(see Defined Terms and § 2.1 of Stalking Horse APA)</p>
<b>Excluded Assets</b>	<p>See § 2.1(b) of Stalking Horse APA</p>
<b>Assumption and Assignment of Contracts and Leases</b>	<p>Schedule 2.1(a)(iv) to the Stalking Horse APA is the list of executory contracts and unexpired leases the Stalking Horse Bidder has designated as Assigned Contracts to be assumed and assigned to the Stalking Horse Bidder. The Stalking Horse Bidder must provide Schedule 2.1(a)(iv) to the Debtor no later than twenty (20) days prior to the Sale Hearing.</p> <p>At any time prior to conclusion of the Sale Hearing the Stalking Horse Bidder may, in its sole and absolute discretion, remove executory contracts and unexpired leases from Schedule 2.1(a)(iv).</p> <p>(see §§ 2.1, 2.3 of Stalking Horse APA; Bidding Procedures Order)</p>

<b><u>Term</u></b>	<b><u>Description</u></b>
<b>Assumed Liabilities</b>	Liabilities under any Assigned Contract required to be performed after the Closing Date (and do not relate to any failure to any action or breach that occurred on or prior to the Closing Date) and (ii) those liabilities and obligations enumerated on Schedule 2.2(a)(ii) of the Stalking Horse APA.  (see Defined Terms and § 2.2 of Stalking Horse APA)
<b>Stalking Horse Payment</b>	If the Stalking Horse APA has not been terminated based on a breach by the Stalking Horse Bidder and the Debtor sells all or substantially all the Purchased Assets in a transaction or series of transactions with one or more persons other than the Stalking Horse Bidder, upon consummation of such transaction(s), from the proceeds of such sale(s), the Debtor shall pay to the Stalking Horse Bidder Five Hundred Nineteen Thousand Dollars (\$519,000) (the “ <u>Stalking Horse Payment</u> ”).  (see ¶ 20 of Bidding Procedures Order)

17. The following chart represents the Debtor’s compliance with Local Rule 6004-1(b):

<b>Term</b>	<b>Description</b>
<b>Sale to Insider</b> <i>Local Rule 6004-1(b)(iv)(A)</i>	The sale is not to an insider.
<b>Agreements with Management</b> <i>Local Rule 6004-1(b)(iv)(B)</i>	No agreements with management have been entered into in connection with the Stalking Horse APA although offers of employment to the Debtor’s employees, including management, may be extended if the Stalking Horse Bidder is the Successful Bidder.
<b>Releases</b> <i>Local Rule 6004-1(b)(iv)(C)</i>	The Stalking Horse APA does not contain releases.
<b>Private Sale/No Competitive Bidding</b> <i>Local Rule 6004-1(b)(iv)(D)</i>	Subject to the Stalking Horse Payment, the Purchased Assets will be subject to competitive bidding and an auction in accordance with the Bidding Procedures Order.

<b>Term</b>	<b>Description</b>
<b>Closing and Other Deadlines</b> <i>Local Rule 6004-1(b)(iv)(E)</i>	<p>The closing of the transactions contemplated by the Stalking Horse APA shall take place on or before the third (3<sup>rd</sup>) Business Day following satisfaction or waiver of all the conditions set forth in Article VII of the Stalking Horse APA.</p> <p>(see Defined Terms and § 8.1 of Stalking Horse APA)</p>
<b>Good Faith Deposit</b> <i>Local Rule 6004-1(b)(iv)(F)</i>	None.
<b>Interim Arrangements with Stalking Horse Bidder</b> <i>Local Rule 6004-1(b)(iv)(G)</i>	None.
<b>Use of Proceeds</b> <i>Local Rule 6004-1(b)(iv)(H)</i>	None.
<b>Tax Exemption</b> <i>Local Rule 6004-1(b)(iv)(I)</i>	None.
<b>Record Retention</b> <i>Local Rule 6004-1(b)(iv)(J)</i>	<p>For a period of thirty (30) months after the Closing Date the Stalking Horse Bidder will furnish to the Debtor information that is necessary for the Debtor or another estate representative to, <i>inter alia</i>, carry out the continuing administration of the Debtor's chapter 11 case. Should there be any requests for materials for discovery or materials requiring electronic discovery beyond four (4) hours effort by an employee of the Stalking Horse Bidder, the Debtor shall bear the reasonable cost of compliance with such requests.</p> <p>(see § 6.10 of Stalking Horse APA)</p>
<b>Sale of Avoidance Actions</b> <i>Local Rule 6004-1(b)(iv)(K)</i>	<p>Claims arising under Chapter 5 of the Bankruptcy Code are Excluded Assets under the Stalking Horse APA.</p> <p>(see §§ 2.1(b)(xi) of Stalking Horse APA)</p>
<b>Successor Liability</b> <i>Local Rule 6004-1(b)(iv)(L)</i>	<p>Pursuant to the Stalking Horse APA, other than the explicitly Assumed Liabilities, the Stalking Horse Bidder is not assuming any liabilities or obligations which the Stalking Horse Bidder may or could become liable for as a result of or in connection with any successor, vicarious, or transferee theories of liability.</p> <p>(see ¶ Q of the Sale Order)</p>

<b>Term</b>	<b>Description</b>
<b>Sale Free and Clear of Unexpired Leases</b> <i>Local Rule 6004-1(b)(iv)(M)</i>	The Debtor shall sell all of the Purchased Assets free and clear of all Interests (other than Permitted Liens and Encumbrances expressly identified in the Sale Order). The Debtor is not a lessor of any real property and is not selling any real property free and clear of any leases.  (see § 2.1(a) of Stalking Horse APA)
<b>Credit Bid</b> <i>Local Rule 6004-1(b)(iv)(N)</i>	The Stalking Horse Bidder may credit bid the outstanding balance of the DIP financing to the extent loaned to the Debtor.
<b>Relief from Bankruptcy Rule 6004(h)</b> <i>Local Rule 6004-1(b)(iv)(O)</i>	The Debtor seeks a waiver of the 14-day stay under Bankruptcy Rules 6004(d) and 6004(h).

18. As part of the Bidding Procedures Order, the Debtor requests approval of the Stalking Horse Payment in the amount of \$519,000, to the extent payable to the Stalking Horse Bidder pursuant to the terms and conditions set forth in the Bidding Procedures Order. The Stalking Horse Payment is: (a) an actual and necessary costs of preserving the Debtor's estate within the meaning of section 503(b) of the Bankruptcy Code; (b) of substantial benefit to the Debtor's estate, its creditors, and all other parties in interest, because, among other things, they induced the Stalking Horse Bidder to submit a bid that will serve as a minimum or floor bid for the Debtor's sales process on which the Debtor, its creditors, and other bidders can rely; (c) reasonable and appropriate in light of the size and nature of the proposed sale and the efforts that have been and will be expended by the Stalking Horse Bidder; and (d) necessary to induce the Stalking Horse Bidder to enter into the Stalking Horse APA and to continue to pursue the purchase of the Purchased Assets. If approved by this Court, the Debtor would be authorized to pay the Stalking Horse Payment to the extent the Stalking Horse Bidder is outbid and the Debtor sells the Purchased Assets in a Competing Transaction (as defined the Bidding Procedures Order). The Debtor further requests that any obligations of the Debtor arising under or in

connection with the Stalking Horse APA, including with respect to the Stalking Horse Payment: (a) survive termination of the Stalking Horse APA; (b) constitute administrative expense claims under sections 503(b) and 507(a)(2) of the Bankruptcy Code; and (c) be payable under the terms and conditions of the Stalking Horse APA and the Bidding Procedures Order without further order of the Court.

## **B. Bidding Procedures**

19. The Bidding Procedures are designed to maximize value for the Debtor's estate and will enable the Debtor to review, analyze, and compare all bids received to determine which bid is in the best interests of the Debtor's estate and creditors. The Bidding Procedures describe, among other things, the procedures for parties to access due diligence, the manner in which bidders and bids become "qualified," the receipt of bids received, the conduct of any auction, the selection and approval of any ultimately successful bidders, and the deadlines with respect to the foregoing Bidding Procedures and sale process which are set forth in the chart attached as Exhibit 2 to the proposed Bidding Procedures Order. The Debtor submits that the Bidding Procedures will enable it to conduct a sale process that will maximize the value of its estate. Importantly, the Bidding Procedures recognize the Debtor's fiduciary obligations to maximize sale value, and, as such, do not impair the Debtor's ability to consider all qualified bid proposals and preserve the Debtor's right to modify the Bidding Procedures as necessary or appropriate to maximize value for its estate.

20. The Bidding Procedures contain the following provisions that are to be highlighted pursuant to Local Rule 6004-1(c), which are more fully described in the Bidding Procedures and the proposed Bidding Procedures Order:<sup>4</sup>

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<sup>4</sup> The brief description of the Bidding Procedures contained herein is for the convenience of the Court and parties in interest. In the event of any inconsistency or ambiguity between the terms of the Bidding

**Access to Diligence Materials.** To participate in the bidding process and to receive access to due diligence (the “Diligence Materials”), a party must submit to the Debtor an executed confidentiality agreement in the form and substance satisfactory to the Debtor and evidence demonstrating the party’s financial capability to close a transaction involving some or all of the Purchased Assets (a “Competing Transaction”) as determined by the Debtor. A party who qualifies for access to Diligence Materials shall be a “Preliminary Interested Investor.” All due diligence requests must be directed to the Debtor. For any Preliminary Interested Investor who is a competitor of the Debtor or is affiliated with any competitor of the Debtor, the Debtor reserves the right to withhold any Diligence Materials that the Debtor, in its sole discretion, determines are business-sensitive or otherwise not appropriate for disclosure to such Preliminary Interested Investor.

**Bid Qualification Process.** To be eligible to participate in the Auction, each offer, solicitation or proposal (each, a “Bid”), and each party submitting such a Bid, whether a single Bid for all or substantially all of the Purchased Assets or a joint Bid with another party each for separate components of the Purchased Assets (each, a “Bidder”), must be determined by the Debtor to satisfy each of the following conditions:

- **Good Faith Deposit:** Each Bid must be accompanied by a deposit by wire transfer in the amount equal to ten percent (10%) of the Bid to an interest-bearing account to be identified and established by the Debtor (the “Good Faith Deposit”).
- **Same or Better Terms:** The Bid must be on terms that are substantially the same or better than the terms of the Stalking Horse APA, as determined by the Debtor. A Bid must identify which assets the Bidder intends to purchase and include executed transaction documents. A Bid shall include a copy of the Stalking Horse APA, including exhibits and schedules, marked to show all changes requested by the Bidder. A Bid will not be considered as qualified for the Auction if (i) such Bid contains additional material representations and warranties, covenants, closing conditions, termination rights other than as may be included in the Stalking Horse APA (it being agreed and understood that such Bid shall modify the Stalking Horse APA as needed to comply in all respects with the Bidding Procedures Order and will remove provisions that apply only to the Proposed Purchaser as the Stalking Horse Bidder such as the Stalking Horse Payment); (ii) such Bid is not received by the Debtor in writing on or prior to the Bid Deadline, or (iii) such Bid does not contain evidence that the Bidder has received unconditional debt and/or equity funding commitments (or has unrestricted and fully available cash) sufficient in the aggregate to finance the purchase contemplated thereby, including proof that the Good Faith Deposit has been made.

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Procedures and the Motion, the Bidding Procedures shall control. Capitalized terms used in this paragraph 20 but not otherwise defined shall have the meanings ascribed to them in the Bidding Procedures and Bidding Procedures Order, as applicable.

- Corporate Authority: The Bid must include written evidence reasonably acceptable to the Debtor demonstrating appropriate corporate authorization to consummate the proposed Competing Transaction.
- Proof of Financial Ability to Perform: The Bid must include written evidence that the Debtor reasonably concludes demonstrates that the Bidder has the necessary financial ability to close the Competing Transaction and provide adequate assurance of future performance under all Executory Contract and Leases to be assumed and assigned in such Competing Transaction.
- Contingencies: A Bid may not (i) contain representations and warranties, covenants, termination rights, financing, due diligence contingencies other than as may be included in the Stalking Horse APA (it being agreed and understood that such Bid shall modify the Stalking Horse APA as needed to comply in all respects with the Bidding Procedures Order (including removing any termination rights in conflict with the Bidding Procedures Order) and will remove provisions that apply only to the Stalking Horse Bidder, such as the Stalking Horse Payment or (ii) be conditioned on obtaining financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy in all material respects of specified representations and warranties at the Closing.
- Irrevocable: A Bid must be irrevocable through the Auction, provided, however, that if such Bid is accepted as the Successful Bid or a Backup Bid (each as defined herein), such Bid shall continue to remain irrevocable, subject to the terms and conditions of the Bidding Procedures.
- Bid Deadline. Regardless of when a party qualifies as a Preliminarily Interested Investor, the Notice Parties (as defined in the Bidding Procedures) must receive a Bid in writing, on or before January 19, 2018 at 4:00 p.m. (Prevailing Eastern Time) or such earlier date as may be agreed to by the Debtor (the “Bid Deadline”).
- Amount of Bid. Each Bid for all of the Purchased Assets shall clearly show the amount of the purchase price and shall be, separately or jointly with identified co-Bidders, in a minimum amount of \$18 million.
- Adequate Assurance of Future Performance. Each Bid shall be accompanied by adequate assurance of future performance information (the “Adequate Assurance Information”), which may include (i) information about the Bidder’s financial condition, such as federal tax returns for two years, a current financial statement, or bank account statements, (ii) information demonstrating (in the Debtor’s reasonable business judgment) that the Bidder has the financial capacity to consummate the proposed Competing Transaction, (iii) evidence that the Bidder has obtained authorization or approval from its board of directors (or comparable governing body) with respect to the submission of its Bid, (iv) the identity and exact name of the Bidder (including any equity holder or other financial backer if

the Bidder is an entity formed for the purpose of consummating the proposed Competing Transaction), and (v) such additional information regarding the Bidder as the Bidder may elect to include. By submitting a Bid, Bidders agree that, in the event the Debtor determines such bid to be the Successful Bidder (as defined in the Bidding Procedures), the Debtor may disseminate their Adequate Assurance Information to those non-Debtor counterparties to Scheduled Contracts (defined below) such Successful Bidder designates for assumption and assignment, provided that such non-Debtor counterparties (i) make a written request for such information to Debtor's counsel and (ii) confirm in writing their agreement to keep such information strictly confidential and to use it solely for the purpose of evaluating whether such Successful Bidder has provided adequate assurance of future performance under the counterparty's Scheduled Contract.

**Auction.** If one or more Qualified Bids (other than the Stalking Horse APA from the Stalking Horse Bidder) are received by the Bid Deadline, the Debtor will conduct an Auction to determine the highest and best Qualified Bid. If no Qualified Bid (other than the Stalking Horse APA) is received by the Bid Deadline, no Auction shall be conducted and the Stalking Horse Bid shall be deemed the Successful Bid. Only Qualified Bidders may participate in the Auction.

The Auction shall take place on **January 22, 2018 at 10:00 a.m.** (Prevailing Eastern Time) at the offices of Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036, or such other place and time as the Debtor shall notify all Qualified Bidders, including the Stalking Horse Bidder, counsel for the Stalking Horse Bidder, any official committee, and other parties invited to attend by the Debtor. The Stalking Horse Payment shall be taken into account in connection with each round of bidding and in each phase of the Auction by adding \$519,000 to the amount of each bid made by the Stalking Horse Bidder. Any credit bids submitted by a party other than the Stalking Horse Bidder shall include a cash component that is sufficient to pay the amount of the Stalking Horse Payment.

- **Terms of Overbids.** An "Overbid" is any bid made at the Auction subsequent to the Debtor's announcement of an Auction Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions: Any Overbid after the Auction Baseline Bid shall be made initially in increments valued in an amount of \$100,000 subject to modification of such increment by the Debtor at the Auction. Additional consideration in excess of the amount set forth in an Auction Baseline Bid may include cash and/or noncash consideration. The Stalking Horse Bidder shall be entitled to credit bid all, or any portion, of the outstanding balance of the debtor-in-possession loan from the Stalking Horse Bidder (or its affiliate) to the Debtor.
- **Backup Bidder.** Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the party with the next highest or otherwise best Qualified Bid at the Auction, as determined by the Debtor, in the exercise of its business judgment will be designated as the backup bidder (the "Backup



Bidder”). The Backup Bidder shall be required to keep its initial Bid (or if the Backup Bidder submitted one or more Overbids at the Auction, its final Overbid) (the “Backup Bid”) open and irrevocable until the earlier of 12:00 p.m. (prevailing Eastern Time) on the date that is seventeen (17) days after the date of the Sale Hearing (the “Outside Backup Date”) or the closing of the transaction with the Successful Bidder; provided, however, that the Stalking Horse Bidder shall not be required to be a Backup Bidder without its consent. Following the Sale Hearing, if the Successful Bidder fails to consummate an approved transaction, because of a breach or failure to perform on the part of such Successful Bidder, the Debtor may designate the Backup Bidder to be the new Successful Bidder, and the Debtor will be authorized, but not required, to consummate the transaction, with the Backup Bidder without further order of the Bankruptcy Court. In such case, the defaulting Successful Bidder’s deposit shall be forfeited to the Debtor, and the Debtor specifically reserves the right to seek all available damages from the defaulting Successful Bidder; provided, however, all rights of the Debtor against the Stalking Horse Bidder in the event of a default by the Stalking Horse Bidder are stated in the Stalking Horse APA, as such agreement may be amended by the Debtor and the Stalking Horse Bidder. The deposit of the Backup Bidder shall be held by the Debtor until the earlier of 24 hours after (i) the closing of the transaction with the Successful Bidder and (ii) the Outside Backup Date.

- Additional Procedures. The Debtor may, with the consent of the Stalking Horse Bidder as long as the Stalking Horse APA has not been materially breached by the Stalking Horse Bidder or terminated, announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time to make subsequent Overbids) for conducting the Auction. Without limiting the foregoing, at any point during the Auction, the Debtor shall have the right to request additional financial information from any Qualified Bidder (other than the Stalking Horse Bidder) to allow the Debtor to make a reasonable determination as to the Qualified Bidder’s financial and other capabilities to consummate the transactions contemplated by any Qualified Bid, as amended during the Auction process, and any further information that the Debtor believes is reasonably necessary to clarify and evaluate the terms of a Qualified Bid.
- Closing the Auction. The Auction shall continue until the Debtor determines in its reasonable business judgment that there is a highest or otherwise best Qualified Bid at the Auction for the Purchased Assets. The Auction shall not close unless and until all Bidders who have submitted Qualified Bids have been given a reasonable opportunity to submit an Overbid at the Auction to the then-existing Overbids and the Successful Bidder has submitted fully executed sale and transaction documents memorializing the terms of the Successful Bid. Within one (1) business day following conclusion of the Auction, the Debtor shall file a notice on the Bankruptcy Court’s docket identifying (with specificity) the Successful Bidder(s) for the Purchased Assets and any applicable Backup Bidders. The Debtor shall not consider any Bids submitted after the conclusion of

the Auction and any and all such Bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

**C. Assumption Procedures**

21. In connection with the Sale of the Purchased Assets, the Debtor intends to assume, pursuant to section 365(b) of the Bankruptcy Code, and assign to the Stalking Horse Bidder or other Successful Bidder, as applicable, pursuant to section 365(f) of the Bankruptcy Code, certain Executory Contracts and Leases as of the Closing Date and to execute and deliver to the Stalking Horse Bidder or other Successful Bidder, as applicable, such documents or other instruments as may be necessary to assign and transfer such Scheduled Contracts. Accordingly, the Debtor proposes the following assumption procedures (the “Assumption Procedures”) with respect to the Executory Contracts and Leases that may be designated by the Stalking Horse Bidder or other Successful Bidder, as applicable, for assumption and assignment.

**Cure Notice.** Attached to the Bidding Procedures Order as Exhibit 4 is a notice of potential assumption and assignment (the “Cure Notice”) of the Debtor’s Executory Contracts and Leases (the “Debtor’s Contracts”). On or before three (3) business days after the entry of the Bidding Procedures Order, the Debtor shall serve by first class mail or hand delivery the Cure Notice on all counterparties to the Debtor’s Contracts. The Cure Notice shall identify the Debtor’s Contracts and provide the cure amounts that the Debtor believes must be paid to cure all prepetition defaults under the Debtor’s Contracts (each an “Asserted Cure Amount” and, collectively, the “Asserted Cure Amounts”).

**Objections.** Unless, on or before the Sale Objection Deadline, the counterparty to a Debtor’s Contract files an objection to the Sale and the assumption and assignment of its contract or lease (including its scheduled Asserted Cure Amount, the assumption and assignment to the Stalking Horse Bidder or the ability of the Stalking Horse Bidder to provide adequate assurance of future performance, but excluding the ability of any Successful Bidder other than the Stalking Horse Bidder to provide adequate assurance of future performance) and serves a copy of the applicable objection upon the Objection Notice Parties (as defined in the Bidding Procedures), so as to be received the same day as the objection is filed, such counterparty shall be (a) forever barred from objecting to the Asserted Cure Amount and (b) forever barred and estopped from asserting or claiming against the Debtor, the Stalking Horse Bidder, or any other Successful Bidder or any other assignee of such Debtor’s Contract that any amount other than the Asserted Cure Amount is required to be paid to such non-Debtor counterparty to cure any defaults

required to be cured as a condition of assumption of the applicable Debtor's Contract pursuant to Section 365(b)(1) of the Bankruptcy Code.

Promptly following the Debtor's selection of the Successful Bidder and the Backup Bidder, if any, at the conclusion of the Auction, the Debtor shall announce the Successful Bidder and the Backup Bidder, if any, and shall file with the Court a notice of the Successful Bidder and the Backup Bidder, if any. If and only if the Stalking Horse Bidder is not the Successful Bidder for the Debtor's assets, counterparties to the Debtor's Contracts shall have until the Sale Hearing to object to the assumption and assignment of the Debtor's Contracts solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code. For the avoidance of doubt, if the Stalking Horse Bidder is the Successful Bidder, all adequate assurance objections must be filed by the Sale Objection Deadline.

#### **D. Notice Procedures**

22. On or before three (3) business days after entry of the Bidding Procedures Order, the Debtor will cause the Motion and the Sale Notice to be sent by first-class mail postage prepaid, to the following: (a) all creditors or their counsel known to the Debtor to assert a lien (including any security interest), claim, right, interest or encumbrance of record against all or any portion of the Purchased Assets; (b) the Office of the United States Trustee for the District of Delaware; (c) counsel to the Stalking Horse Bidder; (d) counsel to Century Medical, Inc.; (e) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002; (f) the United States of America Internal Revenue Service; (g) the United States Attorney for the District of Delaware; (h) the United States of America Environmental Protection Agency; (i) the United States of America Food and Drug Administration; (j) the Pension Benefit Guaranty Corporation; (k) the State of California Department of Revenue; (l) the State of California Environmental Protection Agency; (m) the Office of the Attorney General for the State of California; (n) the State of California Department of Industrial Relations; (o) all counterparties to any Executory Contract or Lease of the Debtor; (p) all other known creditors and interest holders of Debtor; (q) all potential bidders previously identified or otherwise known to the

Debtor within the prior twelve (12) months; (r) counsel to the Official Committee of Unsecured Creditors, if one has been appointed, (s) all parties listed on the mailing matrix filed by the Debtor in this Bankruptcy Case; (t) all purchasers of medical devices from the Debtor since January 1, 2015; and (u) to the extent known to the Debtor, all persons upon whom any medical devices sold by the Debtor since January 1, 2015 were used.

23. As soon as practicable after the conclusion of the Auction, the Debtor will file a notice identifying the Successful Bidder(s) and any Backup Bidder (the “Notice of Successful Bidder”) with the Court.

24. The Debtor submits that the proposed Sale Notice and Notice of Successful Bidder, and service of this Motion, and the notice of the Auction and the Sale Hearing as described herein, complies fully with Bankruptcy Rule 2002 and the Local Rules and constitutes good and adequate notice of the Sale and the proceedings with respect thereto. Therefore, the Debtor respectfully requests that this Court approve the form of the Sale Notice and the notice procedures proposed above.

#### **BASIS FOR RELIEF REQUESTED**

##### **A. The Sale is Within the Debtor’s Sound Business Judgment and Should be Approved**

25. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1).

26. Although section 363 of the Bankruptcy Code does not set forth a standard for determining when a sale or disposition of property of the estate should be authorized, courts in the Third Circuit generally authorize sales of a debtor’s assets if such sale is based upon the sound business judgment of the debtor. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389,

395 (3d Cir. 1996); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991).

27. The sale of estate assets outside the ordinary course of business is appropriate if: (a) there is a sound business purpose for the sale; (b) the debtor has provided interested parties with adequate and reasonable notice; (c) the proposed sale prices is fair and reasonable; and (d) the purchaser has acted in good faith. *See, e.g., In re Abbotts Dairies*, 788 F.2d 143, 147 (3d Cir. 1986); *In re Exaeris, Inc.*, 380 B.R. 741, 744 (Bankr. D. Del. 2008); *Titusville Country Club v. Pennbank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991).

28. A debtor's showing of a sound business purpose need not be unduly exhaustive but, rather, a debtor is "simply required to justify the proposed disposition with sound business reasons." *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). A sound business purpose for the sale of a debtor's assets outside the ordinary course of business may be found where such a sale is necessary to preserve and enhance the value of the assets for the debtor's estate, its creditors, or interest holders. *See, e.g., Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th Cir. 1997) (stating that, in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand").

29. Additionally, section 105(a) of the Bankruptcy Code provides a bankruptcy court with broad powers in the administration of a case under the Bankruptcy Code. Section 105(a) provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). Provided that a bankruptcy court does not employ its equitable powers to achieve a result not

contemplated by the Bankruptcy Code, the exercise of its section 105(a) power is proper. *In re Fesco Plastics Corp.*, 996 F.2d 152, 154 (7th Cir. 1993); *Pincus v. Graduate Loan Ctr. (In re Pincus)*, 280 B.R. 303, 312 (Bankr. S.D.N.Y. 2002). Pursuant to section 105(a), a court may fashion an order or decree that helps preserve or protect the value of a debtor's assets. *See, e.g., Chinichian v. Campolongo (In re Chinichian)*, 784 F.2d 1440, 1443 (9th Cir. 1986) ("Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code."); *In re Cooper Props. Liquidating Trust, Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (noting that bankruptcy court is "one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of its creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws").

30. The Debtor submits that sufficient business justifications exist to sell the Purchased Assets to the Stalking Horse Bidder (or other Successful Bidder). The Stalking Horse APA has been extensively negotiated between the parties at arm's length and in good faith and confers several substantial benefits on the Debtor's estate that would not be available in the event of a liquidation of the Debtor's assets.

31. The Sale Notice and other proposed notice procedures are designed to provide adequate notice to all potentially interested parties, including those who have previously expressed an interest in purchasing the Debtor's assets. Accordingly, the Sale satisfies the second prong of the *Abbotts Dairies* standard.

32. Moreover, the Bidding Procedures are designed to maximize the value received for the Assets. Under the facts and circumstances of this Chapter 11 Case, the process proposed herein by the Debtor allows for a timely and efficient auction process, while providing bidders and consultants with adequate time and information to submit a timely bid. The Bidding

Procedures are designed to ensure that the Purchased Assets will be sold for the highest or otherwise best possible purchase price under the circumstances. The Debtor is subjecting the value of the Purchased Assets to market testing through an auction process as set forth in the Bidding Procedures. Therefore, the Debtor and all parties in interest can be assured that the consideration received for the Assets will be fair and reasonable, and therefore, the third prong of the *Abbotts Dairies* standard is satisfied. As discussed below, the “good faith” prong of the *Abbotts Dairies* standard is also satisfied here.

**B. The Stalking Horse Payment is Reasonable and Should be Approved**

33. Local Rule 6004-1(c)(i)(C) provides that a bidding procedures motion must highlight “[a]ny provisions providing an initial or ‘stalking horse’ bidder a form of bid protection.” Local Rule 6004-1(c)(i)(C). The Debtor has complied with this requirement by including herein the Stalking Horse Payment.

34. The Third Circuit Court of Appeals has stated that an expense reimbursement may be approved when it provides some postpetition benefit to the debtor’s estate. *See In re O’Brien Env’tl. Energy, Inc.*, 181 F.3d 527, 536 (3d Cir. 1999). The *O’Brien* court determined that a break-up fee provides an actual benefit to a debtor’s estate in two circumstances. The first such circumstance is where “assurance of a break-up fee promote[s] more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited.” *Id.* at 537. Second, when bidding incentives induce a bidder to research the value of the debtor and submit a bid that serves as a minimum on which other bidders can rely, “the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth.” *Id.*

35. The paramount goal in any proposed sale of property of a debtor’s estate is to maximize the proceeds received by the estate. *See, e.g., Food Barn Stores*, 107 F.3d at 564-65

(in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); *In re Integrated Resources, Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992). Courts recognize that procedures intended to enhance competitive bidding are consistent with this goal. *See id.* (such procedures “encourage bidding and maximize the value of the debtor’s assets”); *In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (“break-up fees and other strategies may be legitimately necessary to convince a ‘white knight’ to enter the bidding by providing some form of compensation for the risks it is undertaking”).

36. In *O’Brien*, the Third Circuit referred to nine factors that the bankruptcy court viewed as relevant in deciding whether to award a break-up fee and expense reimbursement: (1) the presence of self-dealing or manipulation in negotiating the break-up fee and expense reimbursement; (2) whether the fee harms, rather than encourages, bidding; (3) the reasonableness of the break-up fee and expense reimbursement relative to the purchase price; (4) whether the “unsuccessful bidder place[d] the estate property in a sales configuration mode to attract other bidders to the auction”; (5) the ability of the request for a break-up fee and expense reimbursement “to attract or retain a potentially Prevailing Bid, establish a bid standard or minimum for other bidders, or attract additional bidders”; (6) the correlation of the fee to a maximization of value of the debtor’s estate; (7) the support of the principal secured creditors and creditors’ committees of the break-up fee and expense reimbursement; (8) the benefits of the safeguards to the debtor’s estate; and (9) the “substantial adverse impact [of the break-up fee and expense reimbursement] on unsecured creditors, where such creditors are in opposition to the break-up fee.” *See O’Brien*, 181 F.3d at 536.

37. The Debtor submits that the foregoing factors are met under the facts and circumstances of this Chapter 11 Case, as the proposed Stalking Horse Payment is necessary to



the success of the Auction and Sale process and therefore provides an actual benefit to the Debtor's estate. The Stalking Horse Payment is reasonable in light of the efforts and expenses that the Stalking Horse Bidder has undertaken. It was negotiated at arm's length and in good faith and is commensurate with the real and substantial benefit provided to the Debtor's estate and is fair and reasonable in light of the size and nature of the proposed sale transaction. Importantly, the protections provided by the Stalking Horse Payment were a necessary inducement for the Stalking Horse Bidder to enter into the Stalking Horse APA. Without the Stalking Horse APA, it would be challenging to maximize the value of the Assets because the Stalking Horse APA provides a "floor" purchase price. By agreeing to the Stalking Horse Payment, and thereby securing the Stalking Horse Bidder's bid, the Debtor hopes to induce the submission of additional bids that otherwise may have never been made and without which bidding may have been limited. The Stalking Horse Payment not only was, and is, a material inducement for, and condition of, the Stalking Horse Bidder's offer to purchase the Purchased Assets, but also a precondition to the Stalking Horse Bidder's commitment to hold open its offer and to offer debtor-in-possession financing needed by the Debtor to continue to operate pending a sale.

38. The Debtor submits that the proposed Stalking Horse Payment will not chill bidding, is reasonable, and will enable the Debtor to maximize the value of its estate. Bid protections similar to the Stalking Horse Payment sought to be approved by this Motion, which represents three percent (3%) of the purchase price, have been approved in other chapter 11 cases in this Court. *See, e.g., In re Conex Holdings, LLC*, Case No. 11-10501 (CSS) (Bankr. D. Del. Sept. 14, 2011) (approving break-up fee of 3% of final purchase price); *In re Nortel Networks Inc.*, Case No. 09-10138 (KG) (Bankr. D. Del. Feb. 27, 2009) (approving \$650,000

break-up fee in connection with \$17.65 million sale, or 5.9%); *In re Tallygenicom, L.P.*, Case No. 09-10266 (CSS) (Bankr. Del. Feb. 19, 2009) (approving \$2 million break-up fee in connection with \$36.6275 million sale, or 5.5%); *In re Fluid Routing Solutions Intermediate Holding Corp.*, Case No. 09-10384 (CSS) (Bankr. D. Del. Feb. 19, 2009) (court approved expense reimbursement of up to \$1.25 million in connection with a \$11 million sale, or up to 11.4%); *In re Archway Cookies, LLC*, Case No. 08-12323 (CSS) (Bankr. D. Del. Dec. 3, 2008) (approving \$750,000 break-up fee in connection with a \$25 million sale, or 3.8%); *In re Wickes Holdings, LLC, et al.*, Case No. 08-10212 (KJC) (Bankr. D. Del. Feb. 19, 2008) (authorizing debtor to enter into stalking horse agreement providing break-up fee of up to 3%); *In re Tweeter Home Entm't Group, Inc.*, Ch. 11 Case No. 07-10787 (PJW) (Bankr. D. Del. July 13, 2007) (authorizing debtor to pay stalking horse's termination fee); *In re Radnor Holdings*, Case No. 06-10110 (CSS) (Bankr. D. Del. Sept. 22, 2006) (aggregate fee and expense reimbursement of 3% permitted).

39. In sum, the Stalking Horse Payment provided for in the Bidding Procedures Order was the product of arm's length negotiations between the Debtor and the Stalking Horse Bidder. Without this protection, the Stalking Horse Bidder would not have made its offer, and such protections are warranted in light of Stalking Horse Bidder's role as the "stalking horse" in the Sale.

### **C. The Bidding Procedures Are Reasonable and Appropriate**

40. Bankruptcy Code section 363(b)(1) provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). The Debtor submits that the Bidding Procedures are appropriate, consistent with procedures routinely approved by courts in this district, ensure that

the bidding process is fair and reasonable, and will yield the maximum value for their estates and creditors. The Bidding Procedures proposed herein are designed to maximize the value received for the Purchased Assets by facilitating a competitive bidding process in which all potential bidders are encouraged to participate and submit competing bids. The Bidding Procedures provide potential bidders with sufficient notice and an opportunity to acquire information necessary to submit a timely and informed bid. Thus, the Debtor and all parties in interest can be assured that the consideration for the Purchased Assets will be fair and reasonable. At the same time, the Bidding Procedures provide the Debtor with an adequate opportunity to consider all competing offers and to select, in its reasonable business judgment, the highest and best offer(s) for the Purchased Assets. Accordingly, the Debtor submits that the Court should approve the Bidding Procedures.

**D. The Form of Sale Notice Is Appropriate**

41. The Debtor believes that their service of the Sale Notice and Motion, as previously described herein, is reasonable and appropriate and satisfies any and all requirements for such notice under the Bankruptcy Code, Bankruptcy Rules and Local Rules.

42. Under Bankruptcy Rules 2002(a) and (c), the Debtor is required to notify creditors of the proposed sale of the Debtor's assets, including a disclosure of the time and place of an auction, the terms and conditions of a sale, and the deadline for filing any objections. The Debtor respectfully submits that the notice procedures described herein, including, without limitation, the service of the Sale Notice, satisfy Bankruptcy Rule 2002, and are reasonably calculated to provide timely and adequate notice of the Sale to all parties in interest in this Chapter 11 Case, as well as to those parties which have expressed an interest, or may express an interest, in bidding on the Assets.

**E. The Sale of the Debtor's Assets Free and Clear of Claims, Liens, and Other Interests Is Authorized by Section 363(f) of the Bankruptcy Code**

43. Under section 363(f) of the Bankruptcy Code, a debtor may sell property “under subsection (b) and (c) free and clear of any interest in such property of an entity other than the estate.” In particular, section 363(f) authorizes a debtor to sell property free and clear if

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Because section 363(f) is stated in the disjunctive, satisfaction of any one of its five requirements will suffice to warrant approval of the proposed Sale of the Purchased Assets free and clear of all claims, liens, and other interests. *See, e.g., In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002); *see also Folger Adam Sec., Inc. v. DeMatteis/MacGregor, JV*, 209 F.3d 252, 257 (3d Cir. 2000) (discussing how section 363(f) authorizes the sale of a debtor's assets free and clear of all liens, claims and interests if “any one of [the] five prescribed conditions” is met).

44. Because the Debtor expects that it will satisfy, at minimum, the second, third, fourth, and fifth of these requirements, if not others as well, approving the Sale free and clear of all claims, liens, and other interests (other than Permitted Liens and Encumbrances) is warranted. Furthermore, courts have held that they have the equitable power to authorize sales free and clear of adverse interests that are not specifically covered by section 363(f). *See, e.g., In re Trans World Airlines, Inc.*, 2001 WL 1820325 at \*3, 6 (Bankr. D. Del. Mar. 27, 2001);

*Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987).

45. Accordingly, the Debtor requests that the Sale be approved free and clear of all claims, liens, and other interests (other than Permitted Liens and Encumbrances), with any such claims, liens, and other interests to attach to the net proceeds of the Sale in the order of their priority, with the same validity, force and effect that they now have against the Purchased Assets, subject, with respect to such net proceeds, to any rights, claims and defenses the Debtor or any parties in interest may possess with respect thereto.

**F. The Successful Bidder Should Be Afforded All Protections Under Section 363(m) of the Bankruptcy Code as a Good Faith Purchaser**

46. The Debtor requests the Court to find that the Stalking Horse Bidder or other Successful Bidder is entitled to the benefits and protections provided by section 363(m) of the Bankruptcy Code in connection with all aspects of the Sale.

47. Section 363(m) of the Bankruptcy Code provides, in pertinent part

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) of the Bankruptcy Code thus protects the purchaser of assets sold pursuant to section 363 of the Bankruptcy Code from the risk that it will lose its interest in the purchased assets, including any assumed and assigned unexpired leases and executory contracts, if the order allowing the sale is reversed on appeal. By its terms, section 363(m) of the Bankruptcy Code applies to sales of interests in tangible assets.

48. Although the Bankruptcy Code does not define “good faith purchaser,” the Third Circuit has stated that a good faith purchaser is “one who purchases in ‘good faith’ and for

‘value.’” *Abbotts Dairies*, 788 F.2d at 147. To constitute a lack of good faith, a party’s conduct in connection with the sale usually must amount to “fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders.” *Id.* (citing *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)); see also *In re Bedford Springs Hotel, Inc.*, 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989); *In re Perona Bros., Inc.*, 186 B.R. 833, 839 (D.N.J. 1995).

49. The Stalking Horse APA was an arm’s length negotiated transaction in which the Stalking Horse Bidder acted in good faith and without collusion or fraud of any kind. Furthermore, the Debtor and the Stalking Horse Bidder are not entering into the Stalking Horse APA for the purpose of hindering, delaying or defrauding any creditor. The Debtor will make a similar offer, if appropriate, for the Successful Bidder. Accordingly, the Debtor requests the Court to find that the Stalking Horse Bidder or Successful Bidder, as applicable, has purchased the Debtor’s assets in good faith within the meaning of section 363(m) of the Bankruptcy Code. The Court should likewise find that, as the Stalking Horse APA was entered into without collusion or fraud of any kind, the Stalking Horse APA does not constitute an avoidable transaction pursuant to section 363(n) of the Bankruptcy Code.

**G. The Proposed Assumption and Assignment of Certain Executory Contracts and Leases Should be Approved**

50. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, “subject to the court’s approval, may assume or reject any executory contract or [unexpired] lease of the debtor.” 11 U.S.C. § 365(a). The standard governing bankruptcy court approval of a debtor’s decision to assume or reject an executory contract or unexpired lease is whether the debtor’s reasonable business judgment supports assumption or rejection. *See, e.g., In re Trans World Airlines, Inc.*, 261 B.R. 103, 120 (Bankr. D. Del. 2001). If the debtor’s

business judgment has been reasonably exercised, a court should approve the assumption or rejection of an unexpired lease or executory contract. *See Grp. of Institutional Investors v. Chicago M. St. P. & P.R.R. Co.*, 318 U.S. 523 (1943); *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39-40 (3d Cir. 1989). The business judgment test “requires only that the trustee [or debtor in possession] demonstrate that [assumption or] rejection of the contract will benefit the estate.” *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) (quoting *Stable Mews*). Any more exacting scrutiny would slow the administration of a debtor’s estate and increase costs, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten the court’s ability to control a case impartially. *See Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

51. Pursuant to section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract, it must “cure, or provide adequate assurance that the debtor will promptly cure,” any default which is required to be cured, including compensating or providing adequate assurance of prompt compensation for any “actual pecuniary loss” relating to such default. 11 U.S.C. § 365(b)(1). The Debtor respectfully submits that the Assumption Procedures are appropriate and reasonably tailored to provide counterparties to the Debtor’s Contracts with adequate notice of the proposed assumption and assignment of their contracts and leases, as well as proposed cure amounts, if any. Such counterparties will then be given an opportunity to object to such cure amounts and assumption and assignment of their contracts and leases. The Assumption Procedures further provide that, in the event an objection is not resolved, the Court will determine the disputed issues. Accordingly, the Debtor submits that implementation of the

Assumption Procedures is appropriate under the facts and circumstances of the Chapter 11 Case and the proposed Sale.

52. Once an executory contract is assumed, a debtor in possession may elect to assign such contract. *See In re Rickel Home Centers, Inc.*, 209 F.3d 291, 299 (3d Cir. 2000) (“[t]he Code generally favors free assignability as a means to maximize the value of the debtor’s estate”); *see also In re Headquarters Dodge, Inc.*, 13 F.3d 674, 682 (3d Cir. 1994) (noting that the purpose of section 365(f) is to assist a trustee in realizing the full value of the debtor’s assets). Section 365(f) of the Bankruptcy Code provides that the “trustee may assign an executory contract . . . only if the trustee assumes such contract . . . and adequate assurance of future performance is provided.” 11 U.S.C. § 365(f)(2). The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” *See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent). Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *Accord In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease from debtors has financial resources and has expressed willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).

53. Additionally, section 105(a) of the Bankruptcy Code provides a bankruptcy court with broad powers in the administration of a case under title 11. Section 105(a) provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry



out the provisions of [title 11].” 11 U.S.C. § 105(a). Provided that a bankruptcy court does not employ its equitable powers to achieve a result not contemplated by the Bankruptcy Code, the exercise of its section 105(a) power is proper. *See Fesco Plastics*, 996 F.2d at 154; *Pincus*, 280 B.R. at 312. Pursuant to section 105(a) of the Bankruptcy Code, a court may fashion an order or decree that helps preserve or protect the value of a debtor’s assets. *See, e.g., Chinichian*, 784 F.2d at 1443 (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code”); *Cooper Props.*, 61 B.R. at 537 (noting that bankruptcy court is “one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of their creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws”).

54. The Debtor submits that the assumption and assignment of such Debtor’s Contracts to the Stalking Horse Bidder or other Successful Bidder, as applicable, as of the Closing Date is necessary to the consummation of the Sale and is well within the Debtor’s sound business judgment. The Debtor’s Contracts selected by the Stalking Horse Bidder or other Successful Bidder, as applicable, are necessary to run the Debtor’s business, and as such, they are essential to inducing the highest or otherwise best offer for the Purchased Assets. It is unlikely that any purchaser would want to acquire any company on a going-concern basis unless a significant number of the contracts and leases needed to conduct the business and manage the day-to-day operations are included in the transaction. Counterparties to the Debtor’s Contracts will be provided with a Cure Notice and will have an opportunity to object to the potential assumption and assignment of their contracts and leases prior to the entry of the Sale Order. The Debtor proposes that any counterparty that fails to object to the proposed assumption and assignment of its respective Debtor’s Contract will be deemed to consent to that assumption and

assignment pursuant to section 365 of the Bankruptcy Code on the terms set forth in the proposed Bidding Procedures and Sale Order, and to the cure amounts identified in the Cure Notice. *See, e.g., In re Tabone, Inc.*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (holding that creditor was deemed to have consented to sale by not objecting to sale motion).

55. Accordingly, the Debtor submits that the assumption and assignment to the Stalking Horse Bidder or other Successful Bidder of certain of the Debtor's Contracts should be approved as an exercise of the Debtor's sound business judgment.

**REQUEST FOR WAIVER OF BANKRUPTCY RULES 6004(H) AND 6006(D)**

56. Bankruptcy Rule 6004(h) provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Similarly, Bankruptcy Rule 6006(d) provides that “[a]n order authorizing the [debtor] to assign an executory contract or unexpired . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d).

57. The Debtor submits that cause exists to justify a waiver of the fourteen (14) day stays under Bankruptcy Rules 6004(h) and 6006(d), as promptly closing the Sale is of critical importance. The Debtor therefore requests that the Sale Order be effective immediately by providing that the fourteen (14) day stays under Bankruptcy Rules 6004(h) and 6006(d) be waived.

**RESERVATION OF RIGHTS**

58. Nothing contained herein is intended, or should be construed, as an admission of the validity of any claim against the Debtor or a waiver of the Debtor's rights to dispute any claim. Nothing contained herein is intended, or should be construed, as an approval, assumption, or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

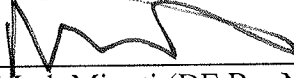
**NOTICE**

59. The Debtor has provided notice of this Motion to: (a) counsel for the Stalking Horse Bidder, (b) counsel for Century Medical, Inc., (c) the Office of the United States Trustee; (d) holders of the 20 largest unsecured claims against the Debtor; (e) all persons known or reasonably believed to have asserted an interest in any of the Debtor's assets; (f) the non-Debtor counterparties to the Executory Contracts and Leases; (g) the Attorneys General in the state(s) where the Purchased Assets are located; (h) the Environmental Protection Agency; (i) all state and local environmental agencies in any jurisdiction where the Debtor owns or has owned or used real property; and (j) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is necessary except as required pursuant to the Bidding Procedures Order.

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

WHEREFORE, the Debtor respectfully requests that the Court enter the Bidding Procedures Order and the Sale Order, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: December 11, 2017



---

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Debtors-in-Possession*

**EXHIBIT A**

**Asset Purchase Agreement**

---

**ASSET PURCHASE AGREEMENT**

DATED AS OF

**DECEMBER 11, 2017**

BY AND BETWEEN

**DEXTERA SURGICAL INC.,**

AS SELLER,

AND

**AESCULAP, INC.**

AS BUYER

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## ASSET PURCHASE AGREEMENT

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

### RECITALS

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

WHEREAS, Seller is the owner of the Purchased Assets;

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

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

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

### AGREEMENT

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

#### **ARTICLE I DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Intellectual Property**” means, collectively, any and all (i) inventions (whether or not patentable and whether or not reduced to practice), records of inventions, test information, developments, applications, improvements, formulae, concepts, ideas, methods or processes,

research property rights and all improvements and modifications to any of the foregoing, (ii) patents, patent rights, patent applications and patent disclosures, together with all reissuances, continuations, continuations in part, revisions, extensions and reexaminations thereof, and all improvements and modifications to any of the foregoing (“**Patents**”), (iii) trademarks, trademark rights, service marks, service mark rights, trade dress, logos, slogans, trade names, trade name rights, assumed names and corporate names, together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith (“**Trademarks**”), (iv) copyrightable works, all copyrights and all applications, registrations and renewals in connection therewith, mask works and all applications, registrations and renewals in connection therewith (“**Copyrights**”), (v) trade secrets and confidential business information (including ideas, concepts, research and development, know-how, composition information and embodiments, technology, inventions, formulas, compositions, processes and techniques, technical and business data, designs, drawings, specifications, customer, distributor and supplier lists, pricing and cost information and business and marketing plans and proposals) (“**Trade Secrets**”), (vi) computer software (including source code, executable code, data, databases, and related software program documentation in computer-readable and hard-copy forms) (“**Software**”), (vii) computer hardware, firmware and applications (including source code, executable code, data, databases, and related programming documentation in computer-readable and hard-copy forms), (viii) web sites, web site domain names, web site sub domains, uniform resource locators and rights in telephone numbers, (ix) advertising and promotional materials, (x) all other proprietary rights and (xi) copies and tangible embodiments of the foregoing in whatever form or medium, in each case, which are owned, licensed, or used by Seller in connection with the Business anywhere in the world.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Section 1.2. Interpretation and Construction.

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

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

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

## **ARTICLE II AGREEMENTS TO SELL AND PURCHASE; RELATED MATTERS**

### Section 2.1. Sale of Purchased Assets.

(a) Purchased Assets. On the Closing Date, on the terms and subject to the conditions hereof and in consideration of the Purchase Price to be paid to Seller by Buyer, Buyer

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

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

(ii) all of Seller's Inventory;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) the Organizational Documents of Seller;

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

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

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

(vii) all accounts and notes receivable;

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

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

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

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

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

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

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

## Section 2.2. Assumption and Exclusion of Liabilities.

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

schedule will list all Seller Liabilities that the Buyer, in its sole discretion, shall have agreed to assume at Closing in addition to the Seller Liabilities identified in Subsection 2.2 (a)(i) above.

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

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

Section 2.3. Assignment of Contracts and Rights.



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

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

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

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

### ARTICLE III PURCHASE PRICE

#### Section 3.1. Payment of Purchase Price.

(a) Closing Date Cash Payment. The purchase price for the Purchased Assets shall be Seventeen Million Three Hundred Thousand Dollars and No Cents (\$17,300,000.00) (the “*Purchase Price*”). At the Closing, in consideration of the purchase and sale of the

Purchased Assets, Buyer shall, pay the following amounts from the Purchase Price to the following Persons, in cash, by wire transfer of immediately available funds: (i) to the Escrow Agent, the Indemnification Escrow (as defined below), to be held, administered and disbursed by the Escrow Agent pursuant to the terms of the Escrow Agreement, as further described in Section 3.1(b); (ii) to the Escrow Agent, the total of all Disputed Cure Amounts, to be held, administered and disbursed by the Escrow Agent pursuant to the terms of the Escrow Agreement, as further described in Section 3.1(c); (iii) to the holders of Liquidated Cure Amounts, such Liquidated Cure Amounts, (iv) to the provider of Tail Coverage, the premium for such Tail Coverage, (v) to itself, the full balance due on account of the DIP Loan, and (vi) to Seller, a net amount equal to the Purchase Price less the items identified in subparagraph (i) – (v) above (such net amount, the “**Closing Date Cash Payment**”). All payments described above except for payment on account of the DIP Loan shall be made pursuant to written wire transfer instructions, or address information for payment by check in the case of one or more of the Liquidated Cure Amounts, delivered by Seller to Buyer at least two (2) Business Days prior to the Closing Date.

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

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

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

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER**

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

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

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

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

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

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

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

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

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

Section 4.9. Real Property.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) any consulting agreement or employment agreement;

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

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

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

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

(f) any Contract with any vendor relating to any vendor rebate program;

(g) any Contract that restricts the right of Seller to engage in any line of business, compete with any Person, solicit any customers, suppliers, employees or contractors of any other Person, or sell or purchase any product;

(h) any Contract relating to the acquisition or disposition, directly or indirectly, of any material business, real property or other Assets, or the Equity Interests of any other Person;

(i) any Contract relating to the borrowing of money, or the guaranty of another Person's borrowing of money or other obligation, including all notes, mortgages, indentures and other obligations, guarantees of performance, letters of credit, advances, and agreements and instruments for or relating to any lending or borrowing, including assumed indebtedness;

(j) any Contract granting any Person a Lien on all or any of the Assets of Seller;

(k) any Contract or group of related Contracts with any Affiliate or group of Affiliates of Seller;

(l) any lease, license, rental or occupancy agreement, installment and conditional sale agreement, and other Contract affecting the ownership of, leasing of, licensing of, title to, use of, or any leasehold or other interest in, any real or personal property, including Seller Intellectual Property (other than any such agreement for personal property with remaining obligations of less than Twenty-Five Thousand Dollars (\$25,000));

(m) (i) any Contract regarding the development, improvement, enhancement, modification appropriation or the non-disclosure of any Seller Intellectual Property; (ii) any Contract with an employee of Seller relating to confidentiality, non-disclosure, assignment of inventions or developments, non-solicitation, non-competition and/or similar matters; or (iii) any Contract with a Person relating to confidentiality, non-disclosure, assignment of inventions or developments, non-solicitation, non-competition and/or similar matters that is material to the conduct of the Business;

(n) any written material warranty, guaranty, and or other similar undertaking with respect to contractual performance extended by Seller;

(o) any Contract that requires Seller to purchase or sell a stated portion of the requirements or outputs of the Business or that contain "take or pay" provisions;

(p) any Contract that provides for the assumption or indemnification of any Person or the assumption of any Tax, environmental or other Liability of any Person;

(q) any joint venture, partnership or similar Contracts;

(r) all powers of attorney with respect to the Business or any Purchased Asset;

(s) any Contract with a Governmental Body;

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

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

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

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

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

Section 4.13. Products Liability.

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

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

Section 4.14. Intellectual Property.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

Section 4.17. Tax Matters.

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

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

(c) There are no Liens or Encumbrances for Taxes upon the Purchased Assets and as of the end of the day on the Closing Date there will be no such Liens or Encumbrances.

There is not and, as of the end of the day on the Closing Date there will not be, any liability for Taxes affecting the Purchased Assets for which Buyer will at any time have any liability for payment.

Section 4.18. Environmental Matters.

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

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

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

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

Section 4.20. Employee Benefit Plans. Each "employee benefit plan" as defined in Section 3(3) of ERISA, and each other benefit plan, policy, program, arrangement or agreement which is sponsored or maintained by Seller, or pursuant to which Seller is otherwise bound, for the benefit of its employees or other representatives is referred to herein as an "***Employee Plan.***" Each Employee Plan (i) has been operated and administered in compliance with its terms and all applicable requirements of ERISA, the Code and other applicable Laws and (ii) intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the IRS. Neither Seller nor any of its ERISA Affiliates maintains, sponsors or is required to contribute to, either currently or at any time in the past, or otherwise any Liability with respect

to, any employee benefit plan that (i) is a “multiemployer plan” within the meaning of Section 3(37) of ERISA, (ii) is subject to the funding requirements of Section 412 of the Code or Title IV of ERISA, or (iii) provides for post-retirement medical, life insurance or other welfare-type benefits (other than as required by Part 6 of Subtitle B of Title I of ERISA or Section 4980B of the Code or under a similar state Law).

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

Section 4.22. Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Section 4.23. Material Customers and Suppliers.

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

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

between the suppliers and vendors listed on Schedule 4.23(b) and the Seller have not changed in any manner materially adverse to the Seller nor has any such supplier or vendor advised the Seller that it intends to seek any such changes.

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

Section 4.25. International Trade and Anti-Corruption.

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

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

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

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

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

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

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER.**

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

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

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

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

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

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

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

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

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

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

## **ARTICLE VI COVENANTS OF THE PARTIES**

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

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

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



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

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

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

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

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

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

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

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

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

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

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

(g) not later than the second (2<sup>nd</sup>) Business Day following on the Petition Date, file a motion with the Bankruptcy Court, in form and substance satisfactory to Buyer, (the "**Sale Motion**") seeking (i) entry of an order (the "**Bid Procedures Order**") in the form attached hereto

as Exhibit B establishing procedures for potential competing offers to purchase the Purchased Assets (the “**Bid Procedures**”) and setting a hearing (the “**Sale Hearing**”) to consider entry of an order (the “**Approval Order**”) in the form attached hereto as Exhibit C approving the Contemplated Transactions, and (ii) approval of the Contemplated Transaction, subject to higher and better offers pursuant to the Bid Procedures;

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

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

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

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

Section 6.5. RESERVED.

Section 6.6. Employees.

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

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

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

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

Section 6.9. Cooperation. Subject in all respects to the Bankruptcy Code, the Parties shall use their respective commercially reasonable efforts not involving litigation to (a) take or cause to be taken all actions, and to do or cause to be done all other things, necessary, proper or advisable to expeditiously satisfy the closing conditions set forth in Article VII and to consummate the Contemplated Transactions as promptly as practicable, and (b) obtain in a timely manner all necessary waivers, consents and approvals and to effect all necessary

registrations and filings in connection with the foregoing. Seller also agrees to assist Buyer in negotiations for any modifications to the Redwood City Lease that Buyer seeks to obtain. Following the Closing, Seller agrees to communicate with customers, suppliers, vendors, and employees as reasonably requested by Buyer to assist in transitioning such relationships to Buyer.

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

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

(a) Confidentiality. From and after the Closing, Seller shall not, directly or indirectly, disclose or use at any time (and shall cause their respective Affiliates and Representatives not to use or disclose) any Confidential Information (whether or not such information is or was developed by Seller), except to the extent that such disclosure or use is directly related to and required by the performance of Seller's duties to Buyer or as required by Law (including in connection with the Bankruptcy Case) or as otherwise provided hereunder. Seller further agrees to take commercially reasonable steps, to the extent within its control, to safeguard such Confidential Information and to protect it against disclosure, misuse, espionage, loss and theft. In the event Seller is required by Law to disclose any Confidential Information, Seller shall promptly notify Buyer in writing, which notification shall include the nature of the legal requirement and the extent of the required disclosure, and shall cooperate, at Buyer's sole cost and expense, with Buyer's reasonable requests to preserve the confidentiality of such Confidential Information consistent with applicable Law; **provided**, that, to the extent the Seller is required to make a disclosure hereunder as required by applicable Law, Seller shall (i) disclose only that portion of such Confidential Information which Seller is advised by its counsel in writing that it is legally required to disclose and (ii) use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such Confidential Information. For purposes of this Agreement, "**Confidential Information**" means all information of a confidential or proprietary nature (whether or not specifically labeled or identified as "confidential"), in any form or medium, that relates to the Business or its suppliers, distributors, customers, independent contractors or other business relations. Confidential Information includes the following as they relate to the Business and, in each case, to the extent the Business obtains a commercial benefit from the secret nature of such information: internal business information (including information relating to strategic and staffing plans and practices, business, training, marketing, promotional and sales plans and

practices, cost, rate and pricing structures, accounting and business methods and potential acquisition candidates); identities of, individual requirements of, and specific contractual arrangements with, the Business's suppliers, distributors, customers, independent contractors or other business relations and their confidential information; trade secrets, know-how, compilations of data and analyses, techniques, systems, formulae, research, records, reports, manuals, documentation, models, data and data bases relating thereto; and inventions, innovations, improvements, developments, methods, designs, analyses, drawings, and reports. Notwithstanding the foregoing, Confidential Information does not include such information which: (i) at the time of disclosure is publicly available or thereafter becomes publicly available through no act or omission of Seller in violation of this Section 6.11(a); (ii) is thereafter disclosed or furnished to Seller by a third party who is not known by Seller to have acquired the information under an obligation of confidentiality; (iii) is independently developed by Seller without the use of or reference to Confidential Information after the Closing Date; or (iv) is disclosed by Seller (subject to compliance with the applicable provisions of this Section 6.11(a)) under compulsion of applicable Law. Confidential Information shall not include information required to be included by the Seller in the schedules, statement of financial affairs, mailing matrix, service lists or affidavits of service, or similar documents filed in the Bankruptcy Case.

(b) Non-Competition.

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

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

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

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

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

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

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

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

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

(f) Tolling of Non-Competition Period and Non-Solicitation Period. The Non-Competition Period and the Non-Solicitation Period shall automatically be extended for any

period of time during which the Seller is not in compliance with the covenants and agreements set forth in this Section 6.11.

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

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

## **ARTICLE VII CONDITIONS TO CLOSING**

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

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

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

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

(a) Representations and Warranties; Covenants.

(i) The representations and warranties of Seller set forth in this Agreement shall be true and correct (without giving effect to any limitation as to “materiality” or “Material Adverse Effect” or similar qualifications) as of the Closing Date, as if made as of such time (except to the extent that such representations and warranties expressly speak as of another date,

in which case such representations and warranties shall be true and correct as of such date), except where the failure of such representations and warranties to be so true and correct would not, individually or in the aggregate, have a Material Adverse Effect.

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

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

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

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

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

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

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

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

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

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

(h) Dextera Surgical GmbH. Buyer shall have received evidence satisfactory to Buyer in the exercise of its reasonable discretion establishing that Dextera Surgical GmbH does



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

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

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

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

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

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

## ARTICLE VIII CLOSING; DELIVERIES AT THE CLOSING

Section 8.1. Closing. The closing of the Contemplated Transactions (the “**Closing**”) shall take place at the offices of 620 Freedom Business Center, Suite 200, King of Prussia, PA 19406, or such other place or remotely by mail, e-mail and/or wire transfer, in each case to the extent acceptable to each of the Parties, as soon as practicable following the satisfaction or

waiver of the conditions set forth in Article VII hereof and in any event within three (3) Business Days thereafter (the date on which the Closing occurs, the “**Closing Date**”). The Closing shall be deemed to have occurred at 12:01 A.M., Eastern Standard Time, on the Closing Date.

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

(a) a bill of sale, substantially in the form attached hereto as Exhibit F (the “**Bill of Sale**”), duly executed by Seller;

(b) an assignment and assumption agreement for the Assigned Contracts, if any, substantially in the form attached hereto as Exhibit G (the “**Assignment and Assumption Agreement**”), duly executed by Seller;

(c) an assignment and assumption agreement for the Redwood City Lease, in a form satisfactory to each of the Parties (the “**Assignment and Assumption of Redwood City Lease**”), duly executed by Seller;

(d) an assignment agreement for Seller Intellectual Property, in a form satisfactory to each of the Parties (the “**Intellectual Property Assignment**”), duly executed by Seller;

(e) the Escrow Agreement, duly executed by Seller;

(f) a non-foreign certification executed by Seller in form and substance reasonably satisfactory to Buyer and that satisfies the requirements of Treasury Regulation § 1.1445-2(b)(2);

(g) Key Employee Employment Agreements;

(h) a certificate of an authorized officer of Seller certifying (i) as to the incumbency and signatures of the officers of Seller executing this Agreement and the Ancillary Agreements, (ii) that attached to such certificate are true and correct copies of the certificate of incorporation and by-laws of Seller, (iii) that attached to such certificate are true and correct copies of resolutions duly adopted or consented to by the board of directors of Seller approving Seller’s execution and delivery of this Agreement and any Ancillary Documents to which it is a party and to the completion of all of the Contemplated Transactions, and (iv) that attached to such certificate is a good standing certificate for Seller issued by the Secretary of State of the State of Delaware, and a good standing, subsistence or similar certificate, as appropriate, issued by the secretary of state of each jurisdiction in which Seller is qualified or authorized to do business as a foreign corporation, in each case dated as of a date that is within thirty (30) Business Days of the Closing Date;

(i) a certificate, dated as of the Closing Date and signed Seller, certifying that each of the conditions set forth in Section 7.1 and Section 7.2 have been satisfied; and

(j) all other certificates, instruments and documents required to be delivered by Seller pursuant to this Agreement or any of the Ancillary Documents.

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

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

## **ARTICLE IX TERMINATION**

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

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

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

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

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

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

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

#### Section 9.2. Effect of Termination and Breach.

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

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

(c) If there shall be a material breach by Buyer of any representation or warranty, or any covenant or agreement contained in this Agreement which would entitle Seller to terminate this Agreement pursuant to Section 9.1(i), Seller may elect to (i) terminate this

Agreement pursuant to Section 9.1(i), in which case such termination shall be the sole remedy of Seller on account of such breach, or (ii) enforce specific performance of this Agreement against the Buyer including Seller's reasonable costs and attorneys' fees and court costs actually incurred in connection therewith, as the sole remedy of Seller.

## ARTICLE X INDEMNIFICATION

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

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

Section 10.2. Indemnification by Buyer. Subject to this Article X and consummation of the Closing, Buyer shall indemnify, defend and hold harmless Seller, Seller's present, former, and future officers, directors, trustees, members, employees, agents, Representatives and

Affiliates (each a, “*Seller Indemnified Party*”), against and in respect of any and all Losses arising out of, based upon or otherwise in respect of: (a) any inaccuracy in or breach of any representation or warranty of Buyer made in or under this Agreement or any of the Schedules attached hereto, or in any of the certificates or other instruments or documents furnished to Seller by Buyer pursuant to this Agreement; (b) any nonfulfillment or breach of any covenant or agreement by Buyer under this Agreement or any of the Schedules attached hereto; and (c) any of the Assumed Liabilities pursuant to this Agreement.

Section 10.3. Third Party Claims.

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

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

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

Body of competent jurisdiction and for any liability established by any settlement or compromise agreed to by such Buyer Indemnified Party, in the exercise of its reasonable discretion.

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

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

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

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

Section 10.8. Miscellaneous Indemnification Provisions.

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

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

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

## ARTICLE XI MISCELLANEOUS

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

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

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

If intended for Buyer:

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



With a copies to:

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

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

If intended for Seller:

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

With a copy to:

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

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

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

Party. No waiver of any of the provisions of this Agreement will be deemed to be or will constitute a continuing waiver. No waiver will be binding unless executed in writing by the Party making the waiver.

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

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

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

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

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

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

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

Section 11.12. Expenses; Transfer Taxes.

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

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

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

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

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

*[Signature page follows]*

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

**SELLER:**

DEXTERA SURGICAL INC.

By: 

Name:

*Julian Nikolchev*

Title:

*President and CEO*

**BUYER:**

AESCULAP, INC.

By: \_\_\_\_\_

Name:

Title:

*and*

By: \_\_\_\_\_

Name:

Title:

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

**SELLER:**

DEXTERA SURGICAL INC.

By: \_\_\_\_\_

Name:

Title:

**BUYER:**

AESLULAP, INC.

By:  \_\_\_\_\_

Name: Keith Maser

Title: VP of Corporate Finance & IT Services

and

By:  \_\_\_\_\_

Name: Charles A. DiNardo

Title: President

**EXHIBIT A**

Escrow Agreement

*(See Attached.)*

## ESCROW AGREEMENT

This ESCROW AGREEMENT (this “*Agreement*”) is made as of \_\_\_\_\_, 201\_\_, by and among AESCULAP, INC., a California corporation (“*Buyer*”), DEXTERA SURGICAL INC., a Delaware corporation formerly known as “Cardica, Inc.” (“*Seller*”), and DELAWARE TRUST COMPANY, a Delaware trust company (the “*Escrow Agent*”).

### BACKGROUND

A. Buyer and Seller have entered into that certain Asset Purchase Agreement, dated as December 11, 2017 (such agreement, together with the Exhibits and Schedules thereto, the “*Purchase Agreement*”), pursuant to which, among other things, Buyer has agreed to purchase, as of the date hereof, all of Seller’s right, title and interest in and to certain assets of Seller as part of a Section 363 bankruptcy sale, as more particularly described, and on the terms and subject to the conditions, therein.

B. The Purchase Agreement requires that Buyer and Seller enter into this Agreement and that Buyer deposit with the Escrow Agent a portion of the cash portion of the Purchase Price otherwise payable to Seller under the Purchase Agreement in order to provide a fund for certain payments to which Buyer may become entitled as and to the extent provided in the Purchase Agreement.

C. The parties are entering into this Agreement to effectuate the intent of the foregoing provisions of the Purchase Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements made herein, Buyer, Seller and the Escrow Agent, each intending to be legally bound, hereby agree as follows:

1. Defined Terms; Incorporation of Preamble and Background. Capitalized terms used herein which are not otherwise defined in this Agreement shall have the respective meanings assigned to them in the Purchase Agreement. The preamble and Background hereof (including terms defined therein) are incorporated by reference as if fully set forth herein.

2. Appointment of Escrow Agent. Buyer and Seller hereby constitute and appoint the Escrow Agent as the escrow agent under and pursuant to this Agreement. The Escrow Agent hereby accepts its appointment as Escrow Agent.

3. Escrow Fund. At the Closing, Buyer shall, simultaneously with the execution and delivery of this Agreement and in accordance with the provisions of Section 3.1(b) and Section 3.1(c) of the Purchase Agreement, deliver to the Escrow Agent, by wire transfer of immediately available funds, an amount equal to Two Million Dollars and No Cents (\$2,000,000.00) (the “*Indemnification Escrow Fund*”) and an amount equal to [●] (\$[●])<sup>1</sup> (the

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<sup>1</sup> **NTD:** The Cure Escrow Fund amount shall equal the sum all of the Disputed Cure Amounts.

“*Cure Escrow Fund*”, and together with the Indemnification Escrow Fund, collectively, the “*Escrow Fund*”), and the Escrow Agent shall thereby acknowledge receipt of the Escrow Fund by email to Buyer’s and Seller’s counsel. The Escrow Agent shall hold the Escrow Fund in accordance with the terms and conditions hereinafter set forth. The Escrow Agent warrants and undertakes that, unless specifically authorized to do so in accordance with the provisions of this Agreement, it will not release, distribute or expend the Escrow Fund or any earnings with respect thereto. The Escrow Fund shall be held by the Escrow Agent in a separate account maintained for such purpose, on the terms and subject to the conditions of this Agreement. Earnings on the Escrow Fund (the “*Escrow Earnings*”) shall not become part of the Escrow Fund; all Escrow Earnings shall be disbursed by the Escrow Agent in accordance with the terms hereof. Neither the Escrow Fund nor any Escrow Earnings shall be subject to lien or attachment by any creditor of any party hereto. The Escrow Fund and the Escrow Earnings shall be used solely for the purpose set forth in this Agreement and shall be disbursed only in accordance with the terms of this Agreement. Neither the Escrow Fund nor any Escrow Earnings shall be available to or used by the Escrow Agent to set-off any obligations of Buyer, Seller, or any of their respective subsidiaries or affiliates, as appropriate, or any current or prior partner or option holder of any of the foregoing owing to the Escrow Agent in any capacity.

4. Investment of Escrow Fund. Subject to the provisions of this Section 4, the Escrow Agent shall invest and reinvest all cash funds held from time to time as part of the Escrow Fund and Escrow Earnings pursuant to the joint written instructions of Buyer (executed by an authorized officer of Buyer) and Seller (executed by an authorized officer of Seller or successor estate representative). Buyer and Seller may provide such joint written instructions from time to time. Any such written instructions may be sent by e-mail or facsimile. Investment of the Escrow Fund and the Escrow Earnings shall be limited to either: (i) certificates of deposit or interest-bearing demand deposits of commercial banks, but only to the extent the certificates of deposit are fully insured by the Federal Deposit Insurance Corporation or otherwise fully secured by direct obligations of the United States of America or obligations fully guaranteed by the United States of America as to principal and interest (“*United States Government Securities*”); (ii) United States Government Securities; (iii) repurchase agreements for United States Government Securities; (iv) money market mutual funds having a constant dollar value invested in United States Government Securities or repurchase agreements for United States Government Securities (collectively, the “*Investment Securities*”), or (v) such other investment to which the Escrow Agent is limited by law or regulation to invest escrow funds. In the event that Buyer and Seller do not provide the Escrow Agent with joint written instructions regarding the investment of the cash funds held from time to time as part of the Escrow Fund and Escrow Earnings as contemplated by this Section 4, the Escrow Agent shall invest such funds in the BlackRock T-Fund Cash Management Class, an institutional money market fund that invests exclusively in United States Treasury securities. The parties hereto: (i) acknowledge the Escrow Agent’s disclosure of the services it is providing to and the fees it receives from BlackRock in connection with the share class; (ii) consent to the Escrow Agent’s receipt of these subservicing fees from BlackRock; and (iii) acknowledge that the Escrow Agent has provided on or before the date hereof a BlackRock T-Fund Cash Management Shares prospectus which discloses, among other things, the various expenses of the share class including the fees to be received by the Escrow Agent from BlackRock. The Escrow Agent shall have the right to liquidate any investments held, in order to provide funds necessary to make required distributions of the



Escrow Fund and Escrow Earnings under this Agreement. The Escrow Agent in its capacity as escrow agent hereunder shall not have any liability for any loss sustained as a result of any investment made pursuant to the instructions of the parties hereto or as a result of any liquidation of any investment prior to its maturity or for the failure of the parties to give the Escrow Agent instructions to invest or reinvest the Escrow Fund or any earnings thereon other than any such loss which arises from the willful misconduct, gross negligence or bad faith of the Escrow Agent or any of its officers, employees, agents or representatives. The Escrow Agent may earn compensation in the form of short-term interest on items like uncashed distribution checks (from the date issued until the date cashed), funds that the Escrow Agent is directed not to invest, deposits awaiting investment direction or received too late to be invested overnight in previously directed investments. As used herein, the term “**Business Day**” means a day Escrow Agent is open for business.

5. Tax Matters; Tax Distributions. The Escrow Agent does not have any interest in the Escrow Fund but is serving as escrow holder only and having only possession thereof. The Federal tax identification numbers of Buyer and Seller shall be used with respect to the escrow account consistent with the foregoing provisions of this Section 5. The parties have provided the Escrow Agent with their respective fully executed Internal Revenue Service (“**IRS**”) Form W-8, or W-9 and/or other required documentation. Each of the parties represents that its correct tax identification number assigned by the IRS, or any other taxing authority, is set forth in the delivered forms. Each party understands that, in the event its correct tax identification number is not certified to the Escrow Agent, then the Internal Revenue Code, as amended from time to time, may require withholding of a portion of any interest or other income earned on the investment of the Escrow Fund. Any Escrow Earnings shall be deemed income of Seller for all tax purposes, whether or not the Escrow Earnings were disbursed by the Escrow Agent during any particular year. Such income shall be reported, to the extent required by law, by the Escrow Agent to the IRS or any other taxing authority, as applicable, on IRS form 1099-INT, 1099-DIV, or 1042S (or other appropriate form) from the Escrow Earnings by Seller. The Escrow Agent, Buyer, and Seller shall each prepare and file all tax returns and information returns in a manner consistent with the foregoing, including, but not limited to, any applicable reporting or withholding pursuant to the Foreign Account Tax Reporting Act (“**FATCA**”). The parties hereto acknowledge and agree that the Escrow Agent shall have no responsibility for the preparation and/or filing of any tax return or any applicable FATCA reporting with respect to the Escrow Fund or Escrow Earnings. The Escrow Agent shall not be liable to pay any tax on any Escrow Earnings. The Escrow Agent shall not have any responsibility for the payment of taxes except with funds furnished to the Escrow Agent for that purpose.

6. Claims Against the Indemnification Escrow Fund; Rights of the Parties.

(a) If Buyer has incurred Losses from which it is entitled to make a claim under Section 10.1 of the Purchase Agreement, Buyer shall deliver to the Escrow Agent and Seller a certificate in substantially the form of Exhibit A, attached hereto (an “**Indemnification Escrow Certificate of Instruction**”) setting forth the amount of the indemnifiable claim (the “**Indemnification Escrow Claim Amount**”). No Indemnification Escrow Certificate of Instruction may be delivered by Buyer after [**INSERT 2 YEAR ANNIVERSARY OF CLOSING DATE**] (the “**Claims Close Date**”).

(b) If the Escrow Agent receives an Indemnification Escrow Certificate of Instruction, then the Escrow Agent shall pay to Buyer from the Indemnification Escrow Fund the portion, if any, of the Indemnification Escrow Claim Amount specified in (i) a certificate executed and delivered by Buyer and Seller substantially in the form of Exhibit B, attached hereto (a “**Resolution Certificate**”), stating that Buyer and Seller have agreed that Buyer is entitled to the Indemnification Escrow Claim Amount referred to in such Indemnification Escrow Certificate of Instruction (or a specified portion thereof) or (ii) a Final Order of the Bankruptcy Court or other court of competent jurisdiction accompanied by a certification from an executive officer of the presenting party which provides that Buyer is entitled to the Indemnification Escrow Claim Amount referred to in such Indemnification Escrow Certificate of Instruction (or a specified portion thereof). For clarity, the Escrow Agent acknowledges and agrees that no disbursement under this Section 6(b) will be made without either (i) the delivery of a joint instruction from Buyer and Seller or (ii) a Final Order of the Bankruptcy Court or other court of competent jurisdiction in accordance with the provisions of this Section 6(b).

(c) Upon the payment in full to Buyer by the Escrow Agent of the amount specified in a Resolution Certificate or Final Order of the Bankruptcy Court or other court of competent jurisdiction in respect of the Indemnification Escrow Claim Amount as set forth in an Indemnification Escrow Certificate of Instruction, such Indemnification Escrow Certificate of Instruction shall be deemed fulfilled.

(d) If Buyer determines to withdraw its claim with respect to an Indemnification Escrow Claim Amount referred to in an Indemnification Escrow Certificate of Instruction (or a specified portion thereof), Buyer will promptly deliver to the Escrow Agent a certificate substantially in the form of Exhibit C, attached hereto (a “**Buyer Cancellation Certificate**”) canceling such Indemnification Escrow Certificate of Instruction (or such specified portion thereof, as the case may be), and such Indemnification Escrow Certificate of Instruction (or portion thereof) shall thereupon be deemed withdrawn and cancelled. Buyer shall deliver a copy of any Buyer Cancellation Certificate to Seller concurrently with the delivery of such Buyer Cancellation Certificate to the Escrow Agent.

(e) The Escrow Agent shall include with any payment made to Buyer pursuant to this Section 6 a pro rata portion (calculated based on the amount of such payment) of the Escrow Earnings from the date hereof through the date of payment, but such Escrow Earnings shall not be considered part of the Indemnification Escrow Fund.

(f) Nothing in this Agreement shall be deemed to mean or require that an Indemnification Escrow Certificate of Instruction include a precise Indemnification Escrow Claim Amount to which Buyer claims if, at the time of the giving of such certificate, the exact amount claimed cannot reasonably be ascertained. In such cases, Buyer may give an Indemnification Escrow Certificate of Instruction setting forth only its good faith estimate of such amount, which may be a range; **provided**, however, in the absence of a precise Indemnification Escrow Claim Amount, the Escrow Agent can rely on such a good faith estimate of such amount when determining the Withholding Amount (as hereinafter defined) in accordance with Section 8.

7. Claims Against the Cure Escrow Fund.

(a) If and when a Disputed Cure Amount, the value of which comprises a portion of the Cure Escrow Fund, has been allowed by Final Order of the Bankruptcy Court, within five (5) Business Days of the entry of such order, Buyer and Seller shall jointly deliver to the Escrow Agent a certificate, substantially in the form of Exhibit D, attached hereto (a “**Cure Escrow Joint Certificate of Instruction**”), setting forth: (i) the allowed amount(s) relating to one or more Disputed Cure Amounts, as fixed by Final Order of the Bankruptcy Court (the “**Allowed Cure Payment Amount**”); and (ii) the amount (if any) by which the Disputed Cure Amount(s) to which such Allowed Cure Payment Amount relates exceeds the Allowed Cure Payment Amount (the “**Disputed Cure Amount Excess**”); **provided**, that the failure to provide such Cure Escrow Joint Certificate of Instruction to the Escrow Agent by such date shall not prohibit Buyer and Seller from later providing a Cure Escrow Joint Certificate of Instruction and seeking or obtaining payment from the Cure Escrow Fund as otherwise herein provided.

(b) Upon receipt of a Cure Escrow Joint Certificate of Instruction, the Escrow Agent shall pay from the Cure Escrow Fund: (i) to the non-Debtor counterparty to the applicable Assigned Contract pursuant to wiring instructions provided with the Cure Escrow Joint Certificate of Instruction, the applicable Allowed Cure Payment Amount; and (ii) to Seller, from the Cure Escrow Fund, the Disputed Cure Amount Excess. For clarity, the Escrow Agent acknowledges and agrees that no disbursement under this Section 7(b) will be made without the delivery of a Cure Escrow Joint Certificate of Instruction from Buyer and Seller.

(c) The Escrow Agent shall include with any payment made to Seller pursuant to this Section 7, the pro rata portion (calculated based on the amount of such payment) of the Escrow Earnings from the date hereof through the date of payment attributable to the Allowed Cure Payment Amount and the Disputed Cure Amount Excess, but such Escrow Earnings shall not be considered part of the Cure Escrow Fund.

8. Termination; Release of Indemnification Escrow Fund.

(a) On the fifth (5<sup>th</sup>) Business Day after the Claims Close Date, the Escrow Agent shall pay over to Seller by wire transfer of immediately available funds to accounts designated in writing by Seller, an amount equal to equal to: (x) the aggregate amount of the Indemnification Escrow Fund as of the Claims Close Date less (y) the aggregate amount designated in each of the Certificates of Instruction received by the Escrow Agent on or prior to the Claims Close Date that have not been fulfilled or withdrawn pursuant to Sections 6(b) through (d) hereof (the “**Withholding Amount**”). If amounts are withheld pursuant to the preceding sentence and, after the Claims Close Date, one or more Certificate(s) of Instruction which was the basis for all or part of such Withholding Amount is fulfilled or withdrawn in accordance with either Section 6(c) or Section 6(d) hereof, then, as long as the aggregate balance of the Withholding Amount at the time of such cancellation exceeds the then remaining aggregate balance of all unfulfilled or non-withdrawn Certificates of Instruction, Buyer and Seller shall jointly instruct the Escrow Agent to promptly pay over to Seller according to the written instructions of Seller, by wire transfer of immediately available funds to an account designated by Seller, the amount by which the then remaining balance of the Withholding

Amount exceeds the outstanding aggregate balance of all such unfulfilled or non-withdrawn Certificates of Instruction. Any Withholding Amount that is not released in accordance with the preceding sentence shall be released pursuant to (i) a Resolution Certificate, (ii) joint instructions of Buyer and Seller, or (iii) pursuant to a Final Order of the Bankruptcy Court or other final non-appealable order of a court of competent jurisdiction.

(b) The Escrow Agent shall include with any payment made to Seller pursuant to this Section 8 a pro rata portion (calculated based on the amount of such payment) of all Escrow Earnings through the date of payment.

(c) Upon disbursement of the entire Escrow Fund, and earnings thereon as provided therein, this Agreement (other than Section 11 and the last sentence of Section 14) shall automatically terminate.

(d) The interest of Seller in the Escrow Fund shall not be assignable or transferable without the prior written consent of Buyer, which consent shall not be unreasonably withheld, except by operation of law or as provided in a plan of reorganization or liquidation confirmed by Final Order of the Bankruptcy Court.

(e) The Escrow Fund shall be held as a trust fund and shall not be subject to any lien, attachment, trustee process or any other judicial process of any creditor of any party hereto. The Escrow Agent agrees to accept delivery of and to hold the Escrow Fund and all Escrow Earnings in escrow in accordance with, and subject to, the terms and conditions of this Agreement.

9. Covenants of the Escrow Agent. The Escrow Agent hereby covenants to Buyer and Seller that it shall perform all of its obligations under this Agreement and will not deliver custody or possession of any of the Escrow Fund to Buyer or Seller or any person except pursuant to the express terms of this Agreement.

10. Resignation and Removal of Escrow Agent. The Escrow Agent may resign at any time or be removed by the mutual consent of Buyer and Seller upon notice to the other parties hereto given at least thirty (30) days prior to the effective date of such resignation or removal; ***provided, however,*** that no resignation or removal of the Escrow Agent shall be effective until the appointment of a successor escrow agent in the manner herein provided. In the event of the resignation or removal of the Escrow Agent, Buyer and Seller shall agree upon a successor escrow agent. Any successor escrow agent shall execute and deliver to the Escrow Agent, Buyer and Seller an instrument accepting such appointment and the transfer of the Escrow Fund (including any Escrow Earnings) and agreeing to the terms of this Agreement, and thereupon such successor escrow agent shall, without further act, become vested with all the estates, properties, rights, powers and duties of the Escrow Agent as if originally named herein. If an instrument of acceptance by a successor escrow agent shall not have been delivered to the Escrow Agent within ten (10) Business Days after the giving of such notice of resignation, the Escrow Agent may at the joint expense of Buyer and Seller, petition the Bankruptcy Court or any court of competent jurisdiction for the appointment of a successor escrow agent.

11. Duties and Obligations of the Escrow Agent. The duties and obligations of the Escrow Agent shall be limited to and determined solely by the provisions of this Agreement and the notices and certificates delivered in accordance herewith. The Escrow Agent is not charged with knowledge of or any duties or responsibilities in respect of any other agreement or document and the Escrow Agent shall not inquire into or consider the merits of any claim to the Escrow Fund by the parties hereto or whether such claim complies with the Purchase Agreement or the terms thereof. The Escrow Agent is obligated only to perform the duties specifically set forth in this Agreement, which shall be deemed purely ministerial in nature. Under no circumstances will the Escrow Agent be deemed to be a fiduciary to any party or any other person under this Agreement. The Escrow Agent will not be responsible or liable for the failure of any party to perform in accordance with this Agreement. In furtherance and not in limitation of the foregoing:

(a) The Escrow Agent shall not be liable for any loss of interest sustained as a result of investments made hereunder in accordance with the terms hereof, including any liquidation of any investment of the Escrow Fund prior to its maturity effected in order to make a payment required by the terms of this Agreement. The parties acknowledge that the Escrow Agent is not providing investment supervision, recommendations, or advice.

(b) The Escrow Agent shall be fully protected in relying in good faith upon any written certification, notice, direction, request, waiver, consent, receipt or other document that the Escrow Agent reasonably believes to be genuine and duly authorized, executed and delivered. The Escrow Agent shall not be liable for acting or refraining from acting upon any notice, request, consent, direction, requisition, certificate, order, affidavit, letter, or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, without further inquiry into the person's or persons' authority.

(c) The Escrow Agent shall not be liable for any error of judgment, or for any act done or omitted by it, or for any mistake in fact or law, or for anything that it may do or refrain from doing in connection herewith; provided, however, that notwithstanding any other provision in this Agreement, the Escrow Agent shall be liable for its willful misconduct, bad faith or gross negligence. THE ESCROW AGENT SHALL NOT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY (I) DAMAGES, LOSSES OR EXPENSES ARISING OUT OF THE SERVICES PROVIDED HEREUNDER, OTHER THAN DAMAGES, LOSSES OR EXPENSES WHICH HAVE BEEN FINALLY ADJUDICATED TO HAVE DIRECTLY RESULTED FROM THE ESCROW AGENT'S GROSS NEGLIGENCE, BAD FAITH OR WILLFUL MISCONDUCT, OR (II) SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOSSES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.

(d) The Escrow Agent may seek the advice of legal counsel selected with reasonable care in the event of any dispute or question as to the construction of any of the provisions of this Agreement or its duties hereunder, and it shall incur no liability and shall be

fully protected in respect of any action taken, omitted or suffered by it in good faith in accordance with the opinion of such counsel.

(e) The Escrow Agent may execute any of its powers or responsibilities hereunder and exercise any rights hereunder either directly or by or through agents or attorneys selected with reasonable care, nothing in this Agreement shall be deemed to impose upon the Escrow Agent any duty to qualify to do business or to act as fiduciary or otherwise in any jurisdiction other than the State of Delaware and the Escrow Agent shall not be responsible for and shall not be under a duty to examine into or pass upon the validity, binding effect, execution or sufficiency of this Agreement or of any agreement amendatory or supplemental hereto.

(f) The permissive rights of the Escrow Agent to do things enumerated in this Agreement shall not be construed as duties.

(g) No provision of this Agreement shall require the Escrow Agent to risk or advance its own funds or otherwise incur any financial liability or potential financial liability in the performance of its duties or the exercise of its rights under this Agreement.

(h) In no event shall the Escrow Agent have any duty, obligation, or liability of any nature whatsoever for or with respect to the calculation or determination of any of the respective amounts referred to in Section 6 or Section 7 hereof or set forth on any certificate delivered to the Escrow Agent in accordance with the provisions of this Agreement, and the Escrow Agent shall be entitled to rely upon any certificate delivered to the Escrow Agent in accordance with the provisions of this Agreement with respect to any of the respective amounts set forth in such certificates.

(i) The Escrow Agent shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Escrow Agent (including, but not limited to, any act or provision of any present or future law or regulation or governmental authority, any act of God or war or terrorism, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility).

12. Notices. All notices, consents, waivers or other communications which are required or permitted hereunder shall be sufficient if given in writing and delivered personally, by confirmed fax, by confirmed electronic mail, or by overnight delivery service for next day delivery, proof of delivery required:

(a) to Buyer, addressed as follows:

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

with copies to:

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

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

(b) to Seller, addressed as follows:

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

with a copy to:

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

(c) to the Escrow Agent, addressed as follows:

Delaware Trust Company  
251 Little Falls Drive  
Wilmington, DE 19808  
Attention: Escrow Administration  
E-mail: [trust@delawaretrust.com](mailto:trust@delawaretrust.com)  
Phone: (302)-636-5404  
Facsimile: (302)-636-8666

(or such other address of Buyer, Seller or the Escrow Agent as shall be set forth in a notice given in the same manner). All such notices shall be deemed given and received on the date personally delivered or faxed or the day following delivery to the overnight delivery service.

13. Merger Clause. This Agreement contains the final, complete and exclusive statement of the Agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, understandings, negotiations, and discussions among all of the parties hereto, whether oral or written, with respect to the subject matter hereof.

14. Escrow Agent's Fee; Indemnification. The Escrow Agent's fee for performing its duties hereunder shall be based upon its schedule of fees set forth as Exhibit E, attached hereto and made a part hereof, and shall be divided equally between Buyer and Seller. Each of Buyer, on the one hand, and Seller, on the other hand, jointly and severally, shall reimburse and indemnify the Escrow Agent for, and hold it harmless against, one-half (1/2) of any loss, damage, cost or expense, including but not limited to reasonable attorneys' fees, reasonably incurred by the Escrow Agent in connection with the Escrow Agent's performance of its duties and obligations or the exercise of its rights under this Agreement, as well as the reasonable costs and expenses of defending against any claim or liability relating to this Agreement; **provided** that, notwithstanding the foregoing, neither Buyer nor Seller shall be required to indemnify the Escrow Agent for any such loss, liability, cost, or expense arising as a result of the Escrow Agent's bad faith, willful misconduct or gross negligence.

15. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Delaware.

16. Jurisdiction. The Parties agree that jurisdiction and venue for any suit, action, or other proceeding seeking to enforce any provision of, or based upon any right arising out of, in connection with, or in any way relating to, this Agreement shall be in the United States Bankruptcy Court for the District of Delaware; provided, however, that if at the time of commencement of any such litigation, there is no longer a pending Bankruptcy Case or if the Bankruptcy Court does not have subject matter jurisdiction, jurisdiction and venue for any litigation arising out of this Agreement, provided jurisdiction may be obtained under applicable law, shall be in the state or federal courts in the State of Delaware. Each party hereby irrevocably consents and submits to the exclusive jurisdiction and venue of such courts and irrevocably waives any objection which it may now or hereafter have to the laying of the venue of any suit, action or proceeding brought in such court and any claim that such suit, action or proceeding brought in such court has been brought in an inconvenient forum or that such court lacks jurisdiction.

16. Waiver of Jury Trial. THE PARTIES HERETO AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT.

17. Cooperation. Subject to the terms and conditions herein provided, each of the parties hereto shall use its best efforts to take, or cause to be taken, such action, to execute and deliver, or cause to be executed and delivered, such additional documents and instruments and to do, or cause to be done, all things necessary, proper or advisable under the provisions of this Agreement and under applicable law to consummate and make effective the transactions contemplated by this Agreement.



18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and any person may become a party hereto by executing a counterpart hereof, but all of such counterparts taken together shall constitute but one and the same instrument.

19. Controversies. If any controversy arises between the parties to this Agreement, or with any other party, concerning the subject matter of this Agreement, its terms or conditions, the Escrow Agent will not be required to determine the controversy or to take any action regarding it. The Escrow Agent may hold all documents and funds and may wait for settlement of any such controversy. The Escrow Agent is authorized to deposit with the Bankruptcy Court or, if there is no longer a pending Bankruptcy Case or if the Bankruptcy Court does not have subject matter jurisdiction, a state or federal court in the State of Delaware, all documents and funds held in escrow, except all costs, expenses, charges, and reasonable attorneys' fees incurred by the Escrow Agent due to the action. Upon initiating such action, the Escrow Agent shall be fully released and discharged of and from all obligations and liability imposed by the terms of this Agreement.

20. Cumulative Rights. Each of the rights, powers and remedies of Buyer and Seller hereunder shall be cumulative and concurrent, and shall be in addition to every other right, power or remedy provided for hereunder or under the Purchase Agreement or otherwise existing at law or in equity or by statute or otherwise, and any exercise or commencement of the exercise by Buyer or Seller of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by Buyer of any or all such other rights, powers and remedies.

21. Right to Interplead. Notwithstanding any other provision of this Agreement, if any conflicting demand shall be made upon the Escrow Agent, the Escrow Agent may file suit in interpleader with the proper court in the State of Delaware for the purpose of having the respective rights of the parties adjudicated. The Escrow Agent may, upon initiation of such suit and if such dispute relates to the manner in which the Escrow Fund will be disbursed, deposit those funds which are the subject of such controversy with the court and, upon giving notice thereof to the parties hereto, the Escrow Agent shall be fully released and discharged from all further obligations hereunder with respect to such funds.

22. Patriot Act Compliance, Etc. In order to comply with laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including those relating to the funding of terrorist activities and money laundering and the Customer Identification Program ("*CIP*") requirements under the USA PATRIOT Act and its implementing regulations, pursuant to which the Escrow Agent must obtain, verify and record information that allows the Escrow Agent to identify customers ("*Applicable Law*"), the Escrow Agent is required to obtain, verify and record certain information relating to individuals and entities which maintain a business relationship with the Escrow Agent. Accordingly, each party agrees to provide to the Escrow Agent upon its request from time to time such identifying information and documentation as may be available for such party in order to enable the Escrow Agent to comply with Applicable Law, including, but not limited to, information as to name, physical address, tax identification number and other information that will help the Escrow Agent to identify and verify such party such as organizational documents, certificates of good

standing, licenses to do business or other pertinent identifying information. Each party understands and agrees that the Escrow Agent cannot open the Escrow Account unless and until the Escrow Agent verifies the identities of the parties in accordance with its CIP.

23. Miscellaneous. If a Final Order of a court of competent jurisdiction declares that any provision of this Agreement is invalid or unenforceable, the parties hereto agree that such court shall have the power to modify such provision consistent with the intent of the parties. The failure or delay on the part of any party hereto: (i) to insist upon or enforce strict performance of any provision of this Agreement by any other party; or (ii) to exercise any right, power or remedy under this Agreement, shall not be deemed or construed as a waiver thereof. A waiver by any party hereto of any provision of this Agreement or of any breach thereof shall not be deemed or construed as a general waiver thereof or of any other provision or of any rights thereunder. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer on any person or entity, other than the parties hereto and their respective successors or permitted assigns, any rights, remedies, benefits, obligations or liabilities under this Agreement, except as specifically provided in this Agreement or otherwise specifically agreed to in writing by the parties hereto. This Agreement may not be amended, modified, discharged or waived orally or by course of conduct, but only by an agreement in writing, signed by or on behalf of the party against whom enforcement of any amendment, modification, discharge or waiver is sought. The section headings contained in this Agreement are for convenience only and shall not be considered in the interpretation or construction of the provisions of this Agreement. Defined terms in the singular shall include the plural and vice versa. This Agreement shall be effective only upon execution by all parties hereto. In the event of a conflict between this Agreement and the Purchase Agreement, the terms of the Purchase Agreement shall prevail.

*[Signature Page Follows]*

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

**BUYER:**

AESCULAP, INC.

By: \_\_\_\_\_

Name: [●]

Title: [●]

By: \_\_\_\_\_

Name: [●]

Title: [●]

**SELLER:**

DEXTERA SURGICAL INC.

By: \_\_\_\_\_

Name: [●]

Title: [●]

**ESCROW AGENT:**

DELAWARE TRUST COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

INDEMNIFICATION ESCROW CERTIFICATE OF INSTRUCTION  
to  
ESCROW AGENT

The undersigned, AESCULAP, INC., a California corporation (the "**Buyer**"), pursuant to Section 6 of the Escrow Agreement dated as of \_\_\_\_\_, 201\_, among Buyer, Seller, and you (terms defined in said Escrow Agreement, which are not defined herein, have the same meanings when used herein), hereby informs you that (i) Buyer has sent to Seller a claim notice, a copy of which is attached hereto, and (ii) Buyer estimates that it is entitled to have paid to it from the Indemnification Escrow Fund the amount of [approximately] \$\_\_\_\_\_ (such estimated amount set forth herein to be paid from the Indemnification Escrow Fund, the "**Indemnification Escrow Claim Amount**") pursuant to the Purchase Agreement by reason of the matter described in such claim notice.

**BUYER:**

AESCULAP, INC.

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

Dated: \_\_\_\_\_, \_\_\_\_\_

**EXHIBIT B**

RESOLUTION CERTIFICATE  
to  
ESCROW AGENT

The undersigned, AESCULAP, INC., a California corporation (the “*Buyer*”), and DEXTERA SURGICAL INC., a Delaware corporation (“*Seller*”), pursuant to Section 6 of the Escrow Agreement dated as of \_\_\_\_\_, 201\_, among Buyer, Seller, and you (terms defined in said Escrow Agreement have the same meanings when used herein), hereby:

(a) certify that (i) Buyer and Seller have resolved any dispute as to the matter described in the Indemnification Escrow Certificate of Instruction dated \_\_\_\_\_, and (ii) the final Indemnification Escrow Claim Amount with respect to the matter described in such certificate, *less* any payments previously made with respect to the matter described in such certificate, is \$\_\_\_\_\_ (“*Net Indemnification Escrow Claim Amount*”); and

(b) instruct you to pay to Buyer from the Indemnification Escrow Fund the Net Indemnification Escrow Claim Amount referred to in clause (ii) of paragraph (a) above by wire transfer of immediately available funds to Buyer’s account at \_\_\_\_\_ (Account No.: \_\_\_\_\_), within two (2) Business Days of your receipt of this Certificate; and

(c) agree that if the originally estimated Indemnification Escrow Claim Amount designated in such Certificate of Instruction exceeds the Net Indemnification Escrow Claim Amount as indicated in clause (ii) of paragraph (a) above, then Buyer shall be deemed not to be entitled to such excess amount of the Net Indemnification Escrow Claim Amount and such Certificate of Instruction is hereby cancelled to such extent.

**BUYER:**

AESCULAP, INC.

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

**SELLER:**

DEXTERA SURGICAL INC.

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

Dated: \_\_\_\_\_, \_\_\_\_\_

**EXHIBIT C**

**BUYER CANCELLATION CERTIFICATE  
to  
ESCROW AGENT**

The undersigned, AESCULAP, INC., a California corporation (the "**Buyer**"), pursuant to **Section 6** of the Escrow Agreement dated as of \_\_\_\_\_, 201\_, among Buyer, Seller, and you (terms defined in said Escrow Agreement have the same meanings when used herein), hereby:

(a) certifies that (i) it hereby withdraws its claim against Seller with respect to [all] [specify portion] of the Indemnification Escrow Claim Amount designated in the Certificate of Instruction dated \_\_\_\_\_, and (ii) as a result, the Indemnification Escrow Claim Amount with respect to such Certificate of Instruction is \$\_\_\_\_\_; and

(b) agrees that such Certificate of Instruction is, to the extent fully withdrawn as provided in clause (i) of paragraph (a) above, cancelled.

**BUYER:**

AESCULAP, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, \_\_\_\_\_

**EXHIBIT D**

CURE ESCROW JOINT CERTIFICATE OF INSTRUCTION  
to  
ESCROW AGENT

The undersigned, AESCULAP, INC., a California corporation (the “*Buyer*”), and DEXTERA SURGICAL INC., a Delaware corporation (“*Seller*”), pursuant to Section 7 of the Escrow Agreement dated as of \_\_\_\_\_, 201\_, among Buyer, Seller, and you (terms defined in said Escrow Agreement have the same meanings when used herein), hereby:

(a) (i) certify that the Bankruptcy Court has allowed payments relating certain Disputed Cure Amounts comprising the Cure Escrow Fund; (ii) certify that the Allowed Cure Payment Amount relating to such Disputed Cure Amounts is \$\_\_\_\_\_; and (iii) the Disputed Cure Amount Excess relating to such Disputed Cure Amounts is \$\_\_\_\_\_;

and  
(b) (i) instruct you to pay to each non-Debtor counterparty to an Assigned Contract identified on Schedule 1 hereto from the Cure Escrow Fund the Allowed Cure Payment Amount referred to in Schedule 1 applicable to such non-Debtor counterparty by wire transfer of immediately available funds to such non-Debtor counterparty’s account stated on Schedule 1, within two (2) Business Days of your receipt of this Certificate; and (ii) instruct you to pay to Seller from the Cure Escrow Fund the Disputed Cure Amount Excess referred to in clause (iii) of paragraph (a) above by wire transfer of immediately available funds to Seller’s account at \_\_\_\_\_ (Account No.: \_\_\_\_\_), within two (2) Business Days of your receipt of this Certificate.

**BUYER:**

AESCULAP, INC.

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

**SELLER:**

DEXTERA SURGICAL INC.

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

Dated: \_\_\_\_\_, \_\_\_\_\_



SCHEDULE 1

TO CURE ESCROW JOINT CERTIFICATE OF INSTRUCTION

NON-DEBTOR COUNTERPARTY	DISPUTED CURE AMOUNT	ALLOWED CURE PAYMENT AMOUNT AND NON-DEBTOR COUNTERPARTY WIRING INSTRUCTIONS	DISPUTED CURE AMOUNT EXCESS

**EXHIBIT E**

ESCROW FEES

[TO BE INSERTED.]

**EXHIBIT B**

Bid Procedures Order

*(See Attached.)*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

DEXTERA SURGICAL INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. \_\_\_\_\_

Ref. Docket No. \_\_\_\_

**ORDER (A) APPROVING BIDDING PROCEDURES AND SALE PROCEDURES; (B) APPROVING FORM AND MANNER OF NOTICES; (C) APPROVING FORM OF ASSET PURCHASE AGREEMENT, INCLUDING STALKING HORSE PAYMENT; (D) SCHEDULING DATES TO CONDUCT AUCTION AND HEARING TO CONSIDER FINAL APPROVAL OF SALE AND RELATED MATTERS; (E) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (F) GRANTING RELATED RELIEF**

Upon the *Debtor's Motion for Orders (A)(I) Authorizing and Approving Bidding Procedures, and Stalking Horse Payment; (II) Authorizing and Approving the Debtor's Entry into the Stalking Horse APA; (III) Approving Notice Procedures; (IV) Scheduling an Auction and Sale Hearing; and (V) Approving Procedures for Assumption and Assignment of Executory Contracts and Unexpired Leases and Determining Cure Amounts and (B)(I) Authorizing the Sale of Substantially All of the Debtor's Assets Free and Clear of All Claims, Liens, Rights, Interests, and Encumbrances; (II) Approving the Stalking Horse APA; and (III) Authorizing the Debtor to Assume and Assign Certain Executory Contracts and Unexpired Leases [D.I. \_\_\_] (the "Motion")<sup>2</sup>* filed by the above captioned debtor and debtor-in-possession (the "Debtor"); and having

<sup>1</sup> The last four digits of the Debtor's taxpayer identification number are as follows: 7832. The address of the Debtor's corporate headquarters is 900 Saginaw Drive, Redwood City, CA, 94603.

<sup>2</sup> Reference herein is made to the bidding procedures attached hereto as Exhibit 1 (the "Bidding Procedures") and that certain Asset Purchase Agreement dated as of December 11, 2017 between Aesculap, Inc. or its permitted assignee as buyer (the "Stalking Horse Bidder"), and the Debtor, as seller (the "Stalking Horse APA"), as applicable. Capitalized terms used but not defined herein shall have the meanings stated in the Motion or the Stalking Horse APA, as applicable.

reviewed the Motion, and the record in this case, and having considered the statements of counsel for the Debtor and the Stalking Horse Bidder the Court finds that establishing bidding procedures and sale procedures in connection with a sale of the Purchased Assets (defined below), in accordance with the provisions contained in this Order, is in the best interests of the Debtor's estate; accordingly,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any conclusions of law herein constitute findings of fact, they are adopted as such.

B. The Court has jurisdiction over the Motion and the transactions contemplated by the Stalking Horse APA pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

C. The statutory bases for the relief requested in the Motion are (i) sections 105, 363, 365, 503, and 507 of the Bankruptcy Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code") and (ii) Bankruptcy Rules 2002, 6003, 6004, 6006, 9007, 9008 and 9014, and (iii) Rules 2002-1, 6004-1 and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

D. Good and sufficient notice of the Motion and the relief sought therein has been given under the circumstances, and no other or further notice is required except as set forth herein with respect to the hearing to be conducted to approve the transactions contemplated by

the Stalking Horse APA (the “Sale Hearing”). A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to parties in interest.

E. The Debtor’s proposed notice of the Bidding Procedures is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the sale of substantially all of the Debtor’s assets (the “Purchased Assets”), the auction (the “Auction”) for the Purchased Assets, and the Bidding Procedures to be employed in connection therewith.

F. The Debtor has articulated good and sufficient reasons for the Court to: (i) approve (a) the Bidding Procedures and (b) the Stalking Horse Payment as provided in the Stalking Horse APA and this Order; (ii) authorize, to the extent necessary, the Debtor’s entry into (but not consummation of) the Stalking Horse APA; (iii) schedule the Auction and Sale Hearing; (iv) approve the form and manner of notice of the Motion and the sale of the Purchased Assets (the “Sale Notice”); (iv) approve the procedures for the assumption and assignment of such executory contracts and unexpired leases, including notice of proposed cure amounts; and (v) grant related relief.

G. The entry of this Order is in the best interests of the Debtor, its estate, creditors and other parties in interest.

H. The Bidding Procedures are fair, reasonable, and appropriate, and are designed to maximize the value to be achieved for the Purchased Assets. The Bidding Procedures were negotiated in good faith by the Debtor and the Stalking Horse Bidder.

I. The Debtor has demonstrated a compelling business justification of the payment of the Stalking Horse Payment (defined below) under the circumstances set forth in the Stalking Horse APA. The Stalking Horse Payment (i) is payable as provided herein, (ii) is of substantial benefit to the Debtor’s estate, (iii) is reasonable and appropriate, including in light of the size and

nature of the sale and the efforts that have been or will be expended by the Stalking Horse Bidder notwithstanding that the proposed sale is subject to higher and better offers for the Purchased Assets, (iv) was negotiated by the parties at arm's length and in good faith, and (v) is necessary to ensure that the Stalking Horse Bidder will continue to pursue its proposed acquisition of the Purchased Assets contemplated by the Stalking Horse APA. The Stalking Horse Bidder is unwilling to commit to purchase the Purchased Assets under the terms of the Stalking Horse APA absent approval of the Stalking Horse Payment.

J. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c).

K. The procedures for the assumption and assignment of executory contracts and unexpired leases are fair, reasonable, and appropriate, and comply with the provisions of section 365 of the Bankruptcy Code.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED to the extent set forth herein.

2. Except as provided to the contrary herein, all objections to the Motion or the relief provided herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits with prejudice.

3. The Bidding Procedures, attached hereto as Exhibit 1, are hereby approved in their entirety, are incorporated by reference, and shall govern the bids and proceedings related to the sale and the Auction, and the Bidding Procedures Key Dates, attached hereto as Exhibit 2, are hereby approved in their entirety. The Debtor is authorized to take any and all actions necessary to implement the Bidding Procedures.

4. The Debtor may sell the Purchased Assets and enter into the transactions contemplated by the Stalking Horse APA by conducting an Auction in accordance with the Bidding Procedures.

5. The Auction shall take place on January 22, 2018 at 10:00 a.m. (prevailing Eastern Time) at the New York offices of Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036. The Auction shall be conducted in accordance with the Bidding Procedures.

6. The Sale Hearing shall be held before the Court on January 23, 2018 at 10:00 a.m. (prevailing Eastern Time).

7. Objections, if any, to the sale of the Purchased Assets and the transaction contemplated by the Stalking Horse APA, or the relief requested in the Motion must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) be filed with the Bankruptcy Court on or before 5:00 p.m. (prevailing Eastern Time) on January 19, 2018 (the “Sale Objection Deadline”); and (d) be served upon: (i) Dexter Surgical, Inc., 900 Saginaw Drive, Redwood City, CA 94063 (Attn: Julian Nikolchev), [jnikolchev@dexterasurgical.com](mailto:jnikolchev@dexterasurgical.com); (ii) special corporate counsel to the Debtor, Cooley LLP, 101 California Street, 5th Floor, San Francisco, CA 94111-5800 (Attn: Robert L. Eisenbach III, Esq.), [reisenbach@cooley.com](mailto:reisenbach@cooley.com), and lead counsel for the Debtor, Saul Ewing Arnstein & Lehr, LLP, P.O. Box 1266, Wilmington, DE 19899-1266 (mailing) and 1201 Market Street, Suite 2300, Wilmington DE 19801 (courier) (Attn: Mark Minuti, Esq.) [mark.minuti@saul.com](mailto:mark.minuti@saul.com); (iii) counsel for the Official Committee of Unsecured Creditors, if any; (iv) counsel for the Stalking Horse Bidder, Stevens & Lee, P.C., 620 Freedom Business Center, Suite 200, King of Prussia, PA 19406 (Attn: Robert Lapowsky, Esq.), [rl@stevenslee.com](mailto:rl@stevenslee.com), and (v) the Office of the United States Trustee, 844 King Street, Suite



2207, Lockbox 35, Wilmington, DE 19801 (collectively, the “Objection Notice Parties”), in each case, so as to be received no later than 5:00 p.m. (prevailing Eastern Time) on the Sale Objection Deadline.

8. The notice, substantially in the form attached hereto as Exhibit 3 (the “Sale Notice”), is hereby approved.

9. On or before three (3) business days after entry of this Order, the Debtor will cause the Motion and the Sale Notice to be sent by first-class mail postage prepaid, to the following: (a) all creditors or their counsel known to the Debtor to assert a lien (including any security interest), claim, right, Interest or encumbrance of record against all or any portion of the Purchased Assets; (b) the Office of the United States Trustee for the District of Delaware; (c) counsel to the Stalking Horse Bidder; (d) counsel to Century Medical, Inc.; (e) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002; (f) the United States of America Internal Revenue Service; (g) the United States Attorney for the District of Delaware; (h) the United States of America Environmental Protection Agency; (i) the United States of America Food and Drug Administration; (j) the Pension Benefit Guaranty Corporation; (k) the State of California Department of Revenue; (l) the State of California Environmental Protection Agency; (m) the Office of the Attorney General for the State of California; (n) the State of California Department of Industrial Relations; (o) all counterparties to any Executory Contract or Lease of the Debtor; (p) all other known creditors of and holders of interests in the Debtor; (q) all potential bidders previously identified or otherwise known to the Debtor within the prior twelve (12) months; (r) counsel to the Official Committee of Unsecured Creditors, if one has been appointed, (s) all parties listed on the mailing matrix filed by the Debtor in this Bankruptcy Case; (t) all purchasers of medical devices from the Debtor since January 1, 2015; and (u) to the extent

known to the Debtor, all persons upon whom any medical devices sold by the Debtor since January 1, 2015 were used.

10. The notice, substantially in the form attached hereto as Exhibit 4 (the “Assumption and Assignment Notice”), of potential assumption and/or assignment of the Debtor’s executory contracts and unexpired leases (individually a “Debtor’s Contract” and collectively, the “Debtor’s Contracts”), is hereby approved.

11. On or before three (3) business days after the entry of this Order, the Debtor shall serve by first-class mail or hand delivery the Assumption and Assignment Notice on all counterparties to the Debtor’s Contracts. The Assumption and Assignment Notice shall identify the Debtor’s Contracts and provide the amounts that the Debtor believes must be paid to each non-debtor counterparty to such Debtor’s Contract to cure any defaults required to be cured as a condition of assumption of such Debtor’s Contract pursuant to Section 365(b)(1) of the Bankruptcy Code (each an “Asserted Cure Amount”).

12. No later than twenty (20) days prior to the Sale Hearing, the Stalking Horse Bidder shall (i) designate in writing to the Debtor which of the Debtor’s Contracts are to be assumed by the Debtor and assigned to the Stalking Horse Bidder if the Stalking Horse Bidder becomes the Successful Bidder (as defined in the Bidding Procedures), and (ii) submit to the Debtor financial and other information about the Stalking Horse Bidder to demonstrate that the Stalking Horse Bidder is able to provide adequate assurance of future performance under Section 365 of the Bankruptcy Code (the “Stalking Horse Bidder Information”). The Debtor may disclose the Stalking Horse Bidder Information to those non-Debtor counterparties to such designated Debtor’s Contracts that make a written request for such information to Debtor’s counsel and who confirm in writing their agreement to keep such information strictly

confidential and to use it solely for the purpose of evaluating whether the Stalking Horse Bidder has provided adequate assurance of future performance under the counterparty's Debtor's Contract; provided, however, that the Stalking Horse Bidder may require such counterparties to execute confidentiality agreements prior to the remittance of any confidential, non-public information.

13. No later than the Bid Deadline (defined below), and in connection with submission of a bid, any bidder other than the Stalking Horse Bidder shall designate in writing to the Debtor which of the Debtor's Contracts are to be assumed by the Debtor and assigned to such bidder if such bidder becomes the Successful Bidder.

14. Any objection to the assumption and assignment of a Debtor's Contract or to the Asserted Cure Amount (including, as to the Stalking Horse Bidder, to adequate assurance of future performance by the Stalking Horse Bidder) (collectively, a "Contract Objection"), must be filed with the Court on or before the Sale Objection Deadline, and served so as to be received the same day as the objection is filed, upon the Objection Notice Parties.

15. Any Contract Objection must state the basis for such objection and, if objecting to the Asserted Cure Amount, state with specificity the amount that the counterparty to the applicable Debtor's Contract believes must be paid to it to cure any defaults required to be cured as a condition of assumption of the applicable Debtor's Contract pursuant to Section 365(b)(1) of the Bankruptcy Code (in all cases with appropriate documentation in support thereof). If no Contract Objection is timely received as to a Debtor's Contract, the Asserted Cure Amount set forth in the Assumption and Assignment Notice applicable to such Debtor's Contract shall be controlling, notwithstanding anything to the contrary in the Debtor's Contract or other documents. The Assumption and Assignment Notice shall also provide that the Contract

Objection to any Asserted Cure Amount or assumption and assignment will be heard at the Sale Hearing at a later hearing, as determined by the Debtor provided, however, if the Stalking Horse Bidder is the Successful Bidder any determination by the Debtor to have a Contract Objection related to any issue other than an objection to the Asserted Cure Amount heard at a later hearing shall be subject to the consent of the Stalking Horse Bidder. If a Successful Bidder that is not the Stalking Horse Bidder prevails at the Auction, then the deadline to object to assumption and assignment (solely on the grounds of adequate assurance of future performance) shall be extended to the Sale Hearing, provided, however, that the deadline to object to the Asserted Cure Amount shall not be extended.

16. Unless a non-Debtor counterparty to any Debtor's Contract files an objection to the Asserted Cure Amount by the applicable objection deadline, then such counterparty shall be (a) forever barred from objecting to the Asserted Cure Amount and (b) forever barred and estopped from asserting or claiming against the Debtor, the Stalking Horse Bidder, or any other Successful Bidder or any other assignee of such Debtor's Contract that any amount other than the Asserted Cure Amount is required to be paid to such non-Debtor counterparty to cure any defaults required to be cured as a condition of assumption of the applicable Debtor's Contract pursuant to Section 365(b)(1) of the Bankruptcy Code.

17. Unless a non-Debtor counterparty to any Debtor's Contract files a timely objection to the assumption and assignment of such contract to the Stalking Horse Bidder or any other Successful Bidder, then such counterparty shall be deemed to have consented to the assumption and assignment to the Stalking Horse Bidder or other Successful Bidder, as applicable.

18. The Stalking Horse Bidder and any other Successful Bidder may remove any Debtor's Contract from its list of Debtor's Contracts designated for assumption and assignment at any time prior to the conclusion of the Sale Hearing. The Stalking Horse Bidder is entitled to make any bids at the Auction in compliance with the Bidding Procedures.

19. The Sale Hearing may be continued, from time to time, without further notice to creditors or other parties in interest other than by announcement of said continuance before the Court on the date scheduled for such hearing or in the hearing agenda for such hearing provided, however, if the Stalking Horse Bidder is the Successful Bidder any such continuance shall be subject to the consent of the Stalking Horse Bidder.

20. If the Stalking Horse APA has not been terminated by the Debtor based on a breach by the Stalking Horse Bidder, and the Debtor sells all or substantially all of the Purchased Assets in a transaction or series of transactions with one or more persons other than the Stalking Horse Bidder, upon consummation of such transaction(s), from the proceeds of such sale(s), the Debtor shall pay to the Stalking Horse Bidder Five Hundred Nineteen Thousand Dollars (\$519,000) (the "Stalking Horse Payment"). The Stalking Horse Payment shall be treated as an administrative claim in this case pursuant to §§ 503(b)(1) and 507(a)(2) of the Bankruptcy Code and as a direct cost of such sale(s). No liens or other Interests shall attach to the amounts owed to the Stalking Horse Bidder on account of the Stalking Horse Payment. No further order of this Court shall be required in order to pay the Stalking Horse Payment to the Stalking Horse Bidder.

21. Except for the Stalking Horse Bidder, no other party submitting an offer or Bid for the Purchased Assets or a Qualifying Bid shall be entitled to any expense reimbursement, break-up, termination or similar fee or payment.

22. Except as otherwise provided in this Order, the Debtor further reserves the right as it may reasonably determine to be in the best interests of its estate: (a) to determine which bidders are Qualified Bidders; (b) to determine which bids are Qualified Bids; (c) to determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (d) to reject any bid, other than the Stalking Horse Bid, that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtor and its estate; (e) with the consent of the Stalking Horse Bidder, as long as the Stalking Horse APA has not been materially breached by the Stalking Horse Bidder or terminated, to modify the Bidding Procedures, to adopt additional rules or procedures, and to extend the deadlines set forth therein or in this Order (other than to permit the submission of bids after the close of the Auction); (f) with the consent of the Stalking Horse Bidder, as long as the Stalking Horse APA has not been materially breached by the Stalking Horse Bidder or terminated, to continue or cancel the Auction; and (g) with the consent of the Stalking Horse Bidder, if the Stalking Horse Bid is the Successful Bid, as long as the Stalking Horse APA has not been terminated, to continue the Sale Hearing in open court, without further notice. As long as the Stalking Horse APA has not been terminated, the Stalking Horse Bidder shall be a party in interest entitled to be heard on any matter relating to the sale process described herein, including any requests to modify the Bidding Procedures.

23. All persons and entities that participate in the bidding process or the Auction shall be deemed to have knowingly and voluntarily submitted to the jurisdiction of this Court with respect to all matters related to the terms and conditions of the transfer of Purchased Assets, the Auction, and any transaction contemplated herein.

24. To the extent that any chapter 11 plan confirmed in this case or any order confirming any such plan or any other order in this case (including any order entered after any conversion of this case to a case under chapter 7 of the Bankruptcy Code) alters, conflicts with or derogates from the provisions of this Order, the provisions of this Order shall control. The Debtor's obligations under this Order shall survive conversion of this case to a case under chapter 7 of the Bankruptcy Code, confirmation of any plan of reorganization or discharge of claims thereunder and shall be binding upon the Debtor, a Chapter 7 trustee and the reorganized or reconstituted debtor, as the case may be, after the effective date of a confirmed plan or plans in the Debtor's case (including any order entered after any conversion of this case to a case under chapter 7 of the Bankruptcy Code).

25. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014 or any other provisions of the Bankruptcy Rules or the Local Rules stating the contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

26. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

27. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

The Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order.

Dated: \_\_\_\_\_, 201\_

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United States Bankruptcy Judge

## EXHIBIT 1

### **BIDDING PROCEDURES**<sup>1</sup>

By the Motion dated December 11, 2017, Dextera Surgical Inc. (the “Debtor”) sought approval of, among other things, the procedures through which it will determine the highest or otherwise best price for the sale of substantially all of its assets (the “Purchased Assets”) described in the Stalking Horse APA dated as of December 11, 2017 (the “Stalking Horse APA”) by and among Aesculap, Inc. or its permitted assignee as purchaser (the “Stalking Horse Bidder”) and the Debtor, as seller, a copy of which is attached as Exhibit A to the Motion.

On January \_\_, 2018, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered an order (the “Bidding Procedures Order”), which, among other things, authorized the Debtor to determine the highest or otherwise best price for the Purchased Assets through the process and procedures set forth below (the “Bidding Procedures”).

Unless expressly indicated, the following Bidding Procedures apply to all bidders regardless of the phase of the Auction in which the bidder intends to participate.

#### **Access to Diligence Materials**

To participate in the bidding process and to receive access to due diligence (the “Diligence Materials”), a party must submit to the Debtor an executed confidentiality agreement in the form and substance satisfactory to the Debtor and evidence demonstrating the party’s financial capability to close a transaction involving some or all of the Purchased Assets (a “Competing Transaction”) as determined by the Debtor.

A party who qualifies for access to Diligence Materials shall be a “Preliminary Interested Investor.” All due diligence requests must be directed to the Debtor.

For any Preliminary Interested Investor who is a competitor of the Debtor or is affiliated with any competitor of the Debtor, the Debtor reserves the right to withhold any Diligence Materials that the Debtor, in its sole discretion, determines are business-sensitive or otherwise not appropriate for disclosure to such Preliminary Interested Investor.

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings set forth in the motion to approve these Bidding Procedures (the “Motion”) or the Stalking Horse APA, as applicable.



### **Bid Qualification Process**<sup>2</sup>

To be eligible to participate in the Auction (defined below), each offer, solicitation or proposal (each, a “Bid”), and each party submitting such a Bid, whether submitting a single Bid for all or substantially all of the Purchased Assets or a joint Bid with another party each for separate components of the Purchased Assets (each, a “Bidder”), must be determined by the Debtor to satisfy each of the following conditions:

- (a) Good Faith Deposit: Each Bid must be accompanied by a deposit by wire transfer in the amount equal to ten percent (10%) of the Bid to an interest-bearing account to be identified and established by the Debtor (the “Good Faith Deposit”).
- (b) Same or Better Terms: The Bid must be on terms that are substantially the same or better than the terms of the Stalking Horse APA, as determined by the Debtor. A Bid must identify which assets the Bidder intends to purchase and include executed transaction documents. A Bid shall include a copy of the Stalking Horse APA, including exhibits and schedules, marked to show all changes requested by the Bidder. A Bid will not be considered as qualified for the Auction if (i) such Bid contains additional material representations and warranties, covenants, closing conditions, termination rights other than as may be included in the Stalking Horse APA (it being agreed and understood that such Bid shall modify the Stalking Horse APA as needed to comply in all respects with the Bidding Procedures Order and will remove provisions that apply only to the Stalking Horse Bidder as the stalking horse bidder such as the Stalking Horse Payment); (ii) such Bid is not received by the Debtor in writing on or prior to the Bid Deadline, or (iii) such Bid does not contain evidence that the Bidder has received unconditional debt and/or equity funding commitments (or has unrestricted and fully available cash) sufficient in the aggregate to finance the purchase contemplated thereby, including proof that the Good Faith Deposit has been made.
- (c) Corporate Authority: The Bid must include written evidence reasonably acceptable to the Debtor demonstrating appropriate corporate authorization to consummate the proposed Competing Transaction.
- (d) Proof of Financial Ability to Perform: The Bid must include written evidence that the Debtor reasonably concludes demonstrates that the Bidder has the necessary financial ability to close the Competing Transaction and provide adequate assurance of future performance under all contracts and unexpired leases to be assumed and assigned in such Competing Transaction.

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<sup>2</sup> None of the Bid Qualification Process requirements apply to the Stalking Horse Bidder or the Stalking Horse APA, as may be amended, (the “Stalking Horse Bid”). For the avoidance of doubt, the Stalking Horse Bid is a Qualified Bid and the Stalking Horse Bidder is a Qualified Bidder.

(e) Contingencies: A Bid may not (i) contain representations and warranties, covenants, termination rights, financing or due diligence contingencies other than as may be included in the Stalking Horse APA (it being agreed and understood that such Bid shall modify the Stalking Horse APA as needed to comply in all respects with the Bidding Procedures Order (including removing any termination rights in conflict with the Bidding Procedures Order) and will remove provisions that apply only to the Stalking Horse Bidder as the stalking horse bidder, such as the Stalking Horse Payment) or (ii) be conditioned on obtaining financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy in all material respects of specified representations and warranties at the Closing.

(f) Irrevocable: A Bid must be irrevocable through the Auction, provided, however, that if such Bid is accepted as the Successful Bid or a Backup Bid (each as defined herein), such Bid shall continue to remain irrevocable, subject to the terms and conditions of the Bidding Procedures.

(g) Bid Deadline. Regardless of when a party qualifies as a Preliminarily Interested Investor, the following parties must receive a Bid in writing, on or before January 19, 2018 at 5:00 p.m. (prevailing Eastern Time) or such earlier date as may be agreed to by the Debtor (the "Bid Deadline"): (i) Dextera Surgical Inc., 900 Saginaw Drive, Redwood City, CA 94063 (Attn: Julian Nikolchev, [jnikolchev@dexterasurgical.com](mailto:jnikolchev@dexterasurgical.com)); (ii) special corporate counsel to the Debtor, Cooley LLP, 101 California Street, 5th Floor, San Francisco, CA 94111-5800 (Attn: Robert L. Eisenbach III, Esq.) [reisenbach@cooley.com](mailto:reisenbach@cooley.com), and lead counsel for the Debtor, Saul Ewing Arnstein & Lehr, LLP, P.O. Box 1266, Wilmington, DE 19899-1266 (mailing) and 1201 Market Street, Suite 2300, Wilmington DE 19801 (courier) (Attn: Mark Minuti, Esq.) [mark.minuti@saul.com](mailto:mark.minuti@saul.com); (iii) counsel for the Official Committee of Unsecured Creditors, if any; (iv) counsel for the Stalking Horse Bidder, Stevens & Lee, P.C., 620 Freedom Business Center, Suite 200, King of Prussia, PA 19406 (Attn: Robert Lapowsky, Esq.); [rl@stevenslee.com](mailto:rl@stevenslee.com), and (v) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (collectively, the "Notice Parties").

(h) Amount of Bid. Each Bid for all of the Purchased Assets shall clearly show the amount of the purchase price and shall be, separately or jointly with identified co-Bidders, in a minimum amount of \$18 million.

(i) Adequate Assurance of Future Performance. Each Bid shall be accompanied by adequate assurance of future performance information (the "Adequate Assurance Information"), including (i) information about the Bidder's financial condition, such as federal tax returns for the previous two years, a current financial statement, or bank account statements, (ii) information demonstrating (in the Debtor's reasonable business judgment) that the Bidder has the financial capacity to consummate the proposed Competing Transaction, (iii) evidence that the Bidder has obtained authorization or approval from its board of

directors (or comparable governing body) with respect to the submission of its Bid, (iv) the identity and exact name of the Bidder (including any equity holder or other financial backer if the Bidder is an entity formed for the purpose of consummating the proposed Competing Transaction), and (v) such additional information regarding the Bidder as the Bidder may elect to include. By submitting a Bid, Bidders agree that, in the event the Debtor determines such bid to be the Successful Bidder (as defined below), the Debtor may disseminate their Adequate Assurance Information to those non-Debtor counterparties to Debtor's Contracts such Successful Bidder designates for assumption and assignment, provided that such non-Debtor counterparties (i) make a written request for such information to Debtor's counsel and (ii) confirm in writing their agreement to keep such information strictly confidential and to use it solely for the purpose of evaluating whether such Successful Bidder has provided adequate assurance of future performance under the counterparty's Debtor's Contract. If selected as the Successful Bidder, such Successful Bidder may require such counterparties to execute confidentiality agreements prior to the remittance of any confidential, non-public information.

The Debtor will review each Bid received from a Bidder to determine, in consultation with the Official Committee of Unsecured Creditors (the "Committee"), if one is appointed, whether it meets the requirements set forth above. A Bid received from a Bidder before the Bid Deadline that meets the above requirements, as determined by the Debtor, in consultation with the Committee, if one is appointed, shall constitute a "Qualified Bid," and each such Bidder, separately or jointly, shall constitute a "Qualified Bidder."<sup>3</sup> The Debtor shall inform Bidders whether or not their Bids have been designated as Qualified Bids prior to the Auction and shall contemporaneously inform the Stalking Horse Bidder of all Bids that the Debtor considers to be a Qualified Bid. Notwithstanding anything herein to the contrary, the Stalking Horse APA submitted by the Stalking Horse Bidder shall be deemed a Qualified Bid, and the Stalking Horse Bidder is a Qualified Bidder for each phase of the Auction.

### Auction

If one or more Qualified Bids (in addition to the Stalking Horse Bid) are received by the Bid Deadline, the Debtor will conduct an auction (the "Auction") to determine the highest or otherwise best Qualified Bid. If no Qualified Bid (other than the Stalking Horse Bid) is received by the Bid Deadline, no Auction shall be conducted and the Stalking Horse Bid shall be deemed the Successful Bid. Only Qualified Bidders may participate in the Auction.

The Auction shall take place on January 22, 2018 at 10:00 a.m. (prevailing Eastern Time) at the offices of Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036, or such other place and time as the Debtor shall notify all Qualified Bidders, including the Stalking

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<sup>3</sup> For the avoidance of doubt, any bid for separate components of the Purchased Assets shall only be a "Qualified Bid" if submitted jointly with other identified Bids which, taken together, provide a purchase price of at least \$18 million and, otherwise, satisfy all Qualified Bid requirements.

Horse Bidder, counsel for the Stalking Horse Bidder, any official committee, and other parties invited to attend by the Debtor.

(a) The Debtor Shall Conduct the Auction. The Debtor and its professionals shall direct and preside over the Auction. At the start of the Auction, the Debtor shall announce which Qualified Bid(s) is/are deemed to be the highest or otherwise best (each Qualified Bid an “Auction Baseline Bid”). Each Qualified Bidder participating in the Auction must confirm that it has not engaged in any collusion with respect to the bidding or sale of the Debtor’s assets.

The Stalking Horse Payment shall be taken into account in connection with each round of bidding and in each phase of the Auction by adding \$519,000 to the amount of each bid made by the Stalking Horse Bidder. Any credit bids submitted by a party other than the Stalking Horse Bidder shall include a cash component that is sufficient to pay the amount of the Stalking Horse Payment.

Only the Debtor, the Stalking Horse Bidder, and any other Qualified Bidder, in each case, along with their representatives, and any official committee, shall attend the Auction in person, and only the Stalking Horse Bidder and such other Qualified Bidders will be entitled to make any Bids at the Auction.

The Debtor reserves the right, in its reasonable business judgment to make one or more continuances of the Auction to, among other things: facilitate discussions between the Debtor and individual Bidders; allow individual Bidders to consider how they wish to proceed; and give Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor in its reasonable business judgment may require, that the Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed Competing Transaction at the prevailing Overbid amount.

The Stalking Horse Bidder is entitled to make any bids at the Auction in compliance with the Bidding Procedures. The Stalking Horse Bidder shall have the last opportunity to bid after the receipt of any Overbid and before the next round of bidding commences.

(b) Terms of Overbids. An “Overbid” is any Bid made at the Auction subsequent to the Debtor’s announcement of an Auction Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

(i) Minimum Overbid Increment.

Any Overbid after the Auction Baseline Bid shall be made initially in increments valued in an amount of \$100,000 subject to modification of such increment by the Debtor at the Auction. Additional consideration in excess of the amount set forth in an Auction Baseline Bid may include cash and/or noncash consideration. The Stalking Horse Bidder shall be

entitled to credit bid all, or any portion, of the outstanding balance of the debtor-in-possession loan from the Stalking Horse Bidder (or its affiliate) to the Debtor.

(ii) Remaining Terms Are the Same as for Qualified Bids.

Except as modified herein, an Overbid must comply with the conditions for a Qualified Bid set forth above, provided, however, that the Bid Deadline shall not apply. Any Overbid must remain open and binding on the Bidder until and unless the Debtor accepts a higher Overbid.

(c) Backup Bidder. Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the party with the next highest or otherwise best Qualified Bid at the Auction, as determined by the Debtor, in the exercise of its business judgment will be designated as the backup bidder (the "Backup Bidder"). The Backup Bidder shall be required to keep its initial Bid (or if the Backup Bidder submitted one or more Overbids at the Auction, its final Overbid) (the "Backup Bid") open and irrevocable until the earlier of 12:00 p.m. (prevailing Eastern Time) on the date that is seventeen (17) days after the date of the Sale Hearing (the "Outside Backup Date") or the closing of the transaction with the Successful Bidder (defined herein), provided, however, that the Stalking Horse Bidder shall not be required to be a Backup Bidder without its consent. Following the Sale Hearing, if the Successful Bidder (defined herein) fails to consummate an approved transaction, because of a breach or failure to perform on the part of such Successful Bidder (defined herein), the Debtor may designate the Backup Bidder to be the new Successful Bidder (defined herein), and the Debtor will be authorized, but not required, to consummate the transaction, with the Backup Bidder without further order of the Bankruptcy Court. In such case, the defaulting Successful Bidder's deposit shall be forfeited to the Debtor, and the Debtor specifically reserves the right to seek all available damages from the defaulting Successful Bidder (defined herein). The deposit of the Backup Bidder shall be held by the Debtor until the earlier of 24 hours after (i) the closing of the transaction with the Successful Bidder (defined herein) and (ii) the Outside Backup Date. The foregoing notwithstanding, all rights of the Debtor against the Stalking Horse Bidder in the event of a default by the Stalking Horse Bidder are stated in the Stalking Horse APA, as such agreement may be amended by the Debtor and the Stalking Horse Bidder.

(d) Additional Procedures. The Debtor may, with the consent of the Stalking Horse Bidder, as long as the Stalking Horse APA has not been materially breached by the Stalking Horse Bidder or terminated, announce at the Auction additional procedural rules that are reasonable under the circumstances (*e.g.*, the amount of time to make subsequent Overbids) for conducting the Auction. Without limiting the foregoing, at any point during the Auction, the Debtor shall have the right to request additional financial information from any Qualified Bidder (other than the Stalking Horse Bidder) to allow the Debtor to make a reasonable determination as to the Qualified Bidder's financial and other

capabilities to consummate the transactions contemplated by any Qualified Bid, as amended during the Auction process, and any further information that Debtor believes is reasonably necessary to clarify and evaluate the terms of a Qualified Bid.

(e) Consent to Jurisdiction as Condition to Bidding. The Stalking Horse Bidder and all other Qualified Bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to these Bidding Procedures, the Stalking Horse APA, the Auction or the construction and enforcement of any documents relating to a Competing Transaction.

(f) Closing the Auction. The Auction shall continue until the Debtor determines in its reasonable business judgment that there is a highest or otherwise best Qualified Bid at the Auction for the Purchased Assets (each a “Successful Bid” and each Bidder submitting such Successful Bid, a “Successful Bidder”). The Auction shall not close unless and until all Bidders who have submitted Qualified Bids have been given a reasonable opportunity to submit an Overbid at the Auction to the then-existing Overbids and the Successful Bidder has submitted fully executed sale and transaction documents memorializing the terms of the Successful Bid. Within one (1) business day following conclusion of the Auction, the Debtor shall file a notice on the Bankruptcy Court’s docket identifying (with specificity) the Successful Bidder for the Purchased Assets and any applicable Backup Bidders. The Debtor shall not consider any Bids submitted after the conclusion of the Auction and any and all such Bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

### **Bid Protections**

The Stalking Horse Bidder is entitled to the Stalking Horse Payment, to the extent it becomes payable, pursuant to the terms of the Stalking Horse APA and the Bidding Procedures Order.

Except for the Stalking Horse Bidder, no other party submitting an offer or Bid for the Purchased Assets or a Qualifying Bid shall be entitled to any expense reimbursement, breakup fee, termination or similar fee or payment.

### **Sale Hearing**

The Debtor will seek approval of the transactions contemplated by the Stalking Horse APA with the Successful Bidder at the hearing scheduled on January 23, 2018 at 10:00 a.m. (the “Sale Hearing”). Objections, if any, to the sale of the Purchased Assets to the Successful Bidder and the transaction contemplated by the Stalking Horse APA must be in writing and filed with the Court no later than 5:00 p.m. (prevailing Eastern Time) on January 19, 2018 (the “Sale Objection Deadline”) and be served such that they are actually received by: (i) Dexter Surgical Inc., 900 Saginaw Drive, Redwood City, CA 94063 (Attn: Julian Nikolchev), [jnikolchev@dexter surgical.com](mailto:jnikolchev@dexter surgical.com); (ii) special corporate counsel to the Debtor, Cooley LLP, 101

California Street, 5th Floor, San Francisco, CA 94111-5800 (Attn: Robert L. Eisenbach III, Esq.) [reisenbach@cooley.com](mailto:reisenbach@cooley.com), and lead counsel for the Debtor, Saul Ewing Arnstein & Lehr, LLP, P.O. Box 1266, Wilmington, DE 19899-1266 (mailing) and 1201 Market Street, Suite 2300, Wilmington DE 19801 (courier) (Attn: Mark Minuti, Esq.) [mark.minuti@saul.com](mailto:mark.minuti@saul.com); (iii) counsel for the Official Committee of Unsecured Creditors, if any; (iv) counsel for the Stalking Horse Bidder, Stevens & Lee, P.C., 620 Freedom Business Center, Suite 200, King of Prussia, PA 19406 (Attn: Robert Lapowsky, Esq.); [rl@stevenslee.com](mailto:rl@stevenslee.com), and (v) the Office of the United States Trustee, United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (collectively, the “Objection Notice Parties”), in each case, so as to be received the same day the objection is filed.

### **Return of Good Faith Deposit**

The Good Faith Deposits of all Qualified Bidders shall be held in one or more interest-bearing segregated accounts by the Debtor, but shall not become property of the Debtor’s estate absent further order of the Court. The Good Faith Deposit of any Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder shall be returned to such Qualified Bidder not later than two (2) business days after the Sale Hearing. The Good Faith Deposit of the Backup Bidder shall be returned to the Backup Bidder on the date that is the earlier of 24 hours after (a) the closing of the transaction with the Successful Bidder (defined herein) and (b) the Outside Backup Date. Upon the return of the Good Faith Deposits, their respective owners shall receive any and all interest that has accrued thereon. If the Successful Bidder timely closes the winning transaction, its Good Faith Deposit, if any, shall be credited towards its purchase price. The foregoing notwithstanding, the Stalking Horse Bidder has not provided a Good Faith Deposit and is not required to provide a Good Faith Deposit.

### **Reservation of Rights**

Except as otherwise provided in the Stalking Horse APA, Bidding Procedures or the Bidding Procedures Order, the Debtor further reserves the right as it may reasonably determine to be in the best interest of its estate, to: (a) determine which bidders are Qualified Bidders; (b) determine which Bids are Qualified Bids; (c) if at least one (1) Qualified Bid in addition to the Stalking Horse Bid is received by the Bid Deadline, determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (d) reject any Bid, other than the Stalking Horse Bid, that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code or (iii) contrary to the best interests of the Debtor and its estate; (e) with the consent of the Stalking Horse Bidder, as long as the Stalking Horse APA has not been materially breached by the Stalking Horse Bidder or terminated, modify the Bidding Procedures, adopt additional rules or procedures, and extend the deadlines set forth therein or in this Order (other than to permit the submission of bids after the close of the Auction); (f) with the consent of the Stalking Horse Bidder, as long as the Stalking Horse APA has not been materially breached or terminated, continue or cancel the Auction; and (g) with the consent of the Stalking Horse Bidder if the Stalking Horse Bid is the Successful Bid, as long as the Stalking Horse APA has not been terminated, continue the Sale Hearing in open court, without further notice.

**EXHIBIT 2****BIDDING PROCEDURES KEY DATES**

Hearing re: Bidding Procedures	January 3, 2018 at 1:00 p.m. E.S.T.
Service of Motion and Sale Notice	+3 business days from entry of Bidding Procedures Order
Service of Assumption and Assignment Notice	+3 business days from entry of Bidding Procedures Order
Bid Deadline	January 19, 2018 at 5:00 p.m. E.S.T.
Assumption/Assignment and Cure Amount Objection Deadline	January 19, 2018 at 5:00 p.m. E.S.T.
Sale Objection Deadline	January 19, 2018 at 5:00 p.m. E.S.T.
Auction	January 22, 2018 at 10:00 a.m. E.S.T.
Sale Hearing	January 23, 2018 at 10:00 a.m. E.S.T.
Adequate Assurance Objection (in the event the Stalking Horse Bidder is not the Successful Bidder)	At or before the Sale Hearing



**EXHIBIT 3**  
**SALE NOTICE**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

DEXTERA SURGICAL INC.,

Debtor.

Chapter 11

Case No. \_\_\_\_\_

**NOTICE OF SALE OF SUBSTANTIALLY ALL ASSETS OF DEXTERA SURGICAL  
INC. FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES AND OTHER  
INTERESTS AND OPPORTUNITY TO SUBMIT BIDS**

PLEASE TAKE NOTICE THAT:

1. Dextera Surgical Inc. (the “Debtor”) has filed Debtor’s Motion for Orders (A)(I) Authorizing and Approving Bidding Procedures, and Stalking Horse Payment; (II) Authorizing and Approving the Debtor’s Entry into the Stalking Horse APA; (III) Approving Notice Procedures; (IV) Scheduling an Auction and Sale Hearing; and (V) Approving Procedures for Assumption and Assignment of Executory Contracts and Unexpired Leases and Determining Cure Amounts and (B)(I) Authorizing the Sale of Substantially All of the Debtor’s Assets Free and Clear of All Claims, Liens, Rights, Interests, and Encumbrances; (II) Approving the Stalking Horse APA; and (III) Authorizing the Debtor to Assume and Assign Certain Executory Contracts and Unexpired Leases [D.I. \_\_\_] (the “Motion”).

2. Pursuant to the *Order (A) Authorizing And Approving Bidding Procedures, and Stalking Horse Payment; (B) Authorizing And Approving The Debtor’s Entry Into The Stalking Horse APA; (C) Approving Notice Procedures; (D) Scheduling An Auction And Sale Hearing; (E) Approving Procedures For The Assumption And Assignment Of Executory Contracts And Unexpired Leases And Determining Cure Amounts, and (F) Granting Related Relief* [D.I. \_\_\_] (the “Bidding Procedures Order”) entered by the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on January \_\_, 2018 the Debtor has entered into an Asset Purchase Agreement (the “Stalking Horse APA”) for the sale of substantially all of the Debtor’s assets to Aesculap, Inc. or its permitted assignee (the “Stalking Horse Bidder”) subject to a competitive bidding process as set forth in the Bidding Procedures Order. Capitalized terms used but not otherwise defined in this notice have the meanings ascribed to them in the Bidding Procedures Order or the Stalking Horse APA, as applicable.

Copies of (i) the Motion, (ii) the Stalking Horse APA, (iii) the proposed Sale Order, (iv) the Bidding Procedures, and (v) the Bidding Procedures Order can be obtained by contacting the Debtor’s investment banker at JMP Securities, LLC, 600 Montgomery Street, Suite 1100, San Francisco, CA 94111, Telephone: (415) 835-3969 (Attn.: Brian Bock), [bbock@jmpsecurities.com](mailto:bbock@jmpsecurities.com), or at the following website: <http://www.omnimgt.com/dextera>.

3. **THE SALE OF THE DEBTOR’S ASSETS WILL BE FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES AND OTHER INTERESTS. IF YOU HAVE A LIEN, ENCUMBRANCE OR INTEREST IN ANY OF THE DEBTOR’S ASSETS AND**

**OBJECT TO THE SALE OF SUCH ASSETS FREE AND CLEAR OF YOUR LIEN, ENCUMBRANCE OR OTHER INTEREST, YOU MUST FILE AN OBJECTION TO THE SALE BY THE OBJECTION DEADLINE (DEFINED BELOW). ALSO TAKE NOTICE THAT ANY SUCH OBJECTION WILL BE HEARD BY THE BANKRUPTCY COURT AT THE SALE HEARING (DEFINED BELOW).**

4. All interested parties are invited to make an offer to purchase the Purchased Assets in accordance with the terms and conditions approved by the Bankruptcy Court (the “Bidding Procedures”) by **5:00 p.m.** (prevailing Eastern Time) on **January 19, 2018**. Pursuant to the Bidding Procedures, the Debtor may conduct an auction for the Purchased Assets (the “Auction”) beginning at **10:00 a.m.** (prevailing Eastern Time) on **January 22, 2018** at the offices of Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036, or such later time or other place as the Debtor shall notify all Qualified Bidders who have submitted Qualified Bids. Contact the Debtor’s investment banker, JMP Securities, LLC, 600 Montgomery Street, Suite 1100, San Francisco, CA 94111, Telephone: (415) 835-3969 (Attn.: Brian Bock), [bbock@jmpsecurities.com](mailto:bbock@jmpsecurities.com), for further information regarding the Debtor’s assets and/or making a bid.

5. Participation at the Auction is subject to the Bidding Procedures and the Bidding Procedures Order.

6. A hearing (the “Sale Hearing”) to approve the sale of the Purchased Assets to the highest or otherwise best bidder will be held on January 23, 2018 at 10:00 a.m. (prevailing Eastern Time) at the Bankruptcy Court. The Sale Hearing may be adjourned without notice other than an adjournment in open court.

7. Objections, if any, to the proposed Sale must be filed and served in accordance with the Bidding Procedures Order, and **actually received** no later than **5:00 p.m.** (prevailing Eastern Time) on **January 19, 2018**.

8. This notice is qualified in its entirety by the Bidding Procedures Order.

Dated: January \_\_, 2018  
Wilmington, Delaware

**SAUL EWING ARNSTEIN & LEHR**  
Mark Minuti  
Box 1266, Wilmington, DE 19899-1266  
(mailing)  
and 1201 Market Street, Suite 2300,  
Wilmington DE 19801 (courier)  
Telephone: 302-421-6840  
Facsimile: 302-421-5873  
[mark.minuti@saul.com](mailto:mark.minuti@saul.com)

*[Proposed] Lead Counsel for the  
Debtor and Debtor in Possession*

**EXHIBIT 4**

**ASSUMPTION AND ASSIGNMENT NOTICE**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:

Chapter 11

DEXTERA SURGICAL INC.,

Case No. \_\_\_\_\_

Debtor.

**NOTICE OF POSSIBLE ASSUMPTION AND CURE AMOUNT WITH RESPECT TO  
EXECUTORY CONTRACTS OR UNEXPIRED LEASES POTENTIALLY TO BE  
ASSUMED AND ASSIGNED IN CONNECTION WITH SALE OF DEBTOR'S ASSETS**

PLEASE TAKE NOTICE THAT:

1. Pursuant to the *Order (A) Authorizing And Approving Bidding Procedures, and Stalking Horse Payment; (B) Authorizing And Approving The Debtor's Entry Into The Stalking Horse APA; (C) Approving Notice Procedures; (D) Scheduling An Auction And Sale Hearing; (E) Approving Procedures For The Assumption And Assignment Of Executory Contracts And Unexpired Leases And Determining Cure Amounts, and (F) Granting Related Relief* (the "Bidding Procedures Order") entered by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") on January \_\_, 2018, [D.I. \_\_] the above captioned debtor (the "Debtor"), has entered into an Asset Purchase Agreement (the "Stalking Horse APA") with Aesculap, Inc. (together with any permitted assignee, the "Stalking Horse Bidder") for the sale of substantially all of the Debtor's assets subject to a competitive bidding process as set forth in the Bidding Procedures Order. The Debtor hereby provides notice that it may seek to assume and assign the prepetition executory contracts or unexpired leases (the "Debtor's Contracts") listed on Exhibit A hereto to the Stalking Horse Bidder or any other Successful Bidder, as the case may be. The inclusion of any executory contract or unexpired lease on Exhibit A does not require or guarantee that such lease or contract will be assumed and assigned, or that such contract or lease is executory, and all rights of the Debtor with respect thereto are reserved. Capitalized terms used but not otherwise defined in this notice have the meanings ascribed to them in the Bidding Procedures Order or the Stalking Horse APA, as applicable.

2. Pursuant to the terms of the Stalking Horse APA (or the asset sale and purchase agreement that the Debtor may enter into with any other Successful Bidder), the Debtor may seek to assume and/or assign one or more of the Debtor's Contracts to the Stalking Horse Bidder or any other Successful Bidder, as the case may be, subject to approval at the hearing to be held at 10:00 a.m. (prevailing Eastern Time) on **January 23, 2018** (the "Sale Hearing") before the Bankruptcy Court. On Exhibit "A" hereto, the Debtor has stated the amounts (each an "Asserted Cure Amount") the Debtor believes must be paid to the non-debtor counterparty to each Debtor's Contract to cure any defaults required to be cured as a condition of assumption of such Debtor's Contract pursuant to Section 365(b)(1) of the Bankruptcy Code (the "Cure Amount").

**3. Objections, if any, to (i) the assumption and assignment of a Debtor's Contract, (ii) the Asserted Cure Amount, and/or (iii) the Stalking Horse Bidder's ability to provide adequate assurance of future performance must (a) be in writing, (b) state with**

specificity the Cure Amount asserted to be required, (c) include appropriate documentation thereof, (d) be filed with the Bankruptcy Court no later than January 19, 2018 at 5:00 p.m. (prevailing Eastern Time) (the “Sale Objection Deadline”) and served on the following parties: (i) Dextera Surgical Inc., 900 Saginaw Drive, Redwood City, CA 94063 (Attn: Julian Nikolchev), [jnikolchev@dexterasurgical.com](mailto:jnikolchev@dexterasurgical.com); (ii) special corporate counsel to the Debtor, Cooley LLP, 101 California Street, 5th Floor, San Francisco, CA 94111-5800 (Attn: Robert L. Eisenbach III, Esq.) [reisenbach@cooley.com](mailto:reisenbach@cooley.com), and lead counsel for the Debtor, Saul Ewing Arnstein & Lehr, LLP, P.O. Box 1266, Wilmington, DE 19899-1266 (mailing) and 1201 Market Street, Suite 2300, Wilmington DE 19801 (courier) (Attn: Mark Minuti, Esq.) [mark.minuti@saul.com](mailto:mark.minuti@saul.com); (iii) counsel for the Official Committee of Unsecured Creditors, if any; (iv) counsel for the Stalking Horse Bidder, Stevens & Lee, P.C., 620 Freedom Business Center, Suite 200, King of Prussia, PA 19406 (Attn: Robert Lapowsky, Esq.); [rl@stevenslee.com](mailto:rl@stevenslee.com), and (v) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, so as to be received no later than 5:00 p.m. on the Sale Objection Deadline.

**If the bid of the Stalking Horse Bidder is not the Successful Bid at the Auction, the non-Debtor counterparties to the Debtor’s Contracts shall have until the Sale Hearing to object to the assumption and assignment of such Debtor’s Contract solely on the issue of whether such Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code.**

4. If an objection to the assumption and assignment of a Debtor’s Contract is timely filed and received, a hearing with respect to the objection will be held before the Bankruptcy Court at the Sale Hearing, provided, however, to the extent such objection includes an objection to an Asserted Cure Amount and the parties are unable to consensually resolve the dispute, at the Debtor’s discretion and provided at Closing the disputed portion of the Cure Amount or such other amount as may be determined by the Bankruptcy Court is escrowed, the hearing regarding the Cure Amount may be continued until after the Closing Date and the Debtor’s Contract(s) subject to such Cure Amount dispute shall be assumed and assigned to the Stalking Horse Bidder or any other Successful Bidder at the Closing of the Sale.

5. Pursuant to 11 U.S.C. § 365, there is adequate assurance of future performance that the Asserted Cure Amount set forth in the Assumption and Assignment Notice will be paid in accordance with the terms of the Sale Order. There is adequate assurance of the Stalking Horse Bidder’s future performance under the executory contract or unexpired lease to be assumed and assigned because of the significant resources of the Stalking Horse Bidder. If necessary, the Debtor will adduce facts at the hearing on any objection demonstrating the financial wherewithal of the Successful Bidder, and its willingness and ability to perform under the contracts to be assumed and assigned to it.

6. If no objection is timely received, the Asserted Cure Amount set forth in Exhibit A hereto will be controlling, notwithstanding anything to the contrary in any Debtor’s Contract or any other document, and the non-Debtor party to the Debtor’s Contract will be deemed to have consented to the Asserted Cure Amount and to assumption and assignment of such Debtor’s Contract to the Stalking Horse Bidder, or to any other Successful Bidder, and will be forever barred from asserting any other claims in respect of such Debtor’s Contract against

the Debtor, the Stalking Horse Bidder, or any other Successful Bidder (as appropriate), or the property of any of them. The failure of any objecting person or entity to timely file its objection will be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Sale Motion, the Sale, or the Debtor's consummation of and performance under the Sale Agreement (including the transfer of the Purchased Assets and the Debtor's Contracts free and clear of all claims, liens and interests), if authorized by the Court.

7. Prior to the conclusion of the Sale Hearing, the Stalking Horse Bidder or any other Successful Bidder may amend its decision with respect to the assumption and assignment of any Debtor's Contract. The Debtor shall retain the right to amend the Asserted Cure Amount and provide a new notice amending the information provided in this notice, including, without limitation, a determination not to assume certain contracts.

Dated: January \_\_, 2018  
Wilmington, Delaware

**SAUL EWING ARNSTEIN & LEHR**

Mark Minuti  
Box 1266, Wilmington, DE 19899-1266  
(mailing)  
and 1201 Market Street, Suite 2300,  
Wilmington DE 19801 (courier)  
Telephone: 302-421-6840  
Facsimile: 302-421-5873  
mark.minuti@saul.com

*[Proposed] Lead Counsel for the  
Debtor and Debtor in Possession*

**EXHIBIT A**

<b><u>Contract/Lease Counterparty</u></b>	<b><u>Contract or Lease</u></b>	<b><u>Cure Amount</u></b>



**EXHIBIT C**

Approval Order

*(See Attached.)*

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:  DEXTERA SURGICAL INC. <sup>1</sup>  Debtor.	: : : : :	Chapter 11  Case No.  <b>Re: Docket No. _____</b>
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**ORDER UNDER 11 U.S.C. § 105, 363, 365, 503 AND 507  
(A) APPROVING ASSET PURCHASE AGREEMENT WITH AESCULAP, INC.,  
(B) AUTHORIZING SALE OF DEBTOR’S ASSETS FREE AND CLEAR OF  
INTERESTS, (C) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN  
OF THE DEBTOR’S EXECUTORY CONTRACTS, AND (D) GRANTING RELATED  
RELIEF**

Upon the motion [D.I. \_\_\_\_] (the “**Sale Motion**”)<sup>2</sup> of Dextera Surgical Inc. (the “**Debtor**”), for, *inter alia*, entry of an order, pursuant to sections 105, 363, 365, 503 and 507 of title 11 of the United States Code (the “**Bankruptcy Code**”),(i) approving the sale by the Debtor to Aesculap, Inc. or its permitted assignee (the “**Buyer**”) of the Purchased Assets pursuant to that certain Asset Purchase Agreement attached hereto as Exhibit “A” (the “**Agreement**”) free and clear of all Interests (defined below) (except those expressly assumed by the Buyer), and (ii) authorizing the assumption by the Debtor and assignment to the Buyer of certain executory contracts free and clear of all Interests (except those expressly assumed by the Buyer), and (iii) granting certain related relief; and the Court having held a hearing on \_\_\_\_\_, 201\_\_ (the “**Sale Hearing**”) to approve the Sale Motion; and the Court having reviewed and considered (a) the Sale Motion, (b) the objections to the Sale Motion, if any, and (c) the arguments of counsel made, and the evidence proffered or adduced at the Sale Hearing; and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtor, its estate and creditors and

<sup>1</sup> The Debtor’s last four digits of taxpayer identification number are as follows: 7832. The address of the Debtor’s corporate headquarters is 900 Saginaw Drive, Redwood City, CA, 94063.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Sale Motion or the Agreement (defined below) as applicable.

other parties in interest; and upon the record of the Sale Hearing and after due deliberation thereon; and good cause appearing therefore,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. This Court has jurisdiction over the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. §157(b)(2)(A), (M), (N) and (O). The statutory predicates for the relief requested in this Sale Motion are Sections 105, 363, 365, 503 and 507 of the Bankruptcy Code.

B. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

C. Proper, timely, adequate and sufficient notice of the Sale Motion, the hearing on the Sale Motion and the Debtor's assumption and assignment of the contracts listed on Exhibit "B" hereto (the "**Assigned Contracts**") to the Buyer has been provided in accordance with sections 102(1), 363, 365, 503 and 507 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") 2002, 6004, 6006, 9008 and 9014 and the order of this Court dated \_\_\_\_\_, \_\_\_\_ (the "**Bidding Procedures Order**"), and no other or further notice of the Sale Motion, the hearing on the Sale Motion, or of the entry of this Order is required.

D. A reasonable opportunity to object or be heard regarding the relief requested in the Sale Motion has been afforded to all interested persons and entities, including: (i) all creditors or their counsel known to the Debtor to assert a lien (including any security interest), claim, right, interest or encumbrance of record against all or any portion of the Purchased Assets; (ii) the Office of the United States Trustee for the District of Delaware; (iii) counsel to the

Stalking Horse Bidder; (iv) counsel to Century Medical, Inc.; (v) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002; (vi) the United States of America Internal Revenue Service; (vii) the United States Attorney for the District of Delaware; (viii) the United States of America Environmental Protection Agency; (ix) the United States of America Food and Drug Administration; (x) the Pension Benefit Guaranty Corporation; (xi) the State of California Department of Revenue; (xii) the State of California Environmental Protection Agency; (xiii) the Office of the Attorney General for the State of California; (xiv) the State of California Department of Industrial Relations; (xv) all counterparties to any Executory Contract or Lease of the Debtor; (xvi) all other known creditors and interest holders of Debtor; (xvii) all potential bidders previously identified or otherwise known to the Debtor within the prior twelve (12) months; (xviii) counsel to the Official Committee of Unsecured Creditors, if one has been appointed, (xix) all parties listed on the mailing matrix filed by the Debtor in this Bankruptcy Case; (xx) all purchasers of medical devices from the Debtor since January 1, 2015, and (xxi) to the extent known to the Debtor, all persons upon whom any medical devices sold by the Debtor since January 1, 2015 were used.

E. The Debtor also caused notice of the Sale Motion to be published in the National Edition of The New York Times and USA Today, which notice by publication is reasonable and sufficient to bind holders of claims against the Debtor whose identity was not known to the Debtor as of the date notice of the Sale Motion was provided pursuant to the Bidding Procedures Order to the terms of this Order.

F. The Debtor has full corporate power and authority to execute the Agreement and all other documents contemplated thereby and consummate the transactions contemplated therein and the sale of the Purchased Assets and assumption and assignment to the Buyer of the

Assigned Contracts (defined below) (collectively, the “Sale”) has been duly and validly authorized by all necessary corporate action of the Debtor and no consents or approvals, other than the approval of this Court, are required for the Debtor to consummate such transactions.

G. The Buyer is not a successor to or mere continuation of the Debtor or its estate.

H. The bidding procedures established pursuant to the Bidding Procedures Order afforded a full, fair and reasonable opportunity for any entity to make a higher or better offer to purchase the Purchased Assets and Assigned Contracts and no higher or better offer has been made.

I. The Debtor has demonstrated that it is an exercise of its sound business judgment to assume and assign the Assigned Contracts and sell the Purchased Assets to the Buyer in connection with the consummation of the Agreement, and that approval of the Agreement and the Sale pursuant thereto is in the best interests of the Debtor, its estates, and its creditors.

J. The Sale must be completed immediately in order to preserve the Debtor’s going concern value and, as a result, good and sufficient business justification exists for the immediate sale of the Purchased Assets and assumption and assignment of the Assigned Contracts to the Buyer outside of a plan of reorganization.

K. The Buyer is not an insider, as that term is defined in the Bankruptcy Code, of the Debtor. Furthermore, no insiders of the Debtor are receiving or retaining any benefit, property or payments in connection with the Sale except to the extent (i) such insiders have allowed claims against or equity interests in the Debtor and, as a result, may participate in a distribution of Sale proceeds, (ii) such insiders are to be employed by the Buyer following

closing, as disclosed on the record at the hearing on the Sale Motion, or (iii) otherwise disclosed on the record at the hearing on the Sale Motion.

L. The Agreement was negotiated, proposed and entered into by the Debtor and Buyer without collusion, in good faith, and as a result of arm's-length bargaining. The Buyer is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to the protections afforded thereby. Neither the Debtor nor the Buyer has engaged in any conduct that would cause or permit the Agreement to be avoided under section 363(n) of the Bankruptcy Code.

M. In the absence of a stay pending appeal, the Buyer will be acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the transactions contemplated by the Agreement at any time after the entry of this Order, provided the Buyer shall not be obligated to close until all applicable conditions to closing under such Agreement have been satisfied or waived as provided in such Agreement.

N. The consideration provided by the Buyer for the Purchased Assets being purchased, including the Assigned Contracts, pursuant to the Agreement constitutes the best and highest offer for the Purchased Assets and the Assigned Contracts and reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession thereof, and the District of Columbia.

O. The Debtor may sell the Purchased Assets and Assigned Contracts free and clear of all Interests (including, without limitation, (i) that purport to give to any party a right or option to effect any forfeiture, modification or termination of the Debtor's or the Buyer's interest in the Purchased Assets and/or Assigned Contracts and, (ii) in respect of Taxes), because each entity with an Interest in any of the Purchased Assets and/or Assigned Contracts has consented to

the Sale, is deemed to have consented to the Sale, has a claim which is subject to a bona fide dispute, or could be compelled in a legal or equitable proceeding to accept a money satisfaction of such Interest.

P. The Debtor has good title to the Purchased Assets and Assigned Contracts and, accordingly, the transfer of the Purchased Assets and Assigned Contracts to the Buyer pursuant to the Agreement will be a legal, valid, and effective transfer of the Purchased Assets and Assigned Contracts.

Q. Neither the transfer of the Purchased Assets nor the assignment of the Assigned Contracts pursuant to the Agreement will subject the Buyer to any liability (except those expressly assumed by the Buyer pursuant to the Agreement (the “**Assumed Liabilities**”)) for claims against the Debtor or the Debtor’s predecessors or affiliates of any kind or character, whether known or unknown, now existing or hereafter occurring, whether fixed or contingent, based, in whole or in part, directly or indirectly, on any theory of law, including, without limitation, any theory of successor, vicarious or transferee liability. Without limiting the general nature of the foregoing, neither the transfer of the Purchased Assets nor the assignment of the Assigned Contracts will subject the Buyer to any liability on account of any Employee Plan (as defined in the Agreement) maintained by the Debtor, including any liability related to benefits, underfunding, termination and/or termination premiums, regardless when such claims are deemed to have accrued and regardless whether such would be considered “claims” as such term is defined in the Bankruptcy Code, to (i) the Pension Benefit Guaranty Corporation (collectively, the “**PBGC Claims**”), or (ii) to any plan participant, beneficiary or any third party.

R. The Buyer has provided adequate assurance of future performance under the Assigned Contracts, as required by Section 365(b)(1)(C) of the Bankruptcy Code.

S. Upon the assumption and assignment of the Assigned Contracts, as provided herein, the Buyer shall succeed to all of the right, title and interest of the Debtor under the Assigned Contracts including, without limitation, the right to exercise renewal options which, pursuant to the terms of the applicable Assigned Contract, are not exercisable by assignees of the Debtor, the Court having found that such provisions constitute unenforceable restrictions on assignment pursuant to Section 365(f)(3) of the Bankruptcy Code.

NOW, THEREFORE, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED THAT:

1. The Sale Motion, and the relief sought therein (including approval of the Sale) is GRANTED, in all respects.
2. All objections to the Sale Motion or the relief requested therein that have not been withdrawn with prejudice, waived, or settled, and all reservations of rights included therein, are overruled on the merits.
3. The Agreement, and all of the terms and conditions thereof, is hereby approved.
4. Pursuant to Sections 105(a), 363(b) and 365 of the Bankruptcy Code, the Debtor is authorized and directed to take all actions necessary to consummate the pursuant to and in accordance with the terms and conditions of the Agreement.
5. As of the date of closing under the Agreement (the “**Closing Date**”), the Assigned Contracts shall be deemed to have been assumed by the applicable Debtor and assigned to the Buyer pursuant to Section 365(f) of the Bankruptcy Code. Pursuant to section 365(k) of the Bankruptcy Code, the Debtor and the Debtor’s estate shall be relieved from any liability for any breach of an Assigned Contract occurring after the effective date of the Closing Date.



6. On the Closing Date, from the Purchase Price, the Buyer shall, (i) pay to the non-debtor party to each Assigned Contract as to which a liquidated cure amount (the “**Liquidated Cure Amount**”) is stated on Exhibit “B,” the amount of such Liquidated Cure Amount, and (ii) pay to the Escrow Agent an amount equal to the maximum cure amounts (the “**Maximum Unliquidated Cure Amounts**”) claimed by the non-debtor party to each other Assigned Contract, as such Maximum Unliquidated Cure Amounts are stated on Exhibit “B.” For the avoidance of doubt, the Maximum Unliquidated Cure Amounts stated on Exhibit “B” shall be the maximum amount of any subsequently allowed claim to which any non-debtor party to an Assigned Contract shall be entitled pursuant to Section 365(b)(1)(A) of the Bankruptcy Code. The amounts paid by the Buyer to the Escrow Agent are hereafter referred to as the “**Disputed Cure Amounts**.”

7. Upon payment of the Liquidated Cure Amounts to the applicable non-debtor parties, (i) all defaults under the related Assigned Contracts required to be cured pursuant to Section 365(b)(1)(A) of the Bankruptcy Code shall be deemed cured and all amounts due to the non-debtor parties to such Assigned Contracts pursuant to Section 365(b)(1)(B) on account of any pecuniary loss resulting from such defaults shall be deemed paid in full, and (ii) each non-debtor party to such Assigned Contracts shall be forever bound by such Liquidated Cure Amounts and enjoined from seeking to terminate such Assigned Contract or enforce any other remedies under such Assigned Contract against the Buyer on account of defaults by the Debtor, including defaults as to which, pursuant to Section 365(b)(1)(A) of the Bankruptcy Code, cure is not required.

8. Upon payment by the Buyer of the Maximum Unliquidated Cure Amounts to the Escrow Agent, the non-debtor parties to such Assigned Contracts shall be (i) limited to

recourse against the Disputed Cure Amounts on account of all defaults under the related Assigned Contracts required to be cured pursuant to Section 365(b)(1)(A) of the Bankruptcy Code and all pecuniary loss resulting from such defaults due to such non-debtor party pursuant to Section 365(b)(1)(B) of the Bankruptcy Code and forever bound by such Maximum Unliquidated Cure Amounts, and (ii) enjoined from seeking (A) recourse against the Debtor or the Buyer on account of any defaults by the Debtor under the related Assigned Contracts required to be cured pursuant to Section 365(b)(1)(A) of the Bankruptcy Code and/or any pecuniary loss resulting from such defaults due to such non-debtor party pursuant to Section 365(b)(1)(B) of the Bankruptcy Code, and/or (B) to terminate such Assigned Contract or enforce any other remedies under such Assigned Contract against the Buyer on account of defaults by the Debtor, including defaults as to which, pursuant to Section 365(b)(1)(A) of the Bankruptcy Code, cure is not required.

9. Any provision in any Assigned Contract that purports to declare a breach, default or payment right as result of an assignment or a change of control in respect of the Debtor is unenforceable, and all such Assigned Contracts shall remain in full force and effect, notwithstanding any such provision. No sections or provisions of any Assigned Contract that purports to provide for additional payments, rent accelerations, assignment fees, increases, payments, charges or any other fees charged to the Buyer or the Debtor as a result of the assumption and the assignment of the Assigned Contracts shall have any force and effect with respect to the transactions contemplated by the Agreement and assignments authorized by this Order, and such provisions constitute unenforceable anti-assignment provisions under Section 363(f) of the Bankruptcy Code. The Buyer shall not be required, pursuant to section 365(l) of

the Bankruptcy Code or otherwise, to provide any additional deposit or security with respect to any Assigned Contract to the extent not previously provided by the Debtor.

10. Except for the Assumed Liabilities and Permitted Liens and Encumbrances, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, upon the Closing under the Agreement, the Purchased Assets and the Assigned Contracts shall be free and clear of all (i) mortgages, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances and claims (as that term is defined in the Bankruptcy Code), (ii) rights or options to effect any forfeiture, modification, repurchase, or termination of the Debtor's or Buyer's interest in the Assigned Contracts and/or Purchased Assets, regardless whether such are "claims" as that term is defined in the Bankruptcy Code, (iii) PBGC Claims, (iv) claims in respect of Taxes (including taxes as to which applicable returns have not yet been filed, whether or not overdue), and (v) easements, restrictions, rights of first refusal or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, regardless whether such are "claims" as that term is defined in the Bankruptcy Code (collectively, items (i) to (v) above are referred to as "**Interests**"), with all such Interests to attach to the Net Proceeds of Sale (defined below) in the order of its respective priority, with the same validity, force and effect (if any) which it now has against the Purchased Assets and Assigned Contracts, subject to any claims and defenses the Debtor may possess with respect thereto. The "**Net Proceeds of Sale**" is the Purchase Price, as adjusted pursuant to the Agreement, minus amounts distributed on account of Liquidated Cure Amounts, minus the Disputed Cure Amounts (to the extent such Disputed Cure Amounts are paid to counterparties to Assigned Contracts following allowance and payment of applicable cure amounts), and minus amounts paid to the Escrow Agent on account

of the Indemnification Escrow (the “**Indemnification Escrow Funds**”), to the extent the Indemnification Escrow Funds are paid to the Buyer pursuant to the terms of the Agreement and the Indemnification Escrow Agreement. For the avoidance of doubt, neither the Disputed Cure Amounts nor the Indemnification Escrow Funds shall be property of the Debtor’s estate and no Interests shall attach to the Disputed Cure Amounts or the Indemnification Escrow Funds unless and until such funds are distributed to the Debtor pursuant to the terms of the Agreement and the Escrow Agreement.

11. All claims of the Buyer or any other Buyer Indemnified Party for indemnification under the terms of the Agreement shall be treated as administrative claims pursuant to Section 503 and 507 of the Bankruptcy Code to the extent necessary to permit a claim against the Indemnification Escrow Funds, provided, however, the sole remedy for claims by the Buyer or any other Buyer Indemnified Party for indemnification for monetary damages shall be to and against the Indemnification Escrow Funds and shall be determined and paid pursuant to the terms of the Agreement and the Escrow Agreement. To the extent of any conflict between the terms of the Agreement or the Escrow Agreement relating to such determination and payment of indemnity claims and the Bankruptcy Code or Bankruptcy Rules, the terms of the Agreement and the Escrow Agreement shall control.

12. All persons are hereby enjoined from asserting, prosecuting or otherwise pursuing any claim against the Buyer to recover on any claims (regardless of when accrued and regardless whether meeting the definition of “claim” under the Bankruptcy Code) such person had, has or may have (other than an Assumed Liability) against (x) the Debtor, its estate, officers, directors, shareholders, the Purchased Assets or the Assigned Contracts, or (y) the

Buyer in connection with the negotiation of, and any agreements contained in, related to or conditioned upon, the Agreement.

13. As of the Closing Date, each of the Debtor's creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its Interests in or claims against the Purchased Assets and Assigned Contracts, if any, as such Interests or claims may have been recorded or may otherwise exist.

14. Each and every federal, state and local governmental agency or department be, and hereby is, directed to accept (i) this Sale Order as sufficient evidence of the transfers of all right, title, and interest in, to, and under the Purchased Assets and the Assigned Contracts, and are authorized to rely on this Sale Order in consummating, or facilitating the consummation of, the transactions contemplated by the Asset Purchase Agreement, and (ii) any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement.

15. Upon the occurrence of the Closing, all Interests in, against, or upon the Purchased Assets or the Assigned Contracts shall be unconditionally released, terminated, and discharged (but solely as to the Buyer, the Purchased Assets and the Assigned Contracts), without the need for any further action. Notwithstanding the foregoing, at the Closing, or as soon as practicable thereafter, (x) the Debtor and the Buyer are hereby authorized to execute and file such termination statements, instruments of satisfaction, releases, or other documents to reflect the unconditional release, termination, and discharge of such Interests on behalf of such person or entity with respect to the Purchased Assets and the Assigned Contracts, and (y) the Buyer is hereby authorized on behalf of each holder of a purported Interest to file, register, or otherwise record a copy of this Sale Order, which, once filed, registered, or otherwise recorded,

shall constitute conclusive evidence of the unconditional release, termination, and discharge of all Interests in, against, or upon the Purchased Assets or the Assigned Contracts. The provisions of this Order authorizing the sale of the Purchased Assets free and clear of all Interests are self-executing and, notwithstanding the failure of the Debtor, the Buyer or any other party to execute, file or obtain termination statements, instruments of satisfaction, releases, or other documents to reflect the release, termination, and discharge of any such Interests, all such Interests shall be deemed divested immediately upon Closing.

16. All entities that are presently, or on the Closing Date may be, in possession of some or all of the Purchased Assets are hereby directed to surrender possession of the Purchased Assets to the Buyer on the Closing Date.

17. As of the Closing Date, all agreements of any kind whatsoever and all orders of this Court entered prior to the date hereof shall be deemed amended and/or modified to the extent required to permit the consummation of the transactions contemplated by the Agreement.

18. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, or refuse to renew any permit, license, or similar grant relating to the operation of the Purchased Assets or the Assigned Contracts on account of the filing or pendency of this Bankruptcy Case or the consummation of the Sale.

19. To the greatest extent available under applicable law, the Buyer shall be authorized, as of the Closing Date and upon the occurrence of Closing, to operate under any transferred license, permit, registration and governmental authorization or approval of the Debtor with respect to the Purchased Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to the Buyer as of the Closing Date.

20. No law of any state or other jurisdiction relating to bulk sales or similar laws shall apply in any way to the transaction contemplated by the Agreement, the Sale Motion, and this Order.

21. For the avoidance of doubt, any privileges, protections or immunities of the Debtor for communications, documents, materials or matters arising at any time, whether before or after the Petition Date, including but not limited to any attorney-client privilege, work product doctrine, common interest or joint defense privilege, relating to any matter whatsoever, including without limitation any matter relating to the negotiation and implementation of the Agreement and any of the transactions contemplated thereby or entered into in connection therewith (collectively, "**Privilege**") shall not be Purchased Assets under the Agreement, and any such Privilege is owned and will continue to be owned by the Debtor, and notwithstanding anything to the contrary herein or in the Agreement, the Buyer shall have no interest in or rights with respect to the Privilege, whether pursuant to this Order, the Agreement, or otherwise. The Privilege shall remain within the sole control of the Debtor and may not be waived by any other person or entity.

22. The Agreement and the Escrow Agreement, as well as other agreements related thereto, may be modified, amended, or supplemented by the Debtor and the Buyer without further order of the Court, provided that any such modification, amendment, or supplement either is (a) not material or (b) not less favorable to the Debtor than the existing applicable provisions.

23. The Debtor is hereby authorized and empowered, upon and in connection with the Closing, to change its corporate name and the caption of this chapter 11 case, consistent with applicable law. The Debtor shall file a notice of change of case caption, containing the new

caption and the new corporate name of the Debtor, within ten (10) business days of any change to its corporate name, and the change of case caption for this chapter 11 case shall be deemed effective as of the date of the Debtor's change of its corporate name.

24. This Court shall retain jurisdiction (a) to enforce and implement the terms and provisions of the Agreement, all amendments thereto, any waivers and consents thereunder and each of the agreements executed in connection therewith, (b) to compel delivery of the Purchased Assets and Assigned Contracts to the Buyer, (c) to resolve any disputes arising under or related to the Agreement, except as otherwise provided therein, and (d) to interpret, implement and enforce the provisions of this Order.

25. Nothing contained in any plan confirmed in this case or the order confirming any plan shall conflict with or derogate from the provisions of the Agreement or the terms of this Order. Further, the provisions of this Order and any actions taken pursuant hereto shall survive the entry of any order which may be entered confirming any plan or converting the Debtor's case from chapter 11 to a case under chapter 7 of the Bankruptcy Code.

26. The terms and provisions of the Agreement, together with the terms and provisions of this Order, shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, its estate, its creditors, the Buyer and its affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting a claim against or Interest in the Debtor's estate or any of the Assigned Contracts and the Purchased Assets and any trustee appointed for the Debtor under any chapter of the Bankruptcy Code.

27. The Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both



parties, and in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement is not material.

28. The failure specifically to include any particular provision of the Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Agreement be authorized and approved in its entirety.

29. The Buyer is a party in interest and shall have standing to appear and be heard on all issues related to or otherwise connected with this Order, the Sale or the Agreement.

30. Notwithstanding the provisions of Fed. R. Bankr. P. 6004 (h), 6006(d), and 7062, this Order shall be effective and enforceable immediately upon entry.

Dated: \_\_\_\_\_

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UNITED STATES BANKRUPTCY JUDGE

EXHIBIT "A"

ASSET PURCHASE AGREEMENT

EXHIBIT "B"

<u>CONTRACT DESCRIPTION</u>	<u>LIQUIDATED CURE AMOUNT</u>	<u>MAXIMUM UNLIQUIDATED CURE AMOUNT (IF APPLICABLE)</u>

**EXHIBIT D**

Bill of Sale

*(See Attached.)*

**BILL OF SALE AND ASSIGNMENT**

December \_\_, 2017

KNOW ALL MEN BY THESE PRESENTS that DEXTERA SURGICAL INC., a Delaware corporation formerly known as “Cardica, Inc.” (the “*Grantor*”), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, has granted, bargained, sold, conveyed, transferred, assigned and delivered and by this Bill of Sale hereby grants, bargains, sells, conveys, transfers, assigns and delivers to AESCULAP, INC., a California corporation (the “*Grantee*”), its successors and assigns, all of the right, title and interest of the Grantor in and to all of the Purchased Assets (as such term is defined in Section 2.1(a) of that certain Asset Purchase Agreement dated as of [●] (together with the Schedules thereto, the “*Purchase Agreement*”) by and among the Grantee and the Grantor, which Purchase Agreement is incorporated herein by reference thereto. All capitalized terms used in this Bill of Sale which are not otherwise defined herein shall have the respective meanings given to such terms in the Purchase Agreement.

TO HAVE AND TO HOLD the Purchased Assets unto the Grantee, its successors and assigns, forever.

Grantor represents and warrants to Grantee: (i) that Grantor has good and marketable title to all of the Purchased Assets, free and clear of all Interests, other than Permitted Liens and Encumbrances and Assumed Liabilities; (ii) that Grantor has the right to transfer the Purchased Assets hereunder; and (iii) that Grantor will execute and deliver all such other and further instruments of assignment or transfer as may be reasonably requested by Grantee, from time to time, to effect, evidence and complete the aforesaid sale and transfer of the Purchased Assets to Grantee as required or contemplated under the Purchase Agreement.

In furtherance of the foregoing, Grantor hereby makes, constitutes and appoints Grantee and Grantee’s officers, employees and agents as the true and lawful attorneys-in-fact of Grantor with full power to execute and deliver such other agreements, documents and instruments and take such other actions which are necessary or appropriate, in the reasonable opinion of Grantee, to effectuate or provide notice to third parties of the sale, conveyance, transfer and assignment of the Purchased Assets by Grantor to Grantee, and its successors and assigns, under and pursuant to this Bill of Sale and Assignment. The power contained in this paragraph, being coupled with an interest, is irrevocable.

This Bill of Sale is being executed and delivered by Grantor to Grantee under and pursuant to Section 8.2(a) of the Purchase Agreement and is subject to the terms and conditions of the Purchase Agreement.

This Bill of Sale shall be governed by, and construed in accordance with, the domestic, internal laws of the State of Delaware without regard to its rule of conflict of laws.

This Bill of Sale may be executed in two or more counterparts, each of which shall be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. Any party to this Bill of Sale may deliver an

executed copy hereof by facsimile transmission to the other party hereto and any such delivery shall have the same force and effect as any other delivery of a manually signed copy of this Bill of Sale.

*[Signature Page Follows]*

IN WITNESS WHEREOF, Grantor has executed and delivered this Bill of Sale and Assignment as of the date first set forth above.

**GRANTOR:**

DEXTERA SURGICAL INC.

By: \_\_\_\_\_

Name: [•]

Title: [•]

**GRANTEE:**

AESCU LAP, INC.

By: \_\_\_\_\_

Name:

Title:

*and*

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT E**

Assignment and Assumption Agreement

*(See Attached.)*



## ASSIGNMENT, DELEGATION AND ASSUMPTION AGREEMENT

This ASSIGNMENT, DELEGATION AND ASSUMPTION AGREEMENT (this “*Agreement*”) is made and entered into as of December \_\_, 2017, by and among DEXTERA SURGICAL INC., a Delaware corporation formerly known as “Cardica, Inc.” (“*Assignor*”), AESCULAP, INC., a California corporation (“*Assignee*”).

### BACKGROUND

A. Assignor and Assignee have entered into that certain Asset Purchase Agreement, dated as of [●] (together with the Exhibits and Schedules thereto, the “*Purchase Agreement*”), which provides for, among other things, the sale, transfer, conveyance, assignment and delivery by Assignor to Assignee of the Purchased Assets and Assumed Liabilities (as those terms are defined in the Purchase Agreement) on the date hereof, on the terms and conditions set forth therein.

B. In connection with the sale and purchase of the Purchased Assets pursuant to the Purchase Agreement, Assignor is to assign and delegate, and Assignee is to assume, certain specified contracts, liabilities and obligations of Assignor relating to Assignor’s business and operations.

C. Closing is being held on the date hereof under the Purchase Agreement and this Agreement is being executed and delivered pursuant to the provisions of Section 8.2(b) of the Purchase Agreement.

### AGREEMENT

NOW, THEREFORE, pursuant to and in consideration of the Purchase Agreement and the mutual covenants and agreements set forth therein and herein, Assignor and Assignee, each intending to be legally bound, agree as follows:

1. Incorporation of Background. The preamble and Background provisions of this Agreement (including the defined terms therein) are incorporated herein by reference thereto as if fully set forth in this Agreement.

2. Defined Terms. Any capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Purchase Agreement.

3. Assignment of Rights. Assignor hereby sells, transfers, conveys, and assigns to Assignee all of Assignor’s right, title and interest in, to and under all of the contracts and agreements of Assignor referred to as “Assigned Contracts” in Section 2.1(a)(iv) of the Purchase Agreement (collectively and also referred to herein as the “*Assigned Contracts*”).

4. Delegation of Duties. Assignor hereby delegates to Assignee all of Assignor’s duties and liabilities under the Assigned Contracts, to the extent assumed by Assignee hereunder.

5. Assumption of Liabilities Under Assigned Contracts. In partial consideration for the sale of the Purchased Assets by Assignor pursuant to the Purchase Agreement, Assignee

hereby undertakes and agrees to assume, discharge or perform as the case may be, all obligations of Assignor under the Assigned Contracts, which are to be performed after, and relate exclusively to the period after, the date hereof (to the extent that the existence of such obligations is ascertainable solely by reference to the written provisions of the Assigned Contracts as disclosed in the copies thereof delivered by Assignor to Assignee before the date hereof), but specifically excluding any obligations to be performed prior to the date hereof and any obligations relating to breaches, defaults or nonperformance under any of the Assigned Contracts occurring prior to the date hereof, or any liabilities of Assignor that are Excluded Liabilities.

6. Assignment of Licenses; Etc. Assignor hereby assigns, sells, transfers and sets over to Assignee all of Assignor's right, title and interest in, to and under all licenses, franchises, approvals, certificates, permits and authorizations of any federal, state or local government or regulatory body held by Assignor with respect to the operations and business of Assignor being transferred to Assignee, subject to any required action or approval by any such applicable federal, state or local government or regulatory body.

7. Delivery of Contracts. Assignor herewith delivers all Assigned Contracts to Assignee.

8. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

9. Governing Law. This Agreement shall be governed by, and construed in accordance with, the domestic, internal laws of the State of Delaware without regard to its rules of conflict of laws.

*[Signature Page Follows.]*

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

**ASSIGNOR:**

DEXTERA SURGICAL INC.

By: \_\_\_\_\_

Name: [●]

Title: [●]

**ASSIGNEE:**

AESCULAP, INC.

By: \_\_\_\_\_

Name:

Title:

*and*

By: \_\_\_\_\_

Name:

Title:

FINAL FORM

SCHEDULES TO ASSET PURCHASE AGREEMENT

Schedule 1.1(a)

None

Schedule 2.1(a)(iv)

To be provided by Buyer

Schedule 2.1(a)(vi)

Exclusive of FDA approvals and CE mark certificates, the Company has the following licenses:

- Business License, City of Redwood City
- California Food and Drug Branch Device Manufacturing License

Schedule 2.1(b)(xiv)

- Western Digital NAS with serial number WUBF26500363, together with all archived email prior to the Closing Date. Est. Value: \$1300
  
- User workstations:
  - **Julian Nikolchev**
    - 27" iMac
      - S/N: C07R8087G1J1
      - Est. Value: \$1200
    - iPad Pro
      - S/N: DLXR26WQGMW4
      - Est. Value: \$750
    - Air Port Time Capsule
      - S/N: C86Q12GRF9H6
      - Est. Value: \$500
  - **Bob Newell**
    - Dell Latitude E7450
      - Asset Tag: 75PB252
      - Est. Value: \$ 950



Schedule 2.2(a)(ii)

To be provided by Buyer

Schedule 4.1

The Seller is incorporated in Delaware, with headquarters in California, and is qualified to do business, and in good standing, in both jurisdictions.

The Seller's wholly-owned subsidiary, Dextera Surgical GmbH, is organized under the laws of Germany and headquartered in Germany, and is qualified to do business, and in good standing, in Germany.

Schedule 4.4

None

Schedule 4.8

Dextera Surgical GmbH uses Medddbase in Germany as a mail stop and as a warehouse/order taker for medical devices sold in Germany.

Address:

MEDDDBASE GmbH

Gottlieb-Daimler-Str. 43

D 89150 Laichingen

Germany

Schedule 4.9(b)

Real property leased by seller:

900 Saginaw Drive

Redwood City, CA 94063

Owner of real property identified above:

HCP LS Redwood City, LLC

3760 Kilroy Airport Way, Suite 300

Long Beach, CA 90806

Attention: Legal Department

Schedule 4.9(c)

Dextera Surgical GmbH uses Medddbase in Germany as a mail stop and as a warehouse/order taker for medical devices sold in Germany.

Address:

MEDDDBASE GmbH  
Gottlieb-Daimler-Str. 43  
D 89150 Laichingen  
Germany

Schedule 4.9(d)

None other than Dextera Surgical GmbH's use of Medddbase in Germany as set forth on Schedule 4.9(c).

Schedule 4.10

- (a) Consulting agreements are in force with:
- Angela Bitting/Bitting Communications (no expiration date)
  - Ken Blier/Endovative (expiring August 14, 2018)
  - Cindy Domecus/Domecus Consulting Services (no expiration date)
  - Allison Foster (expiring Dec. 16, 2017)
  - Peggy McLaughlin (no expiration date)
  - Marco Nardoni (expiring Dec. 7, 2017)
  - Nash Consulting (expiring Dec. 6, 2017)
  - Oppenheimer (investment consulting agreement, no expiration date)
  - Roberts Consulting and Engineering (expiring January 4, 2019)
  - Dr. Douglas Scherr (expiring June 29, 2018)
  - Pamela Segale (no expiration date)
  - Dr. Mark Soberman (expiring June 8, 2018)
  - Dr. Juan-Carlos Verdeja (expiring July 20, 2018)

Located in the data room in folder 19.1 “Consulting Agreements”.

Employment by Dextera Surgical is at will. All employees execute an “Employee Proprietary Information and Inventions Agreement” upon hiring. That document is located in the data room in folder 19.

Non-standard provisions: Senior Staff, Doris Pon, and Ira Ison have change-of-control provisions as part of their terms of employment. Chris Lewis is entitled to three months of severance pay upon separation (unless for cause).

- (b) There are no existing or pending collective bargaining arrangements.

The Company has entered into indemnification agreements with certain Directors (provided in the data room in folder 19.2).

Indemnification provisions are present in the distribution agreements listed below at 4.10(e).

Indemnification provisions are present in clinical study agreements with research sites; such agreements are typically based on the site’s own template contract.

A variety of other contracts and agreements entered into by the Company may include indemnification provisions.

- (c) None.



(d) See the list of ten largest suppliers and vendors (both overall and for manufacturing). JMP Securities engagement letter is in the data room as item 19.12, and sets forth fees payable to JMP in the event of certain transactions.

(e) The Company relies on its employees for sales within the US, with the exception of WiiL Medical/Chris Borg. That agreement is month-to-month, and covers sales of the cardiac product in the continental US.

Outside the US, the Company utilizes distributors.

Current distributors with a definite term:

<u>Distributor</u>	<u>Effective Date</u>	<u>Scheduled Expiration Date</u>	<u>Territory</u>	<u>Products</u>
B. Braun	10/1/2016	10/1/2019	Spain	MicroCutter
Century Medical Inc. (CMI)	6/16/2003	7/31/2019	Japan	PAS-Port, C-Port
Iona Surgical/Kebomed	11/1/2012	1/1/2018	UK	MicroCutter
Tecnohealth	3/15/2013	12/31/2017	Italy	PAS-Port, C-Port, MicroCutter

Current distributors with an indefinite term (expired and operating on purchase order basis):

<u>Distributor</u>	<u>Effective Date</u>	<u>Territory</u>	<u>Products</u>
DACH Medical Group Holding AG	10/1/2012	Austria, Switzerland (, Germany)	MicroCutter
Duomed	10/1/2012	Belgium, Netherlands, Luxembourg	MicroCutter

(f) None. Both Novation/Vizient and Premier are paid administrative fees for sales to hospitals through those organizations, but those fees are not vendor rebates.

(g) None.

(h) None.

(i) The Seller entered into a Note Purchase Agreement, Note, and Security Agreement, each dated September 2, 2011, with Century Medical, Inc., and also a Deposit Account Control Agreement with Silicon Valley Bank and a Pledged Collateral Account Agreement with Oppenheimer. Additionally, the Seller has a letter of credit for \$100,000 in favor of the landlord, collateralized by certificate(s) of deposit.

(j) None.

(k) Dexter Surgical GmbH leases a car for the single employee of that subsidiary.

(l) The only such lease is the lease agreement for 900 Saginaw Drive, as set forth in Schedule 4.9(b).

(m)(i) The Seller has entered into numerous NDAs throughout the years. The Seller has periodically engaged outside consultants to assist in product development, which may result in intellectual property. No pending applications name a consultant as an inventor, and to the extent that consultants have been named inventors with respect to the Seller's IP, the Seller has obtained assignments from those inventors to the Seller.

(ii) Employees, upon hire, sign an Employee Proprietary Information and Inventions Agreement, which is provided in folder 9.4.1 in the data room. A list of current employees who have signed that agreement is document 10.5.1 in the data room, and reproduced below:

Proprietary Agreement	Last Name	First Name	Date Signed:
<input type="checkbox"/>	Angeles	Ivan	11/21/2010
<input type="checkbox"/>	Arguello	Arcelia	11/22/2005
<input type="checkbox"/>	<b>Beljakovic</b>	<b>Mihailo</b>	<b>8/29/2016</b>
<input type="checkbox"/>	Burns	Liam	1/4/2014
<input type="checkbox"/>	Carter	Margaret	3/14/2016
<input type="checkbox"/>	Chen	Ding	12/3/2010
<input type="checkbox"/>	Cudworth	Daniel	4/21/2016
<input type="checkbox"/>	<b>De Leon Calvillo</b>	<b>Alvin</b>	<b>2/1/2017</b>

<input type="checkbox"/>	<b>Defrenne</b>	<b>Alain</b>	<b>2/8/2016</b>
<input type="checkbox"/>	<b>Dinh</b>	<b>Thanh</b>	<b>10/27/2015</b>
<input type="checkbox"/>	<b>Dominguez</b>	<b>Philip</b>	<b>7/10/2017</b>
<input type="checkbox"/>	Duran	Eva	3/25/2016
<input type="checkbox"/>	Espana Recio	Adriana	10/28/2014
<input type="checkbox"/>	Estrada Hernandez	Ernesto	4/17/2014
<input type="checkbox"/>	<b>Ferrer</b>	<b>Maryrose</b>	<b>9/6/2012</b>
<input type="checkbox"/>	Gandhi	Rajivkumar	3/28/2014
<input type="checkbox"/>	<b>Goldberg</b>	<b>Ari</b>	<b>1/6//17</b>
<input type="checkbox"/>	<b>Hambly</b>	<b>Pablo</b>	<b>1/18/2017</b>
<input type="checkbox"/>	Hudelson	Kevin	9/1/2015
<input type="checkbox"/>	Huynh	Jimmie	12/2/2013
<input type="checkbox"/>	Ison	Ira	12/1/2016
<input type="checkbox"/>	<b>Jedlicka</b>	<b>Veronika</b>	<b>6/21/2016</b>
<input type="checkbox"/>	Kaur	Gurjit	5/26/2011
<input type="checkbox"/>	<b>Kaur</b>	<b>Harjinder</b>	<b>12/4/2006</b>
<input type="checkbox"/>	King	Scott	11/21/2005
<input type="checkbox"/>	Kurzweil	Harold	7/19/2010
<input type="checkbox"/>	Lam	Doris	12/4/2009
<input type="checkbox"/>	<b>Lango</b>	<b>James</b>	<b>8/1/2014</b>
<input type="checkbox"/>	<b>Lewis</b>	<b>Christopher</b>	
<input type="checkbox"/>	Lopez	Maria	1/17/2011
<input type="checkbox"/>	<b>Martinez</b>	<b>Anthony</b>	<b>1/20/2017</b>
<input type="checkbox"/>	Matthias	Benjamin	1/27/2004
<input type="checkbox"/>	Molina	Marco	1/22/2004
<input type="checkbox"/>	<b>Newell IV</b>	<b>Robert</b>	<b>12/9/2002</b>
<input type="checkbox"/>	Nikolchev	Julian	10/15/2015
<input type="checkbox"/>	Palermo	Thomas	11/21/2015
<input type="checkbox"/>	Pinsonnault	Jason	
<input type="checkbox"/>	Poon	Patrick Wai Hong	9/29/2011
<input type="checkbox"/>	Rivera	John	2/4/2010
<input type="checkbox"/>	Rodriguez	Helen	2/4/2016
<input type="checkbox"/>	Sayavong	Karen	6/1/2008
<input type="checkbox"/>	Shively	Adam	1/15/2016
<input type="checkbox"/>	Watson	Gregory	4/29/2015
<input type="checkbox"/>	<b>Wilder</b>	<b>Mary</b>	<b>4/16/2003</b>
<input type="checkbox"/>	<b>Wilderman</b>	<b>Julie</b>	<b>2/1/2017</b>
<input type="checkbox"/>	Wu	Nelson	5/13/2011
<input type="checkbox"/>	<b>Xiong</b>	<b>Mai</b>	<b>3/23/2015</b>

- (n) The Seller warrants its products under the standard Terms and Conditions of Sale, and under distribution agreements. There are no warranties or guarantees with regard to contractual performance by the Seller.
  
- (o) None.
  
- (p) None. Indemnification is described above at 4.10(b.)
  
- (q) None.
  
- (r) There is a power of attorney related to patent prosecution, which is in the data room as document 10.2.
  
- (s) None.
  
- (t) None.
  
- (u) Amendments (if any) have been provided along with original documents.

Schedule 4.13(a)

Schedule 4.14(a)

See attached spreadsheet “List of Seller IP.xlsx”.



List of all seller  
IP.xlsx

Country	Patent or TM	Serial No.	Issued or Pending	Issue Date	Patent No.	Status
AT	Pat	8829324.6	Issued		E654312	Active
BE	Pat		Issued			Active
CA	Pat	2,953,123	Pending			Active
CH	Pat		Issued			Active
CH	Pat		Pending			Active
CN	Pat	200880106148.6	Issued	10/23/13	ZL200880106148.6	Active
CN	Pat	201080013997.4	Issued	1/15/14	ZL201080013997.4	Active
CN	Pat	201310418341.6	Issued	9/21/16	ZL201310418341	Active
CN	Pat	201480080250.9	Pending			Active
DE	Pat	10084620.3	Issued	4/10/08	100 84 620	Active
DE	Pat	10084618.1	Issued	8/27/09	100 84 618	Active
DE	Pat	10084856-7	Issued	8/5/10	10084856	Active
DE	Pat	69934319.4	Issued	6/21/07	699 34 319	Active
DE	Pat	8731757.4	Issued	10/28/15	602008040883.3	Active
DE	Pat	8829324.6	Issued	3/5/14	602008030661	Active
DE	Pat		Pending			Active
EPO	Pat	8731757.4	Issued	10/28/15	2124760	Active
EPO	Pat	8829324.6	Issued	3/5/14	2,182,861	Active
EPO	Pat	10 736 190.9	Pending			Active
EPO	Pat	14765514.6	Pending			Active
EPO	Pat	13772576.8	Pending			Active
EPO	Pat	13772892.9	Pending			Active
EPO	Pat	13772043.9	Pending			Active
EPO	Pat	13773122.0	Pending			Active
EPO	Pat	13816767.1	Issued	3/22/17	2,872,048	Active
EPO	Pat	13778977.2	Pending			Active
EPO	Pat	14788090.0	Pending			Active
EPO	Pat	14795415	Pending			Active
EPO	Pat	14820020.7	Pending			Active
EPO	Pat	13865810.9	Pending			Active
EPO	Pat	14884191.9	Pending			Active
EPO	Pat	14878622.1				Active
EPO	Pat	14885977				Active
EPO	Pat	EP14157620.7	Pending			Active
EPO	Pat	14797187.3	Pending			Active
EPO	Pat	14898118.6	Pending			Active
EPO	Pat	16193608.3	Pending			Active
ES	Pat	99941967.4	Issued	7/1/07	2,277,445	Active
ES	Pat		Issued	7/24/17	300234452	Active
FR	Pat	8731757.4	Issued	10/28/15	2124760.0	Active
FR	Pat	8829324.6	Issued	3/5/14	2 182 861	Active
GB	Pat		Pending			Active
IE	Pat	8731757.4	Issued	10/28/15	2124760.0	Active
IN	Pat	1092/CHENP/2010	Pending			Active
IN	Pat	201647041200	Pending			Active
IT	Pat	99941967.4	Issued	3/2/07	IT1105069	Active
IT	Pat		Issued		2,182,861	Active
JP	Pat	2010-524195	Issued	7/20/12	5,042,366	Active
JP	Pat	2016-502774	Pending			Active
JP	Pat	2015-504620	Pending			Active
JP	Pat	2015-504620	Pending			Active
JP	Pat	2015-504631	Pending			Active

JP	Pat	2015-504638	Pending			Active
JP	Pat	2015-507051	Pending			Active
JP	Pat	2016-510679	Pending			Active
JP	Pat	2016-524343	Pending			Active
JP	Pat	2015-549803	Issued	1/6/17	6,066,239	Active
JP	Pat		Pending			Active
JP	Pat	2016-510679	Pending			Active
JP	Pat	2016-571114	Pending			Active
KR	Pat	10-2016-7026057	Pending			Active
KR	Pat	10-2016-7036038	Pending			Active
LU	Pat	8731757.4	Issued	10/28/15	2124760.0	Active
NL	Pat	8829324.6	Issued	3/5/14	2 182 861	Active
PCT	Pat	PCT/US2014/028395				Active
PCT	Pat	PCT/US2014/045227				Active
PCT	Pat	PCT/US2016/023478	Pending			Active
SL	Pat	8731757.4	Issued	10/28/15	2124760.0	Active
UK	Pat	8731757.4	Issued	10/28/15	2124760.0	Active
UK	Pat		Issued			Active
US	Pat	09/330,244	Issued	1/30/01	6,179,849	Active
US	Pat	09/314,278	Issued	8/6/02	6,428,550	Active
US	Pat	09/437,428	Issued	7/16/02	6,419,681	Active
US	Pat	09/440,263	Issued	4/16/02	6,371,964	Active
US	Pat	09/132,711	Issued	10/8/02	6,461,320	Active
US	Pat	09/133,185	Issued	3/27/01	6,206,913	Active
US	Pat	09/363,255	Issued	5/21/02	6,391,038	Active
US	Pat	09/440,116	Issued	6/11/02	6,402,764	Active
US	Pat	09/542,976	Issued	1/6/04	6,673,088	Active
US	Pat	09/664,588	Issued	9/7/04	6,786,914	Active
US	Pat	09/709,373	Issued	10/29/02	6,471,713	Active
US	Pat	09/687,216	Issued	8/17/04	6,776,785	Active
US	Pat	09/967,684	Issued	7/5/05	6,913,609	Active
US	Pat	09/725,232	Issued	6/4/02	6,398,797	Active
US	Pat	09/842,792	Issued	11/12/02	6,478,804	Active
US	Pat	09/886,074	Issued	2/28/06	7,004,949	Active
US	Pat	10/001,962	Issued	4/13/04	6,719,769	Active
US	Pat	10/054745	Issued	9/6/11	8,012,164	Active
US	Pat	09/924,556	Issued	5/9/06	7,041,110	Active
US	Pat	09/946,791	Issued	2/13/07	7,175,637	Active
US	Pat	10/003,406	Issued	3/25/03	6,537,288	Active
US	Pat	10/041,542	Issued	12/23/03	6,666,832	Active
US	Pat	10/057795	Issued	4/18/06	7,029,482	Active
US	Pat	10/055179	Issued	11/23/04	6,821,286	Active
US	Pat	10/159,838	Issued	9/13/05	6,942,675	Active
US	Pat	10/309,519	Issued	9/11/07	7,267,682	Active
US	Pat	10/223,011	Issued	10/31/06	7,128,749	Active
US	Pat	10/426,838	Issued	9/23/08	7,427,261	Active
US	Pat	10/392,336	Issued	8/3/10	7,766,924	Active
US	Pat	10/253,347	Issued	6/20/06	7,063,712	Active
US	Pat	10/253,376	Issued	2/7/06	6,994,714	Active
US	Pat	10/420,551	Issued	5/22/12	8,182,494	Active
US	Pat	10/273,910	Issued	5/23/06	7,048,751	Active
US	Pat	10/439,382	Issued	9/18/07	7,270,670	Active
US	Pat	10/606,813	Issued	2/6/07	7,172,608	Active
US	Pat	10/720,618	Issued	11/27/07	7,300,444	Active
US	Pat	10/659,057	Issued	2/26/08	7,335,216	Active
US	Pat	10/665,170	Issued	11/3/09	7,611,523	Active
US	Pat	10/698,575	Issued	12/18/07	7,309,343	Active
US	Pat	10/698,569	Issued	12/5/06	7,144,405	Active



US	Pat	10/750,712	Issued	5/13/08	7,371,243	Active
US	Pat	10/877,971	Issued	9/14/10	7,794,471	Active
US	Pat	10/789558	Issued	4/15/08	7,357,807	Active
US	Pat	10/842,998	Issued	5/9/06	7,041,112	Active
US	Pat	11/004,777	Issued	11/5/13	8,574,246	Active
US	Pat	10/884,591	Issued	9/19/06	7,108,702	Active
US	Pat	10/898,611	Issued	12/14/10	7,850,703	Active
US	Pat	10/897,783	Issued	5/15/07	7,217,285	Active
US	Pat	10/977,061	Issued	2/8/11	7,883,518	Active
US	Pat	10/934,862	Issued	11/25/08	7,455,677	Active
US	Pat	10/934,883	Issued	5/29/07	7,223,274	Active
US	Pat	10/988,335	Issued	12/4/07	7,303,570	Active
US	Pat	11/054,265	Issued	3/23/10	7,682,368	Active
US	Pat	10/988,325	Issued	4/20/10	7,699,859	Active
US	Pat	10/972,125	Issued	4/21/09	7,520,885	Active
US	Pat	11/066,522	Issued	12/23/08	7,468,066	Active
US	Pat	11/158,414	Issued	1/22/08	7,320,692	Active
US	Pat	11/378,127	Issued	4/18/17	9,622,748	Active
US	Pat	11/451,548	Issued	9/3/13	8,523,939	Active
US	Pat	11/432,932	Issued	8/4/09	7,569,064	Active
US	Pat	11/522,217	Issued	1/25/11	7,875,053	Active
US	Pat	11/608,435	Issued	5/29/12	8,187,315	Active
US	Pat	11/672,858	Issued	1/6/09	7,473,258	Active
US	Pat	11/686,320	Issued	5/19/09	7,533,790	Active
US	Pat	11/759,319	Issued	7/2/13	8,475,493	Active
US	Pat	11/780,648	Issued	6/29/10	7,744,610	Active
US	Pat	11/859,058	Issued	1/11/11	7,866,523	Active
US	Pat	11/851,379	Issued	8/2/11	7,988,026	Active
US	Pat	11/935,315	Issued	8/16/16	9,414,855	Active
US	Pat	11/934,949	Issued	7/8/14	8,771,312	Active
US	Pat	11/865,893	Issued	12/23/14	8,915,934	Active
US	Pat	11/956,988	Issued	6/7/11	7,954,683	Active
US	Pat	12/013,334	Issued	6/1/10	7,727,245	Active
US	Pat	12/140,967	Issued	6/8/10	7,730,889	Active
US	Pat	12/323,309	Issued	7/13/10	7,753,250	Active
US	Pat	12/343,048	Issued	11/29/11	8,066,720	Active
US	Pat	12/400,760	Issued	4/5/11	7,918,376	Active
US	Pat	12/400,790	Issued	12/6/11	8,070,036	Active
US	Pat	12/381,316	Issued	11/27/12	8,317,071	Active
US	Pat	12/435,577	Issued	6/25/13	8,469,253	Active
US	Pat	12/435,653	Issued	5/1/12	8,167,898	Active
US	Pat	12/435,368	Issued	1/25/11	7,875,029	Active
US	Pat	12/436,087	Issued	3/22/16	9,289,208	Active
US	Pat	12/435,912	Issued	3/24/15	8,985,427	Active
US	Pat	12/436,101	Issued	5/26/15	9,038,881	Active
US	Pat	12/471,672	Issued	4/14/15	9,004,339	Active
US	Pat	12/477,065	Issued	1/17/12	8,096,457	Active
US	Pat	12/477,834	Issued	11/15/11	8,056,789	Active
US	Pat	12/489,355	Issued	1/3/12	8,087,562	Active
US	Pat	12/489,397	Issued	4/22/14	8,701,960	Active
US	Pat	12/565,534	Issued	2/5/13	8,365,971	Active
US	Pat	12/603,521	Issued	1/21/14	8,631,992	Active
US	Pat	12/577,589	Issued	7/2/13	8,475,474	Active
US	Pat	12/683,382	Issued	9/11/12	8,261,958	Active
US	Pat	12/770,462	Issued	11/27/12	8,317,072	Active
US	Pat	12/772,322	Issued	2/5/13	8,365,975	Active
US	Pat	12/781,746	Issued	12/6/11	8,070,034	Active
US	Pat	12/788,571	Issued	8/14/12	8,240,538	Active

US	Pat	12/782,880	Issued	11/24/15	9,192,377	Active
US	Pat	12/783,389	Issued	7/24/12	8,225,980	Active
US	Pat	12/788,911	Issued	3/4/14	8,662,369	Active
US	Pat	12/787,708	Issued	6/21/11	7,963,432	Active
US	Pat	12/817,100	Issued	7/30/13	8,496,671	Active
US	Pat	12/840,156	Issued	5/14/13	8,439,246	Active
US	Pat	12/968,641	Issued	3/19/13	8,398,653	Active
US	Pat	13/028,148	Pending			Active
US	Pat	13/048,778	Issued	10/15/13	8,556,935	Active
US	Pat	13/090,168	Issued	2/5/13	8,365,973	Active
US	Pat	13/048,674	Pending			Active
US	Pat	13/090,214	Issued	1/28/14	8,636,189	Active
US	Pat	13/094,716	Issued	10/25/16	9,474,527	Active
US	Pat	13/093,815	Issued	1/21/14	8,631,990	Active
US	Pat	13/094,805	Issued	4/26/16	9,320,519	Active
US	Pat	13/093,743	Issued	5/26/15	9,038,880	Active
US	Pat	13/093,791	Issued	9/25/12	8,272,551	Active
US	Pat	13/094,814	Issued	10/13/15	9,155,536	Active
US	Pat	13/105,799	Issued	7/29/14	8,789,738	Active
US	Pat	13/185,679	Issued	4/15/14	8,695,864	Active
US	Pat	13/186,463	Issued	9/22/15	9,138,212	Active
US	Pat	13/194,098	Issued	5/14/13	8,439,245	Active
US	Pat	13/294,160	Issued	5/24/16	9,345,478	Active
US	Pat	13/399,881	Issued	7/21/15	9,084,600	Active
US	Pat	13/309,916	Issued	7/30/13	8,496,155	Active
US	Pat	13/438,661	Issued	10/27/15	9,168,039	Active
US	Pat	13/439,639	Issued	2/14/17	9,566,048	Active
US	Pat	13/451,344	Issued	8/9/16	9,408,605	Active
US	Pat	13/571,319	Issued	10/15/13	8,556,153	Active
US	Pat	13/607,719	Issued	10/11/16	9,463,015	Active
US	Pat	13/645,416	Issued	1/6/15	8,926,658	Active
US	Pat	13/663,424	Issued	8/13/13	8,505,800	Active
US	Pat	13/746,449	Issued	7/12/16	9,386,986	Active
US	Pat	13/776,794	Issued	8/12/14	8,801,753	Active
US	Pat	13/870,687	Issued	5/23/17	9,655,615	Active
US	Pat	13/889,477	Issued	1/24/17	9,549,733	Active
US	Pat	13/951,873	Issued	11/18/14	8,888,794	Active
US	Pat	14/013,992	Issued	5/16/17	9,649,192	Active
US	Pat	14/053,318	Issued	4/7/15	8,998,951	Active
US	Pat	14/135,368	Issued	2/14/17	9,566,065	Active
US	Pat	14/191,073	Issued	5/10/16	9,332,985	Active
US	Pat	14/222,527	Issued	9/29/15	9,144,427	Active
US	Pat	14/206,606	Issued	5/23/17	9,655,613	Active
US	Pat	14/206,886	Pending			Active
US	Pat	14/272,285	Issued	6/27/17	9,687,233	Active
US	Pat	14/278,493	Issued	7/11/17	9,700,319	Active
US	Pat	14/321,757	Pending			Active
US	Pat	14/339,054	Pending			Active
US	Pat	14/793,691	Pending			Active
US	Pat	14/720,574	Pending			Active
US	Pat	14/734,952	Issued	5/23/17	9,655,618	Active
US	Pat	14/824,405	Pending			Active
US	Pat	14/793,592	Pending			Active
US	Pat	14/793,641	Pending			Active
US	Pat	14/817,049	Pending			Active
US	Pat	15/161,693	Pending			Active

US	Pat	15/178,141	Pending			Active
US	Pat	15/148,730	Pending			Active
US	Pat	15/294,606	Pending			Active
US	Pat	15/403,084	Pending			Active
US	Pat	15/646,524	Pending			Active
US	Pat	15/640,301	Pending			Active
	Pat	10/172,781	Issued	11/8/05	6,962,595	Active
AU	Pat	55438/99				Inactive
AU	Pat	2007296776				Inactive
CA	Pat	2339191				Inactive
CA	Pat	2661646				Inactive
DE	Pat	10066452.0-35				Inactive
EPO	Pat	99941967.4	Issued	12/6/06	1,105,069	Inactive
EPO	Pat	1119138.4				Inactive
EPO	Pat	6734751.8				Inactive
EPO	Pat	7841742.5				Inactive
EPO	Pat	14771090.9	Pending			Inactive
IN	Pat	6059/CHENP/2011	Pending			Inactive
JP	Pat	2000-564545				Inactive
JP	Pat	2008-504035				Inactive
JP	Pat	2009-528386				Inactive
JP	Pat	2015-507051				Inactive
JP	Pat	2016-513133	Pending			Inactive
JP	Pat	2016-502762	Pending			Inactive
PCT	Pat	PCT/US99/16710				Inactive
PCT	Pat	PCT/US00/13957				Inactive
PCT	Pat	PCT/US00/14034				Inactive
PCT	Pat	PCT/US00/13707				Inactive
PCT	Pat	PCT/US00/13958				Inactive
PCT	Pat	PCT/US00/13959				Inactive
PCT	Pat	PCT/US00/20418				Inactive
PCT	Pat	PCT/US00/41979				Inactive
PCT	Pat	PCT/US2004/028902				Inactive
PCT	Pat	PCT/US2006/004763				Inactive
PCT	Pat	PCT/US2007/077416				Inactive
PCT	Pat	PCT/US2008/056328				Inactive
PCT	Pat	PCT/US2008/075449				Inactive
PCT	Pat	US10/20867				Inactive
PCT	Pat	PCT/US2012/054339				Inactive
PCT	Pat	PCT/US2013/025101				Inactive
PCT	Pat	PCT/US2013/033692				Inactive
PCT	Pat	PCT/US2013/033800				Inactive
PCT	Pat	PCT/US2013/034322				Inactive
PCT	Pat	PCT/US2013/034587				Inactive
PCT	Pat	PCT/US2013/034593				Inactive
PCT	Pat	PCT/US2013/035962				Inactive
PCT	Pat	PCT/US2013/038423				Inactive
PCT	Pat	PCT/US2014/037582	Pending			Inactive
PCT	Pat	PCT/US2013/077098				Inactive
PCT	Pat	PCT/US2014/019886				Inactive
PCT	Pat	PCT/US2014/019889				Inactive
PCT	Pat	PCT/US2014/012100				Inactive
PCT	Pat	PCT/US2014/031565				Inactive
PCT	Pat	PCT/US2014/032087				Inactive
PCT	Pat	PCT/US2014/028336				Inactive
PCT	Pat	PCT/US2014/038281				Inactive
PCT	Pat	PCT/US2014/048168				Inactive

PCT	Pat	PCT/US2015/065458				Inactive
PCT	Pat	PCT/US2015/065459				Inactive
PCT	Pat	PCT/US2016/023478	Pending			Inactive
US	Pat	09/664,589	Issued	11/25/03	6,652,541	Inactive
US	Pat	09/712,044	Issued	4/29/03	6,554,764	Inactive
US	Pat	60/247,029				Inactive
US	Pat	09/705,819	Issued	3/25/03	6,537,287	Inactive
US	Pat	09/764,218				Inactive
US	Pat	09/778,003	Issued	12/24/02	6,497,710	Inactive
US	Pat	09/993,438	Issued	3/22/05	6,869,437	Inactive
US	Pat	09/989,055	Issued	5/17/05	6,893,449	Inactive
US	Pat	10/134081	Issued	5/12/09	7,530,987	Inactive
US	Pat	10/151,441	Issued	10/23/07	7,285,131	Inactive
US	Pat	10/135,669	Issued	10/18/05	6,955,679	Inactive
US	Pat	10/136,007	Issued	3/21/06	7,014,644	Inactive
US	Pat	10/197,352	Issued	10/19/04	6,805,708	Inactive
US	Pat	60/399,880				Inactive
US	Pat	10/235,446	Issued	2/21/06	7,001,402	Inactive
US	Pat	10/331,356	Issued	11/22/05	6,966,920	Inactive
US	Pat	10/420,671				Inactive
US	Pat	10/367,175	Issued	9/7/04	6,786,862	Inactive
US	Pat	10/412,173				Inactive
US	Pat	10/607,524				Inactive
US	Pat	10/884,751				Inactive
US	Pat	10/461,269	Issued	12/4/07	7,303,569	Inactive
US	Pat	60/483,078				Inactive
US	Pat	60/483,079				Inactive
US	Pat	10/678,848	Issued	3/21/06	7,014,618	Inactive
US	Pat	10/714,365	Issued	3/28/06	7,018,388	Inactive
US	Pat	10/810,170				Inactive
US	Pat	10/871,823				Inactive
US	Pat	10/934,884				Inactive
US	Pat	10/988,326				Inactive
US	Pat	10/972,124				Inactive
US	Pat	10/972,094				Inactive
US	Pat	11/022,551	Issued	12/9/08	7,462,185	Inactive
US	Pat	11/093,003	Issued	3/18/08	7,344,544	Inactive
US	Pat	11/083,721	Issued	2/16/10	7,662,162	Inactive
US	Pat	11/098,350				Inactive
US	Pat	11/158,413	Issued	3/16/10	7,678,121	Inactive
US	Pat	11/367,904	Issued	5/20/08	7,373,939	Inactive
US	Pat	11/158,431				Inactive
US	Pat	60/680,862				Inactive
US	Pat	11/133,621	Issued	3/25/08	7,347,864	Inactive
US	Pat	11/151,160				Inactive
US	Pat	11/187,108				Inactive
US	Pat	11/282,177	Issued	12/2/08	7,458,978	Inactive
US	Pat	60/723,114				Inactive
US	Pat	11/332,611				Inactive
US	Pat	11/372,839				Inactive
US	Pat	11/451,222	Issued	11/6/07	7,291,157	Inactive
US	Pat	11/437,443				Inactive
US	Pat	11/588,450	Pending			Inactive
US	Pat	11/542,294		2/28/12	8,123,795	Inactive
US	Pat	11/588,452				Inactive

US	Pat	11/615,752				Inactive
US	Pat	11/670,877				Inactive
US	Pat	11/868,431	Pending			Inactive
US	Pat	11/757,821				Inactive
US	Pat	11/756,260				Inactive
US	Pat	12/061,350	Pending			Inactive
US	Pat	11/776,524				Inactive
US	Pat	11/953,791	Issued	3/2/10	7,670,348	Inactive
US	Pat	12/039,925				Inactive
US	Pat	12/030,433	Pending			Inactive
US	Pat	12/060,419				Inactive
US	Pat	12/132,170	Issued	4/24/12	8,163,010	Inactive
US	Pat	12/263,171	Issued	3/26/13	8,403,956	Inactive
US	Pat	12/254,743				Inactive
US	Pat	12/267,350				Inactive
US	Pat	61/148,346				Inactive
US	Pat	12/370,576				Inactive
US	Pat	61/209,693				Inactive
US	Pat	61/209,692				Inactive
US	Pat	12/436,545	Pending			Inactive
US	Pat	61/625,845				Inactive
US	Pat	61/175,027				Inactive
US	Pat	61/175,034				Inactive
US	Pat	12/436,014	Pending			Inactive
US	Pat	61/175,786				Inactive
US	Pat	12/477,302	Pending			Inactive
US	Pat	61/182,528				Inactive
US	Pat	61/182,630				Inactive
US	Pat	61/183,376				Inactive
US	Pat	61/183,353				Inactive
US	Pat	12/612,614	Pending			Inactive
US	Pat	12/700,978	Issued	1/22/13	8,356,740	Inactive
US	Pat	12/716,034	Issued	3/19/13	8,397,973	Inactive
US	Pat	12/715,268				Inactive
US	Pat	61/365,710				Inactive
US	Pat	61/365,729				Inactive
US	Pat	12/970,678				Inactive
US	Pat	13/193,398	Issued	3/25/14	8,679,155	Inactive
US	Pat	61/533,130				Inactive
US	Pat	13/282,759	Pending			Inactive
US	Pat	13/335,581	Pending			Inactive
US	Pat	13/437,351				Inactive
US	Pat	13/439,767				Inactive
US	Pat	61/635,116				Inactive
US	Pat	13/645,407				Inactive
US	Pat	13/757,196	Issued	9/30/14	8,844,788	Inactive
US	Pat	13/778,817	Pending			Inactive
US	Pat	13/859,808	Pending			Inactive
US	Pat	13/864,597	Pending			Inactive
US	Pat	61/821,493				Inactive
US	Pat	13/891,150				Inactive
US	Pat	13/930,640				Inactive
US	Pat	13/948,496				Inactive
US	Pat	13/950,357	Pending			Inactive
US	Pat	14/053,354	Pending			Inactive

US	Pat	14/157,243	Pending			Inactive
US	Pat	14/191,100	Pending			Inactive
US	Pat	14/498,390				Inactive
US	Pat	14/589,113				Inactive
US	Pat	62/091,171				Inactive
US	Pat	62/091,251				Inactive
US	Pat	62/096,764				Inactive
US	Pat	62/136,039				Inactive
US	Pat	62/196,785				Inactive
US	Pat	14/946,608	Pending			Inactive
	Pat	10/083,235	Issued	6/14/05	6,905,504	Inactive
EU	TM	15748023	Pending			Active
JP	TM	2016-102094	Issued	6/2/17	5,951,308	Active
US	TM	76/162,848	Issued	2/10/04	2,813,408	Active
US	TM	78/094302	Issued	6/22/04	2,856,707	Active
US	TM	78/099022	Issued	7/26/05	2,978,174	Active
US	TM	78/140,994	Issued	7/26/05	2,924,086	Active
US	TM	78/201,791	Issued	7/12/05	2,968,231	Active
US	TM	78/201,801	Issued	7/18/06	3,117,830	Active
US	TM	78/398,499	Issued	2/6/07	3,206,640	Active
US	TM	77/174,651	Issued	1/15/08	3,368,638	Active
US	TM	77/222,435	Issued	1/15/08	3,369,115	Active
US	TM	77/364,132	Issued	10/28/08	3,525,542	Active
US	TM	85/200,031	Issued	3/5/13	4,298,645	Active
US	TM	85/200,051	Issued	3/5/13	4,298,646	Active
US	TM	85/778,519	Issued	1/21/14	4,472,230	Active
US	TM	87/079995	Issued	8/29/17	5,277,736	Active
US	TM	87/080039	Issued	8/29/17	5,277,737	Active
US	TM	87/080392	Pending			Active
US	TM	87/088634	Pending			Active
US	TM	86/943893	Issued	7/18/17	5,247,258	Active
US	TM	85/807163	Issued	1/14/14	4,467,697	Active
US	TM	86/946,705	Pending			Active
US	TM	78/096,583				Inactive
US	TM	77/569,729				Inactive
US	TM	77/569,750				Inactive
US	TM	77/864,175				Inactive
US	TM	77/867,345				Inactive
US	TM	85/200,058				Inactive
US	TM	85/200,060				Inactive

Schedule 4.14(b)

<p><b>Name and mailing address of the other party to the lease or contract</b></p>	<p><b>Description of license</b></p>
<p>Mayo Foundation for Medical Education and Research, 200 First Street SW, Rochester, MN 55905</p>	<p>License to Company to develop licensed products based on Shanda Blackmon’s work (the “Know-How”). Expires January 1, 2018. No products have been developed by company based on the Know-How.</p>

Schedule 4.14(c)

<b>Name and mailing address of the other party to the lease or contract</b>	<b>Description of license</b>
Intuitive Surgical, 1020 Kifer Rd, Sunnyvale, CA 94086	License to Intuitive Surgical for stapler technology (excluding anastomosis)
Maquet (original licensee was CardioThoracic Systems, a subsidiary of Guidant)	License to Maquet for aortic cutter technology



Schedule 4.14(d)

None

Schedule 4.15(a)

None

Schedule 4.15(b)

See attached files.



RA Milestones for PAS-Port devices\_30 RA Milestones for C-Port devices\_22 RA Milestones for NoMicroCutter devices\_

## Regulatory Milestones for PAS-Port

Clearance or Approval/ Region	Date of Clearance/Approval	Primary Purpose	Indications for Use	Primary Supporting Data
CE Mark/Europe	Initially issued: March 17, 2003	Initial CE mark for Cardica PAS-Port Proximal Anastomosis System (includes VAG device as an accessory)	The PAS•PORT™ System is intended to create an everting anastomosis between the aorta and an autologous vein graft.	Design Dossier for Class III product: <ul style="list-style-type: none"> <li>• Risk analysis</li> <li>• Essential requirements</li> <li>• Manufacturing information</li> <li>• Biocompatibility data</li> <li>• Data from verification and validation bench testing</li> <li>• Packaging</li> <li>• Stability/shelf life</li> <li>• Sterilization validation</li> <li>• Clinical data</li> <li>• Labeling</li> <li>• Animal studies/human aorta ex vivo study</li> </ul>
FDA clearance/U.S. K081225	Sep. 5, 2008	Initial clearance for device	The PAS•PORT™ System is intended to create the aortic anastomosis of aortic autologous vein grafts.	<ul style="list-style-type: none"> <li>• Bench testing</li> <li>• MRI testing</li> <li>• Animal studies</li> <li>• Clinical study</li> <li>• Labeling</li> <li>• Biocompatibility data</li> <li>• Sterilization validation</li> <li>• Packaging</li> <li>• Shelf life</li> </ul>

**Regulatory Milestones for PAS-Port**

FDA clearance/U.S. K091017	Apr. 29, 2009	Change in material for Introducer Tip	The PAS•PORT™ System is intended to create the aortic anastomosis of aortic autologous vein grafts.	<ul style="list-style-type: none"> <li>• Biocompatibility data</li> </ul>
Marketing approval/ Japan	December 26, 2007	Marketing approval for device	The indication for use follows the definition of Japanese Medical Device Nomenclature “Non-absorbable vascular anastomosis coupler” which defines “a device used to connect the tissue of blood vessels using a joint with components inserted into the ends of the junction. This is made of non-absorbable materials.”	Marketing approval obtained by distributor. A special method for approval was used because, at that time, the device was up-classified from Class I to Class III. This meant not a great deal of information was required for the Shonin approval. Only the “method of use” and the “manufacturing facility” are specified in the certificate of approval (called “ <i>Shonin documents</i> ”).

## Regulatory Milestones for C-Port Devices

Clearance or Approval/Region	Product	Date of Clearance/ Approval	Primary Purpose	Indications for Use	Primary Supporting Data
CE Mark/Europe	C-Port™ Distal Anastomosis System Catalog FG-000050	Initially issued: April 12, 2004	Obtain initial CE mark for C-Port device	The C•Port™ System is intended for non-endoscopic use in the creation of anastomoses in coronary arteries with diameters and wall properties similar to those typically bypassed with autologous vein grafts in coronary artery bypass surgery.	Design Dossier for Class III product: <ul style="list-style-type: none"> <li>• Essential requirements</li> <li>• Risk analysis</li> <li>• Manufacturing information</li> <li>• Data from verification and validation bench testing</li> <li>• Biocompatibility data</li> <li>• Packaging</li> <li>• Stability/shelf life</li> <li>• Sterilization validation</li> <li>• Labeling</li> <li>• Animal studies</li> <li>• Clinical data</li> </ul>
CE Mark/Europe	C-Port xA Anastomosis System Catalog FG-000100	Initially issued: July 11, 2006	Notice of change to add C-Port xA device	The C-Port® xA Anastomosis System is intended for non-endoscopic use in the creation of anastomoses to coronary arteries with diameters and wall properties similar to those typically bypassed with autologous vein and arterial grafts in	Design Dossier for Class III product based on previous C-Port device: <ul style="list-style-type: none"> <li>• Essential requirements</li> <li>• Risk analysis</li> <li>• Manufacturing information</li> <li>• Data from verification and validation bench testing</li> <li>• Biocompatibility data</li> <li>• Packaging</li> <li>• Stability/shelf life</li> <li>• Sterilization validation</li> <li>• Labeling</li> </ul>

## Regulatory Milestones for C-Port Devices

				coronary artery bypass surgery.	<ul style="list-style-type: none"> <li>• Animal studies</li> </ul>
CE Mark/Europe	C-Port Flex-A Anastomosis System Catalog FG-000150	Initially issued: August 24, 2007	Notice of change to add C-Port Flex-A device	The C-Port® Flex-A™ Distal Anastomosis System is intended for use in the creation of anastomoses in blood vessels and grafts, including use in coronary artery bypass grafting procedures.	Design Dossier for Class III product based on previous C-Port devices: <ul style="list-style-type: none"> <li>• Essential requirements</li> <li>• Risk analysis</li> <li>• Manufacturing information</li> <li>• Data from verification and validation bench testing</li> <li>• Biocompatibility data</li> <li>• Labeling</li> <li>• Animal study</li> </ul>
FDA clearance/U.S. K040832	Cardica C-Port Anastomosis system	Nov. 10, 2005	Initial device clearance	The C-Port Anastomosis System is intended for the creation of anastomoses in blood vessels and grafts, including use in coronary artery bypass grafting procedures.	<ul style="list-style-type: none"> <li>• Biocompatibility data</li> <li>• Labeling</li> <li>• Bench testing</li> <li>• Sterilization</li> <li>• Packaging</li> <li>• Shelf life</li> <li>• Clinical study</li> <li>• Animal study</li> </ul>
FDA clearance/U.S. K053524	Cardica C-Port xA Distal Anastomosis system	Nov. 16, 2006	Change from spring driven to gas release-driven and minor design changes	The Cardica C-Port xA Anastomosis System is intended for the creation of anastomoses in blood vessels and grafts, including use in coronary artery bypass grafting procedures.	<ul style="list-style-type: none"> <li>• Biocompatibility data</li> <li>• Labeling</li> <li>• Bench testing</li> <li>• Sterilization</li> <li>• Packaging</li> <li>• Animal study</li> </ul>
FDA clearance/U.S. K063644	Cardica C-Port xA Distal Anastomosis system	Jan. 11, 2007	Modification to the implantable clip component to	The Cardica C-Port xA Anastomosis System is intended for the	<ul style="list-style-type: none"> <li>• Bench testing</li> </ul>

## Regulatory Milestones for C-Port Devices

			improve manufacturability	creation of anastomoses in blood vessels and grafts, including use in coronary artery bypass grafting procedures.	
FDA clearance/U.S. K070548	Cardica C-Port FlexA Distal Anastomosis system	Mar. 29, 2007	Modification to device adding flexible shaft	The Cardica C-Port FlexA Distal Anastomosis System is intended for the creation of anastomoses in blood vessels and grafts, including use in coronary artery bypass grafting procedures.	<ul style="list-style-type: none"> <li>● Biocompatibility data</li> <li>● Labeling</li> <li>● Bench testing</li> <li>● Sterilization</li> <li>● Packaging</li> <li>● Animal study</li> </ul>
FDA clearance/U.S. K073123	Cardica C-Port FlexA Distal Anastomosis system	Dec. 6, 2007	Addition of toe clips and flexible anvil tip, modifications to Flex-A Tray and Cartridge bays	The Cardica C-Port Flex-A Distal Anastomosis System is intended for the creation of anastomoses in blood vessels and grafts, including use in coronary artery bypass grafting procedures.	<ul style="list-style-type: none"> <li>● Bench testing</li> </ul>
FDA clearance/U.S. K073304	Cardica C-Port X-CHANGE Anastomosis system	Dec. 20, 2007	Addition of an interlocking connection in the shaft. Modification to C-Port xA so that it is reloadable and one handle subassembly can be	The Cardica C-Port X-CHANGE Anastomosis System is intended for the creation of anastomoses in blood vessels and grafts, including use in	<ul style="list-style-type: none"> <li>● Bench testing</li> </ul>



## Regulatory Milestones for C-Port Devices

			used to make up to three anastomoses in a single patient, depending on how many conduits may require an anastomosis (single, double or triple bypass)	coronary artery bypass grafting procedures.	
FDA clearance/U.S. K090872	Cardica C-Port xA PLUS Distal Anastomosis system	Apr. 21, 2009	Change in material for Piercer Arm and addition of Retractor Mount, as an accessory	The Cardica C-Port xA PLUS Distal Anastomosis System is intended for the creation of anastomoses in blood vessels and grafts, including use in coronary artery bypass grafting procedures.	<ul style="list-style-type: none"> <li>● Biocompatibility data</li> <li>● Labeling</li> <li>● Bench testing</li> </ul>
FDA clearance/U.S. K101018	Cardica C-Port xA Hybrid PLUS Distal Anastomosis system	Jun 25, 2010	Changes in the materials used for six components	The Cardica® C-Port® xA Hybrid Distal Anastomosis System is intended for the creation of anastomoses in blood vessels and grafts, including use in coronary artery bypass grafting procedures.	<ul style="list-style-type: none"> <li>● Biocompatibility data</li> <li>● Shelf life</li> <li>● Bench testing</li> </ul>

## Regulatory Milestones for MicroCutter Stapler and Reloads

Clearance or Approval/Region	Date	Primary Purpose	Indications for Use	Primary Supporting Data
CE Mark/Europe	CE Feb. 28, 2011	Initial CE mark	Transection, resection and/or anastomosis in general, gynecologic, urologic, thoracic, and pediatric surgical procedures. Can be used to blunt dissect or separate tissue	Bench testing Clinical literature
FDA clearance/U.S. K132581	Jan. 7, 2014	Initial clearance for Stapler and Blue Reload	Multiple open or minimally invasive surgical procedures for transection, resection and/or anastomosis in small and large intestine and transection appendix	Clinical performance data (MET1) in support of the D-shaped staple
FDA clearance/U.S. K140118	Feb. 25, 2014	Change in material for distal tip of cartridge	Change in material (with colorant) used for the distal tip of the Cartridge Insert component of the staple cartridge	Bench testing Biocompatibility Shelf life
FDA clearance/U.S. K140170	Feb. 19, 2014	Addition of White Reload	Same as Jan. 7, 2014	Bench testing
FDA clearance/U.S. K151081	Jan. 15, 2016	Expand Indications for Use, and add tissue type of "vascular" for White Reload and "standard" for Blue Reload	Added urologic, thoracic, and pediatric surgical procedures	Animal studies
FDA clearance/U.S. K161137	Jul. 20, 2016	Minor changes to cartridges, add Blue Reloads to current labeling and revise tissue type for White Reloads to be "vascular/thin"	Same as Jan. 15, 2016	Bench testing
FDA clearance/U.S. K171561	Aug. 28, 2017	Expand Indications for Use	<i>Additional</i> indications for use for Stapler with White Reloads: "open solid organ parenchymal dissection techniques on veins 4-5 mm in diameter and arteries 3-7 mm in diameter"	Bench testing Reference: previous animal studies Clinical literature review

**Regulatory Milestones for MicroCutter Stapler and Reloads**

Shonin approval/ Japan*	12/03/2014 8/28/2015	Initial approval for: Stapler Reload	Transection and sealing of tissue and creation of anastomoses	Bench testing
Health Canada Licence/ Canada* and ## Licence No. 96717	Mar. 29, 2016	Initial licence for Stapler and White Reload	Multiple open or minimally invasive surgical procedures for transection, resection, and/or anastomoses in small and large intestine and transection of the appendix	Clinical performance data (MET1) in support of the D- shaped staple

\*Future submissions are required to update product to most current design

##Health Canada licence to be cancelled due to new requirements in Canada that licence holders undergo Medical Device Single Audit Program (MDSAP) to demonstrate compliance of their quality system to the *Medical Devices Regulations*. Beginning January 1, 2019, only MDSAP certificates will be accepted by Health Canada as the sole mechanism for manufacturers to demonstrate compliance with the quality management system requirements.

Schedule 4.15(c)

See information provided in Schedules 2.1(a)(vi) and 4.15(b).

Schedule 4.15(d)

See information provided in Schedule 4.13(a).

Schedule 4.16

None

Schedule 4.19

Schedule 4.21

None



Schedule 4.22(a)

Schedule 4.22(c)

Schedule 4.22(d)

The Lease Agreement (section XV, Insurance) requires the Seller to carry and maintain specific insurance policies.

Neither the Seller's standard Distribution Agreement nor specific distribution agreements currently in force include requirements for the Seller to insure other parties, with the exception of the Century Medical distribution agreement. Section 9.2 of that agreement requires the Seller to obtain and maintain product liability insurance.

The Seller's standard Clinical Study Agreement requires the Seller to procure and maintain comprehensive liability, clinical trial and product liability insurance, and to include the clinical study institution and its affiliates as additional insureds.

The indemnification agreements for directors (provided in the data room in folder 19.2) require the Seller to cover the indemnitees under the Seller's Director and Officer liability insurance policy.

Schedule 4.22(e)

None

Schedule 4.22(f)

None

Schedule 4.23(a)

Schedule 4.23(b)

**EXHIBIT B**

**Proposed Bid Procedures Order**



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

DEXTERA SURGICAL INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 17-12913 (\_\_\_\_)

Re: Docket No. \_\_\_\_

**ORDER (A) APPROVING BIDDING PROCEDURES AND SALE PROCEDURES;  
(B) APPROVING FORM AND MANNER OF NOTICES; (C) APPROVING FORM  
OF ASSET PURCHASE AGREEMENT, INCLUDING STALKING HORSE PAYMENT;  
(D) SCHEDULING DATES TO CONDUCT AUCTION AND HEARING TO CONSIDER  
FINAL APPROVAL OF SALE AND RELATED MATTERS; (E) APPROVING  
PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES, AND (F) GRANTING RELATED RELIEF**

Upon the *Debtor's Motion for Orders (A)(I) Authorizing and Approving Bidding Procedures, and Stalking Horse Payment; (II) Authorizing and Approving the Debtor's Entry into the Stalking Horse APA; (III) Approving Notice Procedures; (IV) Scheduling an Auction and Sale Hearing; and (V) Approving Procedures for Assumption and Assignment of Executory Contracts and Unexpired Leases and Determining Cure Amounts and (B)(I) Authorizing the Sale of Substantially All of the Debtor's Assets Free and Clear of All Claims, Liens, Rights, Interests, and Encumbrances; (II) Approving the Stalking Horse APA; and (III) Authorizing the Debtor to Assume and Assign Certain Executory Contracts and Unexpired Leases* [D.I. \_\_\_\_] (the "Motion")<sup>2</sup> filed by the above captioned debtor and debtor-in-possession (the "Debtor"); and having reviewed the Motion, and the record in this case, and having considered the statements of

<sup>1</sup> The last four digits of the Debtor's taxpayer identification number are as follows: 7832. The address of the Debtor's corporate headquarters is 900 Saginaw Drive, Redwood City, CA, 94603.

<sup>2</sup> Reference herein is made to the bidding procedures attached hereto as **Exhibit 1** (the "Bidding Procedures") and that certain Asset Purchase Agreement dated as of December 11, 2017 between Aesculap, Inc. or its permitted assignee as buyer (the "Stalking Horse Bidder"), and the Debtor, as seller (the "Stalking Horse APA"), as applicable. Capitalized terms used but not defined herein shall have the meanings stated in the Motion or the Stalking Horse APA, as applicable.

counsel for the Debtor and the Stalking Horse Bidder the Court finds that establishing bidding procedures and sale procedures in connection with a sale of the Purchased Assets (defined below), in accordance with the provisions contained in this Order, is in the best interests of the Debtor's estate; accordingly,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any conclusions of law herein constitute findings of fact, they are adopted as such.

B. The Court has jurisdiction over the Motion and the transactions contemplated by the Stalking Horse APA pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

C. The statutory bases for the relief requested in the Motion are (i) sections 105, 363, 365, 503, and 507 of the Bankruptcy Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code") and (ii) Bankruptcy Rules 2002, 6003, 6004, 6006, 9007, 9008 and 9014, and (iii) Rules 2002-1, 6004-1 and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

D. Good and sufficient notice of the Motion and the relief sought therein has been given under the circumstances, and no other or further notice is required except as set forth herein with respect to the hearing to be conducted to approve the transactions contemplated by

the Stalking Horse APA (the “Sale Hearing”). A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to parties in interest.

E. The Debtor’s proposed notice of the Bidding Procedures is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the sale of substantially all of the Debtor’s assets (the “Purchased Assets”), the auction (the “Auction”) for the Purchased Assets, and the Bidding Procedures to be employed in connection therewith.

F. The Debtor has articulated good and sufficient reasons for the Court to: (i) approve (a) the Bidding Procedures and (b) the Stalking Horse Payment as provided in the Stalking Horse APA and this Order; (ii) authorize, to the extent necessary, the Debtor’s entry into (but not consummation of) the Stalking Horse APA; (iii) schedule the Auction and Sale Hearing; (iv) approve the form and manner of notice of the Motion and the sale of the Purchased Assets (the “Sale Notice”); (iv) approve the procedures for the assumption and assignment of such executory contracts and unexpired leases, including notice of proposed cure amounts; and (v) grant related relief.

G. The entry of this Order is in the best interests of the Debtor, its estate, creditors and other parties in interest.

H. The Bidding Procedures are fair, reasonable, and appropriate, and are designed to maximize the value to be achieved for the Purchased Assets. The Bidding Procedures were negotiated in good faith by the Debtor and the Stalking Horse Bidder.

I. The Debtor has demonstrated a compelling business justification of the payment of the Stalking Horse Payment (defined below) under the circumstances set forth in the Stalking Horse APA. The Stalking Horse Payment (i) is payable as provided herein, (ii) is of substantial benefit to the Debtor’s estate, (iii) is reasonable and appropriate, including in light of the size and

nature of the sale and the efforts that have been or will be expended by the Stalking Horse Bidder notwithstanding that the proposed sale is subject to higher and better offers for the Purchased Assets, (iv) was negotiated by the parties at arm's length and in good faith, and (v) is necessary to ensure that the Stalking Horse Bidder will continue to pursue its proposed acquisition of the Purchased Assets contemplated by the Stalking Horse APA. The Stalking Horse Bidder is unwilling to commit to purchase the Purchased Assets under the terms of the Stalking Horse APA absent approval of the Stalking Horse Payment.

J. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c).

K. The procedures for the assumption and assignment of executory contracts and unexpired leases are fair, reasonable, and appropriate, and comply with the provisions of section 365 of the Bankruptcy Code.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED to the extent set forth herein.

2. Except as provided to the contrary herein, all objections to the Motion or the relief provided herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits with prejudice.

3. The Bidding Procedures, attached hereto as **Exhibit 1**, are hereby approved in their entirety, are incorporated by reference, and shall govern the bids and proceedings related to the sale and the Auction, and the Bidding Procedures Key Dates, attached hereto as **Exhibit 2**, are hereby approved in their entirety. The Debtor is authorized to take any and all actions necessary to implement the Bidding Procedures.

4. The Debtor may sell the Purchased Assets and enter into the transactions contemplated by the Stalking Horse APA by conducting an Auction in accordance with the Bidding Procedures.

5. The Auction shall take place on January 22, 2018 at 10:00 a.m. (prevailing Eastern Time) at the New York offices of Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036. The Auction shall be conducted in accordance with the Bidding Procedures.

6. The Sale Hearing shall be held before the Court on January 23, 2018 at 10:00 a.m. (prevailing Eastern Time).

7. Objections, if any, to the sale of the Purchased Assets and the transaction contemplated by the Stalking Horse APA, or the relief requested in the Motion must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) be filed with the Bankruptcy Court on or before 5:00 p.m. (prevailing Eastern Time) on January 19, 2018 (the “Sale Objection Deadline”); and (d) be served upon: (i) Dexter Surgical, Inc., 900 Saginaw Drive, Redwood City, CA 94063 (Attn: Julian Nikolchev), jnikolchev@dexterasurgical.com; (ii) special corporate counsel to the Debtor, Cooley LLP, 101 California Street, 5th Floor, San Francisco, CA 94111-5800 (Attn: Robert L. Eisenbach III, Esq.), reisenbach@cooley.com, and lead counsel for the Debtor, Saul Ewing Arnstein & Lehr, LLP, P.O. Box 1266, Wilmington, DE 19899-1266 (mailing) and 1201 Market Street, Suite 2300, Wilmington DE 19801 (courier) (Attn: Mark Minuti, Esq.) mark.minuti@saul.com ; (iii) counsel for the Official Committee of Unsecured Creditors, if any; (iv) counsel for the Stalking Horse Bidder, Stevens & Lee, P.C., 620 Freedom Business Center, Suite 200, King of Prussia, PA 19406 (Attn: Robert Lapowsky, Esq.), rl@stevenslee.commailto:bhall@sgrlaw.com, and (v) the Office of the United States

Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (collectively, the “Objection Notice Parties”), in each case, so as to be received no later than 5:00 p.m. (prevailing Eastern Time) on the Sale Objection Deadline.

8. The notice, substantially in the form attached hereto as **Exhibit 3** (the “Sale Notice”), is hereby approved.

9. On or before three (3) business days after entry of this Order, the Debtor will cause the Motion and the Sale Notice to be sent by first-class mail postage prepaid, to the following: (a) all creditors or their counsel known to the Debtor to assert a lien (including any security interest), claim, right, Interest or encumbrance of record against all or any portion of the Purchased Assets; (b) the Office of the United States Trustee for the District of Delaware; (c) counsel to the Stalking Horse Bidder; (d) counsel to Century Medical, Inc.; (e) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002; (f) the United States of America Internal Revenue Service; (g) the United States Attorney for the District of Delaware; (h) the United States of America Environmental Protection Agency; (i) the United States of America Food and Drug Administration; (j) the Pension Benefit Guaranty Corporation; (k) the State of California Department of Revenue; (l) the State of California Environmental Protection Agency; (m) the Office of the Attorney General for the State of California; (n) the State of California Department of Industrial Relations; (o) all counterparties to any Executory Contract or Lease of the Debtor; (p) all other known creditors of and holders of interests in the Debtor; (q) all potential bidders previously identified or otherwise known to the Debtor within the prior twelve (12) months; (r) counsel to the Official Committee of Unsecured Creditors, if one has been appointed, (s) all parties listed on the mailing matrix filed by the Debtor in this Bankruptcy Case; (t) all purchasers of medical devices from the Debtor since January 1, 2015; and (u) to the extent

known to the Debtor, all persons upon whom any medical devices sold by the Debtor since January 1, 2015 were used.

10. The notice, substantially in the form attached hereto as **Exhibit 4** (the "Assumption and Assignment Notice"), of potential assumption and/or assignment of the Debtor's executory contracts and unexpired leases (individually a "Debtor's Contract" and collectively, the "Debtor's Contracts"), is hereby approved.

11. On or before three (3) business days after the entry of this Order, the Debtor shall serve by first-class mail or hand delivery the Assumption and Assignment Notice on all counterparties to the Debtor's Contracts. The Assumption and Assignment Notice shall identify the Debtor's Contracts and provide the amounts that the Debtor believes must be paid to each non-debtor counterparty to such Debtor's Contract to cure any defaults required to be cured as a condition of assumption of such Debtor's Contract pursuant to Section 365(b)(1) of the Bankruptcy Code (each an "Asserted Cure Amount").

12. No later than twenty (20) days prior to the Sale Hearing, the Stalking Horse Bidder shall (i) designate in writing to the Debtor which of the Debtor's Contracts are to be assumed by the Debtor and assigned to the Stalking Horse Bidder if the Stalking Horse Bidder becomes the Successful Bidder (as defined in the Bidding Procedures), and (ii) submit to the Debtor financial and other information about the Stalking Horse Bidder to demonstrate that the Stalking Horse Bidder is able to provide adequate assurance of future performance under Section 365 of the Bankruptcy Code (the "Stalking Horse Bidder Information"). The Debtor may disclose the Stalking Horse Bidder Information to those non-Debtor counterparties to such designated Debtor's Contracts that make a written request for such information to Debtor's counsel and who confirm in writing their agreement to keep such information strictly

confidential and to use it solely for the purpose of evaluating whether the Stalking Horse Bidder has provided adequate assurance of future performance under the counterparty's Debtor's Contract; provided, however, that the Stalking Horse Bidder may require such counterparties to execute confidentiality agreements prior to the remittance of any confidential, non-public information.

13. No later than the Bid Deadline (defined below), and in connection with submission of a bid, any bidder other than the Stalking Horse Bidder shall designate in writing to the Debtor which of the Debtor's Contracts are to be assumed by the Debtor and assigned to such bidder if such bidder becomes the Successful Bidder.

14. Any objection to the assumption and assignment of a Debtor's Contract or to the Asserted Cure Amount (including, as to the Stalking Horse Bidder, to adequate assurance of future performance by the Stalking Horse Bidder) (collectively, a "Contract Objection"), must be filed with the Court on or before the Sale Objection Deadline, and served so as to be received the same day as the objection is filed, upon the Objection Notice Parties.

15. Any Contract Objection must state the basis for such objection and, if objecting to the Asserted Cure Amount, state with specificity the amount that the counterparty to the applicable Debtor's Contract believes must be paid to it to cure any defaults required to be cured as a condition of assumption of the applicable Debtor's Contract pursuant to Section 365(b)(1) of the Bankruptcy Code (in all cases with appropriate documentation in support thereof). If no Contract Objection is timely received as to a Debtor's Contract, the Asserted Cure Amount set forth in the Assumption and Assignment Notice applicable to such Debtor's Contract shall be controlling, notwithstanding anything to the contrary in the Debtor's Contract or other documents. The Assumption and Assignment Notice shall also provide that the Contract



Objection to any Asserted Cure Amount or assumption and assignment will be heard at the Sale Hearing at a later hearing, as determined by the Debtor provided, however, if the Stalking Horse Bidder is the Successful Bidder any determination by the Debtor to have a Contract Objection related to any issue other than an objection to the Asserted Cure Amount heard at a later hearing shall be subject to the consent of the Stalking Horse Bidder. If a Successful Bidder that is not the Stalking Horse Bidder prevails at the Auction, then the deadline to object to assumption and assignment (solely on the grounds of adequate assurance of future performance) shall be extended to the Sale Hearing, provided, however, that the deadline to object to the Asserted Cure Amount shall not be extended.

16. Unless a non-Debtor counterparty to any Debtor's Contract files an objection to the Asserted Cure Amount by the applicable objection deadline, then such counterparty shall be (a) forever barred from objecting to the Asserted Cure Amount and (b) forever barred and estopped from asserting or claiming against the Debtor, the Stalking Horse Bidder, or any other Successful Bidder or any other assignee of such Debtor's Contract that any amount other than the Asserted Cure Amount is required to be paid to such non-Debtor counterparty to cure any defaults required to be cured as a condition of assumption of the applicable Debtor's Contract pursuant to Section 365(b)(1) of the Bankruptcy Code.

17. Unless a non-Debtor counterparty to any Debtor's Contract files a timely objection to the assumption and assignment of such contract to the Stalking Horse Bidder or any other Successful Bidder, then such counterparty shall be deemed to have consented to the assumption and assignment to the Stalking Horse Bidder or other Successful Bidder, as applicable.

18. The Stalking Horse Bidder and any other Successful Bidder may remove any Debtor's Contract from its list of Debtor's Contracts designated for assumption and assignment at any time prior to the conclusion of the Sale Hearing. The Stalking Horse Bidder is entitled to make any bids at the Auction in compliance with the Bidding Procedures.

19. The Sale Hearing may be continued, from time to time, without further notice to creditors or other parties in interest other than by announcement of said continuance before the Court on the date scheduled for such hearing or in the hearing agenda for such hearing provided, however, if the Stalking Horse Bidder is the Successful Bidder any such continuance shall be subject to the consent of the Stalking Horse Bidder.

20. If the Stalking Horse APA has not been terminated by the Debtor based on a breach by the Stalking Horse Bidder, and the Debtor sells all or substantially all of the Purchased Assets in a transaction or series of transactions with one or more persons other than the Stalking Horse Bidder, upon consummation of such transaction(s), from the proceeds of such sale(s), the Debtor shall pay to the Stalking Horse Bidder Five Hundred Nineteen Thousand Dollars (\$519,000) (the "Stalking Horse Payment"). The Stalking Horse Payment shall be treated as an administrative claim in this case pursuant to §§ 503(b)(1) and 507(a)(2) of the Bankruptcy Code and as a direct cost of such sale(s). No liens or other Interests shall attach to the amounts owed to the Stalking Horse Bidder on account of the Stalking Horse Payment. No further order of this Court shall be required in order to pay the Stalking Horse Payment to the Stalking Horse Bidder.

21. Except for the Stalking Horse Bidder, no other party submitting an offer or Bid for the Purchased Assets or a Qualifying Bid shall be entitled to any expense reimbursement, break-up, termination or similar fee or payment.

22. Except as otherwise provided in this Order, the Debtor further reserves the right as it may reasonably determine to be in the best interests of its estate: (a) to determine which bidders are Qualified Bidders; (b) to determine which bids are Qualified Bids; (c) to determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (d) to reject any bid, other than the Stalking Horse Bid, that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtor and its estate; (e) with the consent of the Stalking Horse Bidder, as long as the Stalking Horse APA has not been materially breached by the Stalking Horse Bidder or terminated, to modify the Bidding Procedures, to adopt additional rules or procedures, and to extend the deadlines set forth therein or in this Order (other than to permit the submission of bids after the close of the Auction); (f) with the consent of the Stalking Horse Bidder, as long as the Stalking Horse APA has not been materially breached by the Stalking Horse Bidder or terminated, to continue or cancel the Auction; and (g) with the consent of the Stalking Horse Bidder, if the Stalking Horse Bid is the Successful Bid, as long as the Stalking Horse APA has not been terminated, to continue the Sale Hearing in open court, without further notice. As long as the Stalking Horse APA has not been terminated, the Stalking Horse Bidder shall be a party in interest entitled to be heard on any matter relating to the sale process described herein, including any requests to modify the Bidding Procedures.

23. All persons and entities that participate in the bidding process or the Auction shall be deemed to have knowingly and voluntarily submitted to the jurisdiction of this Court with respect to all matters related to the terms and conditions of the transfer of Purchased Assets, the Auction, and any transaction contemplated herein.

24. To the extent that any chapter 11 plan confirmed in this case or any order confirming any such plan or any other order in this case (including any order entered after any conversion of this case to a case under chapter 7 of the Bankruptcy Code) alters, conflicts with or derogates from the provisions of this Order, the provisions of this Order shall control. The Debtor's obligations under this Order shall survive conversion of this case to a case under chapter 7 of the Bankruptcy Code, confirmation of any plan of reorganization or discharge of claims thereunder and shall be binding upon the Debtor, a Chapter 7 trustee and the reorganized or reconstituted debtor, as the case may be, after the effective date of a confirmed plan or plans in the Debtor's case (including any order entered after any conversion of this case to a case under chapter 7 of the Bankruptcy Code).

25. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014 or any other provisions of the Bankruptcy Rules or the Local Rules stating the contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

26. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

27. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

28. The Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order.

Dated: \_\_\_\_\_, 201\_

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United States Bankruptcy Judge

## EXHIBIT 1

### **BIDDING PROCEDURES**<sup>1</sup>

By the Motion dated December 11, 2017, Dextera Surgical Inc. (the “Debtor”) sought approval of, among other things, the procedures through which it will determine the highest or otherwise best price for the sale of substantially all of its assets (the “Purchased Assets”) described in the Stalking Horse APA dated as of December 11, 2017 (the “Stalking Horse APA”) by and among Aesculap, Inc. or its permitted assignee as purchaser (the “Stalking Horse Bidder”) and the Debtor, as seller, a copy of which is attached as **Exhibit A** to the Motion.

On January \_\_, 2018, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered an order (the “Bidding Procedures Order”), which, among other things, authorized the Debtor to determine the highest or otherwise best price for the Purchased Assets through the process and procedures set forth below (the “Bidding Procedures”).

Unless expressly indicated, the following Bidding Procedures apply to all bidders regardless of the phase of the Auction in which the bidder intends to participate.

#### **Access to Diligence Materials**

To participate in the bidding process and to receive access to due diligence (the “Diligence Materials”), a party must submit to the Debtor an executed confidentiality agreement in the form and substance satisfactory to the Debtor and evidence demonstrating the party’s financial capability to close a transaction involving some or all of the Purchased Assets (a “Competing Transaction”) as determined by the Debtor.

A party who qualifies for access to Diligence Materials shall be a “Preliminary Interested Investor.” All due diligence requests must be directed to the Debtor.

For any Preliminary Interested Investor who is a competitor of the Debtor or is affiliated with any competitor of the Debtor, the Debtor reserves the right to withhold any Diligence Materials that the Debtor, in its sole discretion, determines are business-sensitive or otherwise not appropriate for disclosure to such Preliminary Interested Investor.

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings set forth in the motion to approve these Bidding Procedures (the “Motion”) or the Stalking Horse APA, as applicable.

### **Bid Qualification Process<sup>2</sup>**

To be eligible to participate in the Auction (defined below), each offer, solicitation or proposal (each, a “Bid”), and each party submitting such a Bid, whether submitting a single Bid for all or substantially all of the Purchased Assets or a joint Bid with another party each for separate components of the Purchased Assets (each, a “Bidder”), must be determined by the Debtor to satisfy each of the following conditions:

(a) Good Faith Deposit: Each Bid must be accompanied by a deposit by wire transfer in the amount equal to ten percent (10%) of the Bid to an interest-bearing account to be identified and established by the Debtor (the “Good Faith Deposit”).

(b) Same or Better Terms: The Bid must be on terms that are substantially the same or better than the terms of the Stalking Horse APA, as determined by the Debtor. A Bid must identify which assets the Bidder intends to purchase and include executed transaction documents. A Bid shall include a copy of the Stalking Horse APA, including exhibits and schedules, marked to show all changes requested by the Bidder. A Bid will not be considered as qualified for the Auction if (i) such Bid contains additional material representations and warranties, covenants, closing conditions, termination rights other than as may be included in the Stalking Horse APA (it being agreed and understood that such Bid shall modify the Stalking Horse APA as needed to comply in all respects with the Bidding Procedures Order and will remove provisions that apply only to the Stalking Horse Bidder as the stalking horse bidder such as the Stalking Horse Payment); (ii) such Bid is not received by the Debtor in writing on or prior to the Bid Deadline, or (iii) such Bid does not contain evidence that the Bidder has received unconditional debt and/or equity funding commitments (or has unrestricted and fully available cash) sufficient in the aggregate to finance the purchase contemplated thereby, including proof that the Good Faith Deposit has been made.

(c) Corporate Authority: The Bid must include written evidence reasonably acceptable to the Debtor demonstrating appropriate corporate authorization to consummate the proposed Competing Transaction.

(d) Proof of Financial Ability to Perform: The Bid must include written evidence that the Debtor reasonably concludes demonstrates that the Bidder has the necessary financial ability to close the Competing Transaction and provide adequate assurance of future performance under all contracts and unexpired leases to be assumed and assigned in such Competing Transaction.

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<sup>2</sup> None of the Bid Qualification Process requirements apply to the Stalking Horse Bidder or the Stalking Horse APA, as may be amended, (the “Stalking Horse Bid”). For the avoidance of doubt, the Stalking Horse Bid is a Qualified Bid and the Stalking Horse Bidder is a Qualified Bidder.

(e) Contingencies: A Bid may not (i) contain representations and warranties, covenants, termination rights, financing or due diligence contingencies other than as may be included in the Stalking Horse APA (it being agreed and understood that such Bid shall modify the Stalking Horse APA as needed to comply in all respects with the Bidding Procedures Order (including removing any termination rights in conflict with the Bidding Procedures Order) and will remove provisions that apply only to the Stalking Horse Bidder as the stalking horse bidder, such as the Stalking Horse Payment) or (ii) be conditioned on obtaining financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy in all material respects of specified representations and warranties at the Closing.

(f) Irrevocable: A Bid must be irrevocable through the Auction, provided, however, that if such Bid is accepted as the Successful Bid or a Backup Bid (each as defined herein), such Bid shall continue to remain irrevocable, subject to the terms and conditions of the Bidding Procedures.

(g) Bid Deadline. Regardless of when a party qualifies as a Preliminarily Interested Investor, the following parties must receive a Bid in writing, on or before January 19, 2018 at 5:00 p.m. (prevailing Eastern Time) or such earlier date as may be agreed to by the Debtor (the "Bid Deadline"): (i) Dextera Surgical Inc., 900 Saginaw Drive, Redwood City, CA 94063 (Attn: Julian Nikolchev), jnikolchev@dexterasurgical.com; (ii) special corporate counsel to the Debtor, Cooley LLP, 101 California Street, 5th Floor, San Francisco, CA 94111-5800 (Attn: Robert L. Eisenbach III, Esq.) reisenbach@cooley.com, and lead counsel for the Debtor, Saul Ewing Arnstein & Lehr, LLP, P.O. Box 1266, Wilmington, DE 19899-1266 (mailing) and 1201 Market Street, Suite 2300, Wilmington DE 19801 (courier) (Attn: Mark Minuti, Esq.) mark.minuti@saul.com; (iii) counsel for the Official Committee of Unsecured Creditors, if any; (iv) counsel for the Stalking Horse Bidder, Stevens & Lee, P.C., 620 Freedom Business Center, Suite 200, King of Prussia, PA 19406 (Attn: Robert Lapowsky, Esq.); rl@stevenslee.commailto:bhall@sgrlaw.com, and (v) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (collectively, the "Notice Parties").

(h) Amount of Bid. Each Bid for all of the Purchased Assets shall clearly show the amount of the purchase price and shall be, separately or jointly with identified co-Bidders, in a minimum amount of \$18 million.

(i) Adequate Assurance of Future Performance. Each Bid shall be accompanied by adequate assurance of future performance information (the "Adequate Assurance Information"), including (i) information about the Bidder's financial condition, such as federal tax returns for the previous two years, a current financial statement, or bank account statements, (ii) information demonstrating (in the Debtor's reasonable business judgment) that the Bidder has the financial capacity to consummate the proposed Competing Transaction, (iii) evidence that the Bidder has obtained authorization or approval from its board of

directors (or comparable governing body) with respect to the submission of its Bid, (iv) the identity and exact name of the Bidder (including any equity holder or other financial backer if the Bidder is an entity formed for the purpose of consummating the proposed Competing Transaction), and (v) such additional information regarding the Bidder as the Bidder may elect to include. By submitting a Bid, Bidders agree that, in the event the Debtor determines such bid to be the Successful Bidder (as defined below), the Debtor may disseminate their Adequate Assurance Information to those non-Debtor counterparties to Debtor's Contracts such Successful Bidder designates for assumption and assignment, provided that such non-Debtor counterparties (i) make a written request for such information to Debtor's counsel and (ii) confirm in writing their agreement to keep such information strictly confidential and to use it solely for the purpose of evaluating whether such Successful Bidder has provided adequate assurance of future performance under the counterparty's Debtor's Contract. If selected as the Successful Bidder, such Successful Bidder may require such counterparties to execute confidentiality agreements prior to the remittance of any confidential, non-public information.

The Debtor will review each Bid received from a Bidder to determine, in consultation with the Official Committee of Unsecured Creditors (the "Committee"), if one is appointed, whether it meets the requirements set forth above. A Bid received from a Bidder before the Bid Deadline that meets the above requirements, as determined by the Debtor, in consultation with the Committee, if one is appointed, shall constitute a "Qualified Bid," and each such Bidder, separately or jointly, shall constitute a "Qualified Bidder."<sup>3</sup> The Debtor shall inform Bidders whether or not their Bids have been designated as Qualified Bids prior to the Auction and shall contemporaneously inform the Stalking Horse Bidder of all Bids that the Debtor considers to be a Qualified Bid. Notwithstanding anything herein to the contrary, the Stalking Horse APA submitted by the Stalking Horse Bidder shall be deemed a Qualified Bid, and the Stalking Horse Bidder is a Qualified Bidder for each phase of the Auction.

### Auction

If one or more Qualified Bids (in addition to the Stalking Horse Bid) are received by the Bid Deadline, the Debtor will conduct an auction (the "Auction") to determine the highest or otherwise best Qualified Bid. If no Qualified Bid (other than the Stalking Horse Bid) is received by the Bid Deadline, no Auction shall be conducted and the Stalking Horse Bid shall be deemed the Successful Bid. Only Qualified Bidders may participate in the Auction.

The Auction shall take place on January 22, 2018 at 10:00 a.m. (prevailing Eastern Time) at the offices of Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036, or such other place and time as the Debtor shall notify all Qualified Bidders, including the Stalking

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<sup>3</sup> For the avoidance of doubt, any bid for separate components of the Purchased Assets shall only be a "Qualified Bid" if submitted jointly with other identified Bids which, taken together, provide a purchase price of at least \$18 million and, otherwise, satisfy all Qualified Bid requirements.



Horse Bidder, counsel for the Stalking Horse Bidder, any official committee, and other parties invited to attend by the Debtor.

(a) The Debtor Shall Conduct the Auction. The Debtor and its professionals shall direct and preside over the Auction. At the start of the Auction, the Debtor shall announce which Qualified Bid(s) is/are deemed to be the highest or otherwise best (each Qualified Bid an “Auction Baseline Bid”). Each Qualified Bidder participating in the Auction must confirm that it has not engaged in any collusion with respect to the bidding or sale of the Debtor’s assets.

The Stalking Horse Payment shall be taken into account in connection with each round of bidding and in each phase of the Auction by adding \$519,000 to the amount of each bid made by the Stalking Horse Bidder. Any credit bids submitted by a party other than the Stalking Horse Bidder shall include a cash component that is sufficient to pay the amount of the Stalking Horse Payment.

Only the Debtor, the Stalking Horse Bidder, and any other Qualified Bidder, in each case, along with their representatives, and any official committee, shall attend the Auction in person, and only the Stalking Horse Bidder and such other Qualified Bidders will be entitled to make any Bids at the Auction.

The Debtor reserves the right, in its reasonable business judgment to make one or more continuances of the Auction to, among other things: facilitate discussions between the Debtor and individual Bidders; allow individual Bidders to consider how they wish to proceed; and give Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor in its reasonable business judgment may require, that the Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed Competing Transaction at the prevailing Overbid amount.

The Stalking Horse Bidder is entitled to make any bids at the Auction in compliance with the Bidding Procedures. The Stalking Horse Bidder shall have the last opportunity to bid after the receipt of any Overbid and before the next round of bidding commences.

(b) Terms of Overbids. An “Overbid” is any Bid made at the Auction subsequent to the Debtor’s announcement of an Auction Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

(i) Minimum Overbid Increment.

Any Overbid after the Auction Baseline Bid shall be made initially in increments valued in an amount of \$100,000 subject to modification of such increment by the Debtor at the Auction. Additional consideration in excess of the amount set forth in an Auction Baseline Bid may include cash and/or noncash consideration. The Stalking Horse Bidder shall be

entitled to credit bid all, or any portion, of the outstanding balance of the debtor-in-possession loan from the Stalking Horse Bidder (or its affiliate) to the Debtor.

(ii) Remaining Terms Are the Same as for Qualified Bids.

Except as modified herein, an Overbid must comply with the conditions for a Qualified Bid set forth above, provided, however, that the Bid Deadline shall not apply. Any Overbid must remain open and binding on the Bidder until and unless the Debtor accepts a higher Overbid.

(c) Backup Bidder. Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the party with the next highest or otherwise best Qualified Bid at the Auction, as determined by the Debtor, in the exercise of its business judgment will be designated as the backup bidder (the "Backup Bidder"). The Backup Bidder shall be required to keep its initial Bid (or if the Backup Bidder submitted one or more Overbids at the Auction, its final Overbid) (the "Backup Bid") open and irrevocable until the earlier of 12:00 p.m. (prevailing Eastern Time) on the date that is seventeen (17) days after the date of the Sale Hearing (the "Outside Backup Date") or the closing of the transaction with the Successful Bidder (defined herein), provided, however, that the Stalking Horse Bidder shall not be required to be a Backup Bidder without its consent. Following the Sale Hearing, if the Successful Bidder (defined herein) fails to consummate an approved transaction, because of a breach or failure to perform on the part of such Successful Bidder (defined herein), the Debtor may designate the Backup Bidder to be the new Successful Bidder (defined herein), and the Debtor will be authorized, but not required, to consummate the transaction, with the Backup Bidder without further order of the Bankruptcy Court. In such case, the defaulting Successful Bidder's deposit shall be forfeited to the Debtor, and the Debtor specifically reserves the right to seek all available damages from the defaulting Successful Bidder (defined herein). The deposit of the Backup Bidder shall be held by the Debtor until the earlier of 24 hours after (i) the closing of the transaction with the Successful Bidder (defined herein) and (ii) the Outside Backup Date. The foregoing notwithstanding, all rights of the Debtor against the Stalking Horse Bidder in the event of a default by the Stalking Horse Bidder are stated in the Stalking Horse APA, as such agreement may be amended by the Debtor and the Stalking Horse Bidder.

(d) Additional Procedures. The Debtor may, with the consent of the Stalking Horse Bidder, as long as the Stalking Horse APA has not been materially breached by the Stalking Horse Bidder or terminated, announce at the Auction additional procedural rules that are reasonable under the circumstances (*e.g.*, the amount of time to make subsequent Overbids) for conducting the Auction. Without limiting the foregoing, at any point during the Auction, the Debtor shall have the right to request additional financial information from any Qualified Bidder (other than the Stalking Horse Bidder) to allow the Debtor to make a reasonable determination as to the Qualified Bidder's financial and other

capabilities to consummate the transactions contemplated by any Qualified Bid, as amended during the Auction process, and any further information that Debtor believes is reasonably necessary to clarify and evaluate the terms of a Qualified Bid.

(e) Consent to Jurisdiction as Condition to Bidding. The Stalking Horse Bidder and all other Qualified Bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to these Bidding Procedures, the Stalking Horse APA, the Auction or the construction and enforcement of any documents relating to a Competing Transaction.

(f) Closing the Auction. The Auction shall continue until the Debtor determines in its reasonable business judgment that there is a highest or otherwise best Qualified Bid at the Auction for the Purchased Assets (each a "Successful Bid") and each Bidder submitting such Successful Bid, a "Successful Bidder"). The Auction shall not close unless and until all Bidders who have submitted Qualified Bids have been given a reasonable opportunity to submit an Overbid at the Auction to the then-existing Overbids and the Successful Bidder has submitted fully executed sale and transaction documents memorializing the terms of the Successful Bid. Within one (1) business day following conclusion of the Auction, the Debtor shall file a notice on the Bankruptcy Court's docket identifying (with specificity) the Successful Bidder for the Purchased Assets and any applicable Backup Bidders. The Debtor shall not consider any Bids submitted after the conclusion of the Auction and any and all such Bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

### **Bid Protections**

The Stalking Horse Bidder is entitled to the Stalking Horse Payment, to the extent it becomes payable, pursuant to the terms of the Stalking Horse APA and the Bidding Procedures Order.

Except for the Stalking Horse Bidder, no other party submitting an offer or Bid for the Purchased Assets or a Qualifying Bid shall be entitled to any expense reimbursement, breakup fee, termination or similar fee or payment.

### **Sale Hearing**

The Debtor will seek approval of the transactions contemplated by the Stalking Horse APA with the Successful Bidder at the hearing scheduled on January 23, 2018 at 10:00 a.m. (the "Sale Hearing"). Objections, if any, to the sale of the Purchased Assets to the Successful Bidder and the transaction contemplated by the Stalking Horse APA must be in writing and filed with the Court no later than 5:00 p.m. (prevailing Eastern Time) on January 19, 2018 (the "Sale Objection Deadline") and be served such that they are actually received by: (i) Dextera Surgical Inc., 900 Saginaw Drive, Redwood City, CA 94063 (Attn: Julian Nikolchev), jnikolchev@dexterasurgical.com; (ii) special corporate counsel to the Debtor, Cooley LLP, 101

California Street, 5th Floor, San Francisco, CA 94111-5800 (Attn: Robert L. Eisenbach III, Esq.) reisenbach@cooley.com, and lead counsel for the Debtor, Saul Ewing Arnstein & Lehr, LLP, P.O. Box 1266, Wilmington, DE 19899-1266 (mailing) and 1201 Market Street, Suite 2300, Wilmington DE 19801 (courier) (Attn: Mark Minuti, Esq.) mark.minuti@saul.com; (iii) counsel for the Official Committee of Unsecured Creditors, if any; (iv) counsel for the Stalking Horse Bidder, Stevens & Lee, P.C., 620 Freedom Business Center, Suite 200, King of Prussia, PA 19406 (Attn: Robert Lapowsky, Esq.); rl@stevenslee.commailto:bhall@sgrlaw.com, and (v) the Office of the United States Trustee, United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (collectively, the “Objection Notice Parties”), in each case, so as to be received the same day the objection is filed.

### **Return of Good Faith Deposit**

The Good Faith Deposits of all Qualified Bidders shall be held in one or more interest-bearing segregated accounts by the Debtor, but shall not become property of the Debtor’s estate absent further order of the Court. The Good Faith Deposit of any Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder shall be returned to such Qualified Bidder not later than two (2) business days after the Sale Hearing. The Good Faith Deposit of the Backup Bidder shall be returned to the Backup Bidder on the date that is the earlier of 24 hours after (a) the closing of the transaction with the Successful Bidder (defined herein) and (b) the Outside Backup Date. Upon the return of the Good Faith Deposits, their respective owners shall receive any and all interest that has accrued thereon. If the Successful Bidder timely closes the winning transaction, its Good Faith Deposit, if any, shall be credited towards its purchase price. The foregoing notwithstanding, the Stalking Horse Bidder has not provided a Good Faith Deposit and is not required to provide a Good Faith Deposit.

### **Reservation of Rights**

Except as otherwise provided in the Stalking Horse APA, Bidding Procedures or the Bidding Procedures Order, the Debtor further reserves the right as it may reasonably determine to be in the best interest of its estate, to: (a) determine which bidders are Qualified Bidders; (b) determine which Bids are Qualified Bids; (c) if at least one (1) Qualified Bid in addition to the Stalking Horse Bid is received by the Bid Deadline, determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (d) reject any Bid, other than the Stalking Horse Bid, that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code or (iii) contrary to the best interests of the Debtor and its estate; (e) with the consent of the Stalking Horse Bidder, as long as the Stalking Horse APA has not been materially breached by the Stalking Horse Bidder or terminated, modify the Bidding Procedures, adopt additional rules or procedures, and extend the deadlines set forth therein or in this Order (other than to permit the submission of bids after the close of the Auction); (f) with the consent of the Stalking Horse Bidder, as long as the Stalking Horse APA has not been materially breached or terminated, continue or cancel the Auction; and (g) with the consent of the Stalking Horse Bidder if the Stalking Horse Bid is the Successful Bid, as long as the Stalking Horse APA has not been terminated, continue the Sale Hearing in open court, without further notice.

**EXHIBIT 2****BIDDING PROCEDURES KEY DATES**

Hearing re: Bidding Procedures	January 3, 2018 at 1:00 p.m. E.S.T.
Service of Motion and Sale Notice	+3 business days from entry of Bidding Procedures Order
Service of Assumption and Assignment Notice	+3 business days from entry of Bidding Procedures Order
Bid Deadline	January 19, 2018 at 5:00 p.m. E.S.T.
Assumption/Assignment and Cure Amount Objection Deadline	January 19, 2018 at 5:00 p.m. E.S.T.
Sale Objection Deadline	January 19, 2018 at 5:00 p.m. E.S.T.
Auction	January 22, 2018 at 10:00 a.m. E.S.T.
Sale Hearing	January 23, 2018 at 10:00 a.m. E.S.T.
Adequate Assurance Objection (in the event the Stalking Horse Bidder is not the Successful Bidder)	At or before the Sale Hearing

**EXHIBIT 3**

**SALE NOTICE**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

DEXTERA SURGICAL INC.,

Debtor.

Chapter 11

Case No. \_\_\_\_\_

**NOTICE OF SALE OF SUBSTANTIALLY ALL ASSETS OF DEXTERA SURGICAL  
INC. FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES AND OTHER  
INTERESTS AND OPPORTUNITY TO SUBMIT BIDS**

PLEASE TAKE NOTICE THAT:

1. Dextera Surgical Inc. (the “Debtor”) has filed Debtor’s Motion for Orders (A)(I) Authorizing and Approving Bidding Procedures, and Stalking Horse Payment; (II) Authorizing and Approving the Debtor’s Entry into the Stalking Horse APA; (III) Approving Notice Procedures; (IV) Scheduling an Auction and Sale Hearing; and (V) Approving Procedures for Assumption and Assignment of Executory Contracts and Unexpired Leases and Determining Cure Amounts and (B)(I) Authorizing the Sale of Substantially All of the Debtor’s Assets Free and Clear of All Claims, Liens, Rights, Interests, and Encumbrances; (II) Approving the Stalking Horse APA; and (III) Authorizing the Debtor to Assume and Assign Certain Executory Contracts and Unexpired Leases [D.I. \_\_\_] (the “Motion”).

2. Pursuant to the Order (A) Authorizing And Approving Bidding Procedures, and Stalking Horse Payment; (B) Authorizing And Approving The Debtor’s Entry Into The Stalking Horse APA; (C) Approving Notice Procedures; (D) Scheduling An Auction And Sale Hearing; (E) Approving Procedures For The Assumption And Assignment Of Executory Contracts And Unexpired Leases And Determining Cure Amounts, and (F) Granting Related Relief [D.I. \_\_\_] (the “Bidding Procedures Order”) entered by the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on January \_\_, 2018 the Debtor has entered into an Asset Purchase Agreement (the “Stalking Horse APA”) for the sale of substantially all of the Debtor’s assets to Aesculap, Inc. or its permitted assignee (the “Stalking Horse Bidder”) subject to a competitive bidding process as set forth in the Bidding Procedures Order. Capitalized terms used but not otherwise defined in this notice have the meanings ascribed to them in the Bidding Procedures Order or the Stalking Horse APA, as applicable.

Copies of (i) the Motion, (ii) the Stalking Horse APA, (iii) the proposed Sale Order, (iv) the Bidding Procedures, and (v) the Bidding Procedures Order can be obtained by contacting the Debtor’s investment banker at JMP Securities, LLC, 600 Montgomery Street, Suite 1100, San Francisco, CA 94111, Telephone: (415) 835-3969 (Attn.: Brian Bock), bbock@jmpsecurities.com, or at the following website: <http://www.omnimgt.com/dextera>.

3. **THE SALE OF THE DEBTOR’S ASSETS WILL BE FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES AND OTHER INTERESTS. IF YOU HAVE A LIEN, ENCUMBRANCE OR INTEREST IN ANY OF THE DEBTOR’S ASSETS AND**

**OBJECT TO THE SALE OF SUCH ASSETS FREE AND CLEAR OF YOUR LIEN, ENCUMBRANCE OR OTHER INTEREST, YOU MUST FILE AN OBJECTION TO THE SALE BY THE OBJECTION DEADLINE (DEFINED BELOW). ALSO TAKE NOTICE THAT ANY SUCH OBJECTION WILL BE HEARD BY THE BANKRUPTCY COURT AT THE SALE HEARING (DEFINED BELOW).**

4. All interested parties are invited to make an offer to purchase the Purchased Assets in accordance with the terms and conditions approved by the Bankruptcy Court (the "Bidding Procedures") by **5:00 p.m.** (prevailing Eastern Time) on **January 19, 2018**. Pursuant to the Bidding Procedures, the Debtor may conduct an auction for the Purchased Assets (the "Auction") beginning at **10:00 a.m.** (prevailing Eastern Time) on **January 22, 2018** at the offices of Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036, or such later time or other place as the Debtor shall notify all Qualified Bidders who have submitted Qualified Bids. Contact the Debtor's investment banker, JMP Securities, LLC, 600 Montgomery Street, Suite 1100, San Francisco, CA 94111, Telephone: (415) 835-3969 (Attn.: Brian Bock), [bbock@jmpsecurities.com](mailto:bbock@jmpsecurities.com), for further information regarding the Debtor's assets and/or making a bid.

5. Participation at the Auction is subject to the Bidding Procedures and the Bidding Procedures Order.

6. A hearing (the "Sale Hearing") to approve the sale of the Purchased Assets to the highest or otherwise best bidder will be held on January 23, 2018 at 10:00 a.m. (prevailing Eastern Time) at the Bankruptcy Court. The Sale Hearing may be adjourned without notice other than an adjournment in open court.

7. Objections, if any, to the proposed Sale must be filed and served in accordance with the Bidding Procedures Order, and **actually received** no later than **5:00 p.m.** (prevailing Eastern Time) on **January 19, 2018**.

8. This notice is qualified in its entirety by the Bidding Procedures Order.

Dated: January \_\_, 2018  
Wilmington, Delaware

**SAUL EWING ARNSTEIN & LEHR LLP**  
Mark Minuti (DE Bar No. 2659)  
1201 N. Market Street, Suite 2300  
P.O. Box 1266  
Wilmington, DE 19899  
Telephone: (302) 421-6840  
Facsimile: (302) 421-5873

*[Proposed] Lead Counsel for the  
Debtor and Debtor in Possession*



**EXHIBIT 4**

**ASSUMPTION AND ASSIGNMENT NOTICE**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:

Chapter 11

DEXTERA SURGICAL INC.,

Case No. \_\_\_\_\_

Debtor.

**NOTICE OF POSSIBLE ASSUMPTION AND CURE AMOUNT WITH RESPECT TO  
EXECUTORY CONTRACTS OR UNEXPIRED LEASES POTENTIALLY TO BE  
ASSUMED AND ASSIGNED IN CONNECTION WITH SALE OF DEBTOR'S ASSETS**

PLEASE TAKE NOTICE THAT:

1. Pursuant to the *Order (A) Authorizing And Approving Bidding Procedures, and Stalking Horse Payment; (B) Authorizing And Approving The Debtor's Entry Into The Stalking Horse APA; (C) Approving Notice Procedures; (D) Scheduling An Auction And Sale Hearing; (E) Approving Procedures For The Assumption And Assignment Of Executory Contracts And Unexpired Leases And Determining Cure Amounts, and (F) Granting Related Relief* (the "Bidding Procedures Order") entered by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") on January \_\_, 2018, [D.I. \_\_] the above captioned debtor (the "Debtor"), has entered into an Asset Purchase Agreement (the "Stalking Horse APA") with Aesculap, Inc. (together with any permitted assignee, the "Stalking Horse Bidder") for the sale of substantially all of the Debtor's assets subject to a competitive bidding process as set forth in the Bidding Procedures Order. The Debtor hereby provides notice that it may seek to assume and assign the prepetition executory contracts or unexpired leases (the "Debtor's Contracts") listed on **Exhibit A** hereto to the Stalking Horse Bidder or any other Successful Bidder, as the case may be. The inclusion of any executory contract or unexpired lease on **Exhibit A** does not require or guarantee that such lease or contract will be assumed and assigned, or that such contract or lease is executory, and all rights of the Debtor with respect thereto are reserved. Capitalized terms used but not otherwise defined in this notice have the meanings ascribed to them in the Bidding Procedures Order or the Stalking Horse APA, as applicable.

2. Pursuant to the terms of the Stalking Horse APA (or the asset sale and purchase agreement that the Debtor may enter into with any other Successful Bidder), the Debtor may seek to assume and/or assign one or more of the Debtor's Contracts to the Stalking Horse Bidder or any other Successful Bidder, as the case may be, subject to approval at the hearing to be held at 10:00 a.m. (prevailing Eastern Time) on **January 23, 2018** (the "Sale Hearing") before the Bankruptcy Court. On Exhibit "A" hereto, the Debtor has stated the amounts (each an "Asserted Cure Amount") the Debtor believes must be paid to the non-debtor counterparty to each Debtor's Contract to cure any defaults required to be cured as a condition of assumption of such Debtor's Contract pursuant to Section 365(b)(1) of the Bankruptcy Code (the "Cure Amount").

**3. Objections, if any, to (i) the assumption and assignment of a Debtor's Contract, (ii) the Asserted Cure Amount, and/or (iii) the Stalking Horse Bidder's ability to provide adequate assurance of future performance must (a) be in writing, (b) state with**

specificity the Cure Amount asserted to be required, (c) include appropriate documentation thereof, (d) be filed with the Bankruptcy Court no later than January 19, 2018 at 5:00 p.m. (prevailing Eastern Time) (the “Sale Objection Deadline”) and served on the following parties: (i) Dextera Surgical Inc., 900 Saginaw Drive, Redwood City, CA 94063 (Attn: Julian Nikolchev), jnikolchev@dexterasurgical.com; (ii) special corporate counsel to the Debtor, Cooley LLP, 101 California Street, 5th Floor, San Francisco, CA 94111-5800 (Attn: Robert L. Eisenbach III, Esq.) reisenbach@cooley.com, and lead counsel for the Debtor, Saul Ewing Arnstein & Lehr, LLP, P.O. Box 1266, Wilmington, DE 19899-1266 (mailing) and 1201 Market Street, Suite 2300, Wilmington DE 19801 (courier) (Attn: Mark Minuti, Esq.) mark.minuti@saul.com; (iii) counsel for the Official Committee of Unsecured Creditors, if any; (iv) counsel for the Stalking Horse Bidder, Stevens & Lee, P.C., 620 Freedom Business Center, Suite 200, King of Prussia, PA 19406 (Attn: Robert Lapowsky, Esq.); rl@stevenslee.commailto:bhall@sgrlaw.com, and (v) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, so as to be received no later than 5:00 p.m. on the Sale Objection Deadline.

**If the bid of the Stalking Horse Bidder is not the Successful Bid at the Auction, the non-Debtor counterparties to the Debtor’s Contracts shall have until the Sale Hearing to object to the assumption and assignment of such Debtor’s Contract solely on the issue of whether such Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code.**

4. If an objection to the assumption and assignment of a Debtor’s Contract is timely filed and received, a hearing with respect to the objection will be held before the Bankruptcy Court at the Sale Hearing, provided, however, to the extent such objection includes an objection to an Asserted Cure Amount and the parties are unable to consensually resolve the dispute, at the Debtor’s discretion and provided at Closing the disputed portion of the Cure Amount or such other amount as may be determined by the Bankruptcy Court is escrowed, the hearing regarding the Cure Amount may be continued until after the Closing Date and the Debtor’s Contract(s) subject to such Cure Amount dispute shall be assumed and assigned to the Stalking Horse Bidder or any other Successful Bidder at the Closing of the Sale.

5. Pursuant to 11 U.S.C. § 365, there is adequate assurance of future performance that the Asserted Cure Amount set forth in the Assumption and Assignment Notice will be paid in accordance with the terms of the Sale Order. There is adequate assurance of the Stalking Horse Bidder’s future performance under the executory contract or unexpired lease to be assumed and assigned because of the significant resources of the Stalking Horse Bidder. If necessary, the Debtor will adduce facts at the hearing on any objection demonstrating the financial wherewithal of the Successful Bidder, and its willingness and ability to perform under the contracts to be assumed and assigned to it.

6. If no objection is timely received, the Asserted Cure Amount set forth in Exhibit A hereto will be controlling, notwithstanding anything to the contrary in any Debtor’s Contract or any other document, and the non-Debtor party to the Debtor’s Contract will be deemed to have consented to the Asserted Cure Amount and to assumption and assignment of such Debtor’s Contract to the Stalking Horse Bidder, or to any other Successful Bidder, and will be forever barred from asserting any other claims in respect of such Debtor’s Contract against

the Debtor, the Stalking Horse Bidder, or any other Successful Bidder (as appropriate), or the property of any of them. The failure of any objecting person or entity to timely file its objection will be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Sale Motion, the Sale, or the Debtor's consummation of and performance under the Sale Agreement (including the transfer of the Purchased Assets and the Debtor's Contracts free and clear of all claims, liens and interests), if authorized by the Court.

7. Prior to the conclusion of the Sale Hearing, the Stalking Horse Bidder or any other Successful Bidder may amend its decision with respect to the assumption and assignment of any Debtor's Contract. The Debtor shall retain the right to amend the Asserted Cure Amount and provide a new notice amending the information provided in this notice, including, without limitation, a determination not to assume certain contracts.

Dated: January \_\_, 2018  
Wilmington, Delaware

**SAUL EWING ARNSTEIN & LEHR LLP**  
Mark Minuti (DE Bar No. 2659)  
1201 N. Market Street, Suite 2300  
P.O. Box 1266  
Wilmington, DE 19899  
Telephone: (302) 421-6840  
Facsimile: (302) 421-5873

*[Proposed] Lead Counsel for the  
Debtor and Debtor in Possession*

**EXHIBIT A**

<b><u>Contract/Lease Counterparty</u></b>	<b><u>Contract or Lease</u></b>	<b><u>Cure Amount</u></b>

**EXHIBIT C**

**Proposed Sale Order**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

Dextera Surgical Inc.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 17-12913 (\_\_\_\_)

Re: Docket No. \_\_\_\_\_

**ORDER UNDER 11 U.S.C. § 105, 363, 365, 503 AND 507 (A) APPROVING ASSET PURCHASE AGREEMENT WITH AESCULAP, INC., (B) AUTHORIZING SALE OF DEBTOR'S ASSETS FREE AND CLEAR OF INTERESTS, (C) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN OF THE DEBTOR'S EXECUTORY CONTRACTS, AND (D) GRANTING RELATED RELIEF**

Upon the motion (the "Sale Motion")<sup>2</sup> of Dextera Surgical Inc. (the "Debtor"), for, *inter alia*, entry of an order, pursuant to sections 105, 363, 365, 503 and 507 of title 11 of the United States Code (the "Bankruptcy Code"),(i) approving the sale by the Debtor to Aesculap, Inc. or its permitted assignee (the "Buyer") of the Purchased Assets pursuant to that certain Asset Purchase Agreement attached hereto as **Exhibit A** (the "Agreement") free and clear of all Interests (defined below) (except those expressly assumed by the Buyer), and (ii) authorizing the assumption by the Debtor and assignment to the Buyer of certain executory contracts free and clear of all Interests (except those expressly assumed by the Buyer), and (iii) granting certain related relief; and the Court having held a hearing on \_\_\_\_\_, 201\_\_ (the "Sale Hearing") to approve the Sale Motion; and the Court having reviewed and considered (a) the Sale Motion, (b) the objections to the Sale Motion, if any, and (c) the arguments of counsel made, and the evidence proffered or adduced at the Sale Hearing; and it appearing that the relief requested in

<sup>1</sup> The last four digits of the Debtor's federal tax identification number are 7832. The Debtor's address is 900 Saginaw Drive, Redwood City, CA 94063.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Sale Motion or the Agreement (defined below) as applicable.

the Sale Motion is in the best interests of the Debtor, its estate and creditors and other parties in interest; and upon the record of the Sale Hearing and after due deliberation thereon; and good cause appearing therefore,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. This Court has jurisdiction over the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. §157(b)(2)(A), (M), (N) and (O). The statutory predicates for the relief requested in this Sale Motion are Sections 105, 363, 365, 503 and 507 of the Bankruptcy Code.

B. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

C. Proper, timely, adequate and sufficient notice of the Sale Motion, the hearing on the Sale Motion and the Debtor's assumption and assignment of the contracts listed on **Exhibit B** hereto (the "Assigned Contracts") to the Buyer has been provided in accordance with sections 102(1), 363, 365, 503 and 507 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") 2002, 6004, 6006, 9008 and 9014 and the order of this Court dated \_\_\_\_\_, \_\_\_\_ (the "Bidding Procedures Order"), and no other or further notice of the Sale Motion, the hearing on the Sale Motion, or of the entry of this Order is required.

D. A reasonable opportunity to object or be heard regarding the relief requested in the Sale Motion has been afforded to all interested persons and entities, including: (i) all creditors or their counsel known to the Debtor to assert a lien (including any security interest), claim, right, interest or encumbrance of record against all or any portion of the



Purchased Assets; (ii) the Office of the United States Trustee for the District of Delaware; (iii) counsel to the Stalking Horse Bidder; (iv) counsel to Century Medical, Inc.; (v) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002; (vi) the United States of America Internal Revenue Service; (vii) the United States Attorney for the District of Delaware; (viii) the United States of America Environmental Protection Agency; (ix) the United States of America Food and Drug Administration; (x) the Pension Benefit Guaranty Corporation; (xi) the State of California Department of Revenue; (xii) the State of California Environmental Protection Agency; (xiii) the Office of the Attorney General for the State of California; (xiv) the State of California Department of Industrial Relations; (xv) all counterparties to any Executory Contract or Lease of the Debtor; (xvi) all other known creditors and interest holders of Debtor; (xvii) all potential bidders previously identified or otherwise known to the Debtor within the prior twelve (12) months; (xviii) counsel to the Official Committee of Unsecured Creditors, if one has been appointed, (xix) all parties listed on the mailing matrix filed by the Debtor in this Bankruptcy Case; (xx) all purchasers of medical devices from the Debtor since January 1, 2015, and (xxi) to the extent known to the Debtor, all persons upon whom any medical devices sold by the Debtor since January 1, 2015 were used.

E. The Debtor also caused notice of the Sale Motion to be published in the National Edition of The New York Times and USA Today, which notice by publication is reasonable and sufficient to bind holders of claims against the Debtor whose identity was not known to the Debtor as of the date notice of the Sale Motion was provided pursuant to the Bidding Procedures Order to the terms of this Order.

F. The Debtor has full corporate power and authority to execute the Agreement and all other documents contemplated thereby and consummate the transactions

contemplated therein and the sale of the Purchased Assets and assumption and assignment to the Buyer of the Assigned Contracts (defined below) (collectively, the “Sale”) has been duly and validly authorized by all necessary corporate action of the Debtor and no consents or approvals, other than the approval of this Court, are required for the Debtor to consummate such transactions.

G. The Buyer is not a successor to or mere continuation of the Debtor or its estate.

H. The bidding procedures established pursuant to the Bidding Procedures Order afforded a full, fair and reasonable opportunity for any entity to make a higher or better offer to purchase the Purchased Assets and Assigned Contracts and no higher or better offer has been made.

I. The Debtor has demonstrated that it is an exercise of its sound business judgment to assume and assign the Assigned Contracts and sell the Purchased Assets to the Buyer in connection with the consummation of the Agreement, and that approval of the Agreement and the Sale pursuant thereto is in the best interests of the Debtor, its estates, and its creditors.

J. The Sale must be completed immediately in order to preserve the Debtor’s going concern value and, as a result, good and sufficient business justification exists for the immediate sale of the Purchased Assets and assumption and assignment of the Assigned Contracts to the Buyer outside of a plan of reorganization.

K. The Buyer is not an insider, as that term is defined in the Bankruptcy Code, of the Debtor. Furthermore, no insiders of the Debtor are receiving or retaining any benefit, property or payments in connection with the Sale except to the extent (i) such insiders

have allowed claims against or equity interests in the Debtor and, as a result, may participate in a distribution of Sale proceeds, (ii) such insiders are to be employed by the Buyer following closing, as disclosed on the record at the hearing on the Sale Motion, or (iii) otherwise disclosed on the record at the hearing on the Sale Motion.

L. The Agreement was negotiated, proposed and entered into by the Debtor and Buyer without collusion, in good faith, and as a result of arm's-length bargaining. The Buyer is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to the protections afforded thereby. Neither the Debtor nor the Buyer has engaged in any conduct that would cause or permit the Agreement to be avoided under section 363(n) of the Bankruptcy Code.

M. In the absence of a stay pending appeal, the Buyer will be acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the transactions contemplated by the Agreement at any time after the entry of this Order, provided the Buyer shall not be obligated to close until all applicable conditions to closing under such Agreement have been satisfied or waived as provided in such Agreement.

N. The consideration provided by the Buyer for the Purchased Assets being purchased, including the Assigned Contracts, pursuant to the Agreement constitutes the best and highest offer for the Purchased Assets and the Assigned Contracts and reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession thereof, and the District of Columbia.

O. The Debtor may sell the Purchased Assets and Assigned Contracts free and clear of all Interests (including, without limitation, (i) that purport to give to any party a right or option to effect any forfeiture, modification or termination of the Debtor's or the Buyer's

interest in the Purchased Assets and/or Assigned Contracts and, (ii) in respect of Taxes), because each entity with an Interest in any of the Purchased Assets and/or Assigned Contracts has consented to the Sale, is deemed to have consented to the Sale, has a claim which is subject to a bona fide dispute, or could be compelled in a legal or equitable proceeding to accept a money satisfaction of such Interest.

P. The Debtor has good title to the Purchased Assets and Assigned Contracts and, accordingly, the transfer of the Purchased Assets and Assigned Contracts to the Buyer pursuant to the Agreement will be a legal, valid, and effective transfer of the Purchased Assets and Assigned Contracts.

Q. Neither the transfer of the Purchased Assets nor the assignment of the Assigned Contracts pursuant to the Agreement will subject the Buyer to any liability (except those expressly assumed by the Buyer pursuant to the Agreement (the “Assumed Liabilities”)) for claims against the Debtor or the Debtor’s predecessors or affiliates of any kind or character, whether known or unknown, now existing or hereafter occurring, whether fixed or contingent, based, in whole or in part, directly or indirectly, on any theory of law, including, without limitation, any theory of successor, vicarious or transferee liability. Without limiting the general nature of the foregoing, neither the transfer of the Purchased Assets nor the assignment of the Assigned Contracts will subject the Buyer to any liability on account of any Employee Plan (as defined in the Agreement) maintained by the Debtor, including any liability related to benefits, underfunding, termination and/or termination premiums, regardless when such claims are deemed to have accrued and regardless whether such would be considered “claims” as such term is defined in the Bankruptcy Code, to (i) the Pension Benefit Guaranty Corporation (collectively, the “PBGC Claims”), or (ii) to any plan participant, beneficiary or any third party.

R. The Buyer has provided adequate assurance of future performance under the Assigned Contracts, as required by Section 365(b)(1)(C) of the Bankruptcy Code.

S. Upon the assumption and assignment of the Assigned Contracts, as provided herein, the Buyer shall succeed to all of the right, title and interest of the Debtor under the Assigned Contracts including, without limitation, the right to exercise renewal options which, pursuant to the terms of the applicable Assigned Contract, are not exercisable by assignees of the Debtor, the Court having found that such provisions constitute unenforceable restrictions on assignment pursuant to Section 365(f)(3) of the Bankruptcy Code.

NOW, THEREFORE, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED THAT:

1. The Sale Motion, and the relief sought therein (including approval of the Sale) is GRANTED, in all respects.
2. All objections to the Sale Motion or the relief requested therein that have not been withdrawn with prejudice, waived, or settled, and all reservations of rights included therein, are overruled on the merits.
3. The Agreement, and all of the terms and conditions thereof, is hereby approved.
4. Pursuant to Sections 105(a), 363(b) and 365 of the Bankruptcy Code, the Debtor is authorized and directed to take all actions necessary to consummate the pursuant to and in accordance with the terms and conditions of the Agreement.
5. As of the date of closing under the Agreement (the "Closing Date"), the Assigned Contracts shall be deemed to have been assumed by the applicable Debtor and assigned to the Buyer pursuant to Section 365(f) of the Bankruptcy Code. Pursuant to section 365(k) of

the Bankruptcy Code, the Debtor and the Debtor's estate shall be relieved from any liability for any breach of an Assigned Contract occurring after the effective date of the Closing Date.

6. On the Closing Date, from the Purchase Price, the Buyer shall, (i) pay to the non-debtor party to each Assigned Contract as to which a liquidated cure amount (the "Liquidated Cure Amount") is stated on **Exhibit B**, the amount of such Liquidated Cure Amount, and (ii) pay to the Escrow Agent an amount equal to the maximum cure amounts (the "Maximum Unliquidated Cure Amounts") claimed by the non-debtor party to each other Assigned Contract, as such Maximum Unliquidated Cure Amounts are stated on **Exhibit B**. For the avoidance of doubt, the Maximum Unliquidated Cure Amounts stated on **Exhibit B** shall be the maximum amount of any subsequently allowed claim to which any non-debtor party to an Assigned Contract shall be entitled pursuant to Section 365(b)(1)(A) of the Bankruptcy Code. The amounts paid by the Buyer to the Escrow Agent are hereafter referred to as the "Disputed Cure Amounts."

7. Upon payment of the Liquidated Cure Amounts to the applicable non-debtor parties, (i) all defaults under the related Assigned Contracts required to be cured pursuant to Section 365(b)(1)(A) of the Bankruptcy Code shall be deemed cured and all amounts due to the non-debtor parties to such Assigned Contracts pursuant to Section 365(b)(1)(B) on account of any pecuniary loss resulting from such defaults shall be deemed paid in full, and (ii) each non-debtor party to such Assigned Contracts shall be forever bound by such Liquidated Cure Amounts and enjoined from seeking to terminate such Assigned Contract or enforce any other remedies under such Assigned Contract against the Buyer on account of defaults by the Debtor, including defaults as to which, pursuant to Section 365(b)(1)(A) of the Bankruptcy Code, cure is not required.

8. Upon payment by the Buyer of the Maximum Unliquidated Cure Amounts to the Escrow Agent, the non-debtor parties to such Assigned Contracts shall be (i) limited to recourse against the Disputed Cure Amounts on account of all defaults under the related Assigned Contracts required to be cured pursuant to Section 365(b)(1)(A) of the Bankruptcy Code and all pecuniary loss resulting from such defaults due to such non-debtor party pursuant to Section 365(b)(1)(B) of the Bankruptcy Code and forever bound by such Maximum Unliquidated Cure Amounts, and (ii) enjoined from seeking (A) recourse against the Debtor or the Buyer on account of any defaults by the Debtor under the related Assigned Contracts required to be cured pursuant to Section 365(b)(1)(A) of the Bankruptcy Code and/or any pecuniary loss resulting from such defaults due to such non-debtor party pursuant to Section 365(b)(1)(B) of the Bankruptcy Code, and/or (B) to terminate such Assigned Contract or enforce any other remedies under such Assigned Contract against the Buyer on account of defaults by the Debtor, including defaults as to which, pursuant to Section 365(b)(1)(A) of the Bankruptcy Code, cure is not required.

9. Any provision in any Assigned Contract that purports to declare a breach, default or payment right as result of an assignment or a change of control in respect of the Debtor is unenforceable, and all such Assigned Contracts shall remain in full force and effect, notwithstanding any such provision. No sections or provisions of any Assigned Contract that purports to provide for additional payments, rent accelerations, assignment fees, increases, payments, charges or any other fees charged to the Buyer or the Debtor as a result of the assumption and the assignment of the Assigned Contracts shall have any force and effect with respect to the transactions contemplated by the Agreement and assignments authorized by this Order, and such provisions constitute unenforceable anti-assignment provisions under Section

363(f) of the Bankruptcy Code. The Buyer shall not be required, pursuant to section 365(l) of the Bankruptcy Code or otherwise, to provide any additional deposit or security with respect to any Assigned Contract to the extent not previously provided by the Debtor.

10. Except for the Assumed Liabilities and Permitted Liens and Encumbrances, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, upon the Closing under the Agreement, the Purchased Assets and the Assigned Contracts shall be free and clear of all (i) mortgages, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances and claims (as that term is defined in the Bankruptcy Code), (ii) rights or options to effect any forfeiture, modification, repurchase, or termination of the Debtor's or Buyer's interest in the Assigned Contracts and/or Purchased Assets, regardless whether such are "claims" as that term is defined in the Bankruptcy Code, (iii) PBGC Claims, (iv) claims in respect of Taxes (including taxes as to which applicable returns have not yet been filed, whether or not overdue), and (v) easements, restrictions, rights of first refusal or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, regardless whether such are "claims" as that term is defined in the Bankruptcy Code (collectively, items (i) to (v) above are referred to as "Interests"), with all such Interests to attach to the Net Proceeds of Sale (defined below) in the order of its respective priority, with the same validity, force and effect (if any) which it now has against the Purchased Assets and Assigned Contracts, subject to any claims and defenses the Debtor may possess with respect thereto. The "Net Proceeds of Sale" is the Purchase Price, as adjusted pursuant to the Agreement, minus amounts distributed on account of Liquidated Cure Amounts, minus the Disputed Cure Amounts (to the extent such Disputed Cure Amounts are paid to counterparties to Assigned Contracts following allowance and



payment of applicable cure amounts), and minus amounts paid to the Escrow Agent on account of the Indemnification Escrow (the “Indemnification Escrow Funds”), to the extent the Indemnification Escrow Funds are paid to the Buyer pursuant to the terms of the Agreement and the Indemnification Escrow Agreement. For the avoidance of doubt, neither the Disputed Cure Amounts nor the Indemnification Escrow Funds shall be property of the Debtor’s estate and no Interests shall attach to the Disputed Cure Amounts or the Indemnification Escrow Funds unless and until such funds are distributed to the Debtor pursuant to the terms of the Agreement and the Escrow Agreement.

11. All claims of the Buyer or any other Buyer Indemnified Party for indemnification under the terms of the Agreement shall be treated as administrative claims pursuant to Section 503 and 507 of the Bankruptcy Code to the extent necessary to permit a claim against the Indemnification Escrow Funds, provided, however, the sole remedy for claims by the Buyer or any other Buyer Indemnified Party for indemnification for monetary damages shall be to and against the Indemnification Escrow Funds and shall be determined and paid pursuant to the terms of the Agreement and the Escrow Agreement. To the extent of any conflict between the terms of the Agreement or the Escrow Agreement relating to such determination and payment of indemnity claims and the Bankruptcy Code or Bankruptcy Rules, the terms of the Agreement and the Escrow Agreement shall control.

12. All persons are hereby enjoined from asserting, prosecuting or otherwise pursuing any claim against the Buyer to recover on any claims (regardless of when accrued and regardless whether meeting the definition of “claim” under the Bankruptcy Code) such person had, has or may have (other than an Assumed Liability) against (x) the Debtor, its estate, officers, directors, shareholders, the Purchased Assets or the Assigned Contracts, or (y) the

Buyer in connection with the negotiation of, and any agreements contained in, related to or conditioned upon, the Agreement.

13. As of the Closing Date, each of the Debtor's creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its Interests in or claims against the Purchased Assets and Assigned Contracts, if any, as such Interests or claims may have been recorded or may otherwise exist.

14. Each and every federal, state and local governmental agency or department be, and hereby is, directed to accept (i) this Sale Order as sufficient evidence of the transfers of all right, title, and interest in, to, and under the Purchased Assets and the Assigned Contracts, and are authorized to rely on this Sale Order in consummating, or facilitating the consummation of, the transactions contemplated by the Asset Purchase Agreement, and (ii) any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement.

15. Upon the occurrence of the Closing, all Interests in, against, or upon the Purchased Assets or the Assigned Contracts shall be unconditionally released, terminated, and discharged (but solely as to the Buyer, the Purchased Assets and the Assigned Contracts), without the need for any further action. Notwithstanding the foregoing, at the Closing, or as soon as practicable thereafter, (x) the Debtor and the Buyer are hereby authorized to execute and file such termination statements, instruments of satisfaction, releases, or other documents to reflect the unconditional release, termination, and discharge of such Interests on behalf of such person or entity with respect to the Purchased Assets and the Assigned Contracts, and (y) the Buyer is hereby authorized on behalf of each holder of a purported Interest to file, register, or otherwise record a copy of this Sale Order, which, once filed, registered, or otherwise recorded,

shall constitute conclusive evidence of the unconditional release, termination, and discharge of all Interests in, against, or upon the Purchased Assets or the Assigned Contracts. The provisions of this Order authorizing the sale of the Purchased Assets free and clear of all Interests are self-executing and, notwithstanding the failure of the Debtor, the Buyer or any other party to execute, file or obtain termination statements, instruments of satisfaction, releases, or other documents to reflect the release, termination, and discharge of any such Interests, all such Interests shall be deemed divested immediately upon Closing.

16. All entities that are presently, or on the Closing Date may be, in possession of some or all of the Purchased Assets are hereby directed to surrender possession of the Purchased Assets to the Buyer on the Closing Date.

17. As of the Closing Date, all agreements of any kind whatsoever and all orders of this Court entered prior to the date hereof shall be deemed amended and/or modified to the extent required to permit the consummation of the transactions contemplated by the Agreement.

18. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, or refuse to renew any permit, license, or similar grant relating to the operation of the Purchased Assets or the Assigned Contracts on account of the filing or pendency of this Bankruptcy Case or the consummation of the Sale.

19. To the greatest extent available under applicable law, the Buyer shall be authorized, as of the Closing Date and upon the occurrence of Closing, to operate under any transferred license, permit, registration and governmental authorization or approval of the Debtor with respect to the Purchased Assets, and all such licenses, permits, registrations and

governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to the Buyer as of the Closing Date.

20. No law of any state or other jurisdiction relating to bulk sales or similar laws shall apply in any way to the transaction contemplated by the Agreement, the Sale Motion, and this Order.

21. For the avoidance of doubt, any privileges, protections or immunities of the Debtor for communications, documents, materials or matters arising at any time, whether before or after the Petition Date, including but not limited to any attorney-client privilege, work product doctrine, common interest or joint defense privilege, relating to any matter whatsoever, including without limitation any matter relating to the negotiation and implementation of the Agreement and any of the transactions contemplated thereby or entered into in connection therewith (collectively, "Privilege") shall not be Purchased Assets under the Agreement, and any such Privilege is owned and will continue to be owned by the Debtor, and notwithstanding anything to the contrary herein or in the Agreement, the Buyer shall have no interest in or rights with respect to the Privilege, whether pursuant to this Order, the Agreement, or otherwise. The Privilege shall remain within the sole control of the Debtor and may not be waived by any other person or entity.

22. The Agreement and the Escrow Agreement, as well as other agreements related thereto, may be modified, amended, or supplemented by the Debtor and the Buyer without further order of the Court, provided that any such modification, amendment, or supplement either is (a) not material or (b) not less favorable to the Debtor than the existing applicable provisions.

23. The Debtor is hereby authorized and empowered, upon and in connection with the Closing, to change its corporate name and the caption of this chapter 11 case, consistent with applicable law. The Debtor shall file a notice of change of case caption, containing the new caption and the new corporate name of the Debtor, within ten (10) business days of any change to its corporate name, and the change of case caption for this chapter 11 case shall be deemed effective as of the date of the Debtor's change of its corporate name.

24. This Court shall retain jurisdiction (a) to enforce and implement the terms and provisions of the Agreement, all amendments thereto, any waivers and consents thereunder and each of the agreements executed in connection therewith, (b) to compel delivery of the Purchased Assets and Assigned Contracts to the Buyer, (c) to resolve any disputes arising under or related to the Agreement, except as otherwise provided therein, and (d) to interpret, implement and enforce the provisions of this Order.

25. Nothing contained in any plan confirmed in this case or the order confirming any plan shall conflict with or derogate from the provisions of the Agreement or the terms of this Order. Further, the provisions of this Order and any actions taken pursuant hereto shall survive the entry of any order which may be entered confirming any plan or converting the Debtor's case from chapter 11 to a case under chapter 7 of the Bankruptcy Code.

26. The terms and provisions of the Agreement, together with the terms and provisions of this Order, shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, its estate, its creditors, the Buyer and its affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting a claim against or Interest in the Debtor's estate or any of the Assigned Contracts and the Purchased Assets and any trustee appointed for the Debtor under any chapter of the Bankruptcy Code.

27. The Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement is not material.

28. The failure specifically to include any particular provision of the Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Agreement be authorized and approved in its entirety.

29. The Buyer is a party in interest and shall have standing to appear and be heard on all issues related to or otherwise connected with this Order, the Sale or the Agreement.

30. Notwithstanding the provisions of Fed. R. Bankr. P. 6004 (h), 6006(d), and 7062, this Order shall be effective and enforceable immediately upon entry.

Dated: \_\_\_\_\_, 2017  
Wilmington, Delaware

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United States Bankruptcy Judge

**EXHIBIT A**

**ASSET PURCHASE AGREEMENT**

**EXHIBIT B**

**ASSIGNED CONTRACTS**



<u>CONTRACT DESCRIPTION</u>	<u>LIQUIDATED CURE AMOUNT</u>	<u>MAXIMUM UNLIQUIDATED CURE AMOUNT (IF APPLICABLE)</u>