

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

BAXANO SURGICAL, INC.,

as Seller,

AND

EXWORKS CAPITAL FUND I, L.P.

as Purchaser

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”) is made and entered into as of this ~~—31st day of January, 2015,~~December, 2014, by and between Baxano Surgical, Inc., a Delaware corporation, formerly known as Trans1 Inc. and successor to Baxano, Inc. (the “**Seller**”), and [Ex Works Capital Fund I, L.P.] (the “**Purchaser**”). The Seller and the Purchaser are sometimes individually referred to herein as a “**Party**” and collectively as the “**Parties.**”

WHEREAS, the Seller is engaged in utilizing the Acquired Assets (hereinafter defined) in the business of designing, developing, marketing, and selling minimally invasive medical devices and (i) flexible surgical instruments used under its iO-Flex® product line that allow surgeons to treat degenerative conditions of the lumbar spine, including the Products lumbar spinal stenosis during spinal decompression procedures (the “iO-Flex® Products”); (ii) disposable facetectomy instruments under its iO-Tome® product line that allow surgeons to perform rapid facetectomies while working above exiting nerves (the “iO-Tome® Products”); and (iii) tools, equipment, and inventory in the field of bone graft harvesting including, without limitation, the trochar introducer the trephine saw assembly, tissue dilator shaft assembly, tissue dilator sheath subassembly, and iliac crest bone graft harvesting products (the “Bone Graft Harvesting Products”) (such business as conducted by the Seller as of the date hereof, the “**Acquired Business**”); and

WHEREAS, Seller is engaged in other aspects of the medical device and instruments business (“Non-Acquired Business” and, together with the Acquired Business, the “Business”) that is not included in the Acquired Assets.

WHEREAS, the Seller is the owner of the Acquired Assets; and

WHEREAS, on November 12, 2014 (the “**Petition Date**”), a voluntary petition for relief was filed by the Seller 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**”), under Case Number 14-12545 (CSS) (the “**Bankruptcy Case**”); and

WHEREAS, the Seller desires to sell and the Purchaser desires to purchase the Acquired Assets all in accordance with, and subject to, the terms and conditions contained in this Agreement; and

WHEREAS, the Acquired Assets ~~being transferred herein are intended to~~shall be sold, ~~conveyed and transferred to the Purchaser free and clear of all Liens and Encumbrances pursuant to Section 363 of the Bankruptcy Code, and subject to the Sale Order.~~

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~~ARTICLE I.~~
DEFINITIONS

For purposes of this Agreement (including any Exhibits or Schedules attached hereto), the following terms shall have the meanings indicated below, unless the context clearly requires otherwise:

“**510(k) Clearances**” shall mean, collectively, the FDA cleared 510(k) Filings relating to any Product identified on Schedule A-4 to **Exhibit A**.

“**510(k) Filings**” shall mean, collectively, the pre-market notifications submitted by or on behalf of the Seller to the FDA relating to any Product identified on Schedule A-4 to **Exhibit A**.

“**510(k) Supporting Materials**” means, collectively, all technical files, drawings and documents supporting the submissions for ~~pre-market notifications~~ 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.

“**Acquired Assets**” shall mean all of the assets and properties of the Seller identified on **Exhibit A** (~~except to for the extent such are Excluded Assets~~).

“Acquired Business” is defined in the Recitals to this Agreement.

“**Affiliate**” shall mean, 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.

“Amendia” shall mean Amendia, Inc., a Georgia corporation.

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

“**Assigned Contracts**” shall mean, collectively, those Contracts included in the Acquired Assets, which shall consist solely of the Contracts identified on Schedule A-3 to **Exhibit A**, ~~which Schedule A-3 is subject to modification at any time prior to the Auction.~~

“**Assignment and Assumption Agreement**” shall mean the Assignment, Delegation and Assumption Agreement to be executed at the Closing between the Seller and the Purchaser in the form attached hereto as **Exhibit B**, pursuant to which, among other things, the Seller will assign and transfer to the Purchaser all of its right, title and interest under the Assigned Contracts, if any, on the terms and conditions set forth therein.

“**Assumed Liabilities**” shall mean, collectively, (i) all liabilities arising after the Closing with respect to the Assigned Contracts, (ii) all liabilities arising with respect to the Acquired Business arising on or after the Closing Date, (iii) the Cure Amounts, ~~(iv)~~ to the extent provided in

Section 2.3 hereof, (iv) one-half (1/2) of any and all Transfer Taxes, (v) all PTO for Retained Employees, and (vi) all obligations of the Purchaser under this Agreement.

“Assumption/Cure Notice” means the Notice of Possible Assumption and Assignment of Executory Contracts and of Cure Amounts delivered to counterparties to Contracts with the Seller pursuant to the Sale Procedures Order.

~~“Avance® MIS Pedicle Screw System” means the percutaneous pedicle screw and instruments sold by the Seller in connection with the Business under its “Avance MIS Pedicle Screw System” product line that that addresses (i) single, complex and multi-level spinal pathologies with minimal tissue disruption and (ii) trauma fusion in numerous degenerative and complex spinal pathologies.~~

~~“AxiaLIF® Products” means the following single and two-level lumbar fusion products designed, developed, marketed, and sold by the Seller in connection with the Business under its AxiaLIF® product line and which are delivered to patients via a pre-sacral approach: (i) AxiaLIF Legacy®, (ii) AxiaLIF Plus 1 Level®, (iii) AxiaLIF Plus 2 Level® and (iii) AxiaLIF Non-Distracting®.~~

“Bankruptcy Case” shall have the meaning given to it in the Recitals to this Agreement.

“Bankruptcy Code” shall have the meaning given to it in the Recitals to this Agreement.

“Bankruptcy Court” shall have the meaning given to it in the Recitals to this Agreement.

“Bid Procedures” shall mean the bid procedures governing the process by which the sale of the Acquired Assets shall occur, which are attached to the Sale Procedures Order as **Exhibit I**.

“Bill of Sale” shall mean the bill of sale to be delivered at Closing by the Seller to the Purchaser in the form attached hereto as **Exhibit C**. The Bill of Sale shall be assignable by Purchaser to Amendia with no other approval of the Seller or Bankruptcy Court required.

“Bone Graft Harvesting Products” shall mean all tools, equipment, and inventory owned by Seller in the field of bone graft harvesting including, without limitation, the trochar introducer the trephine saw assembly, tissue dilator shaft assembly, tissue dilator sheath subassembly, and iliac crest bone graft harvesting products.

“Book Value” means book value as of the Closing Date based on the Seller’s standard valuations in its books and records.

“Book Value of Closing Inventory” means the Book Value of Inventory on the Closing Date.

“Books and Records” means, collectively, all books, records, documents, lists and files relating or pertaining to the Business, the Acquired Assets, ~~or the Assumed Liabilities,~~ including price lists, lists of accounts, customers, prospects, suppliers, and personnel, all Products, business and marketing plans, historical sales data, credit records, and all books, ledgers, files and business

records (including all FDA and other regulatory records, submissions, forms and other files, maintenance records, financial records and books of account), in any of the foregoing cases, whether in electronic form or other media, excluding, however, the Corporate Documents.

~~“Business” is defined in the Recitals to this Agreement.~~

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

“**CE Marks**” means the “Conformité Européenne” (European Conformity) mark examination certificates for any of the Products identified on Schedule A-4 to **Exhibit A**.

“**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).

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

“**Claim**” means a “claim” as defined in Section 101(5) of the Bankruptcy Code.

“**Closing**” is defined in Section 8.1.

“**Closing Date**” is defined in Section 8.1.

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

“**Cure Amount**” shall mean, 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.

“**Deposit**” is defined in Section 3.1(a).

“**Employee Benefit Plan**” means any material “employee benefit plan” (as such term is defined in ERISA Section 3(3)) that is covered by Title I of ERISA and is maintained or sponsored by the Seller or any of its ERISA Affiliates or to which the Seller or any of its ERISA Affiliates has any obligation to contribute.

“**Encumbrance**” shall mean 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 the Seller has or may become materially liable to any Person in connection with the Business or by reason of which the Acquired 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 Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq.; 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 any “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 the Seller for purposes of Section 414 of the Code.

“Escrow Agent” shall mean Stevens & Lee, P.C.

“Escrow Agreement” shall mean the agreement substantially in the form attached hereto as Exhibit [D].

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.

“Excluded Assets” shall mean the following property, assets, rights and interests of the Seller:

(a) Cash. All cash, checks, cash equivalents, cash in transit, and cash on hand or on deposit in any operating account or other account or reserve;

(b) Accounts Receivable. All accounts receivable of the Seller, including all accounts receivable of the Seller as of the Petition Date;

(c) Contracts. All Contracts, including any Employee Benefit Plan, other than the Assigned Contracts;

(d) Transaction Documents. All rights of and benefits to the Seller under this Agreement and the Ancillary Documents;

~~(e)~~ ~~(d)~~ Refunds and Credits. All rights to refunds of or credits for Taxes of the Seller paid prior to the Closing Date, and any records relating to the Seller's Taxes;

~~(f)~~ ~~(e)~~ Insurance Proceeds. All insurance premiums, policies, contracts and coverage obtained by the Seller and all rights to insurance proceeds and recoveries from or under any Contracts of insurance, indemnity or similar agreement;

~~(g)~~ ~~(f)~~ Causes of Action. All avoidance claims and causes of action arising under Chapter 5 of the Bankruptcy Code and all other claims and causes of action under the Bankruptcy Code or non-bankruptcy ~~Law~~Laws, and the proceeds from any of the foregoing other than claims for refund of Transfer Taxes paid by the Purchaser pursuant to Section 10.14; 10.15;

~~(g)~~ Transaction Documents. All rights of and benefits to Seller under this Agreement and the Ancillary Documents;

(h) Deposits. All deposits made by the Seller prior to the Closing Date and all claims and rights to the refund of all or any portion thereof; provided, however, that Deposits shall be deposits of money only and any deposit of Equipment that is part of the Acquired Assets shall not be deemed a Deposit hereunder;

(i) (h) Corporate Documents & Records. All employee records and corporate seals, minute books, charter documents, stock transfer records, record books, Tax returns and all other files, books and records relating to the organization, existence or capitalization of the Seller (the **“Corporate Documents”**);

(j) (i) Retainers. All professional retainers paid by the Seller to its advisors or Representatives in connection with the Bankruptcy Case and the transactions contemplated herein;

~~(j) Deposits~~. All deposits made by Seller prior to the Closing Date and all claims and rights to the refund of all or any portion thereof;

(k) Non-Transferrable Assets. All property of the Seller that is not lawfully transferrable or is required by law to be retained by the Seller; and

(l) Other Excluded Assets. All The Baxano tradename and all other rights, benefits or property of the Seller which is not an Acquired Asset.

“Excluded Liabilities” shall mean, collectively, any and all liabilities of the Seller of any kind or description other than the Assumed Liabilities.

“FDA” shall mean the United States Food and Drug Administration and any successor thereto.

“Final Order” shall mean an order, judgment or other decree as to which (a) the operation or effect has not been reversed, stayed, modified or amended, (b) no appeals or motions for reconsideration are pending, and (c) any and all appeal periods have expired.

“GAAP” shall mean 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 ~~Law~~Laws

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

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

“Intellectual Property” shall mean, collectively, any and all (i) patents, patent applications and patent disclosures, together with all reissuances, continuations, continuations in part, revisions, extensions and reexaminations thereof (“Patents”), (ii) trademarks, service marks, trade dress, logos, trade names, 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”), (iii) 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, research and development, know-how, technology, inventions, formulas, compositions, processes and techniques, technical 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 data and related software program documentation in computer-readable and hard-copy forms) (“Software”), and (vii) web sites, web site domain names and uniform resource locators, in each case, which are owned, licensed, or used by the Seller in connection with the Business.

“Inventory” means any “inventory,” as that term is defined in the UCC, pertaining to the Products and Acquired 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.

“Inventory Adjustment” means an amount equal to one hundred percent (100%) of the difference between (a) \$1,400,000.00 and (b) the Book Value of the Closing Inventory on the Closing Date. If the Book Value of Closing Inventory exceeds \$1,400,000.00, there will be no Inventory Adjustment.

“iO-Flex® Products” shall mean, collectively, flexible surgical instruments designed, developed, marketed, and sold by the Seller in connection with the Acquired Business under its

iO-Flex® product line allowing surgeons to treat lumbar spinal stenosis during spinal decompression procedures.

“iO-Tome® Products” shall ~~means~~mean, collectively, disposable facetectomy instruments designed, developed, marketed, and sold by the Seller in connection with the Acquired Business under its iO-Tome® product line allowing surgeons to perform rapid facetectomies while working above exiting nerves.

“Knowledge of the Seller” and “to the Seller’s Knowledge” shall mean the actual or constructive knowledge of Ken Reali, the Seller’s Chief Executive Officer, or John L. Palmer, the Seller’s Chief Restructuring Officer, after due inquiry.

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

~~“Leases” means each of the leases identified on Schedule A-3 to Exhibit A.~~

~~“Leased Real Property” means the real property leased by the Seller under any of the Leases.~~

“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” means all Cure Amounts relating to Assigned Contracts which are stated in a Final Order of the Bankruptcy Court.

“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 Acquired Business or the Acquired 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 the Seller operates; (ii) the filing of the Bankruptcy Case; (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

transactions contemplated hereby; (x) the termination of any Contract that is not an Assigned Contract; (xi) any adverse change to the Acquired Business prior to the date hereof; or (xii) any adverse change to the Acquired Business that is cured by the Seller prior to the Closing Date.

“Material Contracts” is defined in Section 4.7.4.10.

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

“Net Proceeds of the Sale” means the gross cash proceeds of the sale minus (i) the amounts payable pursuant to subparagraphs ~~17~~[20](a) and (b) of the Sale Order.

“Non-Acquired Business” is defined in the Recitals to this Agreement.

“Non-Disclosure Agreement” means any and all confidentiality agreements and/or non-disclosure agreements executed by the Purchaser as a condition to obtaining confidential and/or proprietary information from the Seller.

“Order” shall mean any award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any court, administrative agency, or other Governmental Body.

“Ordinary Course of Business” means the ordinary course of the Seller’s Business consistent with past practice (including with respect to quantity and frequency).

“Outside Closing Date” shall mean February 28, 2015.

“Owned Intellectual Property” is defined in Section 4.9~~[4.12]~~(a).

“PTO” means all liabilities of the Seller for or with respect to any accrued vacation, sick days, personal days and/or other paid time-off payable or otherwise owing to any of the Retained Employees as of the Closing.

“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 Acquired Assets or the Leased Real Property is subject; (iv) the Liens and Encumbrances listed on Schedule 1(a) hereto; and (v) any Encumbrances or liabilities created by this Agreement.

“Previously Assumed Assigned Contracts” means all Assigned Contracts which were assumed by the Seller prior to the Closing Date.

“Products” shall mean, collectively, the ~~Avancee® MIS Pedicle Screw System®, the AxiaLIF® Products, the iO-Flex® Products, the iO-Tome® Products, and the VEO® all Bone Graft Harvesting Products.~~

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

“**Proceeding**” shall mean 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**” is defined in Section 3.1.

“**Purchaser Disclosure Letter**” is defined in Article V.

“**Purchaser Material Adverse Effect**” shall mean a material and adverse effect on the Purchaser’s ability to consummate the transactions contemplated by this Agreement and the Ancillary Documents.

“**Related Person**” (i) with respect to a Person who is an individual, shall mean, (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, shall mean (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**” shall mean, 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**” is defined in Section 6.5-6.6.

“**Retained Employees**” means all employees of the Seller who are offered employment by the Purchaser and who accept such offer effective on the Closing Date.

“**Sale Procedures Motion**” shall mean that certain motion filed by the Seller in the Bankruptcy Case on November 19, 2014 (D.I. 43) pursuant to which, among other things, the Seller requested an order (a) approving the Bid Procedures, (b) approving procedures relating to the assumption and assignment of executory contracts, including procedures for establishing cure claims, (c) establishing a date for an auction, and (d) scheduling a sale hearing.

“**Sale Procedures Order**” shall mean the order of the Bankruptcy Court entered on [] December 12, 2014 approving the Sale Procedures Motion.

“**Sale Order**” shall mean an Order of the Bankruptcy Court pursuant to the Bankruptcy Code approving this Agreement and the transactions contemplated hereby substantially in the form attached hereto as Exhibit [E] and made part hereof.

“**Sarbanes Oxley Act**” is defined in Section 4.18.4.21.

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

“**SEC Reports**” is defined in Section 4.18.4.21.

“**Seller Disclosure Letter**” is defined in Article IV.

“**Seller’s Facilities**” shall mean 110 Horizon Drive, Suite 230, Raleigh, North Carolina.

“**Tax**” and “**Taxes**” shall mean 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 Notices**” shall mean notices, in form and substance satisfactory to the Purchaser in the exercise of reasonable discretion, directing third parties in possession of any Acquired Assets to turn over those assets to the Purchaser.

“**Transfer Taxes**” is defined in Section 10.14(a).10.15(b).

~~“**VEO® Products**” means the direct lateral access and interbody fusion system designed, developed, marketed, and sold by the Seller in connection with the Business under its VEO® product line and providing for visualization during lateral fusion surgery and indicated for spinal fusion surgical procedures in skeletally mature patients with degenerative disc disease.~~

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

ARTICLE IIARTICLE II.

AGREEMENTS TO SELL AND PURCHASE; RELATED MATTERS

2.1. 2.1—Agreement to Sell and Purchase Acquired Assets. On the Closing Date, subject to the performance by the Parties of the terms and provisions of this Agreement and satisfaction of the terms and conditions set forth in the Sale Order, the Seller shall sell, convey, assign, transfer and deliver to the Purchaser, and the Purchaser shall purchase, acquire and accept from the Seller, the Acquired Assets, free and clear of all Liens and Encumbrances other than ~~the~~ Permitted Liens and Encumbrances, to the fullest extent permitted by Section 363 of the Bankruptcy Code.

2.2. 2.2—Assumption of Assumed Liabilities/Excluded Liabilities. ~~On and~~ subject to the terms and conditions of this Agreement, on the Closing Date, the Purchaser shall assume and become responsible for, and shall pay, perform, fulfill and discharge, all of the Assumed Liabilities. The Purchaser ~~shall not~~ is not assuming and will have no obligation to assume, perform, or discharge any of the Excluded Liabilities, all of which shall remain the sole responsibility and obligation of the Seller.

2.3. 2.3—Assigned Contracts. The Purchaser is not assuming and will have no obligation to assume, perform, or discharge any Contracts, all of which shall remain the sole

responsibility and obligation of the Seller, except for the Assigned Contracts. As to the Assigned Contracts:

(a) At Closing, Seller shall assign to Purchaser all of the Assigned Contracts and (i) Purchaser shall ~~(i) pay to the applicable counterparty the Liquidated Cure Amount with respect to any Assigned Contract which is not a Previously Assumed Assigned Contract and as to which a Liquidated Cure Amount exists as of the Closing Date, and (ii) pay to the Escrow Agent, pursuant to the terms of the Escrow Agreement, the Maximum Cure Amount (or such lesser amount as the Court may determine constitutes an adequate reserve) with respect to any Assigned Contract~~ (ii) Seller shall pay to the applicable counterparty the Liquidated Cure Amount with respect to any Assigned Contract which is a Previously Assumed Assigned Contract and as to which a Liquidated Cure Amount exists as of the Closing Date, (iii) Purchaser shall pay to the Escrow Agent, pursuant to the terms of the Escrow Agreement, the Maximum Cure Amount (or such lesser amount as the Court may determine constitutes an adequate reserve) with respect to any Assigned Contract which is not a Previously Assumed Contract and as to which a Liquidated Cure Amount does not exist as of the Closing Date, and (iv) Seller shall pay to the Escrow Agent, pursuant to the terms of the Escrow Agreement, the Maximum Cure Amount (or such lesser amount as the Court may determine constitutes an adequate reserve) with respect to any Assigned Contract which is a Previously Assumed Contract and as to which a Liquidated Cure Amount does not exist as of the Closing Date. As to any Assigned Contract as to which a Liquidated Cure Amount does not exist as of the Closing Date, the Escrow Agent shall pay the Liquidated Cure Amount to the applicable counterparty promptly following the existence of a Liquidated Cure Amount and promptly return to the Purchaser or Seller, as applicable, the amount, if any, by which the Maximum Cure Amount (or such lesser amount as the Court may determine constitutes an adequate reserve) paid by the Purchaser or Seller exceeds the Liquidated Cure Amount.

(b) Purchaser shall provide in a timely fashion any and all information required by the Bankruptcy Code and the Bankruptcy Court to evidence Purchaser's capability of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code with respect to the Assigned Contracts.

(c) At Closing, to the extent the performance by the Seller under an Assigned Contract is supported by a letter of credit, the Purchaser shall cause such letter of credit to be terminated or cash collateralized in a manner acceptable to the Seller in the exercise of its reasonable discretion.

2.4. 2.4—Competing Transactions; Bankruptcy Court Approval. This Agreement is subject to approval by the Bankruptcy Court and the consideration by the Seller of higher or better competing bids pursuant to the Sale Procedures Order and the Bid Procedures approved thereby (each, a “**Competing Bid**”). Until the transactions contemplated by this Agreement are consummated, the 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 Acquired Assets. In addition, the Seller shall have the responsibility and obligation to respond to any inquiries or offers to purchase all or any part of the Acquired Assets and perform any and all other acts related thereto which are required under the Bankruptcy Code, the Sale Procedures Order or other applicable Law,

including, supplying information relating to the Business and the assets of the Seller to prospective purchasers. In soliciting Competing Bids and in conducting any auction resulting from the receipt of a Competing Bid for the Acquired Assets, the Seller shall comply with the Sale Procedures Motion and Bid Procedures

2.5. Stalking Horse Designation. The Seller hereby designates the Purchaser as the Stalking Horse for the Acquired Assets pursuant to paragraph 12 of the Sale Procedures Order. In the event the Acquired Assets are not sold to the Purchaser, the Purchaser shall be entitled to the Bid Protections described in paragraph 12 of the Sale Procedures Order to the extent the conditions to such entitlement stated in such paragraph are satisfied.

2.6. No Collusive Bidding. The Seller acknowledges that (a) the Purchaser has disclosed that it is purchasing the Acquired Assets with the intent of assigning its rights hereunder to Amendia or re-selling the Acquired Assets to Amendia under a separate agreement between the Purchaser and Amendia, and (b) even though Amendia was a potential bidder to purchase the Acquired Assets directly from the Seller, the Purchaser has disclosed its relationship with Amendia and the Seller is satisfied that the agreement between the Purchaser and Amendia does not constitute collusive bidding or a violation of applicable law that would constitute a basis for avoiding the sale or the recovery of damages under Section 363(n) of the Bankruptcy Code.

ARTICLE III ~~ARTICLE III.~~ **PURCHASE PRICE**

3.1. 3.1—Payment of Purchase Price. The purchase price for the Acquired Assets shall be [_____] (\$[_____]) Four Million and 0/100 Dollars (\$4,000,000.00) plus the Assumed Liabilities and minus the Inventory Adjustment, if applicable, (the “Purchase Price”). The ~~cash portion of the~~ Purchase Price shall be payable by Purchaser to Seller as follows:

(a) As security for Purchaser’s faithful performance of its obligations hereunder, concurrent with the execution of this Agreement, Purchaser shall deposit into escrow ~~the sum of [_____] (\$[_____])~~ Four Hundred Thousand and 00/100 Dollars (\$400,000.00) (the “**Deposit**”) pursuant to and in accordance with the Escrow Agreement. The Deposit shall be held by the Escrow Agent in the Escrow Agent’s trust account pursuant to the terms of the Escrow Agreement and will not generate interest payable to either the Seller or the Purchaser. Subject to Section 9.2 and the Escrow Agreement, at the Closing, the Deposit shall be released to the Seller and applied against the Purchase Price.

(b) At the Closing, the Purchaser shall pay to the Seller the balance of the cash portion of the Purchase Price in excess of the Deposit, by wire transfer of immediately available funds to an account or accounts designated in writing by the Seller prior to the Closing.

[†] ~~Amount to equal 10% of the Purchase Price exclusive of Assumed Liabilities.~~

3.2. 3.2—Tax Allocation of Purchase Price. The Purchase Price shall be allocated among the Acquired Assets in accordance with the IRS Form 8594, Asset Acquisition Statement Under Section 1060, ~~as completed and attached hereto as Schedule 3.2.~~ The allocation set forth on Schedule 3.2 shall, for federal and state income Tax purposes, be binding on the Seller and the Purchaser ~~1060 as agreed by their respective accountants in good faith consistent in all respects with applicable Laws.~~ The Seller and the Purchaser shall file their respective Tax returns in accordance with such allocation and shall not take any position inconsistent with such allocation, unless the Seller or the Purchaser, as the case may be, reasonably determines (and notifies the other Party) that such allocation is contrary to applicable Law.

3.3. Inventory Adjustment. Within seven (7) before the Closing Date, the Purchaser and the Seller will jointly determine the Book Value of the Closing Inventory based on Seller's electronic records of the Inventory along with Seller's production of confirmation letters from the ten (10) largest distributors of the Products or another methodology mutually acceptable to the Parties.

ARTICLE IV~~ARTICLE IV.~~
REPRESENTATIONS AND WARRANTIES OF THE SELLER

Except as set forth in the disclosure letter delivered by the Seller to the Purchaser on the date hereof (the “**Seller Disclosure Letter**”) or as disclosed in any of the SEC Reports, the Seller represents and warrants to the Purchaser as follows:

4.1. 4.1—Organization. The 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 where the operation of the Business by the Seller requires such qualification, except where the failure to be so qualified would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

4.2. 4.2—Power and Authority. Upon entry of the Sale Order by the Bankruptcy Court, Seller shall have all requisite power and authority to enter into this Agreement and the Ancillary Documents and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by the Seller. Upon entry of the Sale Order by the Bankruptcy Court, this Agreement shall constitute a valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms, except 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.

4.3. 4.3—Non-contravention. Subject to the entry of the Sale Order by the Bankruptcy Court, the execution and delivery of this Agreement or any other Ancillary Document to which the Seller is a party, ~~and~~ the performance by the Seller of its obligations hereunder and thereunder, will not (i) violate any provision of the organizational documents of the Seller, (ii) 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 ~~Assigned~~ Contract, (iii) violate any Law or Order applicable to the

Business or the Acquired Assets, or (iv) result in the imposition of any Lien or Encumbrance on the Acquired Assets (other than Permitted Liens and Encumbrances); other than, in the case of (ii) or (iii) above, any violation, conflict, breach, default, acceleration, termination, modification, cancellation or notice that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

4.4. 4.4—Consents. Upon entry of the Sale Order by the Bankruptcy Court, 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 the Seller of this Agreement or the consummation by the Seller of the transactions contemplated hereby.

4.5. Liabilities. The Seller has no Liabilities with respect to the Acquired Assets for which the Purchaser will be responsible after Closing except Assumed Liabilities.

4.6. 4.5—Title. The Seller has good and marketable title to, or a valid leasehold interest in, all of its properties and assets which comprise ~~a portion of~~ the Acquired Assets, free and clear of all Liens and Encumbrances other than Permitted Liens and Encumbrances and other Liens and Encumbrances which will be divested from the Acquired Assets by the Sale Order. ~~Subject to, and to the extent permitted by, Sections 363 and 365 of the Bankruptcy Code, upon~~ Upon the completion of the transactions contemplated hereby, the Purchaser will be vested with good and marketable title to the Acquired Assets, free and clear of all Liens and Encumbrances other than Permitted Liens and Encumbrances and any ~~Liens~~ Lien and/or ~~Encumbrances~~ Encumbrance imposed upon the Acquired Assets by the Purchaser or any of its creditors or other financing sources.

4.7. Litigation. There are no actions, suits, proceedings, orders, investigations, or claims pending, or to the Seller's Knowledge, threatened against the Acquired Assets or Acquired Business, at Law or in equity, or before or by any Governmental Body which will interfere with the ownership or use by the Purchaser of the Acquired Assets after the Closing.

4.8. 4.6—Condition of Tangible Personal Property. The material machinery, ~~equipment~~ Goods, Equipment, furniture, leasehold improvements, fixtures and other tangible personal property (other than ~~inventory~~ Inventory), which comprise a portion of the Acquired Assets are in good operating condition and repair, ~~ordinary wear and tear excepted.~~ That portion of the Acquired Assets which is comprised of inventory material to the Business consists of good and merchantable items of a quality and quantity usable in the Ordinary Course of Business. The buildings, structures and other improvements which comprise a portion of the Leased Real Property are in good operating condition and repair in all material respects, ordinary wear and tear excepted. That portion of the Acquired 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.

4.9. Location of Inventory. Schedule 4.9 identifies all third parties that are in possession of any Acquired Assets which is Inventory and sets forth the locations of such Inventory.

4.10. 4.7—Material Contracts. Schedule ~~4.74.10~~ lists each of the following written Contracts to which the Seller is a party or by which it is bound relating to the Business: (i) any Contract with material vendors (including manufacturing representatives and distributors) or material suppliers providing for the purchase by the Seller of products or other materials, including Contracts with any material original equipment manufacturers or other material suppliers or vendors that provide to the Seller parts, assemblies, components and other products used in the manufacture and production of any Product; (ii) each licensing agreement with respect to any Intellectual Property material to the Business; (iii) each Contract entered into by the Seller for, or regarding, the sale or distribution of Products by any material distributor, broker, agent or other Representative of the Seller; (iv) each of the Leases; and (v) each Contract between the Seller and any material consultant or independent contractor (collectively, the “**Material Contracts**”). The Seller has provided the Purchaser with true and correct copies of each Material Contract.

~~**4.11. 4.8—Leased Real Property.** With respect to the Leased Real Property, (i) the Seller enjoys peaceful and undisturbed possession of the Leased Real Property, (ii) except as set forth on Schedule 4.8, no Person other than the Seller is occupying or in possession of the Leased Real Property except as set forth in the applicable Lease, (iii) the Seller has not given any notice to any landlord with respect to any of the Leased Real Property indicating that it will not be exercising any extensions thereof or renewal options thereunder, and (iv) the use and occupancy thereof by the Seller, and the conduct thereon and therein of the Business, do not violate in any material respect any applicable Law. To the Seller’s Knowledge, there are no pending or contemplated condemnation, eminent domain, assessment or similar proceeding or charge affecting any of the Leased Real Property or any portion thereof, nor received any written notice that any such Proceeding is contemplated.~~**Reserved.**

4.12. 4.9—Intellectual Property.

(a) Schedule 4.94.12(a) identifies all Patents and Trademarks which are owned by the Seller (together with all other Intellectual Property owned by the Seller, the “**Owned Intellectual Property**”). All Owned Intellectual Property that is currently registered with any Governmental Body complies in all material respects with all applicable Laws.

(b) Schedule 4.94.12(b) lists all licenses, sublicenses and other agreements pursuant to which a third party authorizes the Seller to use, practice any rights under, or grant sublicenses with respect to, any Intellectual Property owned by such third party and material to the Business, 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 4.94.12(c) lists all licenses, sublicenses and other agreements pursuant to which the Seller authorizes a third party to use, practice any rights under, or grant sublicenses with respect to, any material Owned Intellectual Property or pursuant to which the Seller grants rights to use or practice any rights under any Intellectual Property owned by a third party and material to the Business.

(d) To the Knowledge of the Seller, (i) no Intellectual Property identified on Schedule 4.94.12(a) has been infringed or challenged in any way, nor has any Proceeding been

threatened with respect thereto, and (ii) except as set forth on Schedule 4.94.12(d), none of such Intellectual Property has infringed or infringes upon the rights of any Person nor, to the Knowledge of the Seller, has been alleged to infringe upon the rights of any Person.

(e) To the Knowledge of the Seller, (i) none of the ~~material~~ Owned 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 the ~~material~~ Owned Intellectual Property. Without limiting the generality of the foregoing, any and all ~~material~~ Owned Intellectual Property conceived, invented or developed on behalf of the Seller by any employee, subcontractor, consultant, independent contractor, or other Person has been duly and validly assigned and transferred to the Seller pursuant to and in accordance with an assignment of inventions or similar agreements.

4.13. 4.10—Compliance with Law, Governmental Authorizations, Etc.

(a) Except as set forth on Schedule 4.104.13(a): (i) since January 1, 2012, the Seller has complied in all material respects with all Laws that are applicable to the Products or the Seller's conduct or operation of the Business, and (ii) since January 1, 2012, the 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.

(b) Schedule 4.104.13(b) contains a list of all CE Marks, 510(k) Clearances, other international approvals and 510(k) Filings relating and pertaining to ~~any of the Products~~Business. The Seller is in compliance in all material respects with 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.

(c) Schedule 4.104.13(c) contains a complete and accurate list of each Governmental Authorization that is held by the Seller other than the CE Marks and the 510(k) Clearances which otherwise relate and are material to the Business ~~and including~~ the Products. Each Governmental Authorization listed on Section 4.104.13(c) is valid and in full force and effect, and the Seller is in compliance in all material respects with all such Governmental Authorizations.

(d) The 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 material defect or lack of material safety or efficacy of any Product.

(e) The Products that are within the Acquired Assets are merchantable and fit for purpose for with they were designed.

4.14. 4.11—Legal Proceedings; Orders. 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 transactions contemplated by this Agreement. There is no Order to which the Business or any Product is currently subject.

4.15. ~~4.12~~—Tax Matters.

(a) The Seller has filed (or has had filed on its behalf) all material 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 the Seller does not file Tax returns to the effect that the Seller is or may be subject to taxation by that jurisdiction. The 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) The Seller has, within the time and in the manner prescribed by applicable Laws, paid all Taxes that are due and payable by the Seller and attributable to the Business or the Acquired Assets. No deficiency for any such Taxes has been proposed, asserted or assessed against the Seller that has not been resolved and paid in full.

(c) There are no Tax Liens or Encumbrances for Taxes upon the Acquired Assets and as of the end of the day on the Closing Date there will be no such Tax 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 Acquired Assets for which the Purchaser will at any time have any liability for payment.

4.16. ~~4.13~~—Environmental Matters. Except for conditions that, either individually or in the aggregate, would not reasonably be expected to result in material liability under Environmental Laws and to the Sellers' Knowledge, the Seller, in the conduct of the Business: (i) has transported, stored and/or disposed of any Hazardous Materials brought on to the Leased Real Property in compliance in all material respects with all applicable Environmental Laws, (ii) has operated the Business with all material Governmental Authorizations required under any applicable Environmental Law, and (iii) has not received any written notice of any investigation, Proceeding or Order concerning any material Environmental Condition applicable to the conduct of the Business as currently conducted or the ownership and use by the Seller of the material Acquired Assets. There is no pending or, to the Sellers' Knowledge, threatened civil or criminal litigation, written notice of violation, written inquiry or information request by any Governmental Body, relating to any material violation of Environmental Law involving the Seller that is applicable to the conduct of the Business or the ownership and use of the material Acquired Assets.

4.17. ~~4.14~~—Employee Matters. Schedule 4.144.17 sets forth an accurate list of (i) all officers, directors, and employees of the Seller and (ii) 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.

4.18. ~~4.15~~—Employee Benefit Plans.

(a) The SEC Reports identify each material Employee Benefit Plan maintained by the Seller. Each such Employee Benefit Plan complies in all material respects with the applicable requirements of ERISA, the Code, and other applicable Laws. All material required reports and descriptions (including Form 5500 Annual Reports, summary annual reports, and summary plan descriptions) have been timely filed and distributed appropriately with respect to each such Employee Benefit Plan.

(b) Each Employee Benefit Plan described in Section 4.15(a) is intended to be qualified under Section 401(a) of the Code is so qualified and has been determined by the IRS to be so qualified.

(c) The Seller has not, and at no time in the past has had, an obligation to contribute to a “defined benefit plan” as defined in Section 3(35) of ERISA, a pension plan subject to the funding standards of Section 302 of ERISA or Section 412 of the Code, a “multiemployer plan” as defined in Section 3(37) of ERISA or Section 414(f) of the Code or a “multiple employer plan” within the meaning of Section 210(a) of ERISA or Section 413(c) of the Code.

(d) All (i) insurance premiums required to be paid with respect to, (ii) benefits, expenses and other amounts due and payable under, and (iii) contributions, transfers or payments required to be made to, any Employee Benefit Plan described in Section 4.15(a) prior to the Closing Date will have been paid or made on or before the Closing Date.

4.19. ~~4.16~~—Labor Matters. The Seller is not a party to nor is bound by, or has an obligation to perform under, any collective bargaining agreement or any other Contract with a labor union or labor organization. The Seller has not received any written notice of any outstanding representation petitions involving the Seller before the National Labor Relations Board or any state labor board, and to the Knowledge of the Seller, no such petition has been threatened.

4.20. ~~4.17~~—Insurance. Schedule 4.174.20 sets forth a list of each insurance policy maintained by the Seller with respect to the Business and the Acquired Assets as of the date hereof. Each such policy of insurance is in full force and effect.

4.21. ~~4.18~~—Financial Statements and SEC Reports. From January 1, 2012 through June 30, 2014, the Seller had timely 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 in all material respects 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 the 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 in all material respects the financial position and the results of operations, changes in stockholders’ equity and cash flows of the 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).

~~4.22. 4.19~~—**Brokers and Finders.** Other than Houlihan Lokey Capital, Inc., no broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of the Seller and at Seller’s expense or as an administrative claim in the Bankruptcy Case.

~~4.23. 4.20~~—**Representations and Warranties are Exclusive.** EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE IV, SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OF IMPLIED, AT LAW OR IN EQUITY, WITH RESPECT TO ANY FACT OR MATTER RELATING OR PERTAINING TO THE ACQUIRED ASSETS OR THE BUSINESS OR ANY OTHER MATTER, INCLUDING WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE OR NON-INFRINGEMENT, AND ANY SUCH OTHER REPRESENTATIONS AND/OR WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED AND NONE SHALL BE IMPLIED AT LAW OR IN EQUITY. THE PURCHASER HEREBY EXPRESSLY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS ARTICLE IV, THE PURCHASER IS ACQUIRING THE ACQUIRED ASSETS ON AN “AS-IS, WHERE-IS” BASIS. ALL REPRESENTATIONS AND WARRANTIES OF THE SELLER SHALL EXPIRE ON THE CLOSING DATE AND THEREAFTER BE OF NO FURTHER FORCE OR EFFECT.

~~4.24.~~ **Scheduled Assets and Contracts v. Acquired Assets and Assigned Contracts.** Notwithstanding that some disclosure schedules hereto may include assets and contracts which are not Acquired Assets or Assigned Contracts, it is understood and agreed that the Purchaser is purchasing only Acquired Assets and that there are no Assigned Contracts hereunder.

~~ARTICLE V~~ARTICLE V.
REPRESENTATIONS AND WARRANTIES OF PURCHASER.

Except as set forth in the disclosure letter delivered by the Purchaser to the Seller on the date hereof (the “**Purchaser Disclosure Letter**”), the Purchaser represents and warrants to the Seller as follows.

~~5.1. 5.1~~—**Organization.** The Purchaser is a [] Limited Partnership duly formed, validly existing and in good standing under the laws of the State of [] Delaware and has all requisite power and authority to conduct its business and own and operate its properties.

~~5.2. 5.2~~—**Power and Authority.** The Purchaser has all requisite power and authority to enter into this Agreement and the Ancillary Documents and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly executed and

delivered by the Purchaser. This Agreement is a valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms.

~~5.3.~~ ~~5.3~~—**Non-contravention.** Neither the execution and delivery of this Agreement or any other Ancillary Document to which the Purchaser is a party, will (i) violate any provision of the organizational documents of the Purchaser, or (ii) violate any Law or Order applicable to the Purchaser.

~~5.4.~~ ~~5.4~~—**No Proceedings.** There are no actions, suits or proceedings pending, or to the actual knowledge of the Purchaser, threatened, before or by any Governmental Body, against the Purchaser which would affect the Purchaser's ability to proceed with the transactions contemplated by this Agreement.

~~5.5.~~ ~~Bankruptcy Matters.~~ Purchaser 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.

~~5.6.~~ ~~5.5~~—**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 the Purchaser of this Agreement or the performance by the Purchaser of its obligations hereunder or thereunder.

~~5.6~~—~~Bankruptcy Matters.~~ Purchaser 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.

~~5.7.~~ ~~5.7~~—**Financing.** Purchaser has cash on hand, availability under existing lines of credit, or other immediately available financial resources sufficient to pay the cash portion of the Purchase Price at Closing. True and complete copies of all documents and definitive agreements evidencing any commitments for debt or equity that the Purchaser intends to use in connection with the completion of the transactions contemplated hereby and its operation of the Business subsequent to the Closing (the “Financing”) are attached hereto as Schedule 5.7 (collectively, the “Financing Commitment”). As of the date of this Agreement, the Financing Commitment is in full force and effect and is a legal, valid and binding obligation of the lender(s) party thereto. The Financing Commitment has not been amended, waived, rescinded, withdrawn, supplemented or otherwise modified in any respect. As of the date of this Agreement, no event has occurred that, with or without notice, lapse of time or both, would constitute a default or breach on the part of the Purchaser, or to the knowledge of the Purchaser, any other party thereto, under the Financing Commitment. Purchaser has fully paid any and all commitment fees or other fees required by the Financing Commitment to be paid by it on or prior to the date of this Agreement and shall in the future pay any such fees as they become due. As of the date of this Agreement, (i) Purchaser does not have any reason to believe that it or any of the other parties to the Financing Commitment will be unable to satisfy on a timely basis any term or condition of the Financing Commitment required to be satisfied by it, and (ii) Purchaser does not have any reason to believe, as of the date of this Agreement, that any portion of the financing to be made thereunder will otherwise not be available to consummate the transactions contemplated hereby. The obligations

~~of the lenders or other financing sources to fund the full amount set forth in the Financing Commitment are not subject to any conditions other than the conditions set forth in the Financing Commitment. The Purchaser 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.~~

5.8. ~~5.8~~—Certain Relationships. Neither the Purchaser nor any officer, director, manager, member, Representative or Affiliate of the Purchaser is an officer or director of the Seller or a Related Person of any officer, director or key employee of the Seller. Except as set forth in Schedule 5.8, 5.7, neither the Purchaser nor any officer, director, manager, member, Representative or Affiliate of the Purchaser has entered into any Contract with any officer, director or key employee of the Seller.

5.9. ~~5.9~~—Brokers and Finders. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for the Purchaser in connection with the transactions contemplated hereunder and no Person is entitled to any fee or commission or like payment in respect thereof.

~~ARTICLE VI~~ARTICLE VI. COVENANTS OF THE PARTIES

6.1. ~~6.1~~—Access to Information. The Seller shall permit the Purchaser'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 the ~~Business~~Seller, to the premises, personnel, books, records, ~~Assigned Contracts,~~ and documents of or pertaining to the Acquired Business; provided, that the Seller may restrict the foregoing access to the extent that in the reasonable judgment of the Seller, any Laws applicable ~~Law applicable~~ to the Seller ~~requires~~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 the Seller ~~or the Business~~. The Purchaser shall comply with, and shall cause its Representatives to comply with, all of its obligations under the Non-Disclosure Agreement with respect to the terms and conditions of this Agreement and the transactions contemplated hereby and the information of the Seller and the Acquired Business disclosed or accessed pursuant to this Section 6.1, which agreement shall remain in full force and effect until the Closing Date. Notwithstanding anything to the contrary contained in this Agreement, the Seller shall not be required to provide any information or access that the Seller reasonably believes could violate applicable Law.

6.2. ~~6.2~~—Conduct of the Acquired Business. From the date hereof until the Closing Date, except as otherwise provided in this Agreement or consented to in writing by the Purchaser (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 Sale Order), the Seller shall: (a) conduct the Acquired Business ~~related to the Products included in the Acquired Assets~~ in the Ordinary Course of Business; and (b) use its commercially reasonable efforts to preserve intact its material business relationships with customers, suppliers, and other Persons having business dealings with it relating to the ~~Products~~

~~included in the Acquired Assets Business~~, and to keep available the services of its officers, members and key employees.

6.3. 6.3—Reserved.

6.4. 6.4—Further Actions Regarding 510(k) Clearances and Filings, CE Marks and Intellectual Property Administration. ~~Following~~ Promptly following the Closing Date, the Seller ~~(at the Purchaser's expense)~~ shall execute and deliver such documents and instruments of transfer or assignment, and take all such other actions, as may be necessary or required under any applicable Laws or reasonably requested by the Purchaser or any applicable Governmental Body from time to time, in order to (a) effectively transfer and assign to the Purchaser all of the Seller's right, title, and interest in and to any 510(k) Clearances, 510(k) Filings and CE Marks included in the Acquired Assets, and (b) take such other actions (all at the Purchaser's expense) as the Purchaser shall reasonably request or require in order to transfer ownership thereof and responsibility therefor to the Purchaser.

6.5. Further Actions Regarding Acquired Assets. The Seller shall execute and deliver all documents and instruments and take all actions as may be necessary or required under any applicable Contract or Lease or reasonably requested by the Purchaser (at the Seller's expense), in order to (a) allow the Acquired Assets to remain in the Seller's Facilities for at least thirty (30) days (at the Seller's cost and expense), (b) provide the Purchaser access to the Acquired Assets during such period for the Purchaser to inspect, take possession of and remove the Acquired Assets from the Seller's Facilities and to extract from the Seller's Salesforce, Customer Relationship Management ("CRM") and the Enterprise Resource Planning ("ERP") systems information relating to the Products, the Acquired Assets and Acquired Business; and (c) where the Acquired Assets are located outside of the Seller's Facilities, the Seller shall make commercially reasonable efforts to assist the Purchaser in gaining access to such Acquired Assets provided, however, the foregoing shall not apply to Inventory in the possession of any distributor who is continuing as a distributor for the Purchaser for any period of time after the Closing Date nor to any Acquired Assets located at Venta Medical, Inc. ("Venta") unless the Purchaser does not utilize the manufacturing services of Venta after the Closing Date. The Seller shall also take all reasonable and customary actions to secure and safeguard the Seller's Facilities, all at the Seller's cost and expense. The foregoing notwithstanding, the Purchaser acknowledges that the Seller has advised the Purchaser that, immediately following Closing the Seller intends to terminate the employment of all, or substantially all, of its employees and agrees that that Seller shall not have any obligation to (x) assist the Purchaser in effecting removal of Acquired Assets from the Seller's Facilities or in the extraction of information from the Seller's Salesforce, CRM and ERP systems but, rather, shall only be required to provide the Purchaser access to the Seller's Facilities for thirty (30) days following the Closing Date in order to allow the Purchaser to effect such removal and extract such information, nor (y) effect physical delivery to the Purchaser of any Acquired Assets, whether located at the Seller's Facilities or elsewhere.

6.6. 6.5—Notification of Certain Matters. From time to time prior to the Closing Date, the Parties shall promptly notify each other of the occurrence or non-occurrence of any event or circumstance that as applicable, indicates (a) that any of the representations and warranties set forth herein may not be, will not be, or are not, true and correct, or (b) any failure on its part to

comply with or satisfy, in any material respect, any covenant, agreement or condition to be complied with or satisfied by it pursuant hereto (any such notification, a “**Required Notification**”); provided, however, that in each case, such disclosure shall not be deemed to (i) amend or supplement any Schedule hereto, or (ii) cure any breach of such representation, warranty, covenant or agreement or satisfy any condition set forth herein.

6.7. 6.6—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 transactions contemplated hereby 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. Nothing in this Agreement shall be construed so as to prohibit or restrict the Seller from winding up its operations and, provided it has complied with its obligations under the Agreement that have arisen to the date of such winding up, once it has done so, it shall have no further obligations hereunder.

6.8. 6.7—Records Retention and Access. For a period of six (6) years following the Closing or such shorter period that records are required to be retained by applicable LawLaws (but in no event less than three (3) years), the Purchaser shall furnish to the Seller, to the extent in the Purchaser’s possession and following receipt of a reasonable, written request therefor, information that is necessary for the Seller to prepare for, prosecute or defend against any Proceeding related to the Acquired Business, to validate claims filed in the Bankruptcy Case and/or to enable the Seller and its Representatives to prepare, complete and file all required federal, state and local Tax returns in accordance with applicable LawLaws. Should there be any requests for materials for discovery or materials requiring electronic discovery beyond four (4) hours effort by an employee of Purchaser, Seller shall bear Purchaser's reasonable cost of compliance with such requests.

6.9. 6.8—Confidentiality. The Purchaser acknowledges and agrees that the Non-Disclosure Agreement remains in full force and effect and shall remain in full force and effect from the date hereof through and including the Closing Date, and covenants and agrees to keep confidential, in accordance with the provisions of the Non-Disclosure Agreement, any and all information and other materials provided to or accessed by the Purchaser pursuant to this Agreement. After the Closing, Purchaser shall own the information it has purchased and shall be released from the confidentiality obligations with respect to that information.

6.10. 6.9—Certain Agreements. From the date hereof through the Closing Date, the Parties shall not enter into any Contract other than those which are specifically contemplated by this Agreement or the Ancillary Documents.

6.11. 6.10—Bankruptcy Matters. The Seller shall use commercially reasonable efforts to seek relief from the fourteen (14) day stay provided by Section 6004(h) of the Bankruptcy Code. At the hearing to consider approval of this Agreement, the Seller will request that the Sale Order be modified to extend the protections afforded to the Purchaser under Section 363 (including, without limitation, section 363(m)) of the Bankruptcy Code to Amendia as

assignee or transferee of the Purchaser. If such request is denied by the Bankruptcy Court, the Seller shall have no further obligations related to such request and such denial shall not affect any obligations of the Purchaser hereunder.

~~ARTICLE VII~~ARTICLE VII.
CONDITIONS TO CLOSING

~~7.1.~~ **7.1—Conditions to Obligations of Each Party.** The respective obligations of each Party to consummate the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Closing of the following conditions:

~~(a)~~ ~~(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 transactions contemplated hereby illegal or otherwise prohibiting consummation of such transactions.

~~(b)~~ ~~(b)~~ Sale Order. The Bankruptcy Court shall have entered the Sale Order and the fourteen (14) period provided by Section 6004(h) of the Bankruptcy Code shall have expired or been waived by the Bankruptcy Court.

~~7.2.~~ **7.2—Additional Conditions to Obligations of the Purchaser.** The obligations of the Purchaser to effect the transactions contemplated hereby are subject to satisfaction or waiver of the following additional conditions:

~~(a)~~ ~~(a)~~ Representations and Warranties. The representations and warranties of the 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.

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

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

~~(d)~~

~~(e)~~ Closing Date Inventory. The Book Value of the Closing Date Inventory must be at least \$ 1,200,000.00.

(f) Consent to Sale. Hercules Technology Growth Capital, Inc. (“Hercules”) shall consented to the sale to Purchaser of the Acquired Assets.

(g) No Litigation. No litigation shall have been filed alleging manufacturing design or other defects in the Products that are within the Acquired Assets between the date of the Agreement and the Closing Date and which could reasonably be expected to interfere with the ability of the Purchaser to conduct the Acquired Business.

7.3. ~~7.3~~—Additional Conditions to Obligations of the Seller. The obligations of the Seller to effect the transactions contemplated hereby are subject to satisfaction or waiver by the Seller of the following additional conditions:

(a) ~~—————(a)~~ Representations and Warranties. The representations and warranties of the Purchaser 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 Purchaser Material Adverse Effect.

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

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

~~ARTICLE VIII~~ARTICLE VIII. CLOSING; DELIVERIES AT THE CLOSING

8.1. ~~8.1~~—Closing. The closing of the transactions contemplated hereby (the “Closing”) shall take place at the offices of Stevens & Lee, P.C., 1818 Market St., 29th Floor, Philadelphia, PA., 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 “Closing Date”). The Closing shall be deemed to have occurred at 12:01 a.m., Eastern Standard Time, on the Closing Date.

8.2. ~~8.2~~—Deliveries by the Seller at the Closing. At the Closing, Seller shall furnish and deliver to the Purchaser the following:

- (a) the Bill of Sale, duly executed by the Seller;

(b) the Assignment and Assumption Agreement, duly executed by the Seller; for the Assigned Contracts, if any;

(c) all Termination Notices, duly executed by the Seller;

(d) ~~(e)~~—an Assignment of Trademarks executed by the Seller in the form(s) attached hereto as **Exhibit [F]**;

(e) ~~(d)~~—an Assignment of Patents executed by the Seller in the form(s) attached hereto as **Exhibit [G]**;

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

(g) ~~(f)~~—a certificate, dated as of the Closing Date and signed the Seller, certifying that each of the conditions set forth in **Sections 7.2(a)** and **7.2(b)** have been satisfied;

~~(g) [a letter in the form attached hereto as **Exhibit [H]** to be filed by the Seller with the FDA regarding the 510(k) Clearances and the 510(k) Filings;]~~

~~(h) [a notification in the form attached hereto as **Exhibit [I]** to be filed by the Seller with each applicable Governmental Body within the European Union regarding the CE Marks;]~~**Reserved;**

(i) Reserved;

(j) ~~(i)~~—a copy of the Sale Order; and

(k) ~~(j)~~—all other certificates, instruments and documents required to be delivered by the Seller pursuant to this Agreement or any of the Ancillary Documents and such other documents customarily delivered and viewed as necessary or advisable by Purchaser.

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

(a) the ~~cash~~ portion of the Purchase Price in excess of the Deposit (and all interest thereon in accordance with the Escrow Agreement), by wire transfer of immediately available funds to an account designated in writing by the Seller provided, however, the Net Proceeds of Sale payable to Hercules Technology Growth Capital, Inc. (“Hercules”) pursuant to subparagraph ~~17~~[20(e)] of the Sale Order shall be paid directly to an account designated in writing by Hercules;

(b) an authorization, in form and substance satisfactory to the Seller and in accordance with the Escrow Agreement, to the Escrow Agent to release the Deposit (and all interest thereon) to the Seller;

(c) the Assignment and Assumption Agreement, duly executed by the ~~Seller~~ Purchaser for the Assigned Contracts, if any;

(d) a certificate, dated as of the Closing Date and signed the Purchaser, certifying that each of the conditions set forth in Sections 7.3(a) and 7.3(b) have been satisfied;

(e) a list of all Retained Employees; and

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

~~ARTICLE IX~~ARTICLE IX.
TERMINATION

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

(a) — ~~(a)~~ — By mutual written consent of the Seller and the Purchaser;

(b) — ~~(b)~~ — By (i) the Seller if, as of the day after the Outside Closing Date, any condition to the obligation of the Seller to close has not been satisfied, provided, however, that if the Closing has not occurred on or before the Outside Closing Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Seller, then Seller may not terminate this Agreement pursuant to this Section 9.1(b) and (ii) the Purchaser if, as of the day after the Outside Closing Date, any condition to the obligation of the Purchaser to close has not been satisfied provided, however, that if the Closing has not occurred on or before the after the Outside Closing Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by the Purchaser, then the Purchaser may not terminate this Agreement pursuant to this ~~Section 9.1(b)~~ and if the Closing has not occurred on or before the day after the Outside Closing Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Seller, then the Seller may not terminate this Agreement pursuant to this Section 9.1(b);

(c) — ~~(c)~~ — Automatically, and without further action by any Party, upon the issuance of a ~~final~~Final Order to restrain, enjoin or otherwise prohibit the closing of the transactions contemplated hereby provided that neither the Seller nor the Purchaser shall not take any action to support entry of such an order;

(d) — ~~(d)~~ — 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 the Seller nor the Purchaser shall not take any action to support such conversion or dismissal;

(e) — ~~(e)~~ — By the Purchaser, if the Purchaser is not in material breach of its obligations under this Agreement, and if (i) the Seller fails to close on the Closing

Date notwithstanding the satisfaction of all conditions to the obligation of the Seller to Close (other than conditions related to deliveries to be made at Closing by the Purchaser provided the Purchaser is ready, willing and able to make such deliveries as of the Closing Date), (ii) any of the representations and warranties of the Seller herein become untrue or inaccurate such that the condition set forth Section 7.2(a) would not be satisfied or (iii) there has been a breach on the part of the Seller of any of its covenants or agreements contained in this Agreement such that the condition set forth in Section 7.2(b) would not be satisfied, and, in the case of clauses (ii) and (iii) hereof, such breach (if curable) has not been cured within ten (10) days after written notice thereof to the Seller; and

~~(f)~~ ~~_____~~ ~~(f)~~ —By the Seller, if the Seller is not in material breach of its obligations under this Agreement, and if (i) the Purchaser fails to close on the Closing Date notwithstanding the satisfaction of all conditions to the obligation of the Purchaser to close (other than conditions related to deliveries to be made at Closing by the Seller provided the Seller is ready, willing and able to make such deliveries as of the Closing Date), (ii) any of the representations and warranties of the Purchaser herein become untrue or inaccurate such that the condition set forth in Section 7.3(a) would not be satisfied or (iii) there has been a breach on the part of the Purchaser of any of its covenants or agreements contained in this Agreement such that the condition set forth in Section 7.3(b) would not be satisfied, and, in the case of clauses (ii) and (iii) hereof, such breach (if curable) has not been cured within ten (10) days after written notice thereof to the Purchaser.

~~(g)~~ ~~_____~~ ~~(g)~~ —Automatically, and without further action by any Party, if (i) the Purchaser is not the Successful Bidder or Backup Bidder (each as defined in the Bid Procedures), or (ii) if the Purchaser is the Backup Bidder, upon Closing with the Successful Bidder.

9.2. — 9.2 — Effect of Termination. Except as provided in this Section 9.2, in the event of the termination of this Agreement pursuant to Section 9.1, this Agreement (other than this Section 9.2, Section 6.8, 6.9, and Article X (other than Sections 10.4, 10.5 and 10.14, 10.15(b)), which shall survive such termination) will forthwith become void, and there will be no liability on the part of any Party to the other and all rights and obligations of any Party will cease, except that nothing herein shall relieve any Party from liability for any intentional and material breach of this Agreement. Upon termination of this Agreement (~~ax~~) pursuant to Section 9.1(a), (b), (c), (d), (g) or (~~gh~~), the Escrow Agent shall promptly disburse the Deposit to the Purchaser pursuant, in the case of a termination pursuant to Section 9.1(g), to the terms of the Bid Procedures, (~~by~~) pursuant to Section 9.1(e), the Escrow Agent shall immediately disburse the Deposit to the Purchaser upon the entry of a Final Order by the Bankruptcy Court finding that there has been a breach by the Seller of the type described in Section 9.1(e) which has not been cured within the applicable time period set forth therein (or is not curable), or (~~ez~~) pursuant to Section 9.1(f), the Escrow Agent shall immediately disburse the Deposit (and all interest thereon) to the Seller upon the entry of a Final Order by the Bankruptcy Court finding that there has been a breach by the Purchaser of the type described in Section 9.1(f) which has not been cured within the applicable time period set forth therein (or is not curable). The requirement for the entry of a Final Order for the disbursement of the Deposit as set forth in clauses (~~by~~) and (~~ez~~) of the preceding sentence shall not be interpreted so as to require the entry of a Final Order before either the Seller or the Purchaser may exercise

their respective rights to terminate this Agreement pursuant to Sections 9.1(e) or 9.1(f), as applicable. If any Party purports to terminate this Agreement based on an alleged breach of this Agreement by the other Party and if such other Party shall dispute whether such breach occurred, the non-prevailing Party shall pay 50% of the prevailing Party's legal fees and reasonable expenses related to such dispute in addition to whatever other remedies may be available to the prevailing Party, including specific performance.

~~ARTICLE X~~
ARTICLE X.
MISCELLANEOUS

10.1. 10.1—Expiration of Representations, Warranties and Agreements. No representations or warranties made by the Seller in this Agreement or in any Ancillary Document delivered pursuant to this Agreement shall survive beyond the Closing Date. However, the foregoing shall not be deemed to exculpate or relieve any party or individual from liability for actionable, intentional fraud.

10.2. 10.2—Assignment. Neither this Agreement nor any interest herein may be assigned or transferred by either Party to any other Person without the prior written consent of the other Party, which consent may be given or withheld in the sole discretion of such other Party; provided (a) Purchaser may, at any time prior to January 15, 2015, assign its rights (but not its obligations) hereunder to Amendia without the consent of the Seller, and (b) Purchaser may assign or transfer any remaining rights (but not its obligations) to Amendia following Closing without the consent of the Seller.

10.3. 10.3—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 the Purchaser:

Andy Hall
ExWorks Capital Fund I, L.P.
333 W. Wacker Drive, Suite 1620
Chicago, IL 60606

With a copy to:

[] Donald F. Baty, Esquire
Honigman Miller Schwartz and Cohn LLP
2290 First National Building
660 Woodward Avenue
Detroit, MI 48226

And a copy also to:

Michael F. Rozmajzl
Amendia, Inc.
1755 West Oak Parkway
Marietta, Georgia 30062

And a copy to:

Michael A. Steel
Brennan, Manna & Diamond, LLC
75 East Market Street
Akron, Ohio 44308

If intended for the Seller:

Baxano Surgical, Inc.
110 Horizon Drive
Suite 203
Raleigh, North Carolina 27615

With a copy to:

Robert Lapowsky, Esquire
Stevens & Lee, P.C.
1818 Market St., 29th Floor
Philadelphia, PA 19103

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.

10.4. 10.4—Further Assurances. Each of the Parties hereto shall execute such documents (including, without limitation, the Ancillary Documents) and take such further actions as may be reasonably required or desirable to carry out the provisions hereof and the transactions contemplated hereby or, at or after the Closing, to evidence the consummation of the transactions consummated pursuant to this Agreement.

10.5. 10.5—Entire Agreement; Modifications; Waivers. This Agreement (together with the Exhibits and Schedules hereto), the Ancillary Documents, and the Non-Disclosure Agreement 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. 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.

10.6. 10.6—Applicable Law; Jurisdiction and Venue; Jury Trial Waiver.
THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY 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, jurisdiction and venue for any litigation arising out of this Agreement, provided jurisdiction may be obtained under applicable law, shall be in the U.S. District Court for the District of 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 TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.**

10.7. ~~10.7~~—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.

10.8. ~~10.8~~—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.

10.9. ~~10.9~~—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.

10.10. ~~10.10~~—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.

10.11. ~~10.11~~—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.

10.12. ~~10.12~~—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.

10.13. ~~10.13~~—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.

10.14. ~~10.14~~—Expenses; Transfer Taxes.

(a) Except as otherwise expressly provided in this Agreement, each Party will bear its respective expenses incurred in connection with the preparation, negotiation, execution, and performance of this Agreement and the transactions contemplated hereby, including all fees and expenses of agents, representatives, counsel, and accountants.

(b) The Purchaser 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 transactions contemplated hereby ("**Transfer Taxes**").

10.15. ~~10.15~~—Counterparts. This Agreement may be executed at different times and in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by e-mail shall be as effective as delivery of a manually executed counterpart of this Agreement.

10.16. ~~10.16~~—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.

[Signature page follows-]

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

SELLER:

BAXANO SURGICAL, INC.

By: _____
_____]

Name:

Title:

PURCHASER:

EXWORKS CAPITAL FUND I, L.P.

By: _____

Name:

Title:

[Signature page to Asset Purchase Agreement]

EXHIBIT A

~~Acquired Assets~~
ACQUIRED ASSETS

The Acquired Assets to be purchased by the Purchaser and sold, ~~conveyed, assigned, transferred and delivered~~ on the Closing Date to the Purchaser by the Seller shall include all of the Seller's right, title and interest in and to all of the following assets, but specifically excluding, however, the Excluded Assets:

1. Product Rights. All of the Seller's right, title, and interest in and to all of the Products, including all of the Seller's rights with respect to the design, development, manufacturing, marketing, sale, and distribution of the Products throughout the world, regardless of whether such Products are in development or any other stage of the product life cycle, and including all rights with respect to any modification, improvement, or enhancement thereto.

2. Inventories. All ~~inventories pertaining to the Products~~Inventory, including raw materials and components, work-in-process, finished goods, and other materials, spare parts, components, and supplies, as well as all packaging and labeling inventories, supplies, and materials wherever located.

3. Other Tangible Personal Property. All (a) property described on Schedule A-1 to this Exhibit A, and (b) other items not described on Schedule A-1 consisting of Goods, machinery, ~~equipment~~Equipment, tooling, molds, and other fixed assets, trade fixtures, furnishings, vehicles, furniture, displays, display materials, signs, tools, computer hardware (other than computer hardware related to the CRM, ERP and Salesforce systems), accessories, artwork, office and other equipment, ~~telephone and telecommunications equipment~~, appliances, and other tangible personal property, and any replacement parts for any such tangible assets, ~~including any of the foregoing leased by the Seller (including the Leased Personal Property)~~in all cases to the extent related to the Products, but only to the extent described on Schedule A-1 to this Exhibit A.

4. Intellectual Property. ~~All~~That portion of the Owned Intellectual Property identified on Schedule A-2 to this Exhibit A, and all goodwill associated therewith and all reissuances, continuations, continuations in part, revisions, extensions and reexaminations thereof.

5. Assigned Contracts. All of the Seller's rights and interests as of the Closing Date under or relating to the Contracts specifically identified on Schedule A-3 to this Exhibit A.

6. Books and Records. All Books and Records related to the Products, ~~but specifically excluded~~ including without limitation all original data and records related to the Products, including client and customer lists and records, referral sources, research and development reports and records, software programs, customer relationship management records related to the historical Product sales, production reports and records, service and warranty records, equipment logs, operating guides and manuals, financial and accounting records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and records. The foregoing notwithstanding, the Books and Records including

in the Acquired Assets shall not include the ERP, CRM and Salesforce systems (as to which access will be provided as described in the Agreement) or any Corporate Documents.

7. Governmental Authorizations. All transferable Governmental Authorizations, identified on Schedule A-4 to this **Exhibit A**, (including the 510(k) Clearances, 510(k) Filings, and CE Marks identified thereon, and the 510(k) Supporting Materials and CE Mark Supporting Materials relating thereto. All regulatory filings, certifications, and approvals from the U.S. Food and Drug Administration and its foreign counterparts including all pending applications therefore or renewals thereof incorporated into or necessary for the Seller's products, including, for example, CE approval, ISO9001, ISO 13485, CMCDA, quality assurance systems and related documentation and software, and any other regulatory certifications including but not limited to the assets listed in Schedule A-4.).

8. Rights; Warranty Claims. All of Seller's rights, claims, counterclaims, credits, causes of action or rights of set-off against third parties that relate to ~~manufacturers' and vendors'~~ warranties, indemnities and all similar rights to the extent related to any Acquired Assets.

9. Goodwill. All goodwill associated with the Products.

10. Other Assets. Those other assets of the Seller identified on Schedule A-5 to this **Exhibit A**.

Schedule A-1

Other Tangible Personal Property

1. All hard copy training materials for iO-Flex and iO-Tome consisting of:
 - a. Training videos
 - b. Surgical technique guide
 - c. Bone models
2. All hard copy Design History Files for iO-Flex, iO-Tome and Bone Graft Harvester
3. All hard copy Salesforce Data pertaining to iO-Flex, iO-Tome and Bone Graft Harvester
4. All hard copy Clinical Study Files for iO-Flex Specific to the STRIDE and original iO-Flex Study
5. All tooling, inspection and manufacturing located at Venta described in Schedule A-1A
6. All manufacturing equipment and machinery located at various vendors listed in Schedule A-1B
7. The iO Flex saw bone models at Baxano Surgical – approximately 2 cases
8. Approximately 17 cases of Baxtor demonstration models at Baxano Surgical
9. Ten 13 inch wide by 72 inch long rolling wire racks used to store iO inventory
10. Five 24 inch wide by 72 inch long rolling wire racks used to store iO inventory

Schedule A-2Owned Intellectual PropertyU.S. Patents

	<u>File ref. #</u>	<u>Title</u>	<u>App. No.</u>	<u>App. Date</u>	<u>Patent No.</u>	<u>Patent Date</u>	<u>Esp Date</u>
<u>52</u>	<u>10376-700.201</u>	<u>DEVICES AND METHODS FOR SELECTIVE SURGICAL REMOVAL OF TISSUE</u>	<u>11/250,332</u>	<u>10/15/2005</u>	<u>7,738,968</u>	<u>6/15/2010</u>	<u>7/31/2027</u>
<u>53</u>	<u>10376-700.202</u>	<u>DEVICES AND METHODS FOR SELECTIVE SURGICAL REMOVAL OF TISSUE</u>	<u>11/250,369</u>	<u>10/15/2005</u>	<u>7,555,343</u>	<u>6/30/2009</u>	<u>3/5/2027</u>
<u>54</u>	<u>10376-700.204</u>	<u>DEVICES AND METHODS FOR TISSUE ACCESS</u>	<u>11/251,205</u>	<u>10/15/2005</u>	<u>7,918,849</u>	<u>4/5/2011</u>	<u>10/01/2029</u>
<u>55</u>	<u>10376-700.206</u>	<u>DEVICES AND METHODS FOR TISSUE ACCESS</u>	<u>11/251,186</u>	<u>10/15/2005</u>	<u>7,963,915</u>	<u>6/21/2011</u>	<u>08/16/2029</u>
<u>56</u>	<u>10376-700.207</u>	<u>DEVICES AND METHODS FOR TISSUE MODIFICATION</u>	<u>11/251,165</u>	<u>10/15/2005</u>	<u>7,553,307</u>	<u>6/30/2009</u>	<u>02/25/2027</u>
<u>57</u>	<u>10376-700.208</u>	<u>DEVICES AND METHODS FOR TISSUE MODIFICATION</u>	<u>11/251,204</u>	<u>10/15/2005</u>	<u>7,740,631</u>	<u>6/22/2010</u>	<u>02/23/2029</u>
<u>58</u>	<u>10376-700.209</u>	<u>DEVICES AND METHODS FOR TISSUE MODIFICATION</u>	<u>11/251,199</u>	<u>10/15/2005</u>	<u>8,192,435</u>	<u>6/5/2012</u>	<u>01/28/2027</u>
<u>59</u>	<u>10376-700.307</u>	<u>DEVICES AND METHODS FOR TISSUE MODIFICATION</u>	<u>12/428,369</u>	<u>4/22/2009</u>	<u>8,221,397</u>	<u>7/17/2012</u>	<u>11/23/2026</u>
<u>60</u>	<u>10376-700.310</u>	<u>DEVICES AND METHODS FOR TISSUE MODIFICATION</u>	<u>13/430,500</u>	<u>3/26/2012</u>	<u>8,579,902</u>	<u>11/12/2013</u>	<u>12/08/2025</u>
<u>61</u>	<u>10376-700.401</u>	<u>DEVICES AND METHODS FOR SELECTIVE SURGICAL REMOVAL OF TISSUE</u>	<u>12/357,289</u>	<u>1/21/2009</u>	<u>7,738,969</u>	<u>6/15/2010</u>	<u>10/15/2025</u>
<u>62</u>	<u>10376-700.402</u>	<u>SPINAL ACCESS AND NEURAL LOCALIZATION</u>	<u>12/504,545</u>	<u>7/16/2009</u>	<u>8,419,653</u>	<u>4/16/2013</u>	<u>11/06/2026</u>
<u>63</u>	<u>10376-700.501</u>	<u>MECHANICAL TISSUE MODIFICATION DEVICES AND METHODS</u>	<u>11/405,848</u>	<u>4/17/2006</u>	<u>8,430,881</u>	<u>4/30/2013</u>	<u>06/14/2027</u>
<u>64</u>	<u>10376-700.502</u>	<u>POWERED TISSUE MODIFICATION DEVICES AND METHODS</u>	<u>11/406,486</u>	<u>4/17/2006</u>	<u>7,938,830</u>	<u>5/10/2011</u>	<u>08/12/2027</u>
<u>65</u>	<u>10376-700.504</u>	<u>FLEXIBLE TISSUE RASP</u>	<u>11/429,377</u>	<u>5/4/2006</u>	<u>8,048,080</u>	<u>11/1/2011</u>	<u>12/29/2027</u>
<u>66</u>	<u>10376-700.505</u>	<u>SPINAL ACCESS AND NEURAL LOCALIZATION</u>	<u>11/457,416</u>	<u>7/13/2006</u>	<u>7,578,819</u>	<u>8/25/2009</u>	<u>10/15/2025</u>
<u>67</u>	<u>10376-700.506</u>	<u>TISSUE REMOVAL WITH AT LEAST PARTIALLY FLEXIBLE DEVICES</u>	<u>11/687,548</u>	<u>3/16/2007</u>	<u>8,062,300</u>	<u>11/22/2011</u>	<u>03/24/2028</u>
<u>68</u>	<u>10376-700.507</u>	<u>FLEXIBLE TISSUE REMOVAL DEVICES AND METHODS</u>	<u>11/687,558</u>	<u>3/16/2007</u>	<u>8,062,298</u>	<u>11/22/2011</u>	<u>01/19/2028</u>
<u>69</u>	<u>10376-700.509</u>	<u>TISSUE MODIFICATION DEVICES</u>	<u>12/324,147</u>	<u>11/26/2008</u>	<u>8,192,436</u>	<u>6/5/2012</u>	<u>12/08/2028</u>
<u>70</u>	<u>10376-700.US1</u>	<u>METHODS AND APPARATUS FOR TISSUE MODIFICATION</u>	<u>11/375,265</u>	<u>3/13/2006</u>	<u>7,887,538</u>	<u>2/15/2011</u>	<u>01/08/2027</u>

<u>71</u>	<u>10376-706.201</u>	<u>TISSUE ACCESS GUIDEWIRE SYSTEM AND METHOD</u>	<u>11/468,247</u>	<u>8/29/2006</u>	<u>7,857,813</u>	<u>12/28/2010</u>	<u>05/16/2028</u>
<u>72</u>	<u>10376-706.501</u>	<u>GUIDEWIRE EXCHANGE SYSTEMS TO TREAT SPINAL STENOSIS</u>	<u>12/127,535</u>	<u>5/27/2008</u>	<u>8,257,356</u>	<u>9/4/2012</u>	<u>08/09/2028</u>
<u>73</u>	<u>10376-719.200</u>	<u>METHOD, SYSTEM, AND APPARATUS FOR NEURAL LOCALIZATION</u>	<u>12/060,229</u>	<u>3/31/2008</u>	<u>7,959,577</u>	<u>6/14/2011</u>	<u>06/27/2028</u>
<u>74</u>	<u>10376-719.400</u>	<u>METHOD, SYSTEM, AND APPARATUS FOR NEURAL LOCALIZATION</u>	<u>13/090,944</u>	<u>4/20/2011</u>	<u>8,303,516</u>	<u>11/6/2012</u>	<u>03/31/2028</u>
<u>75</u>	<u>10376-727.200</u>	<u>MULTIPLE PATHWAYS FOR SPINAL NERVE ROOT DECOMPRESSION FROM A SINGLE ACCESS POINT</u>	<u>12/352,978</u>	<u>1/13/2009</u>	<u>8,092,456</u>	<u>1/10/2012</u>	<u>05/08/2026</u>
<u>76</u>	<u>10376-727.300</u>	<u>MULTIPLE PATHWAYS FOR SPINAL NERVE ROOT DECOMPRESSION FROM A SINGLE ACCESS POINT</u>	<u>13/312,272</u>	<u>12/6/2011</u>	<u>8,366,712</u>	<u>2/5/2013</u>	<u>10/15/2025</u>
<u>77</u>	<u>10376-730.200</u>	<u>SURGICAL TOOLS FOR TREATMENT OF SPINAL STENOSIS</u>	<u>12/824,043</u>	<u>6/25/2010</u>	<u>8,394,102</u>	<u>3/12/2013</u>	<u>01/30/2031</u>
<u>78</u>	<u>10376-731.200</u>	<u>TISSUE MODIFICATION DEVICES AND METHODS</u>	<u>12/773,595</u>	<u>5/4/2010</u>	<u>8,409,206</u>	<u>4/2/2013</u>	<u>07/01/2029</u>
<u>79</u>	<u>10376-731.500</u>	<u>TISSUE MODIFICATION DEVICES AND METHODS</u>	<u>13/338,103</u>	<u>12/27/2011</u>	<u>8,398,641</u>	<u>3/19/2013</u>	<u>07/01/2029</u>
<u>80</u>	<u>10376-706.301</u>	<u>TISSUE ACCESS GUIDEWIRE SYSTEM AND METHOD</u>	<u>12/917,253</u>	<u>11/1/2010</u>	<u>8,551,097</u>	<u>10/8/2013</u>	<u>08/29/2026</u>
<u>81</u>	<u>10376-706.502</u>	<u>ACCESS AND TISSUE MODIFICATION SYSTEMS AND METHODS</u>	<u>13/588,969</u>	<u>8/17/2012</u>	<u>8,568,416</u>	<u>10/29/2013</u>	<u>10/14/2025</u>
<u>82</u>	<u>10376-700.310</u>	<u>DEVICES AND METHODS FOR TISSUE MODIFICATION</u>	<u>13/430,500</u>	<u>3/26/2012</u>	<u>8,579,902</u>	<u>11/12/2013</u>	<u>12/8/2025</u>
<u>83</u>	<u>10376-700.309</u>	<u>FLEXIBLE TISSUE REMOVAL DEVICES AND METHODS</u>	<u>13/267,683</u>	<u>10/6/2011</u>	<u>8,585,704</u>	<u>11/19/2013</u>	<u>05/09/2026</u>
<u>84</u>	<u>10376-700.514</u>	<u>METHODS, SYSTEMS AND DEVICES FOR CARPAL TUNNEL RELEASE</u>	<u>13/112,886</u>	<u>5/20/2011</u>	<u>8,617,163</u>	<u>12/31/2013</u>	<u>09/14/2026</u>
<u>85</u>	<u>10376-700.515</u>	<u>METHODS, SYSTEMS AND DEVICES FOR CARPAL TUNNEL RELEASE</u>	<u>13/112,918</u>	<u>5/20/2011</u>	<u>8,613,745</u>	<u>12/24/2013</u>	<u>09/14/2026</u>
<u>86</u>	<u>10376-700.311</u>	<u>DEVICES AND METHODS FOR TISSUE MODIFICATION</u>	<u>13/484,744</u>	<u>5/31/2012</u>	<u>8,647,346</u>	<u>02/11/2014</u>	<u>10/15/2025</u>
<u>87</u>	<u>10376-700.304</u>	<u>FLEXIBLE TISSUE RASP</u>	<u>13/243,095</u>	<u>9/23/2011</u>	<u>8,652,138</u>	<u>2/18/2014</u>	<u>10/15/2025</u>
<u>88</u>	<u>10376-700.403</u>	<u>TISSUE MODIFICATION DEVICES</u>	<u>13/232,882</u>	<u>9/14/2011</u>	<u>8,662,228</u>	<u>3/4/2014</u>	<u>12/07/2027</u>
<u>93</u>	<u>10376-729.500</u>	<u>FLEXIBLE NEURAL LOCALIZATION DEVICES AND METHODS</u>	<u>13/340,363</u>	<u>12/29/2011</u>	<u>8,801,626</u>	<u>8/12/2014</u>	
<u>94</u>	<u>10376-706.401</u>	<u>TISSUE ACCESS GUIDEWIRE SYSTEM AND METHOD</u>	<u>14/023,893</u>	<u>9/11/2013</u>	<u>8,845,637</u>	<u>9/30/2014</u>	
<u>95</u>	<u>10376-725.300</u>	<u>TISSUE MODIFICATION DEVICES</u>	<u>13/007,381</u>	<u>1/14/2011</u>	<u>8,845,639</u>	<u>9/30/2014</u>	

Foreign Issued Patents

<u>File Ref. no.</u>	<u>Title</u>	<u>App. No.</u>	<u>App. Date</u>	<u>Nat. Date</u>	<u>Patent No.</u>	<u>Patent Date</u>
<u>10376-700.DE5</u>	<u>TISSUE REMOVAL DEVICES AND METHODS</u>	<u>10075066.0</u>	<u>12/7/2007</u>		<u>EP 2241274</u>	<u>2/1/2012</u>
<u>10376-700.FR5</u>	<u>TISSUE REMOVAL DEVICES AND METHODS</u>	<u>10075066.0</u>	<u>12/7/2007</u>		<u>2241274</u>	<u>2/1/2012</u>
<u>10376-700.GB5</u>	<u>TISSUE REMOVAL DEVICES AND METHODS</u>	<u>10075066.0</u>	<u>12/7/2007</u>		<u>2241274</u>	<u>2/1/2012</u>
<u>10376-700.IT5</u>	<u>TISSUE REMOVAL DEVICES AND METHODS</u>	<u>10075066.0</u>	<u>12/7/2007</u>		<u>2241274</u>	<u>2/1/2012</u>

U.S. Pending Patent Applications

<u>File Ref. no.</u>	<u>Title</u>	<u>App. No.</u>	<u>App. Date</u>	<u>Pub. No.</u>	<u>Pub. Date</u>	<u>Status</u>
<u>10376-700.404</u>	<u>FLEXIBLE TISSUE RASP</u>	<u>14/180,221</u>	<u>02/13/2014</u>	<u>20140163562</u>	<u>6/12/2014</u>	<u>pending</u>
<u>10376-700.314</u>	<u>FLEXIBLE TISSUE REMOVAL DEVICES AND METHODS</u>	<u>14/082,052</u>	<u>11/15/2013</u>	<u>20140074097</u>	<u>3/13/2014</u>	<u>pending</u>

Additional Patents:*

US 2011-0060314 A1 - DEVICES AND METHODS FOR TREATING TISSUE
US 2011-0160731 A1 - DEVICES AND METHODS FOR TISSUE ACCESS
US 2011-0060314 A1 - DEVICES AND METHODS FOR TREATING TISSUE
US 2012-0191003 A1 - FLEXIBLE NEURAL LOCALIZATION DEVICES AND METHODS
US 2013-0150855 A1 - MULTIPLE PATHWAYS FOR SPINAL NERVE ROOT DECOMPRESSION FROM A SINGLE ACCESS POINT
US 2013-0150856 A1 TISSUE MODIFICATION DEVICES AND METHODS
US 2013-0310837 A1 - POWERED TISSUE MODIFICATION DEVICES AND METHODS
US 2014-0180293 A1 - TISSUE MODIFICATION DEVICES
US 2014-0107709 A1 - ACCESS AND TISSUE MODIFICATION SYSTEMS AND METHODS
WO 2008/027926 - TISSUE ACCESS GUIDEWIRE SYSTEM AND METHOD JP2010502305 (A) EP2056710 (A2) CA2661869 (A1) AU2007289243 (A1) AU2007289243 (B2)
WO 2007/106740 - METHODS AND APPARATUS FOR TISSUE MODIFICATION
WO 2006/044727 - DEVICES AND METHODS FOR TISSUE REMOVAL
JP2012179371 (A) JP5607100 (B2) JP2008516694 (A) JP5243034 (B2) EP1799129 (A2) EP1799129 (A4) CA2583906 A1 CA2583906 (C) AU2005295589 (A1) AU2005295589 (B2)
WO 2010/009093 - TISSUE MODIFICATION DEVICES MX2011000510 (A) EP2328489 (A2) EP2328489 (A4) CA2730732 (A1) AU2009271047 (A1) AU2009271047

* The Seller has not paid the associated registration and/or maintenance fees for any of the patents listed below, nor has it, since August 2014, otherwise enforced any such patents.

Federal Trademarks

<u>MARK</u>	<u>APP. NO. FILING DATE</u>	<u>REG. NO. REG. DATE</u>	<u>CLASS</u>	<u>CLASS: GOODS/SERVICES</u>	<u>STATUS</u>
<u>iO-Flex</u>	<u>77/817,765</u> <u>01-Sept-2009</u>	<u>3894968</u> <u>21-Dec-2010</u>	<u>10</u>	<u>10: Surgical and medical devices and instruments, namely, surgical instruments for accessing, localizing and modifying tissue; Surgical and medical systems, comprised of a set of minimally invasive surgical instruments used in sequence for accessing, localizing and modifying tissue</u>	<u>REGISTERED</u>
<u>iO-Flex</u>	<u>77/817,782</u> <u>01-Sept-2009</u>	<u>3887573</u> <u>07-Dec-2010</u>	<u>44</u>	<u>44: Medical services</u>	<u>REGISTERED</u>
<u>iO-Flex</u>	<u>77/817,791</u> <u>01-Sept-2009</u>	<u>3894969</u> <u>21-Dec-2010</u>	<u>10</u>	<u>10: Surgical and medical devices and instruments, namely, surgical instruments for accessing, localizing and modifying tissue; Surgical and medical systems, comprised of a set of minimally invasive surgical instruments used in sequence for accessing, localizing and modifying tissue</u>	<u>REGISTERED</u>
<u>iO-Flex</u>	<u>77/817,794</u> <u>01-Sept-2009</u>	<u>3887574</u> <u>07-Dec-2010</u>	<u>44</u>	<u>44: Medical services</u>	<u>REGISTERED</u>
<u>iO-Flex</u>	<u>77/817,829</u> <u>01-Sept-2009</u>	<u>3894970</u> <u>21-Dec-2010</u>	<u>10</u>	<u>10: Surgical and medical devices and instruments, namely, surgical instruments for accessing, localizing and modifying tissue; Surgical and medical systems, comprised of a set of minimally invasive surgical instruments used in sequence for accessing, localizing and modifying tissue</u>	<u>REGISTERED</u>
<u>iO-Flex</u>	<u>77/817,833</u> <u>01-Sept-2009</u>	<u>3894971</u> <u>21-Dec-2010</u>	<u>44</u>	<u>44: Medical services</u>	<u>REGISTERED</u>

<u>MARK</u>	<u>APP. NO. FILING DATE</u>	<u>REG. NO. REG. DATE</u>	<u>CLASS</u>	<u>CLASS: GOODS/SERVICES</u>	<u>STATUS</u>
<u>MICROBLADE SHAVER AXIAMD.138T</u>	<u>77/817,695</u> <u>01-Sept-2009</u>	<u>3921286</u> <u>15-Feb-2011</u>	<u>10</u>	<u>10: Surgical and medical devices and instruments, namely, surgical instruments for accessing and modifying soft tissue and bone</u>	<u>REGISTERED</u>
<u>MICROBLADE SHAVER</u>	<u>77/817,698</u> <u>01-Sept-2009</u>	<u>3926514</u> <u>01-Mar-2011</u>	<u>44</u>	<u>44: Medical services</u>	<u>REGISTERED</u>
<u>NEURO CHECK AXIAMD.139T</u>	<u>77/817,683</u> <u>01-Sept-2009</u>	<u>3,958,689</u> <u>10-May-2011</u>	<u>10</u>	<u>10: Surgical and medical devices and instruments, namely, surgical instruments for accessing and localizing tissue</u>	<u>REGISTERED</u>
<u>NEURO CHECK</u>	<u>77/817,687</u> <u>01-Sept-2009</u>	<u>4074547</u> <u>20-Dec-2011</u>	<u>44</u>	<u>44: Providing medical information concerning the use of surgical devices and instruments</u>	<u>REGISTERED</u>
<u>IO-TOME</u>	<u>85/082,846</u> <u>12-Jul-2010</u>	<u>4415146</u> <u>10/08/2013</u>	<u>10 & 41</u>	<u>10: Surgical and medical devices and instruments, namely, surgical instruments for accessing and modifying soft tissue and bone.</u> <u>41: Education, namely, providing classes, seminars, conferences and workshops and training services all in the medical field.</u>	<u>REGISTERED</u>

Foreign Trademarks

<u>MARK</u>	<u>TERRITORY</u>	<u>APP. NO. FILING DATE</u>	<u>REG. NO. REG. DATE</u>	<u>CLASSES</u>	<u>CLASS: GOODS/SERVICES</u>	<u>STATUS</u>
<u>iO-Flex</u>	<u>European Community</u>	<u>8919052</u> <u>01-Mar-2010</u>	<u>8919052</u> <u>13-Oct-2010</u>	<u>10 & 44</u>	<u>10: Surgical and medical devices and instruments, namely, surgical instruments for accessing, localizing and modifying tissue;</u>	<u>REGISTERED</u>

<u>MARK</u>	<u>TERRITORY</u>	<u>APP. NO. FILING DATE</u>	<u>REG. NO. REG. DATE</u>	<u>CLASSES</u>	<u>CLASS: GOODS/SERVICES</u>	<u>STATUS</u>
<u>IO-TOME</u>	<u>European Union</u>	<u>9647389</u> <u>10-Jan-2011</u>	<u>9647389</u> <u>16-Jun-2011</u>	<u>10, 41, 44</u>	<u>Surgical and medical systems, comprised of a set of minimally invasive surgical instruments used in sequence for accessing, localizing and modifying tissue</u> <u>44: Medical services.</u>	<u>REGISTERED</u>
					<u>10: Surgical and medical devices, machines, instruments, apparatus and systems; surgical and medical devices and instruments, namely, surgical instruments for accessing and modifying soft tissue and bone.</u> <u>41: Education; Providing of training; education and training services in the medical field.</u> <u>44: Medical Services; providing medical information.</u>	

Trademarks[†]
85654590 4285902 IO-FLEXIBILITY
85571995 4326980 IO-CONNECT
77817743 3887572 INSIDE OUT. THE INTUITIVE DIRECTION
77817742 3958693 INSIDE OUT. THE INTUITIVE DIRECTION

[†] The Seller has not paid the associated registration and/or maintenance fees for any of the trademarks listed below, nor has it, since August 2014, otherwise enforced any such trademarks.

77817733 3894967 SURGERY FROM THE INSIDE OUT
77817727 3958692 SURGERY FROM THE INSIDE OUT
77817720 3887571 DISCOVER THE UPSIDE OF THE INSIDE OUT
77817715 3958691 DISCOVER THE UPSIDE OF THE INSIDE OUT
77817707 3887570 PRECISION DECOMPRESSION FROM THE INSIDE
OUT
77817702 3958690 PRECISION DECOMPRESSION FROM THE INSIDE
OUT

Schedule A-3

Assigned Contracts

None.

Schedule A-4Governmental Authorizations*

<u>US</u>			
<u>Product</u>	<u>510k #</u>	<u>Class</u>	<u>Product Code</u>
iO-Flex	<u>K100958, K063231</u>	<u>II</u>	<u>HAE</u>
Neurocheck	<u>K092729, K081742</u>	<u>II</u>	<u>ETN</u>
Catheter	<u>K102594</u>	<u>II</u>	<u>BSO</u>

Neurocheck with wire K113533 and K110696

iO Tome K113073

Baxano Ultra Low Profile Rongeur K080494

Microblade Shaver and Accessories K063231

Ultra Low Profile Rongeur K062711

K110696

*Please note that the Bone Graft Harvester did not require a 510(k) registration

<u>Canada</u>						
<u>Product</u>	<u>Registration #</u>	<u>Class</u>	<u>Registration Holder</u>	<u>First Issue</u>	<u>Registration Agent</u>	<u>Frequency for Renewal</u>
iO-Flex	<u>88060</u>	<u>3 of 4</u>	<u>Baxano Surgical</u>	<u>1/13/2012</u>	<u>Baxano Surgical</u>	<u>Annual</u>

<u>EU</u>						
<u>Product</u>	<u>Registration #</u>	<u>Class</u>	<u>Registration Holder</u>	<u>First Issue</u>	<u>Notified Body</u>	<u>Expiry</u>
iO-Flex	<u>41314965</u>	<u>IIb</u>	<u>Baxano Surgical</u>	<u>Transferred from BSi</u>	<u>Intertek</u>	<u>3/9/2015 (EC Cert)</u>

<u>Dubai</u>	
iO-Flex	<u>Approved</u>

<u>Turkey TITUBB Database Listings</u>	
<u>iO-Wire</u>	<u>00814864010545</u>
<u>iO-CP45</u>	<u>00814864010552</u>
<u>iO-IP</u>	<u>00814864010569</u>
<u>iO-IP-TR</u>	<u>00814864010576</u>
<u>iO-NCW</u>	<u>00814864010583</u>
<u>iO-DH</u>	<u>00814864010590</u>
<u>iO-MBS5.5</u>	<u>00814864010606</u>
<u>iO-MBS7.5s</u>	<u>00814864010613</u>
<u>c</u>	
<u>iO-MBS10s</u>	<u>00814864010620</u>
<u>c</u>	
<u>iO-MBS12s</u>	<u>00814864010637</u>
<u>c</u>	
<u>iO-Tome7.5</u>	<u>00814864010644</u>
<u>iO-Tome10</u>	<u>00814864010651</u>
<u>iO-IC</u>	<u>00814864010668</u>

iO-CC	00814864010675
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Schedule A-5

Other Assets

None

EXHIBIT B

ASSIGNMENT, DELEGATION AND ASSUMPTION AGREEMENT

ASSIGNMENT, DELEGATION AND ASSUMPTION AGREEMENT
("Agreement") dated as of [] by and between Baxano Surgical, Inc., a Delaware corporation ("Assignor"), and [] a [] ("Assignee").

BACKGROUND

A. Assignee and Assignor have entered into an Asset Purchase Agreement dated as of [] (together with the Exhibits and Schedules thereto, the "Purchase Agreement") providing for, among other things, the sale, transfer, conveyance, assignment, and delivery by Assignor to Assignee of certain assets of Assignor (collectively, the "Acquired Assets") that are owned or used by Assignor in connection with the Business.

B. In connection with the sale and purchase of the Acquired Assets pursuant to the Purchase Agreement, Assignor is to assign and delegate, and Assignee is to assume, the Assigned Contracts. Closing is being held on the date hereof under the Purchase 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; Defined Terms. The Background provisions set forth above (including, without limitation, all of the defined terms set forth therein) are hereby incorporated by reference into this Agreement and made a part hereof as if set forth in their entirety in this Section 1. Capitalized terms used herein which are not otherwise defined shall have the respective meanings assigned to them in the Purchase Agreement.

2. 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 Assigned Contracts, each of which are identified on Schedule 2 attached hereto.

3. Delegation of Duties. Assignor hereby delegates to Assignee all of Assignor's duties and liabilities under the Assigned Contracts.

4. Assumption of Liabilities. In partial consideration for the sale of the Acquired Assets by Assignor pursuant to the Purchase Agreement, Assignee hereby undertakes and agrees to assume, discharge, or perform as the case may be, all duties, obligations, and liabilities of Assignor under the Assigned Contracts which are to be performed after, and relate to the period after, the date hereof or which are otherwise assigned to and assumed by the Purchaser under or pursuant to the Purchaser Agreement or the Sale Order.

5. Assignment of Governmental Authorizations; Etc. Assignor hereby assigns, sells, transfers, and sets over to Assignee all of Assignor's right, title and interest in, to, and under all of the Governmental Authorizations which are listed on Schedule 5 attached hereto, but only to the extent that any of the foregoing may be legally sold, transferred, conveyed, assigned and

delivered by Assignor to Assignee without any action by any such applicable federal, state, or local government or regulatory body.

6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

7. 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 pertaining to the conflict of laws.

8. Counterparts. This Agreement may be executed in two (2) 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 Agreement may deliver an executed counterpart hereof by facsimile transmission or electronic mail (as a Portable Document Format (PDF) file) to the other party hereto and any such delivery shall have the same force and effect as the manual delivery of an original executed counterpart of this Agreement.

Remainder of Page Intentionally Left Blank
Signature Page Follows

EXHIBIT C

BILL OF SALE

January __, 2015

KNOW ALL BY THESE PRESENTS that BAXANO SURGICAL, INC., a Delaware corporation (the "Seller"), 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 ExWorks Capital Fund I, L.P ("Purchaser"), its successors and assigns, all of the Seller's right, title and interest in and to the Acquired Assets. As used herein, the term "Acquired Assets" has the meaning given to such term in that certain Asset Purchase Agreement, dated as of December 31, 2014, by and between the Seller and Purchaser (together with the Exhibits and Schedules thereto, the "Purchase Agreement"), which Purchase Agreement is incorporated herein by this reference.

EXCLUDING, HOWEVER, the "Excluded Assets" (as such term is defined in the Purchase Agreement).

TO HAVE AND TO HOLD the Acquired Assets unto Purchaser, its successors and assigns, forever.

This Bill of Sale is being executed and delivered by the Seller to the Purchaser under and pursuant to Section 8.2(a) of the Purchase Agreement and is subject to the terms and conditions of the Purchase Agreement in all respects.

Remainder of Page Intentionally Left Blank

Signature Page Follows

IN WITNESS WHEREOF, Seller has executed and delivered this Bill of Sale as of the date and year first set forth above.

BAXANO SURGICAL, INC.

By _____

Name:

Title:

EXHIBIT D

DEPOSIT ESCROW AGREEMENT

This Escrow Agreement (this "Agreement") is entered into as of December 31, 2014, by and among Stevens & Lee, P.C., as escrow agent ("Escrow Agent"), Baxano Surgical, Inc. ("Baxano"), and ExWorks Capital Fund I, L.P. (the "Purchaser," and, collectively with Baxano, the "Principals"). The Escrow Agent and the Principals may be referred to herein as a "Party" and collectively, the "Parties".

WHEREAS, pursuant to that certain Asset Purchase Agreement of even date herewith (the "Purchase Agreement"), the Purchaser has offered to purchase certain assets of Baxano.

WHEREAS, pursuant to the Purchase Agreement, the Purchaser is required to provide a Deposit (as defined in the Purchase Agreement.)

WHEREAS, the Principals have requested that the Escrow Agent serve as escrow agent for the Deposit.

WHEREAS, the Escrow Agent has agreed to act as escrow agent during the term of this Agreement, on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the representations, warranties and covenants herein contained, and intending to be legally bound, the Parties agree as follows:

1. Appointment. The Principals hereby constitute and appoint the Escrow Agent as escrow agent hereunder, and the Escrow Agent hereby agrees to assume and perform the duties of the escrow agent hereunder. The Escrow Agent is not charged with knowledge of the terms or provisions of any agreements between the Principals or with any duties or responsibilities except as expressly stated in this Agreement.

2. Escrow Funds. Upon the execution hereof Purchaser shall cause to be delivered to the Escrow Agent the amount of \$400,000 in immediately available funds (the "Escrow Funds").

3. Investments.

(a) The Escrow Agent is authorized and directed to deposit, transfer, hold and invest the Escrow Funds in its Interest on Lawyers Trust Funds account.

(b) The Escrow Agent is hereby authorized and directed to make any payments or distributions required under this Agreement. The Parties acknowledge that the Escrow Agent is not providing investment supervision, recommendations, or advice.

4. Disbursements. The Escrow Agent shall disburse the Escrow Funds only pursuant to (a) a joint written direction from the Principals (a "Joint Instruction Letter"), or (b) an order of a court of competent jurisdiction. The Escrow Agent shall not be responsible for verifying

the accuracy or completeness of any Joint Instruction Letter or the compliance of such Joint Instruction Letter with the terms of this Agreement or any agreement between the Principals. The Escrow Agent shall not be liable for any action taken in respect of the distribution of Escrow Funds in accordance with this Section 4.

5. No Security Interest; Escrow Agent Priority of Payment. Escrow Agent hereby disclaims any security interest in any portion of the Escrow Funds and agrees to keep the Escrow Funds free and clear of liens in favor of Escrow Agent while such Escrow Funds remain in the Escrow Account.

6. Termination. This Agreement shall terminate upon the distribution of all of the Escrow Funds held by the Escrow Agent pursuant to this Agreement.

7. Compensation. The Escrow Agent's services hereunder shall be provided without charge.

8. Exculpatory Provisions. The Escrow Agent shall be obligated only to perform such duties as are specifically set forth in this Agreement and may rely and shall be protected in relying on any instrument reasonably believed to be genuine and to have been signed or presented by the proper Party or Parties. The Escrow Agent shall not be liable for forgeries or false impersonations. The Escrow Agent shall not be liable for any act done or omitted hereunder as escrow agent except for actions or omissions that are finally determined by a court of competent jurisdiction to constitute fraud, gross negligence or willful misconduct. The Escrow Agent shall in no case or event incur liability for any punitive, incidental or consequential losses or damages 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. The Escrow Agent shall be entitled to rely on and shall not be liable for any action taken or omitted to be taken by the Escrow Agent in accordance with the advice of counsel or other professionals retained or consulted by the Escrow Agent. Any act done or omitted pursuant to the advice or opinion of counsel (including counsel employed by the Escrow Agent) shall be conclusive evidence of the good faith of the Escrow Agent.

9. Alteration of Duties. The duties of the Escrow Agent may only be altered, amended, modified or revoked pursuant to a writing signed by all the Parties.

10. Resignation or Removal of the Escrow Agent. The Escrow Agent may resign as escrow agent at any time with or without cause by giving at least sixty (60) days' prior written notice to each of the Principals, such resignation to be effective sixty (60) days following the date such notice is given or upon the earlier appointment of a successor escrow agent. In addition, the Principals may jointly remove the Escrow Agent as escrow agent at any time with or without cause, by an instrument executed by the Principals, which instrument shall designate the effective date of such removal. In the event of any such resignation or removal, a successor escrow agent shall be appointed by the Principals. If, however, the Principals shall fail to name such a successor escrow agent within thirty (30) days after the notice of resignation from the Escrow Agent, the Escrow Agent may apply to a court of competent jurisdiction for appointment of a successor escrow agent. Any such successor escrow agent shall deliver to the Principals a written instrument

accepting such appointment, and thereupon it shall succeed to all the rights and duties of the Escrow Agent hereunder and shall be entitled to receive and safeguard the Escrow Funds.

11. Further Instruments. If the Escrow Agent reasonably requires other or further instruments in connection with the performance of its duties hereunder, the Principals shall join in furnishing such instruments.

12. Indemnification. The Principals, jointly and severally, shall reimburse and indemnify the Escrow Agent for, and hold it harmless against, any loss, damages, cost or expense, including, without limitation, reasonable attorneys' fees, reasonably incurred by the Escrow Agent in connection with the performance of its duties and obligations 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 Principal 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 gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. The provisions of this paragraph shall survive the termination of this Agreement and the resignation or removal of the Escrow Agent for any reason.

13. Disagreements. If any conflict, disagreement or dispute arises between, among, or involving any of the Parties concerning the meaning or validity of any provision hereunder or concerning any other matter relating to this Agreement, or the Escrow Agent is in doubt as to the action to be taken hereunder, the Escrow Agent is authorized to retain the Escrow Funds until the Escrow Agent (a) receives a final non-appealable order of a court of competent jurisdiction or a final non-appealable arbitration decision directing delivery of the Escrow Funds, (b) receives a written agreement executed by each of the Principals directing delivery of the Escrow Funds, in which event the Escrow Agent shall be authorized to disburse the Escrow Funds in accordance with such final court order, arbitration decision, or agreement, or (c) files an interpleader action in any court of competent jurisdiction, and upon the filing thereof, the Escrow Agent shall be relieved of all liability as to the Escrow Funds and shall be entitled to recover attorneys' fees, expenses and other costs incurred in commencing and maintaining any such interpleader action. The Escrow Agent shall be entitled to act on any such agreement, court order, or arbitration decision without further question, inquiry, or consent.

14. Notices. Any notice given hereunder shall be in writing and shall be deemed effective upon the earliest of (a) personal delivery, (b) electronic or facsimile delivery, and (c) the third day after mailing by certified or registered mail, postage prepaid as follows:

To Purchaser:

With a copy(which copy shall not constitute notice) to:

Andy Hall
ExWorks Capital Fund I, L.P.
333 W. Wacker Drive, Suite 1620
Chicago, IL 60606

With a copy to:

Donald F. Baty, Esquire
Honigman Miller Schwartz and Cohn LLP
2290 First National Building
660 Woodward Avenue

Detroit, MI 48226

And a copy to:

Michael F. Rozmajzl
Amendia, Inc.
1755 West Oak Parkway
Marietta, GA 30062

And a copy to:

Michael A. Steel
Brennan, Manna & Diamond, LLC
75 East Market Street
Akron, Ohio 44308

To Baxano:

With a copy (which copy shall not constitute notice) to:

Baxano Surgical, Inc.
110 Horizon Drive, Suite 230
Raleigh, N.C., 27615
Attn: John L. Palmer
Email: jpalmer@tamarackassoc.com
Facsimile: (215) 475-4714

Stevens & Lee, P.C.
1818 Market Street
29th Floor
Philadelphia, Pennsylvania, 19103
Attention: Robert Lapowsky
Email: rl@stevenslee.com
Facsimile: (610) 371-7958

To the Escrow Agent:

Stevens & Lee, P.C.
1818 Market Street
29th Floor
Philadelphia, Pennsylvania, 19103
Attention: Robert Lapowsky
Email: rl@stevenslee.com
Facsimile: (610) 371-7958

15. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania. Each of the Parties hereby (a) irrevocably and unconditionally submits to the jurisdiction of (i) the United States Bankruptcy Court for the District of Delaware or, (ii) if such court declines to exercise jurisdiction, the courts of the State of Delaware and the United States District Court for the District of Delaware, and (b) irrevocably agrees that all actions or proceedings arising out of or related to this Agreement shall be litigated exclusively in such courts. Each of the Parties agrees not to commence any legal proceedings related hereto except in such courts. Each of the Parties hereby irrevocably waives any objection which he or it may now or hereafter have to the laying of venue of any such proceeding in any such court and hereby irrevocably waives and agrees not to plead or claim that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

16. Waiver of Jury Trial. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION, SUIT OR

PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

17. Tax Matters.

(a) Reporting. The Principals agree that, for tax reporting purposes, all interest and other income from investment of the Escrow Funds, if any, shall, as of the end of each calendar year and to the extent required by the Internal Revenue Service, be reported as having been earned by the Principal to whom it is actually disbursed, in the year in which disbursed.

(b) Certification of Tax Identification Numbers. The Principals shall provide the Escrow Agent with certified tax identification numbers by furnishing appropriate forms W-9 or W-8 and other forms and documents as the Escrow Agent may reasonably request. The Principals understand that if such tax documentation is not certified to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code of 1986, as amended, to withhold a portion of any interest or other income earned on the investment of monies or other property held by the Escrow Agent pursuant to this Agreement.

(c) Tax Allocation. To the extent the Escrow Agent becomes liable for the payment of any taxes in respect of income derived from the investment of funds or payments made hereunder, the Escrow Agent shall satisfy such liability to the extent possible from the Escrow Fund. The Principals, jointly and severally, agree to indemnify and hold harmless the Escrow Agent from and against any taxes, additions for late payment, interest, penalties and other expenses that may be assessed against the Escrow Agent on or with respect to any payment or other activities under this Agreement unless any such tax, addition for late payment, interest, penalties and other expenses shall arise out of or be caused by the actions of, or failure to act by, the Escrow Agent.

18. Conflict Waiver. The Principals acknowledge that (a) Stevens & Lee, P.C. serves as counsel to Baxano in its pending bankruptcy proceeding and in connection with the transaction between the Principals described in the Purchase Agreement (the "Transaction"), and (b) Stevens & Lee, P.C. has agreed to serve as Escrow Agent solely to facilitate the Transaction. Purchaser hereby waives any conflict of interest that exists, or may in the future arise, as a result of Stevens & Lee's service as Escrow Agent hereunder and Stevens & Lee's representation of Baxano in connection with the Transaction and any related transactions or litigation. The Purchaser agrees that the service by Stevens & Lee, P.C. as Escrow Agent hereunder shall not preclude the continued representation of Baxano by Stevens & Lee, P.C. in connection with the Baxano bankruptcy proceedings, the Transaction or any related transactions or litigation.

19. Amendments and Waivers; Entire Agreement. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each of the Parties. No waiver by any Party of any right or remedy hereunder shall be valid unless the same shall be in writing and signed by the Party giving such waiver. No waiver by any Party with respect to any default hereunder shall be deemed to extend to any prior or subsequent default hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. The Escrow Agent is bound only by the terms of this Agreement.

20. Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign any of its rights or delegate any of its performance obligations hereunder without the prior written approval of the other Parties. Any purported assignment of rights or delegation of performance obligations in violation of this Section is void.

21. Parties in Interest. Nothing expressed or implied in this Agreement is intended to or shall be construed to confer upon or give any party other than the parties hereto and their permitted successors and assigns, any rights or remedies under or by reason of this Agreement or any transaction contemplated hereby.

22. Invalidity of Provisions. Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

23. Section Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. Unless otherwise expressly indicated, any reference in this Agreement to a "Section", "clause" or other division means a Section, clause or division of this Agreement.

24. Counterparts. This Agreement may be executed by facsimile, electronic or pdf signature and in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

[Remainder of Page Intentionally Left Blank]

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

STEVENS & LEE, P.C., as Escrow Agent

By _____

Name: Robert Lapowsky

Title: Vice-President

EXWORKS CAPITAL FUND I, L.P.

Name:

Title:

BAXANO SURGICAL, INC.

By _____

Name:

Title:

EXHIBIT E

SALE ORDER

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

Baxano Surgical, Inc.,[‡]

Debtor.

Chapter 11

Case No. 14-12545 (CSS)

Re: Docket No. 43, 147

ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105(A), 363, 365, 503
AND BANKRUPTCY RULES 2002, 6004, 6006 (I) APPROVING THE SALE OF
THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES AND INTERESTS; (II) AUTHORIZING THE ASSUMPTION
AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES; AND (III) GRANTING CERTAIN RELATED RELIEF

Upon the motion (the "Sale Motion")[§] of the Debtor (D.I. 43) for, among other things,
entry of an order, pursuant to sections 105(a), 363, 365 and 503 of title 11 of the United States
Code (the "Bankruptcy Code") and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy
Procedure (the "Bankruptcy Rules"), (i) approving the sale of substantially all of the Debtor's
assets (the "Sale") free and clear of all Interests (defined below), other than Assumed Liabilities,
and authorizing the assumption and assignment of certain executory contracts, in each case as set
forth in that certain Asset Purchase Agreement attached hereto as Exhibit "A" (as may be
amended, supplemented or restated, the "Asset Purchase Agreement"), and (ii) granting certain
related relief; and the Court having held a hearing on January 27, 2015 (the "Sale Hearing") to
approve the Sale; and the Court having reviewed and considered (a) the Motion, (b) the objections

¹ The Debtor's last four digits of taxpayer identification number are as follows: 9022. The address of the Debtor's
corporate headquarters is 110 Horizon Drive, Suite 230, Raleigh, North Carolina.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion, the
Sale Procedures Order, the Bidding Procedures or the Asset Purchase Agreement, as applicable.

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 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, the transactions contemplated by the Asset Purchase Agreement and any other ancillary documents and agreements related thereto 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).

B. Proper, timely, adequate and sufficient notice of the Sale Motion, the hearing on the Sale Motion, the sale of the Acquired Assets to ExWorks Capital Fund I, L.P (the “Purchaser”) and the Debtor’s assumption and assignment of the contracts listed on Exhibit “B” hereto (the “Assigned Contracts”) to the Purchaser, has been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code and Fed. R. Bankr. P. 2002, 6004, 6006 and 9014, the applicable Local Rules of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) and the order of this Court dated December 12, 2014 (the “Sale 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.

C. 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 (a) all entities known to have expressed an interest in a transaction with respect to some or all of the Acquired

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate.

Assets at any time; (b) all entities known to have asserted any lien, claim, interest or encumbrance in or upon any of the Acquired Assets; (c) all federal, state and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested by this Motion; (d) the United States Attorney's office; (e) the Securities and Exchange Commission; (f) the Internal Revenue Service; (g) legal and financial advisors to any statutory committee appointed in this case; (h) the parties included on the Debtor's list of twenty (20) largest unsecured creditors; and (i) those parties who have filed the appropriate notice requesting notice of all pleadings filed in the Chapter 11 Case; and (j) all counterparties to the Assigned Contracts ; (k) all other known creditors of the Debtor; and (l) the Office of the United States Trustee.

D. The Bidding Procedures afforded a full, fair and reasonable opportunity for any Qualified Bidder to make a Qualified Bid to purchase the Acquired Assets which was higher and better than the offer documented in the Asset Purchase Agreement, and no such higher or better offer has been made. The Purchaser complied with the Bidding Procedures Order.

E. The Debtor has full power and authority to execute the Asset Purchase Agreement and all other documents contemplated thereby and consummate the transactions contemplated therein, including the sale of the Acquired Assets and assumption and assignment of the Assigned Contracts, and no consents or approvals, other than the approval of this Court are required for the Debtor to consummate such transactions.

F. The Debtor has adequately marketed all of its assets. The Debtor has demonstrated that it is an exercise of its sound business judgment to, in connection with the consummation of the Asset Purchase Agreement, sell the Acquired Assets to Purchaser and assume and assign the Assigned Contracts, if any, to the Purchaser and that approval of the Asset Purchase Agreement and sale of the Acquired Assets and assumption and assignment of the

Assigned Contracts pursuant thereto is in the best interests of the Debtor, its estate, and its creditors.

G. The sale must be completed immediately in order to preserve the value of the Acquired Assets and, as a result, good and sufficient business justification exists for the immediate sale of the Acquired Assets to Purchaser and assumption and assignment of the Assigned Contracts to the Purchaser outside of a plan of reorganization. The transactions set forth in the Asset Purchase Agreement will provide a greater recovery for the Debtor's creditors than would be provided by any other practical available alternative, including, without limitation, liquidation under Chapter 7 or Chapter 11 of the Bankruptcy Code.

H. No insiders of the Debtor are receiving or retaining any benefit, property or payments in connection with the sale of the Acquired Assets or assumption and assignment of the Assigned Contracts except to the extent (i) such insiders have allowed claims against the Debtor and, as a result, may participate in a distribution of sale proceeds, (ii) such insiders are to be employed by the Purchaser following closing or otherwise have an interest in Purchaser, as disclosed by Purchaser to the Debtor in connection with the sale process and on the record at the hearing on the Sale Motion, or (iii) otherwise disclosed on the record at the hearing on the Sale Motion.

I. The Purchaser has disclosed that it is purchasing the Acquired Assets with the intent of re-selling the Acquired Assets to Amendia, Inc. ("Amendia") under a separate agreement between the Purchaser and Amendia. Even though Amendia was a potential bidder to purchase the Acquired Assets directly from the Debtor, the Asset Purchase Agreement was negotiated, proposed and entered into by the Debtor and the Purchaser without collusion, in good faith, and as a result of arm's length bargaining. The Purchaser 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 Purchaser nor Amendia have engaged in any conduct that would cause or permit a sale pursuant to the Asset Purchase Agreement (including the assumption and assignment of the Assigned Contracts) to be avoided under section 363(n) of the Bankruptcy Code.

J. In the absence of a stay pending appeal, the Purchaser will be acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the transactions contemplated by the Asset Purchase Agreement (including the assumption and assignment of the Assigned Contracts) at any time after the entry of this Order, provided the Purchaser shall not be obligated to close until all applicable conditions to closing under the Asset Purchase Agreement have been satisfied or waived as provided in such agreement.

K. The consideration provided by the Purchaser for the Acquired Assets and the assumption and assignment of the Assigned Contracts pursuant to the Asset Purchase Agreement constitutes the best and highest offer for the Acquired Assets and Assigned Contracts and reasonably equivalent value and fair consideration (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and Section 548 of the Bankruptcy Code) under the Bankruptcy Code and under the laws of the United States, any state, territory or possession thereof or the District of Columbia.

L. The Debtor may sell the Acquired Assets and assign the Assigned Contracts free and clear of all (i) mortgages, security interests, conditional sale or other title retention agreements, pledges, Liens, judgments, demands, Encumbrances and claims (as these terms are defined in the Bankruptcy Code and the Asset Purchase Agreement), (ii) rights or options to effect any forfeiture, modification, repurchase, or termination of the Debtor's or the Purchaser's interest in the Acquired Assets, regardless whether such are "claims" as that term is defined in the

Bankruptcy Code, (iii) 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 the Pension Benefit Guaranty Corporation, (iv) claims in respect of taxes, (v) claims based on any successor or transferee liability, (vi) claims in respect of that certain Corporate Integrity Agreement dated June 24, 2013 by and between the Office of Inspector General of the Department of Health and Human Services and the Debtor, 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, regardless whether such are “claims” as that term is defined in the Bankruptcy Code, (collectively, items (i) to (vii) above are referred to as “Interests”), because each entity with an Interest in any of the Acquired Assets and/or the Assigned Contracts, including specifically Hercules Technology Growth Capital, Inc., has consented to such sale, is deemed to have consented to such sale or could be compelled in a legal or equitable proceeding to accept a money satisfaction of such Interest and because all such Interests will attach to the proceeds of the sale as provided in paragraph 9 below.

M. The Debtor has good title to the Acquired Assets and the Assigned Contracts and, accordingly, assumption and assignment of the Assigned Contracts and the transfer of the Acquired Assets to Purchaser pursuant to the Asset Purchase Agreement will be a legal, valid, and effective transfer of the Acquired Assets and assumption and assignment of the Assigned Contracts.

N. The Purchaser has provided adequate assurance of future performance under the Assigned Contracts, as required by Section 365(f)(2)(B) of the Bankruptcy Code.

O. Upon the assumption and assignment of the Assigned Contracts, as provided herein, the Purchaser 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 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 Asset Purchase Agreement, and all of the terms and conditions thereof including the assumption and assignment of the Assigned Contracts, 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 sale of the Acquired Assets to the Purchaser and assumption and assignment of the Assigned Contracts to the Purchaser pursuant to and in accordance with the terms and conditions of the Asset Purchase Agreement and any ancillary documents thereto.
5. As of the date of closing under the Asset Purchase Agreement (the “Closing Date”), in accordance with sections 363 and 365 of the Bankruptcy Code, (i) the Assigned Contracts shall be deemed to have been assumed by the Debtor and assigned to the Purchaser, (ii) the Purchaser shall be fully and irrevocably vested with all right, title and interest of the Debtor

under the Assigned Contracts, (iii) the Purchaser shall be deemed to be substituted for the Debtor as a party to the applicable Assigned Contracts, and (iv) the Debtor shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Assigned Contracts.

6. The Assigned Contracts will be transferred to, and remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assigned Contract (including those of the types described in Sections 365(e)(1) and (f) of the Bankruptcy Code) that prohibits, restricts or conditions such assignment or transfer. There will be no rent accelerations, assignment fees, increases or any other fees charged to Purchaser as a result of the assumption or assignment of the Assigned Contracts. No Assigned Contract may be terminated, or the rights of any party modified in any respect, including pursuant to any “change of control” clause, by any other party thereto as a result of the transactions contemplated by the Asset Purchase Agreement.

7. Promptly after the Closing Date, (i) Purchaser shall pay to the non-debtor party to each Assigned Contract as to which a Liquidated Cure Amount is stated on Exhibit “B” hereto and which is not a Previously Assumed Assigned Contract the amount of such Liquidated Cure Amount, (ii) Seller shall pay to the non-debtor party to each Assigned Contract as to which a Liquidated Cure Amount is stated on Exhibit “B” hereto and which is a Previously Assumed Assigned Contract the amount of such Liquidated Cure Amount (iii) Purchaser shall pay to the Escrow Agent the “Reserve Amount,” if any, stated on Exhibit “B,” on account of each Assigned Contract as to which no Liquidated Cure Amount exists on the date of this Order and which is not a Previously Assumed Contract, and (iv) Seller shall pay to the Escrow Agent the “Reserve Amount” stated on Exhibit “B,” on account of each Assigned Contract as to which no Liquidated Cure Amount exists on the date of this Order and which is a Previously Assumed Contract. As to

any Assigned Contract as to which a Liquidated Cure Amount does not exist as of the Closing Date, the Escrow Agent shall pay the Liquidated Cure Amount to the applicable counterparty promptly following the existence of a Liquidated Cure Amount and promptly return to the Purchaser or Seller, as applicable, the amount, if any, by which the Reserve Amount paid by the Purchaser or Seller exceeds the Liquidated Cure Amount. Any amounts returned to the Seller shall be disbursed as stated in paragraph 28 of the Final Order (I) Authorizing Debtor to Obtain Financing Pursuant to 11 U.S.C. §§ 105, 362, 363 and 364, (II) Granting Liens and Superpriority Claims to Postpetition Lender Pursuant to 11 U.S.C. §§ 364 and 507, (III) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363, and (IV) Providing Adequate Protection to Prepetition Secured Lender Pursuant to 11 U.S.C. §§ 361, 362, 363, 364 and 507. The Reserve Amount for each Assigned Contract is equal to the maximum amount claimed by the applicable non-debtor party as necessary to cure all defaults under the related Assigned Contracts required to be cured pursuant to Section 365(b)(1)(A) of the Bankruptcy Code and to compensate such non-debtor party for all actual pecuniary loss related to such defaults pursuant to pursuant to Section 365(b)(1)(B) of the Bankruptcy Code, or such lesser amount as the Court may determine constitutes an adequate reserve for payment of such amounts.

8. Upon payment of the Liquidated Cure Amounts to the applicable non-debtor parties, (i) all defaults, whether monetary or non-monetary, 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 enjoined from seeking to terminate such Assigned Contract or enforce any other remedies under such Assigned Contract

against the Purchaser on account of defaults, whether monetary or non-monetary, by any Debtor, including defaults as to which, pursuant to Section 365(b)(1)(A) of the Bankruptcy Code, cure is not required. Upon payment of the applicable Liquidated Cure Amounts, each non-debtor party to an Assigned Contract shall be forever barred, estopped and permanently enjoined from asserting against the Purchaser any default based on any known and unknown fact and circumstances existing as of the date of the Sale Hearing regardless of whether such default was raised or asserted prior to or at the Sale Hearing.

9. Upon payment of the Reserve Amounts to the Escrow Agent, the non-debtor parties to each applicable Assigned Contract shall be (i) limited to recourse against the Reserve Amount attributed to its Assigned Contract on account of all defaults under such Assigned Contract 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 (ii) enjoined from seeking (A) recourse against the Purchaser on account of any defaults, whether monetary or non-monetary, by the Debtor under such Assigned Contract 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 Purchaser 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.

10. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, upon the closing under the Asset Purchase Agreement, the Acquired Assets and the Assigned Contracts shall be free and clear of all Interests other than Assumed Liabilities, with all such divested

Interests to attach to the proceeds of the sale in the order of their priority, with the same validity, force and effect (if any) which they now have against the Acquired Assets.

11. Transfer of the Acquired Assets and assumption and assignment of the Assigned Contracts will not subject the Purchaser to any liability 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. No persons or entities will assert against the Purchaser any liability, debt, claim or obligation arising from, related to or in connection with the ownership or operation of the Acquired Assets prior to the Closing Date.

12. Effective on the Closing Date, all persons and entities are forever prohibited and enjoined, to the maximum extent permitted by the powers vested in this Court under the Bankruptcy Code, from commencing or continuing any action or proceeding, at law or in equity, against the Purchaser or the Acquired Assets with respect to any claim (as defined in the Bankruptcy Code), including claims based on successor liability against Purchaser.

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 the Acquired Assets (including the Assigned Contracts) as such Interests may have been recorded or may otherwise exist.

14. Each and every federal, state and local governmental agency or department be, and hereby is, authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement.

15. If any person or entity that has filed financing statements or other documents or agreements evidencing Interests, other than Assumed Liabilities, in the Acquired Assets (including the Assigned Contracts) shall not have delivered to the Debtor prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction and releases of all such Interests, the Debtor and/or Purchaser are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Acquired Assets and the Assigned Contracts. The foregoing notwithstanding, the provision of this Order authorizing the sale of the Acquired Assets and assignment of the Assigned Contracts free and clear of all Interests other than Assumed Liabilities shall be self-executing, and notwithstanding the failure of the Debtor, the Purchaser or any other party to execute, file or obtain releases, termination statements, assignments, consents or other instruments to effectuate, consummate and/or implement the provisions hereof or in the Asset Purchase Agreement with respect to the sale of the Acquired Assets and/or assumption and assignment of the Assigned Contracts, all Interests other than Assumed Liabilities in or against the Acquired Assets and/or the Assigned Contracts shall be deemed divested on the Closing Date. This Sale Approval Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state or local government agency, department or office.

16. All entities that are presently, or on the Closing Date may be, in possession of some or all of the Acquired Assets are hereby ordered and directed to surrender possession of the Acquired Assets to Purchaser on the Closing Date.

17. The Acquired Assets may remain at the Seller's Facilities for up to 30 days after the Closing Date at no cost to Purchaser as further detailed in the Asset Purchase 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 Acquired Assets on account of the filing or pendency of this chapter 11 case or the consummation of the Asset Purchase Agreement and the assumption and assignment of the Assigned Contracts

19. 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 Asset Purchase Agreement.

20. The gross proceeds from the Sale payable to the Debtor shall be distributed as follows:

- a) First, to pay all Liquidated Cure Amounts and Reserve Amounts as to which the Seller is responsible for payment;
- b) Second, to pay amounts due to Houlihan Lokey Capital, Inc. (“Houlihan”), to the extent such amounts are payable under that certain order of this Court approving the retention of Houlihan (D.I. 177);
- c) Third, to pay any Bid Protections (as defined in the Sale Procedures Order) owing on account of sale of the Acquired Assets; and
- d) Fourth, as provided in the Disposition of Collateral paragraph of the Final Order (I) Authorizing Debtor to Obtain Financing Pursuant to 11 U.S.C. §§ 105, 362, 363 and 364, (II) Granting Liens and

Superpriority Claims to Postpetition Lender Pursuant to 11 U.S.C. §§ 364 and 507, (III) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363, and (IV) Providing Adequate Protection to Prepetition Secured Lender Pursuant to 11 U.S.C. §§ 361, 362, 363, 364 and 507 (the “DIP/Cash Collateral Order”);

21. Subject to further Court order and the terms of the Asset Purchase Agreement, the Debtor is authorized to and shall take appropriate measures to maintain and preserve, until the earliest of (i) consummation of any plan for the Debtor, (ii) conversion of the Debtor’s chapter 11 case to a case under chapter 7 of the Bankruptcy Code, and (iii) dismissal of the Debtor’s bankruptcy case, the books, records, and any other documentation, including tapes or other audio or digital recordings and data in, or retrievable from, computers or servers relating to or reflecting the records held by the Debtor or its affiliates relating to the Debtor’s business.

22. 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 Asset Purchase Agreement, including, without limitation, the assumption and assignment of the Assigned Contracts, the Sale Motion, and this Order.

23. This Court shall retain jurisdiction (a) to enforce and implement the terms and provisions of the Asset Purchase Agreement, all amendments thereto, any waivers and consents thereunder and each of the agreements executed in connection therewith, (b) to compel delivery of the Acquired Assets and assumption and assignment of the Assigned Contracts to the Purchaser, (c) to resolve any disputes arising under or related to the Asset Purchase Agreement, except as otherwise provided therein, and (d) to interpret, implement and enforce the provisions of this Order.

24. Nothing contained in any plan of reorganization confirmed in this case or the order confirming any plan of reorganization shall conflict with or derogate from the provisions of the Asset Purchase 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 of reorganization for the Debtor or converting the Debtor's case from chapter 11 to a case under chapter 7 of the Bankruptcy Code.

25. The terms and provisions of the Asset Purchase 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, and the Purchaser and its affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting a claim against the Debtor's estate and/or Interest in the Acquired Assets and/or the Assigned Contracts and any trustee appointed for the Debtor under any chapter of the Bankruptcy Code.

26. The Asset Purchase Agreement and any related agreements, documents or other instruments may, with the consent of Hercules and in consultation with the Committee, 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.

27. The failure specifically to include any particular provision of the Asset Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Asset Purchase Agreement be authorized and approved in its entirety.

28. 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: _____, 2014
Wilmington, Delaware

Christopher S. Sontchi
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT "A"

ASSET PURCHASE AGREEMENT

EXHIBIT "B"

ASSIGNED CONTRACTS AND CURE AMOUNTS

NOT APPLICABLE – NO ASSIGNED CONTRACTS

<u>CONTRACT</u>	<u>COUNTERPARTY</u>	<u>LIQUIDATED CURE AMOUNT</u>	<u>RESERVE AMOUNT</u>

EXHIBIT F

ASSIGNMENT OF TRADEMARKS

THIS ASSIGNMENT made as of the _____ day of January, 2015, by BAXANO SURGICAL, INC., a Delaware corporation (“Assignor”), to ExWorks Capital Fund I, L.P., (“Assignee”) with a place of business at 333 W. Wacker Drive, Suite 1620, Chicago, IL 60606.

WHEREAS, Assignor owns all of the right, title and interest in and to the registered trademarks and applications for trademark registration listed on Schedule A attached hereto (collectively, the “Trademarks”) which Trademarks relate to a business that Assignor has sold, assigned, transferred and set over to Assignee; and

WHEREAS, Assignor has agreed to assign, transfer and convey all of its right, title and interest in and to the Trademarks, and each of them, to Assignee.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby assign unto Assignee, all of the right, title and interest of Assignor in and to the Trademarks and all goodwill associated therewith or related thereto.

FURTHER, Assignor does hereby assign to Assignee, all income, royalties or payments due or payable in respect of the Trademarks as of the date hereof or thereafter, including, without limitation, all claims for damages by reason of past, present or future infringement or other unauthorized use of the Trademarks, with right to sue for, and collect the same for Assignee’s own use and enjoyment and for the use and enjoyment of its successors, assigns or other legal representatives.

Assignor requests that the Register of Trademarks or corresponding agencies in all applicable jurisdictions record Assignee as the assignee and owner of each of the Trademarks and registrations therefor.

IN WITNESS WHEREOF, Assignor has executed this instrument.

BAXANO SURGICAL, INC.

By: _____
_____, its [_____]

STATE OF _____)

_____) SS.

COUNTY OF _____)

On this date, the person executing this document, who acknowledged himself to be _____, the _____ of Baxano Surgical, Inc., a Delaware corporation, with the authority to execute the same, personally appeared before me and executed the document in my presence.

Subscribed and sworn to before me this _____ day of _____, 201_____.

Notary Public

My Commission Expires: _____

SCHEDULE A

EXHIBIT G

ASSIGNMENT OF PATENTS

THIS ASSIGNMENT made as of the _____ day of January, 2015, by BAXANO SURGICAL, INC., a Delaware corporation (“Assignor”), to ExWorks Capital Fund I, L.P. (“Assignee”).

WHEREAS, Assignor owns all of the right, title and interest in and to the patents, patent applications and patent disclosures listed on Schedule A attached hereto, together with all continuations (in whole or in part), divisionals, extensions, reissuances, revisions and reexaminations thereof (collectively, the “Patents”).

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Assignor hereby sells, assigns, transfers and sets over to Assignee the entire right, title and interest of Assignor in and to the Patents and the inventions claimed therein (collectively, the “Patent Rights”), for the United States and for all foreign countries, including, without limitation, any applications and registrations therefor, any renewals and extensions of the registrations, and all other corresponding rights that are or may be secured under the laws of the United States or any foreign country, now or hereafter in effect, for Assignee’s own use and enjoyment, and for the use and enjoyment of Assignee’s successors, assigns or other legal representatives, as fully and entirely as the same would have been held and enjoyed by Assignor if this Assignment had not been made, together with all income, royalties or payments due or payable as of the date hereof or thereafter, including, without limitation, all claims for damages by reason of past, present or future infringement or other unauthorized use of the Patent Rights, with right to sue for, and collect the same for Assignee’s own use and enjoyment and for the use and enjoyment of its successors, assigns or other legal representatives.

Assignor hereby requests the Commissioner for Patents record Assignee as the assignee and owner of the Patents and Patent Rights.

IN WITNESS WHEREOF, Assignor has executed this instrument.

BAXANO SURGICAL, INC.

By: _____
_____, its [_____]

STATE OF _____)
_____) SS.
COUNTY OF _____)

On this date, the person executing this document, who acknowledged himself to be _____, the _____ of Baxano Surgical, Inc., a Delaware corporation, with the authority to execute the same, personally appeared before me and executed the document in my presence.

Subscribed and sworn to before me this _____ day of _____, 201_____.

Notary Public

My Commission Expires: _____

[ACCEPTANCE OF ASSIGNMENT]^{††}

The Assignee hereby accepts the foregoing assignment.

[PURCHASER]

By: _____

Its: _____

^{††} To be included for any foreign patent assignments.

SCHEDULE A

SCHEDULES TO THE

ASSET PURCHASE AGREEMENT

DATED AS OF DECEMBER 31, 2014

BY AND BETWEEN

BAXANO SURGICAL, INC.,

as Seller,

AND

EXWORKS CAPITAL FUND I, L.P.

as Purchaser

SCHEDULES
TO THE
ASSET PURCHASE AGREEMENT
DATED AS OF DECEMBER 31, 2014
BY AND BETWEEN

BAXANO SURGICAL, INC.

AND

EXWORKS CAPITAL FUND I, L.P.

1. Asset Purchase Agreement; Defined Terms. Attached hereto are the Schedules (the “Schedules”) to the Asset Purchase Agreement dated as of December 31, 2014 (the “Agreement”) by and between Baxano Surgical, Inc., a Delaware corporation, successor to each of TranS1, Inc. and Baxano, Inc. (“Seller”), and Exworks Capital Fund I, L.P. (“Purchaser”). Pursuant to the Agreement, among other things, Purchaser shall purchase from the Seller, and the Seller shall sell, certain assets of the Seller. The inclusion of an item in any Schedule as an exception to a representation or warranty shall not be deemed an admission that such item represents a material exception or material fact, event or circumstance. The information contained in any Schedule is disclosed solely for the purposes of the Agreement, and any descriptions or summaries of any agreements or documents in the Schedules are summaries only and are qualified in their entirety by the specific terms of such agreements or documents. No disclosure in the Schedules relating to any possible breach or violation of any agreement or Law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. Where the representations and warranties in the Agreement contain specific dollar thresholds, the items, contracts and other matters listed in response thereto may include items, agreements and other matters that are below such dollar thresholds. Any disclosure set forth in one Section or Paragraph of a Schedule shall apply to (A) the representations and warranties contained in the Section of the Agreement to which it corresponds in number; (B) any representation and warranty or Schedule (or Section or Paragraph thereof) to which it is referred by cross reference; and (C) any other representation or warranty set forth in the Agreement, to the extent it is reasonably apparent that such disclosure is intended to qualify such other representation or warranty. Any capitalized terms used herein or in any Schedule that are not defined therein, but which are defined in the Agreement, shall have the meaning given to those terms in the Agreement. Any capitalized term defined in any Schedule shall have the same meaning when used in any other Schedule, unless otherwise indicated or the context clearly requires otherwise.

2. Exhibits. Each Exhibit attached to, or delivered together with, any Schedule is incorporated by reference into, and made a part of, such Schedule, as if such Exhibit were set forth in its entirety in such Schedule.

3. Captions. The headings or other captions set forth in any Schedule are provided for convenience of reference only and shall not affect the construction or interpretation, or modify any, of the representations and warranties made by any Seller pursuant to the Agreement or any of the qualifications or exceptions set forth in the Agreement relating to such representations and warranties including, without limitation, any qualifications based on the Seller's Knowledge.

Schedule 1(a)

Permitted Liens and Encumbrances

None.

Schedule 4.9

Listing and Location of Inventory as December 31, 2014

See attached.

Schedule 4.10

Material Contracts

(i)

1. Kanban Supply Agreement dated December 2, 2012 by and between Wightman Engineering Services and Baxano, Inc.^{††}
2. Kanban Supply Agreement dated February 24, 2012 by and between AIM Plastics and Baxano, Inc.
3. Kanban Supply Agreement dated November 14, 2011 by and between McCash and Baxano, Inc.
4. Kanban Supply Agreement dated March 1, 2013 by and between Bioconnect/RF Industries and Baxano, Inc.
5. Kanban Supply Agreement dated February 17, 2014 by and between Clean Cut Technology and Baxano, Inc.
6. Kanban Supply Agreement dated January 30, 2012 by and between Delta Pacific Products and Baxano, Inc.
7. Kanban Supply Agreement dated December 9, 2011 by and between Centerline Precision and Baxano, Inc.
8. Kanban Supply Agreement dated March 12, 2012 by and between Strand Products and Baxano, Inc.

^{††} The Seller is not offering to assume and assign any of the Kanban contracts.

9. Kanban Supply Agreement dated January 9, 2014 by and between Tech-Etch, Inc. and Baxano, Inc.
10. Kanban Supply Agreement dated December 2, 2013 by and between Mountain Manufacturing Technologies and Baxano, Inc.
11. Kanban Supply Agreement dated October 14, 2011 by and between Nitinol Devices and Components, Inc. and Baxano, Inc.
12. Master Agreement (Reference No. 22-5779) dated January 20, 2012 by and between Stryker Finance, a division of Stryker Sales Corporation, and TranS1, Inc.^{§§}
13. Supplier Agreement dated June 1, 2014 by and between Venta Medical, Inc. and Baxano Surgical, Inc.
14. Quality Agreement dated May 25, 2012 by and between Millstone Medical Outsourcing and TranS1, Inc.
15. Quality Agreement dated May 25, 2012 by and between Quality Tech Services, Inc. and TranS1, Inc.
16. Agreement dated December 23, 2008 by and between Millstone Medical Outsourcing and TranS1, Inc.
17. Requirements Agreement dated January 1, 2014 by and between QTS Packing Solutions and Baxano, Inc.^{***}
18. Service Contract dated February 2, 2006 by and between Quality Tech Services, Inc. and TranS1, Inc.^{†††}

(ii)

1. Schedules 4.12(b) and 4.12(c) are incorporated by reference.

§§ Not available for assumption and assignment

*** Not available for assumption and assignment.

††† Not available for assumption and assignment

(iii)

1. Each of the distribution agreements identified in that certain Debtor Motion for Order under 11 U.S.C. 365 Authorizing Assumption of Distribution Agreements, as amended.⁺⁺⁺

(iv)^{§§§}

1. Agreement of Lease dated July 30, 2009 by and between Market Place Group LLC and the Seller.
2. Lease Agreement dated October 24, 2012, as amended, by and between Sun Life Assurance Company of Canada d/b/a Horizon IV and the Seller.
3. Lease Agreement dated September 30, 2009 by and between Montague Oaks Associates Phase I & II and the Seller.
4. Lease Agreement dated October 28, 2011 by and between Six Forks Capital, LLC and the Seller.

(v)

1. Paragraphs 2 and 3 of Schedule 4.12(b) are incorporated by reference.
2. Letter Agreement, dated November 12, 2014 by and between the Seller and Houlihan Lokey.
3. Letter Agreement, dated November 12, 2014 by and between the Seller and Tamarack Associates.

⁺⁺⁺ Subject to finalization of list of distributors in motion.

^{§§§} The Seller has moved to reject the leases with Market Place Group, LLC, Montague Oaks Associates Phase I & II and Six Forks Capital, LLC and does not anticipate assuming and assigning any real estate leases.

Schedule 4.12(a)

Owned Intellectual Property

1. See Exhibit 4.12(a) attached hereto.

Exhibit 4.12(a)

Owned Intellectual Property

See attached.

Exhibit 4.12(a)

Schedule 4.12(b)

In-Bound Licenses

1. The Seller licenses the following software pursuant to standard end-user license agreements:^{****}
 - QAD Enterprise Applications
 - Sales Force
 - Adaptive Planning
 - Concur
 - ADP
 - Office 365
 - AST

2. Exclusive License Agreement dated January 24, 2011 by and among Dr. Mitchell A. Hardenbrook, MH Brook, Inc., and the Seller.

3. Option Agreement dated August 11, 2014 by and between IKYN Surgical, LLC and the Seller, pursuant to which IKYN has granted to the Seller an exclusive option for a worldwide, exclusive license to the patent rights associated with U.S. Patent Provisional Application #61/942,737.^{†††±}

4. The Seller has entered into several license agreements, pursuant to which a third party assigns, conveys, grants a license or right of use to, or sells to the Seller the intellectual property described therein:
 - a. Agreement for Tranforaminal Lumbar Interbody Fusion System Product Design and Development Consulting Services dated February 19, 2014 with Dr. Lawrence Cohen;
 - b. Agreement for Tranforaminal Lumbar Interbody Fusion System Product Design and Development Consulting Services dated January 30, 2014 with Dr. Richard Ozuna;

^{****} ADP, Office 365 and AST contract not available for assumption and assignment. Sales Force agreement for assumption and assignment only if Acquired Assets include substantially all assets of Seller.

^{†††} Counterparty has taken position that agreement was terminated prepetition.

- c. Agreement for Tranforaminal Lumbar Interbody Fusion System Product Design and Development Consulting Services dated December 16, 2013 with Dr. Jed Vanichkachorn;
- d. Agreement for Lateral System Instrumentation Product Design and Development Consulting dated December 22, 2011 with Dr. Gary Fleischer;⁺⁺⁺
- e. Agreement for Pedicle Screw System Product Design and Development Consulting Services dated June 13, 2012 with Dr. Sameer Mathur;
- f. Agreement for Lordosis/Presacral Cage Product Design and Development Consulting Services dated October 8, 2013 with Dr. Gary Fleischer;
- g. Agreement for Tranforaminal Lumbar Interbody Fusion System Product Design and Development Consulting Services dated January 1, 2014 with Anders Cohen, DO;
- h. Agreement for Lateral System Instrumentation Product Design and Development Consulting dated December 22, 2011 with Dr. Tung Nguyen;^{§§§}
- i. Agreement for Lordosis/Presacral Cage Product Design and Development Consulting Services dated September 27, 2013 with Dr. Larry Khoo;
- j. Agreement for Pedicle Screw System Product Design and Development Consulting Services dated June 13, 2012 with Dr. Nael Shanti;
- k. Agreement for Lordosis/Presacral Cage Product Design and Development Consulting Services dated May 12, 2014 with Future Solutions II, LLC (Dr. James Billys);
- l. Development and License Agreement (Polyaxial Screw/MIS/LIS/Helical Flange/BOT) dated January 1, 2013 with Dr. Roger P. Jackson and SMS Trust;
- m. Agreement for Lateral System Instrumentation Product Design and Development Consulting dated December 8, 2011 with Dr. Neel Anand;
- n. Agreement for Single Cutting Wire System Product Design and Development Consulting Services dated July 24, 2013 with Dr. William D. Smith; and
- o. Agreement for Tranforaminal Lumbar Interbody Fusion System Product Design and Development Consulting Services dated December 16, 2013 with Dr. Daniel Park.

5. See also Exhibit 4.12(a) for additional licenses granted to the Seller.

⁺⁺⁺ Counterparty has taken position that agreement was terminated prepetition.

^{§§§} Counterparty has taken position that agreement was terminated prepetition.

Schedule 4.12(c)

Out-Bound Licenses

None, other than rights of use granted to vendors, suppliers, consultants or independent contractors under or pursuant to any of the Material Contracts.

Schedule 4.12(d)

Infringements

1. In October 2013, Paradigm BioDevices alleged that the Seller's ICBGH infringes on the claimant's U.S. Patent RE 40,796 (the reissue of U.S. Patent 5,954,671). The Seller responded in a letter from its counsel disputing the allegation. Since December 2013, the Seller has not received any further correspondences concerning the patent infringement claim.
2. In September 2012, an individual inventor alleged that the Seller's ICBGH infringes on the claimant's U.S. Patent 6,007,496. The Seller responded twice in a letter from its counsel disputing the allegation. Since the last correspondence in November 2012, the Seller has not received any further correspondences concerning the patent infringement claim.
3. On October 8, 2013, Mölnlycke Healthcare AB ("**Mölnlycke**") filed a 90 Day Request for Extension of Time to Oppose Seller's application for the mark AVANCE. Seller's trademark counsel contacted Mölnlycke to discuss Mölnlycke's concerns with Seller's proposed use and registration of the AVANCE mark, and this matter was resolved between the parties permitting Seller to utilize the AVANCE mark for its pedicle screw system.

Schedule 4.13(a)

Compliance with Law

1. The Seller is subject to periodic routine inspection by the FDA and other applicable Governmental Bodies.

In the last five years, there have been three (3) FDA inspections at the Seller's facilities, the results of which have been previously provided to the Purchaser.

2. On January 24, 2012, the Seller received notice that a putative class action lawsuit had been filed in the U.S. District Court for the Eastern District of North Carolina, on behalf of all persons who purchased the Seller's securities between February 21, 2008 and October 17, 2011. The complaint alleged violations of the Exchange Act based upon purported omissions and/or false and misleading statements concerning the Seller's financial statements and reimbursement practices. The complaint sought damages sustained by the putative class, pre- and post-judgment interest, and attorneys' fees and other costs. On September 7, 2012, the Seller filed a motion to dismiss the complaint for failure to meet the heightened pleading requirements of the Private Securities Litigation Reform Act of 1995, among other grounds. On September 19, 2013, the Seller's motion was granted and the complaint was dismissed with prejudice. On October 17, 2013, the plaintiff filed a motion to alter or amend the order dismissing the complaint with prejudice.
3. On June 28, 2013, the Seller entered into a Settlement Agreement and Corporate Integrity Agreement (CIA) with various U.S. Governmental Bodies. Under the terms of this settlement agreement, the Seller has agreed to pay an aggregate of \$6.0 million (plus accrued interest) in installments from July 2013 through July 2015 in settlement of certain government investigatory matters related to its compliance with federal healthcare fraud and false claims statutes. In addition, the Seller has agreed under the CIA, among other things, to maintain a compliance program designed to promote compliance with various federal health care and FDA requirements. Pursuant to the CIA, the Seller is required to notify the applicable Governmental Body in writing, among other things, of (i) any ongoing government investigation or legal proceeding involving an allegation that the Seller has committed a crime or have engaged in fraudulent activities; (ii) any other matter that a reasonable person would consider a probable violation of applicable criminal, civil, or administrative laws related to compliance with federal healthcare programs or FDA requirements; and (iii) any change in location, sale, closing, purchase, or establishment of a new business unit or location related to items or services that may be reimbursed by federal health care programs. The Seller is also subject to periodic reporting and certification

requirements attesting that the provisions of the CIA are being implemented and followed, as well as certain document and record retention mandates.

4. The Seller did not files its 2014 Third Quarter Financial Statements with the SEC and has notified that SEC that it will no longer be making the filings that are required in order for it to remain as a publically traded company in good standing. The Seller makes no representation regarding its status as a publically traded company or the status of its equity.

Schedule 4.13(b)

Governmental Authorizations

See Exhibit 4.13(b) for a listing of the CE Marks, 510(k) Clearances, and 510(k) Filings relating to the Products.

Exhibit 4.13(b)

CE Marks, 510(k) Clearances, and all 510(k) Filings relating to the Products

See attached.

Exhibit 4.13(b)

Schedule 4.13(c)

Other Governmental Authorizations

None, other than those set forth on Exhibit 4.13(b) and those that are not material to the Business or the Acquired Assets either individually or in the aggregate.

Schedule 4.17

Employee Matters

<u>Name</u>	<u>Title</u>	<u>2014 Compensation (Salary, Bonus, Other Compensation)</u> *****
<u>Ken Reali</u>	<u>Chief Executive Officer</u>	
<u>Steve Ainsworth</u>	<u>Vice President of R&D and Business Development</u>	
<u>Catherine Maher</u>	<u>Commercial Operations Representative</u>	
<u>Laura Howard</u>	<u>Commercial Operations Representative</u>	
<u>Amelia Smith</u>	<u>Commercial Operations Representative</u>	
<u>Martina Hrnair</u>	<u>Senior Quality Assurance Manager</u>	
<u>Greg Welsh</u>	<u>Vice President, Operations</u>	
<u>Charlie Torres</u>	<u>Senior Buyer Planner</u>	
<u>Toma Barker</u>	<u>Senior Staff Accountant</u>	
<u>Bailey Robbins</u>	<u>Assistant Controller</u>	
<u>Gretchen McReynolds</u>	<u>Accounts Receivable Specialist</u>	
<u>Justin Denning</u>	<u>Application Support Specialist</u>	
<u>Greg Pellatt</u>	<u>National Sales Director</u>	
<u>Pat Caylor</u>	<u>RSD</u>	
<u>Steve Green</u>	<u>RSD</u>	
<u>Katryn Fernald</u>	<u>RSD</u>	
<u>John Dieterly</u>	<u>RSD</u>	
<u>Robert Cook</u>	<u>Senior Manager, iO Products and Strategic Marketing</u>	

***** Compensation information to be redacted from the version of the schedules filed of record in the BR proceeding.

Schedule 4.20**Insurance**AON Financing Agreement-Quote 100000775221.002 – International PFA

<u>POLICY NUMBER</u> <u>Prefix Number</u>	<u>Full Name of Insurance Company and Address of Branch Reporting Office and Full Name and Address of General Agent</u>	<u>TYPE OF INSURANCE</u>	<u>TERM IN MONTHS</u>	<u>POLICY EFFECTIVE DATE</u> <u>MM/DD/YYYY</u> <u>Y</u>	<u>POLICY PREMIUM</u>
<u>WS11002931</u>	<u>Insurance Company of the State of Pennsylvania</u>	<u>FRLB</u>	<u>12</u>	<u>10/01/2014</u>	<u>6,015.00</u>

AON Financing Agreement-Quote 199949.1 – Omnibus PFA

<u>POLICY NUMBER</u> <u>Prefix Number</u>	<u>Full Name of Insurance Company and Address of Branch Reporting Office and Full Name and Address of General Agent</u>	<u>TYPE OF INSURANCE</u>	<u>TERM IN MONTHS</u>	<u>POLICY EFFECTIVE DATE</u> <u>MM/DD/YYYY</u>	<u>POLICY PREMIUM</u>
<u>LPK5001316Q17</u>	<u>Berkley National Insurance Company, PO Box 152180, Irving, TX 75015-2180</u>	<u>PACKAGE</u>	<u>12</u>	<u>10/16/2014</u>	<u>Premium: \$68,477.00</u> <u>Taxes: \$0.00</u> <u>Fees: \$0.00</u>
<u>016945634</u>	<u>National Union Fire Ins Co Pittsburgh, PA/AIG (NY), 175 Water St, FL 18, New York, NY 10038</u>	<u>FIDUCIARY</u>	<u>12</u>	<u>10/16/2014</u>	<u>Premium: \$4,925.00</u> <u>Taxes: \$0.00</u> <u>Fees: \$0.00</u>
<u>82310-1404</u>	<u>Federal Insurance Company/Chubb (New York NY), 55 Water Street, New York, NY 10041</u>	<u>EMPLOYMENT PRACTICES LIABILITY</u>	<u>12</u>	<u>10/16/2014</u>	<u>Premium: \$30,881.00</u> <u>Taxes: \$0.00</u> <u>Fees: \$0.00</u>
<u>LWC500132014</u>	<u>Berkley National Insurance Company, PO Box 152180, Irving, TX 75015-2180</u>	<u>WORKERS COMPENSATION - VOLUNTARY</u>	<u>12</u>	<u>10/16/2014</u>	<u>Premium: 36,236.00</u> <u>Taxes: \$1,172.00</u> <u>Fees: \$0.00</u>
<u>016945633</u>	<u>National Union Fire Ins Co Pittsburgh, PA/AIG (NY), 175 Water St, FL 18, New York, NY 10038</u>	<u>CRIME</u>	<u>12</u>	<u>10/16/2014</u>	<u>Premium: \$4,996.00</u> <u>Taxes: \$0.00</u> <u>Fees: \$0.00</u>
<u>GL-108744</u>	<u>Gemini Insurance Company, 1250 E Diehl Rd, Suite 200, Naperville, IL 60563</u>	<u>PRODUCT LIABILITY</u>	<u>12</u>	<u>10/16/2014</u>	<u>Premium: \$186,002.00</u> <u>Taxes: \$9,300.10</u> <u>Fees: \$0.00</u>
<u>00064455-0</u>	<u>James River Insurance Company, AmWins Insurance Brokerage of California – San Francisco, One Bush Street, San Francisco, CA 94104</u>	<u>PRODUCT LIABILITY</u>	<u>12</u>	<u>10/16/2014</u>	<u>Premium: \$130,000.00</u> <u>Taxes: \$6,500.00</u> <u>Fees: \$110.00</u>
<u>LSR-XS-00035-14</u>	<u>Lloyds of London, One Lime Street, London, EC3M 7HA ENGLAND</u>	<u>PRODUCT LIABILITY</u>	<u>12</u>	<u>10/16/2014</u>	<u>Premium: \$85,000.00</u> <u>Taxes 4,250.50</u> <u>Fees: \$0.00</u>

The Seller's D &O Liability Policy is not financed

<u>National Union Fire Ins Co of Pittsburgh</u>	<u>014682707</u> <u>Baxano Surgical, Inc.</u>	<u>Oct 16, 2013 - Oct 16, 2015</u>	<u>Oct 16, 2014</u>	<u>Endorsement – Directors & Officers-Primary</u>	<u>229,944.00</u>
<u>XL Specialty</u>	<u>ELU13173913</u>	<u>Oct 16, 2013 -</u>	<u>Oct 16, 2014</u>	<u>Endorsement – Directors &</u>	<u>55,000.00</u>

<u>Insurance Co</u>	<u>Baxano Surgical, Inc.</u>	<u>Oct 16, 2015</u>		<u>Officers-Excess</u>	
<u>Berkley Insurance Company</u>	<u>11228604</u> <u>Baxano Surgical, Inc.</u>	<u>Oct 16, 2013 -</u> <u>Oct 16, 2015</u>	<u>Oct 16, 2014</u>	<u>Endorsement – Directors &</u> <u>Officers-Excess</u>	<u>80,500.00</u>

Document comparison by Workshare Compare on Wednesday, December 31, 2014 3:08:00 PM

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Description	#1342200v6<SL1> - Amendia APA DRAFT 12/31
Rendering set	Standard with color

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Deletions	247
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Moved to	0
Style change	0
Format changed	0
Total changes	1876

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

In re:

Baxano Surgical, Inc.,¹

Debtor.

Chapter 11

Case No. 14-12545 (CSS)

Re: Docket No. 43, 147

**ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105(A), 363, 365, 503
AND BANKRUPTCY RULES 2002, 6004, 6006 (I) APPROVING THE SALE OF
THE DEBTOR’S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES AND INTERESTS; (II) AUTHORIZING THE ASSUMPTION
AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES; AND (III) GRANTING CERTAIN RELATED RELIEF**

Upon the motion (the “Sale Motion”)² of the Debtor (D.I. 43) for, among other things, entry of an order, pursuant to sections 105(a), 363, 365 and 503 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) approving the sale of substantially all of the Debtor’s assets (the “Sale”) free and clear of all Interests (defined below), other than Assumed Liabilities, and authorizing the assumption and assignment of certain executory contracts ~~and unexpired leases~~, in each case as set forth in that certain Asset Purchase Agreement attached hereto as Exhibit “A” (as may be amended, supplemented or restated, the “Asset Purchase Agreement”), and (ii) granting certain related relief; and the Court having held a hearing on _____, January 27, 2015 (the “Sale Hearing”) to approve the Sale; and the Court having reviewed and considered (a) the Motion, (b) the objections to the Sale Motion, if any, and (c) the arguments of counsel made,

¹ The Debtor’s last four digits of taxpayer identification number are as follows: 9022. The address of the Debtor’s corporate headquarters is 110 Horizon Drive, Suite 230, Raleigh, North Carolina.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion, the Sale Procedures Order, the Bidding Procedures or the Asset Purchase Agreement, as applicable.

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 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,~~

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. This Court has jurisdiction over the Sale Motion, the transactions contemplated by the Asset Purchase Agreement and any other ancillary documents and agreements related thereto 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).

B. Proper, timely, adequate and sufficient notice of the Sale Motion, the hearing on the Sale Motion, the sale of the Acquired Assets to ExWorks Capital Fund I, L.P (the “Purchaser”) and the Debtor’s assumption and assignment of the contracts listed on Exhibit “B” hereto (the “Assigned Contracts”) to _____ (the “Purchaser”), has been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code and Fed. R. Bankr. P. 2002, 6004, 6006 and 9014, the applicable Local Rules of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) and the order of this Court dated December 12, 2014 (the “Sale 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.

C. 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 (a) all entities known to have expressed an interest in a transaction with respect to some or all of the Acquired Assets at any time; (b) all entities known to have asserted any lien, claim, interest or encumbrance

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate.

in or upon any of the Acquired Assets; (c) all federal, state and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested by this Motion; (d) the United States Attorney's office; (e) the Securities and Exchange Commission; (f) the Internal Revenue Service; (g) legal and financial advisors to any statutory committee appointed in this case; (h) the parties included on the Debtor's list of twenty (20) largest unsecured creditors; and (i) those parties who have filed the appropriate notice requesting notice of all pleadings filed in the Chapter 11 Case; and (j) all counterparties to the Assigned Contracts ; (k) all other known creditors of the Debtor; and (l) the Office of the United States Trustee.

D. The Bidding Procedures afforded a full, fair and reasonable opportunity for any Qualified Bidder to make a Qualified Bid to purchase the Acquired Assets which was higher and better than the offer documented in the Asset Purchase Agreement, and no such higher or better offer has been made. The Purchaser complied with the Bidding Procedures Order.

E. The Debtor has full power and authority to execute the Asset Purchase Agreement and all other documents contemplated thereby and consummate the transactions contemplated therein, including the sale of the Acquired Assets and assumption and assignment of the Assigned Contracts, and no consents or approvals, other than the approval of this Court are required for the Debtor to consummate such transactions.

F. The Debtor has adequately marketed all of its assets. The Debtor has demonstrated that it is an exercise of its sound business judgment to, in connection with the consummation of the Asset Purchase Agreement, sell the Acquired Assets to Purchaser and assume and assign the Assigned Contracts, if any, to the Purchaser ~~in connection with the consummation of the Asset Purchase Agreement,~~ and that approval of the Asset Purchase

Agreement and sale of the Acquired Assets and assumption and assignment of the Assigned Contracts pursuant thereto is in the best interests of the Debtor, its estate, and its creditors.

G. The sale must be completed immediately in order to preserve the value of the Acquired Assets and, as a result, good and sufficient business justification exists for the immediate sale of the Acquired Assets to Purchaser and assumption and assignment of the Assigned Contracts to the Purchaser outside of a plan of reorganization. The transactions set forth in the Asset Purchase Agreement will provide a greater recovery for the Debtor's creditors than would be provided by any other practical available alternative, including, without limitation, liquidation under Chapter 7 or Chapter 11 of the Bankruptcy Code.

H. No insiders of the Debtor are receiving or retaining any benefit, property or payments in connection with the sale of the Acquired Assets or assumption and assignment of the Assigned Contracts except to the extent (i) such insiders have allowed claims against the Debtor and, as a result, may participate in a distribution of sale proceeds, (ii) such insiders are to be employed by the Purchaser following closing or otherwise have an interest in Purchaser, as disclosed by Purchaser to the Debtor in connection with the sale process and on the record at the hearing on the Sale Motion, or (iii) otherwise disclosed on the record at the hearing on the Sale Motion.

I. The Purchaser has disclosed that it is purchasing the Acquired Assets with the intent of re-selling the Acquired Assets to Amendia, Inc. ("Amendia") under a separate agreement between the Purchaser and Amendia. Even though Amendia was a potential bidder to purchase the Acquired Assets directly from the Debtor, the Asset Purchase Agreement was negotiated, proposed and entered into by the Debtor and the Purchaser without collusion, in good faith, and as a result of arm's length bargaining. The Purchaser 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 Purchaser ~~has nor Amendia have~~ engaged in any conduct that would cause or permit a sale pursuant to the Asset Purchase Agreement (including the assumption and assignment of the Assigned Contracts) to be avoided under section 363(n) of the Bankruptcy Code.

J. In the absence of a stay pending appeal, the Purchaser will be acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the transactions contemplated by the Asset Purchase Agreement (including the assumption and assignment of the Assigned Contracts) at any time after the entry of this Order, provided the Purchaser shall not be obligated to close until all applicable conditions to closing under the Asset Purchase Agreement have been satisfied or waived as provided in such agreement.

K. The consideration provided by the Purchaser for the Acquired Assets and the assumption and assignment of the Assigned Contracts pursuant to the Asset Purchase Agreement constitutes the best and highest offer for the Acquired Assets and Assigned Contracts and reasonably equivalent value and fair consideration (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and Section 548 of the Bankruptcy Code) under the Bankruptcy Code and under the laws of the United States, any state, territory, or possession thereof, ~~and or~~ the District of Columbia.

L. The Debtor may sell the Acquired Assets and assign the Assigned Contracts 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 these terms are~~ defined in the Bankruptcy Code and the Asset Purchase Agreement), (ii) rights or options to effect any forfeiture, modification, repurchase, or termination of the Debtor's or the Purchaser's interest in the Acquired Assets, regardless whether such are "claims" as that term is

defined in the Bankruptcy Code, (iii) ~~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 the Pension Benefit Guaranty Corporation, (iv) claims in respect of taxes, (v) claims based on any successor or transferee liability, (vi) claims in respect of that certain Corporate Integrity Agreement dated June 24, 2013 by and between the Office of Inspector General of the Department of Health and Human Services and the Debtor, 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, regardless whether such are “claims” as that term is defined in the Bankruptcy Code, (collectively, items (i) to (vii) above are referred to as “Interests”), because each entity with an Interest in any of the Acquired Assets and/or the Assigned Contracts, including specifically Hercules Technology Growth Capital, Inc., has consented to such sale, is deemed to have consented to such sale or could be compelled in a legal or equitable proceeding to accept a money satisfaction of such Interest and because all such Interests will attach to the proceeds of the sale as provided in paragraph 9 below.

M. The Debtor has good title to the Acquired Assets and the Assigned Contracts and, accordingly, ~~the transfer of the Acquired Assets and~~ assumption and assignment of the Assigned Contracts and the transfer of the Acquired Assets to Purchaser pursuant to the Asset Purchase Agreement will be a legal, valid, and effective transfer of the Acquired Assets and assumption and assignment of the Assigned Contracts.

N. The Purchaser has provided adequate assurance of future performance under the Assigned Contracts, as required by Section 365(f)(2)(B) of the Bankruptcy Code.

O. Upon the assumption and assignment of the Assigned Contracts, as provided herein, the Purchaser 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.~~ 1. The Sale Motion, and the relief sought therein is granted, in all respects.

~~2.~~ 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.~~ 3. The Asset Purchase Agreement, and all of the terms and conditions thereof including the assumption and assignment of the Assigned Contracts, is hereby approved.

~~4.~~ 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 sale of the Acquired Assets to the Purchaser and assumption and assignment of the Assigned Contracts to the Purchaser pursuant to and in accordance with the terms and conditions of the Asset Purchase Agreement and any ancillary documents thereto.

~~5.~~ 5. As of the date of closing under the Asset Purchase Agreement (the "Closing Date"), in accordance with sections 363 and 365 of the Bankruptcy Code, (i) the Assigned Contracts shall be deemed to have been assumed by the Debtor and assigned to the Purchaser, (ii) the Purchaser shall be fully and irrevocably vested with all right, title and interest of the Debtor

under the Assigned Contracts, (iii) the Purchaser shall be deemed to be substituted for the Debtor as a party to the applicable Assigned Contracts, and (iv) the Debtor shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Assigned Contracts.

6. The Assigned Contracts will be transferred to, and remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assigned Contract (including those of the types described in Sections 365(e)(1) and (f) of the Bankruptcy Code) that prohibits, restricts or conditions such assignment or transfer. There will be no rent accelerations, assignment fees, increases or any other fees charged to Purchaser as a result of the assumption or assignment of the Assigned Contracts. No Assigned Contract may be terminated, or the rights of any party modified in any respect, including pursuant to any “change of control” clause, by any other party thereto as a result of the transactions contemplated by the Asset Purchase Agreement.

~~6. Within 2 business days following~~ 7. Promptly after the Closing Date, the (i) Purchaser 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,” hereto and which is not a Previously Assumed Assigned Contract the amount of such Liquidated Cure Amount, and (ii) pay to the Escrow Agent the “Reserve Amount” stated on Exhibit “B,” on account of each Assigned Contract as to which no Liquidated Cure Amount exists on the date of this Order (each an “Unliquidated Cure Contract”); (ii) Seller shall pay to the non-debtor party to each Assigned Contract as to which a Liquidated Cure Amount is stated on Exhibit “B” hereto and which is a Previously Assumed Assigned Contract the amount of such Liquidated Cure Amount (iii) Purchaser shall pay to the Escrow Agent the “Reserve Amount,” if any, stated on Exhibit “B,” on account of each Assigned Contract as to which no Liquidated Cure Amount exists on the date of

this Order and which is not a Previously Assumed Contract, and (iv) Seller shall pay to the Escrow Agent the “Reserve Amount” stated on Exhibit “B,” on account of each Assigned Contract as to which no Liquidated Cure Amount exists on the date of this Order and which is a Previously Assumed Contract. As to any Assigned Contract as to which a Liquidated Cure Amount does not exist as of the Closing Date, the Escrow Agent shall pay the Liquidated Cure Amount to the applicable counterparty promptly following the existence of a Liquidated Cure Amount and promptly return to the Purchaser or Seller, as applicable, the amount, if any, by which the Reserve Amount paid by the Purchaser or Seller exceeds the Liquidated Cure Amount. Any amounts returned to the Seller shall be disbursed as stated in paragraph 28 of the Final Order (I) Authorizing Debtor to Obtain Financing Pursuant to 11 U.S.C. §§ 105, 362, 363 and 364, (II) Granting Liens and Superpriority Claims to Postpetition Lender Pursuant to 11 U.S.C. §§ 364 and 507, (III) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363, and (IV) Providing Adequate Protection to Prepetition Secured Lender Pursuant to 11 U.S.C. §§ 361, 362, 363, 364 and 507.

The Reserve Amount for each ~~Unliquidated Cure~~Assigned Contract is equal to the maximum amount claimed by the applicable non-debtor party as necessary to cure all defaults under the related Assigned Contracts required to be cured pursuant to Section 365(b)(1)(A) of the Bankruptcy Code and to compensate such non-debtor party for all actual pecuniary loss related to such defaults pursuant to pursuant to Section 365(b)(1)(B) of the Bankruptcy Code, or such lesser amount as the Court may determine constitutes an adequate reserve for payment of such amounts.

~~7.~~8. Upon payment ~~by the Purchaser~~ of the Liquidated Cure Amounts to the applicable non-debtor parties, (i) all defaults, whether monetary or non-monetary, 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 enjoined from seeking to terminate such Assigned Contract or enforce any other remedies under such Assigned Contract against the Purchaser on account of defaults, whether monetary or non-monetary, by any Debtor, including defaults as to which, pursuant to Section 365(b)(1)(A) of the Bankruptcy Code, cure is not required. Upon payment of the applicable Liquidated Cure Amounts, each non-debtor party to an Assigned Contract shall be forever barred, estopped and permanently enjoined from asserting against the Purchaser any default based on any known and unknown fact and circumstances existing as of the date of the Sale Hearing regardless of whether such default was raised or asserted prior to or at the Sale Hearing.

~~8.~~ 9. Upon payment by the Purchaser of the Reserve Amounts to the Escrow Agent, the non-debtor parties to each applicable Assigned Contract that is an Unliquidated Cure Contract shall be (i) limited to recourse against the Reserve Amount attributed to its Assigned Contract on account of all defaults under such Assigned Contract 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 (ii) enjoined from seeking (A) recourse against the Purchaser on account of any defaults, whether monetary or non-monetary, by the Debtor under such Assigned Contract 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~~ Purchaser 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.~~10. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, upon the closing under the Asset Purchase Agreement, the Acquired Assets and the Assigned Contracts shall be free and clear of all Interests other than Assumed Liabilities, with all such divested Interests to attach to the proceeds of the sale in the order of their priority, with the same validity, force and effect (if any) which they now have against the Acquired Assets.

~~10.~~11. Transfer of the Acquired Assets and assumption and assignment of the Assigned Contracts will not subject the Purchaser to any liability (~~except 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. No persons or entities will assert against the Purchaser any liability, debt, claim or obligation arising from, related to or in connection with the ownership or operation of the Acquired Assets prior to the Closing Date.

12. Effective on the Closing Date, all persons and entities are forever prohibited and enjoined, to the maximum extent permitted by the powers vested in this Court under the Bankruptcy Code, from commencing or continuing any action or proceeding, at law or in equity, against the Purchaser or the Acquired Assets with respect to any claim (as defined in the Bankruptcy Code), including claims based on successor liability against Purchaser.

~~11.~~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 the Acquired Assets (including the Assigned Contracts) as such Interests may have been recorded or may otherwise exist.

~~12.~~ 14. Each and every federal, state and local governmental agency or department be, and hereby is, authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement.

~~13.~~ 15. If any person or entity that has filed financing statements or other documents or agreements evidencing Interests, other than Assumed Liabilities, in the Acquired Assets (including the Assigned Contracts) ~~other than Assumed Liabilities~~ shall not have delivered to the Debtor prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction and releases of all such Interests, the Debtor and/or Purchaser are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Acquired Assets and the Assigned Contracts. The foregoing notwithstanding, the provision of this Order authorizing the sale of the Acquired Assets and assignment of the Assigned Contracts free and clear of all Interests other than Assumed Liabilities shall be self-executing, and notwithstanding the failure of the Debtor, the Purchaser or any other party to execute, file or obtain releases, termination statements, assignments, consents or other instruments to effectuate, consummate and/or implement the provisions hereof or in the Asset Purchase Agreement with respect to the sale of the Acquired Assets and/or assumption and assignment of the Assigned Contracts, all Interests other than Assumed Liabilities in or against the Acquired Assets and/or the Assigned Contracts shall be deemed divested on the Closing Date. This Sale Approval Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state or local government agency, department or office.

~~14.~~16. All entities that are presently, or on the Closing Date may be, in possession of some or all of the Acquired Assets are hereby ordered and directed to surrender possession of the Acquired Assets to Purchaser on the Closing Date.

17. The Acquired Assets may remain at the Seller's Facilities for up to 30 days after the Closing Date at no cost to Purchaser as further detailed in the Asset Purchase Agreement.

~~15.~~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 Acquired Assets on account of the filing or pendency of this chapter 11 case or the consummation of the Asset Purchase Agreement and the assumption and assignment of the Assigned Contracts

~~16.~~19. 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 Asset Purchase Agreement.

~~17.~~20. The gross proceeds from the Sale payable to the Debtor shall be distributed as follows:

a) First, to pay all Liquidated Cure Amounts and Reserve Amounts as to which the Seller is responsible for payment;

~~a) First~~b) Second, to pay amounts due to Houlihan Lokey Capital, Inc. ("Houlihan"), to the extent such amounts are payable under that certain order of this Court approving the retention of Houlihan (D.I. —177);

~~b) — Second~~ c) Third, to pay any Bid Protections (as defined in the Sale Procedures Order) owing on account of sale of the Acquired Assets; and

~~e) — Third~~ d) Fourth, as provided in the Disposition of Collateral paragraph of the Final Order (I) Authorizing Debtor to Obtain Financing Pursuant to 11 U.S.C. §§ 105, 362, 363 and 364, (II) Granting Liens and Superpriority Claims to Postpetition Lender Pursuant to 11 U.S.C. §§ 364 and 507, (III) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363, and (IV) Providing Adequate Protection to Prepetition Secured Lender Pursuant to 11 U.S.C. §§ 361, 362, 363, 364 and 507 (the “DIP/Cash Collateral Order”);

~~18. — 21.~~ 21. Subject to further Court order and the terms of the Asset Purchase Agreement, the Debtor is authorized to and shall take appropriate measures to maintain and preserve, until the earliest of (i) consummation of any plan for the Debtor, (ii) conversion of the Debtor’s chapter 11 case to a case under chapter 7 of the Bankruptcy Code, and (iii) dismissal of the Debtor’s bankruptcy case, the books, records, and any other documentation, including tapes or other audio or digital recordings and data in, or retrievable from, computers or servers relating to or reflecting the records held by the Debtor or its affiliates relating to the Debtor’s business.

~~19. — 22.~~ 22. 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 Asset Purchase Agreement, including, without limitation, the assumption and assignment of the Assigned Contracts, the Sale Motion, and this Order.

~~20.~~23. This Court shall retain jurisdiction (a) to enforce and implement the terms and provisions of the Asset Purchase Agreement, all amendments thereto, any waivers and consents thereunder and each of the agreements executed in connection therewith, (b) to compel delivery of the Acquired Assets and assumption and assignment of the Assigned Contracts to the Purchaser, (c) to resolve any disputes arising under or related to the Asset Purchase Agreement, except as otherwise provided therein, and (d) to interpret, implement and enforce the provisions of this Order.

~~21.~~24. Nothing contained in any plan of reorganization confirmed in this case or the order confirming any plan of reorganization shall conflict with or derogate from the provisions of the Asset Purchase 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 of reorganization for the Debtor or converting the Debtor's case from chapter 11 to a case under chapter 7 of the Bankruptcy Code.

~~22.~~25. The terms and provisions of the Asset Purchase 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, and the Purchaser and its affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting a claim against the Debtor's estate and/or Interest in the Acquired Assets and/or the Assigned Contracts and any trustee appointed for the Debtor under any chapter of the Bankruptcy Code.

~~23.~~26. The Asset Purchase Agreement and any related agreements, documents or other instruments may, with the consent of Hercules and in consultation with the Committee, 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.

~~24.~~27. The failure specifically to include any particular provision of the Asset Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Asset Purchase Agreement be authorized and approved in its entirety.

~~25.~~28. 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: _____, 2014
Wilmington, Delaware

Christopher S. Sontchi
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT "A"

ASSET PURCHASE AGREEMENT

EXHIBIT "B"

ASSIGNED CONTRACTS AND CURE AMOUNTS

CONTRACT	COUNTERPARTY	LIQUIDATED CURE AMOUNT	RESERVE AMOUNT

Document comparison by Workshare Compare on Wednesday, December 31, 2014 3:19:24 PM

Input:	
Document 1 ID	interwovenSite://RDIMAN01/SL1/1336970/3
Description	#1336970v3<SL1> - Exhibit E - Baxano Sale Order
Document 2 ID	interwovenSite://RDIMAN01/SL1/1343057/1
Description	#1343057v1<SL1> - SALE ORDER - Stalking Horse
Rendering set	Standard with color

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	89
Deletions	66
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	155

SCHEDULES TO THE

ASSET PURCHASE AGREEMENT

DATED AS OF DECEMBER _____, 2014

BY AND BETWEEN

BAXANO SURGICAL, INC.,

as Seller,

AND

EXWORKS CAPITAL FUND I, L.P.

as Purchaser

**SCHEDULES
TO THE
ASSET PURCHASE AGREEMENT
DATED AS OF ____, 2014
BY AND BETWEEN**

BAXANO SURGICAL, INC.

AND

[_____]

EXWORKS CAPITAL FUND I, L.P.

1. Asset Purchase Agreement; Defined Terms. Attached hereto are the Schedules (the “*Schedules*”) to the Asset Purchase Agreement dated as of _____December____, 2014 (the “*Agreement*”) by and between Baxano Surgical, Inc., a Delaware corporation, successor to each of TranS1, Inc. and Baxano, Inc. (“*Seller*”), and [_____], a [_____] Exworks Capital Fund I, L.P. (“*Purchaser*”). Pursuant to the Agreement, among other things, Purchaser shall purchase from the Seller, and the Seller shall sell, certain assets of the Seller. The inclusion of an item in any Schedule as an exception to a representation or warranty shall not be deemed an admission that such item represents a material exception or material fact, event or circumstance. The information contained in any Schedule is disclosed solely for the purposes of the Agreement, and any descriptions or summaries of any agreements or documents in the Schedules are summaries only and are qualified in their entirety by the specific terms of such agreements or documents. No disclosure in the Schedules relating to any possible breach or violation of any agreement or Law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. Where the representations and warranties in the Agreement contain specific dollar thresholds, the items, contracts and other matters listed in response thereto may include items, agreements and other matters that are below such dollar thresholds. Any disclosure set forth in one Section or Paragraph of a Schedule shall apply to (A) the representations and warranties contained in the Section of the Agreement to which it corresponds in number; (B) any representation and warranty or Schedule (or Section or Paragraph thereof) to which it is referred by cross reference; and (C) any other representation or warranty set forth in the Agreement, to the extent it is reasonably apparent that such disclosure is intended to qualify such other representation or warranty. Any capitalized terms used herein or in any Schedule that are not defined therein, but which are defined in the Agreement, shall have the meaning given to those terms in the Agreement. Any capitalized term defined in any Schedule shall have the same meaning when used in any other Schedule, unless otherwise indicated or the context clearly requires otherwise.

2. Exhibits. Each Exhibit attached to, or delivered together with, any Schedule is incorporated by reference into, and made a part of, such Schedule, as if such Exhibit were set forth in its entirety in such Schedule.

3. Captions. The headings or other captions set forth in any Schedule are provided for convenience of reference only and shall not affect the construction or interpretation, or modify any, of the representations and warranties made by any Seller pursuant to the Agreement or any of the qualifications or exceptions set forth in the Agreement relating to such representations and warranties including, without limitation, any qualifications based on the Seller's Knowledge.

Schedule 1(a)

Permitted Liens and Encumbrances

None.

1(a)-1

Schedule ~~3.24.9~~

~~Allocation of Purchase Price~~

Listing and Location of Inventory as December , 2014

See attached.

~~{Purchaser to Provide but subject to agreement with Seller.}~~

~~3.24.9-1~~

Schedule 4.74.10

Material Contracts

(i)

1. Kanban Supply Agreement dated December 2, 2012 by and between Wightman Engineering Services and Baxano, Inc.¹
2. Kanban Supply Agreement dated February 24, 2012 by and between AIM Plastics and Baxano, Inc.
3. Kanban Supply Agreement dated November 14, 2011 by and between McCash and Baxano, Inc.
4. Kanban Supply Agreement dated March 1, 2013 by and between Bioconnect/RF Industries and Baxano, Inc.
5. Kanban Supply Agreement dated February 17, 2014 by and between Clean Cut Technology and Baxano, Inc.
6. Kanban Supply Agreement dated January 30, 2012 by and between Delta Pacific Products and Baxano, Inc.
7. Kanban Supply Agreement dated December 9, 2011 by and between Centerline Precision and Baxano, Inc.

¹ The Seller is not offering to assume and assign any of the Kanban contracts.

8. Kanban Supply Agreement dated March 12, 2012 by and between Strand Products and Baxano, Inc.
9. Kanban Supply Agreement dated January 9, 2014 by and between Tech-Etch, Inc. and Baxano, Inc.
10. Kanban Supply Agreement dated December 2, 2013 by and between Mountain Manufacturing Technologies and Baxano, Inc.
11. Kanban Supply Agreement dated October 14, 2011 by and between Nitinol Devices and Components, Inc. and Baxano, Inc.
12. Master Agreement (Reference No. 22-5779) dated January 20, 2012 by and between Stryker Finance, a division of Stryker Sales Corporation, and TranS1, Inc.²
13. Supplier Agreement dated June 1, 2014 by and between Venta Medical, Inc. and Baxano Surgical, Inc.
14. Quality Agreement dated May 25, 2012 by and between Millstone Medical Outsourcing and TranS1, Inc.
15. Quality Agreement dated May 25, 2012 by and between Quality Tech Services, Inc. and TranS1, Inc.
16. Agreement dated December 23, 2008 by and between Millstone Medical Outsourcing and TranS1, Inc.
17. Requirements Agreement dated January 1, 2014 by and between QTS Packing Solutions and Baxano, Inc.³

² Not available for assumption and assignment

³ Not available for assumption and assignment.

18. Service Contract dated February 2, 2006 by and between Quality Tech Services, Inc. and TranS1, Inc.⁴

(ii)

1. Schedules 4.94.12(b) and 4.94.12(c) are incorporated by reference.

(iii)

1. Each of the distribution agreements identified in that certain Debtor Motion for Order under 11 U.S.C. 365 Authorizing Assumption of Distribution Agreements, as amended.⁵

(iv)⁶

1. Agreement of Lease dated July 30, 2009 by and between Market Place Group LLC and the Seller.

2. Lease Agreement dated October 24, 2012, as amended, by and between Sun Life Assurance Company of Canada d/b/a Horizon IV and the Seller.

3. Lease Agreement dated September 30, 2009 by and between Montague Oaks Associates Phase I & II and the Seller.

4. Lease Agreement dated October 28, 2011 by and between Six Forks Capital, LLC and the Seller.

(v)

1. Paragraphs 2 and 3 of Schedule 4.94.12(b) are incorporated by reference.

⁴ Not available for assumption and assignment

⁵ Subject to finalization of list of distributors in motion.

⁶ The Seller has moved to reject the leases with Market Place Group, LLC, Montague Oaks Associates Phase I & II and Six Forks Capital, LLC and does not anticipate assuming and assigning any real estate leases.

2. Letter Agreement, dated November 12, 2014 by and between the Seller and Houlihan Lokey.

3. Letter Agreement, dated November 12, 2014 by and between the Seller and Tamarack Associates.

4.74.10-4

Schedule 4.8

~~Leased Real Property~~

1. ~~Agreement of Sublease dated August 14, 2012 by and between the Seller and Alpha Mortgage Corporation, Inc.~~

Schedule 4.94.12(a)

Owned Intellectual Property

1. See Exhibit 4.94.12(a) attached hereto.

4.84.12(a)-1

Exhibit 4.94.12(a)

Owned Intellectual Property

See attached.

Exhibit 4.94.12(a)

Schedule ~~4.94.12~~(b)

In-Bound Licenses

1. The Seller licenses the following software pursuant to standard end-user license agreements:⁷
 - QAD Enterprise Applications
 - Sales Force
 - Adaptive Planning
 - Concur
 - ADP
 - Office 365
 - AST
2. Exclusive License Agreement dated January 24, 2011 by and among Dr. Mitchell A. Hardenbrook, MH Brook, Inc., and the Seller.
3. Option Agreement dated August 11, 2014 by and between IKYN Surgical, LLC and the Seller, pursuant to which IKYN has granted to the Seller an exclusive option for a worldwide, exclusive license to the patent rights associated with U.S. Patent Provisional Application #61/942,737.⁸
4. The Seller has entered into several license agreements, pursuant to which a third party assigns, conveys, grants a license or right of use to, or sells to the Seller the intellectual property described therein:
 - a. Agreement for Tranforaminal Lumbar Interbody Fusion System Product Design and Development Consulting Services dated February 19, 2014 with Dr. Lawrence Cohen;
 - b. Agreement for Tranforaminal Lumbar Interbody Fusion System Product Design and Development Consulting Services dated January 30, 2014 with Dr. Richard Ozuna;

⁷ ADP, Office 365 and AST contract not available for assumption and assignment. Sales Force agreement for assumption and assignment only to if Acquired Assets include substantially all assets of Seller.

⁸ Counterparty has taken position that agreement was terminated prepetition.

- c. Agreement for Tranforaminal Lumbar Interbody Fusion System Product Design and Development Consulting Services dated December 16, 2013 with Dr. Jed Vanichkachorn;
- d. Agreement for Lateral System Instrumentation Product Design and Development Consulting dated December 22, 2011 with Dr. Gary Fleischer;⁹
- e. Agreement for Pedicle Screw System Product Design and Development Consulting Services dated June 13, 2012 with Dr. Sameer Mathur;
- f. Agreement for Lordosis/Presacral Cage Product Design and Development Consulting Services dated October 8, 2013 with Dr. Gary Fleischer;
- g. Agreement for Tranforaminal Lumbar Interbody Fusion System Product Design and Development Consulting Services dated January 1, 2014 with Anders Cohen, DO;
- h. Agreement for Lateral System Instrumentation Product Design and Development Consulting dated December 22, 2011 with Dr. Tung Nguyen;¹⁰
- i. Agreement for Lordosis/Presacral Cage Product Design and Development Consulting Services dated September 27, 2013 with Dr. Larry Khoo;
- j. Agreement for Pedicle Screw System Product Design and Development Consulting Services dated June 13, 2012 with Dr. Nael Shanti;
- k. Agreement for Lordosis/Presacral Cage Product Design and Development Consulting Services dated May 12, 2014 with Future Solutions II, LLC (Dr. James Billys);
- l. Development and License Agreement (Polyaxial Screw/MIS/LIS/Helical Flange/BOT) dated January 1, 2013 with Dr. Roger P. Jackson and SMS Trust;
- m. Agreement for Lateral System Instrumentation Product Design and Development Consulting dated December 8, 2011 with Dr. Neel Anand;
- n. Agreement for Single Cutting Wire System Product Design and Development Consulting Services dated July 24, 2013 with Dr. William D. Smith; and
- o. Agreement for Tranforaminal Lumbar Interbody Fusion System Product Design and Development Consulting Services dated December 16, 2013 with Dr. Daniel Park.

5. See also Exhibit 4.94.12(a) for additional licenses granted to the Seller.

⁹ Counterparty has taken position that agreement was terminated prepetition.

¹⁰ Counterparty has taken position that agreement was terminated prepetition.

Schedule 4.94.12(c)

Out-Bound Licenses

None, other than rights of use granted to vendors, suppliers, consultants or independent contractors under or pursuant to any of the Material Contracts.

4.94.12(c)-1

Schedule 4.94.12(d)

Infringements

1. In October 2013, Paradigm BioDevices alleged that the Seller's ICBGH infringes on the claimant's U.S. Patent RE 40,796 (the reissue of U.S. Patent 5,954,671). The Seller responded in a letter from its counsel disputing the allegation. Since December 2013, the Seller has not received any further correspondences concerning the patent infringement claim.
2. In September 2012, an individual inventor alleged that the Seller's ICBGH infringes on the claimant's U.S. Patent 6,007,496. The Seller responded twice in a letter from its counsel disputing the allegation. Since the last correspondence in November 2012, the Seller has not received any further correspondences concerning the patent infringement claim.
3. On October 8, 2013, Mölnlycke Healthcare AB ("**Mölnlycke**") filed a 90 Day Request for Extension of Time to Oppose Seller's application for the mark AVANCE. Seller's trademark counsel contacted Mölnlycke to discuss Mölnlycke's concerns with Seller's proposed use and registration of the AVANCE mark, and this matter was resolved between the parties permitting Seller to utilize the AVANCE mark for its pedicle screw system.

Schedule ~~4.104.13~~(a)

Compliance with Law

1. The Seller is subject to periodic routine inspection by the FDA and other applicable Governmental Bodies.

In the last five years, there have been three (3) FDA inspections at the Seller's facilities, the results of which have been previously provided to the Purchaser.

2. On January 24, 2012, the Seller received notice that a putative class action lawsuit had been filed in the U.S. District Court for the Eastern District of North Carolina, on behalf of all persons who purchased the Seller's securities between February 21, 2008 and October 17, 2011. The complaint alleged violations of the Exchange Act based upon purported omissions and/or false and misleading statements concerning the Seller's financial statements and reimbursement practices. The complaint sought damages sustained by the putative class, pre- and post-judgment interest, and attorneys' fees and other costs. On September 7, 2012, the Seller filed a motion to dismiss the complaint for failure to meet the heightened pleading requirements of the Private Securities Litigation Reform Act of 1995, among other grounds. On September 19, 2013, the Seller's motion was granted and the complaint was dismissed with prejudice. On October 17, 2013, the plaintiff filed a motion to alter or amend the order dismissing the complaint with prejudice.
3. On June 28, 2013, the Seller entered into a Settlement Agreement and Corporate Integrity Agreement (CIA) with various U.S. Governmental Bodies. Under the terms of this settlement agreement, the Seller has agreed to pay an aggregate of \$6.0 million (plus accrued interest) in installments from July 2013 through July 2015 in settlement of certain government investigatory matters related to its compliance with federal healthcare fraud and false claims statutes. In addition, the Seller has agreed under the CIA, among other things, to maintain a compliance program designed to promote compliance with various federal health care and FDA requirements. Pursuant to the CIA, the Seller is required to notify the applicable Governmental Body in writing, among other things, of (i) any ongoing government investigation or legal proceeding involving an allegation that the Seller has committed a crime or have engaged in fraudulent activities; (ii) any other matter that a reasonable person would consider a probable violation of applicable criminal, civil, or administrative laws related to compliance with federal healthcare programs or FDA requirements; and (iii) any change in location, sale, closing, purchase, or establishment of a new business unit or location related to items or services that may be reimbursed by federal health care programs. The Seller is also subject to periodic reporting and certification

4.104.13(a)-1

requirements attesting that the provisions of the CIA are being implemented and followed, as well as certain document and record retention mandates.

4. The Seller did not files its 2014 Third Quarter Financial Statements with the SEC and has notified that SEC that it will no longer be making the filings that are required in order for it to remain as a publically traded company in good standing. The Seller makes no representation regarding its status as a publically traded company or the status of its equity.

4.104.13(a)-2

Schedule 4.104.13(b)

Governmental Authorizations

See Exhibit 4.104.13(b) for a listing of the CE Marks, 510(k) Clearances, and 510(k) Filings relating to the Products.

4.104.13(b)-1

Exhibit 4.104.13(b)

CE Marks, 510(k) Clearances, and all 510(k) Filings relating to the Products

See attached.

Exhibit 4.104.13(b)

Schedule ~~4.104.13~~(c)

Other Governmental Authorizations

None, other than those set forth on Exhibit ~~4.104.13~~(b) and those that are not material to the Business or the Acquired Assets either individually or in the aggregate.

4.104.13(c)-1

Schedule 4-144.17**Employee Matters**

Name	Title	2014 Compensation (Salary, Bonus, Other Compensation)¹¹
Ken Reali	Chief Executive Officer	
Micki Lew	Compliance and Regulatory Manager	
Steve Ainsworth	Vice President of R&D and Business Development	
Catherine Maher	Commercial Operations Representative	
Jordan Laura Zachmeyer Howard	Commercial Operations Representative	
Amelia Smith	Commercial Operations Representative	
Martina Hrcir	Senior Quality Assurance Manager	
Greg Welsh	Vice President, Operations	
Charlie Torres	Senior Buyer Planner	
Paul Mircik	Production Manager	
Toma Barker	Senior Staff Accountant	
Bailey Robbins	Assistant Controller	
Gretchen McReynolds	Accounts Receivable Specialist	
Justin Denning	Application Support Specialist	
Greg Pellatt	National Sales Director	
Pat Caylor	RSD	
Steve Green	RSD	
Katryn Fernald	RSD	
John Dieterly	RSD	
Robert Cook	Senior Manager, iO Products and Strategic Marketing	

¹¹ Compensation information to be redacted from the version of the schedules filed of record in the BR proceeding.

4-144.17-1

4-144.17-2

Schedule 4.174.20**Insurance**

AON Financing Agreement-Quote 100000775221.002 – International PFA

POLICY NUMBER Prefix Number	Full Name of Insurance Company and Address of Branch Reporting Office and Full Name and Address of General Agent	TYPE OF INSURANCE	TERM IN MONTHS	POLICY EFFECTIVE DATE MM/DD/YYYY	POLICY PREMIUM
WS11002931	Insurance Company of the State of Pennsylvania	FRLB	12	10/01/2014	6,015.00

AON Financing Agreement-Quote 199949.1 – Omnibus PFA

POLICY NUMBER Prefix Number	Full Name of Insurance Company and Address of Branch Reporting Office and Full Name and Address of General Agent	TYPE OF INSURANCE	TERM IN MONTHS	POLICY EFFECTIVE DATE MM/DD/YYYY	POLICY PREMIUM
LPK5001316Q17	Berkley National Insurance Company, PO Box 152180, Irving, TX 75015-2180	PACKAGE	12	10/16/2014	Premium: \$68,477.00 Taxes: \$0.00 Fees: \$0.00
016945634	National Union Fire Ins Co Pittsburgh, PA/AIG (NY), 175 Water St, FL 18, New York, NY 10038	FIDUCIARY	12	10/16/2014	Premium: \$4,925.00 Taxes: \$0.00 Fees: \$0.00
82310-1404	Federal Insurance Company/Chubb (New York NY), 55 Water Street, New York, NY 10041	EMPLOYMENT PRACTICES LIABILITY	12	10/16/2014	Premium: \$30,881.00 Taxes: \$0.00 Fees: \$0.00
LWC500132014	Berkley National Insurance Company, PO Box 152180, Irving, TX 75015-2180	WORKERS COMPENSATION - VOLUNTARY	12	10/16/2014	Premium: 36,236.00 Taxes: \$1,172.00 Fees: \$0.00
016945633	National Union Fire Ins Co Pittsburgh, PA/AIG (NY), 175 Water St, FL 18, New York, NY 10038	CRIME	12	10/16/2014	Premium: \$4,996.00 Taxes: \$0.00 Fees: \$0.00
GL-108744	Gemini Insurance Company, 1250 E Diehl Rd, Suite 200, Naperville, IL 60563	PRODUCT LIABILITY	12	10/16/2014	Premium: \$186,002.00 Taxes: \$9,300.10 Fees: \$0.00
00064455-0	James River Insurance Company, AmWins Insurance Brokerage of California – San Francisco, One Bush Street, San Francisco, CA 94104	PRODUCT LIABILITY	12	10/16/2014	Premium: \$130,000.00 Taxes: \$6,500.00 Fees: \$110.00
LSR-XS-00035-14	Lloyds of London, One Lime Street, London, EC3M 7HA ENGLAND	PRODUCT LIABILITY	12	10/16/2014	Premium: \$85,000.00 Taxes 4,250.50 Fees: \$0.00

The Seller's D &O Liability Policy is not financed

National Union Fire Ins Co of Pittsburgh	014682707	Oct 16, 2013 - Oct 16, 2015	Oct 16, 2014	Endorsement – Directors & Officers-Primary	229,944.00
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4.174.20-1

	Baxano Surgical, Inc.				
XL Specialty Insurance Co	ELU13173913 Baxano Surgical, Inc.	Oct 16, 2013 - Oct 16, 2015	Oct 16, 2014	Endorsement – Directors & Officers-Excess	55,000.00
Berkley Insurance Company	11228604 Baxano Surgical, Inc.	Oct 16, 2013 - Oct 16, 2015	Oct 16, 2014	Endorsement – Directors & Officers-Excess	80,500.00

4.174.20-1

Schedule 5.7

Financing

~~{Purchaser To Provide}~~

~~Schedule 5.8~~

Certain Relationships Contracts

~~{Purchaser To Provide}~~

Document comparison by Workshare Compare on Wednesday, December 31, 2014 3:12:29 PM

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Description	#1335224v12<SL1> - Disclosure Schedules to APA - Baxano Surgical, Inc.
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Moved cell	
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Padding cell	

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