

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

FORM 8-K

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

Date of Report (Date of earliest event reported): **June 4, 2019**

**OrthoPediatrics Corp.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation)

**001-38242**

(Commission File Number)

**26-1761833**

(IRS Employer Identification No.)

**2850 Frontier Drive**

**Warsaw, Indiana**

(Address of principal executive offices)

**46582**

(Zip Code)

Registrant's telephone number, including area code: **(574) 268-6379**

**Not Applicable**

(Former name or former address, if changed since last report)

Securities registered pursuant to Section 12(b) of the Act:

| <b>Title of each class</b>                  | <b>Trading Symbol(s)</b> | <b>Name of each exchange on which registered</b> |
|---|--------------------------|--|
| Common Stock, \$0.00025 par value per share | KIDS                     | The NASDAQ Stock Market LLC                      |

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 under the Securities Act (17 CFR 230.405) or Rule 12b-2 under the Exchange Act (17 CFR 240.12b-2).

Emerging growth company

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

### **Item 1.01. Entry Into a Material Definitive Agreement.**

On June 4, 2019, OrthoPediatrics Corp. (the “Company”) entered into an Equity Interest Purchase Agreement (the “Purchase Agreement”) with the stockholders of Vilex in Tennessee, Inc., a Tennessee corporation (“Vilex”), and the members of Orthex, LLC, a Florida limited liability company (“Orthex”), providing for the purchase by the Company of all of the issued and outstanding shares of stock of Vilex and all of the issued and outstanding units of membership interests in Orthex (the “Acquisition”) from such stockholders and members, respectively (collectively, the “Sellers”). Orthex and Vilex (together, the “Vilex Companies”) are primarily manufacturers of foot and ankle surgical implants, including cannulated screws, fusion devices, surgical staples and bone plates, as well as Orthex Hexapod technology which is used to treat pediatric congenital deformities and limb length discrepancies.

Under the terms of the Purchase Agreement, consideration of (a) \$50 million of cash, as adjusted for estimated working capital, and (b) 245,352 shares of common stock, \$0.00025 par value per share, of the Company (“Common Stock”), will be paid by the Company at the closing. The shares of Common Stock were valued at \$40.76 per share (which amount represents the volume weighted average trading price during the thirty day trading period ending on May 30, 2019). In addition, \$3 million of the cash consideration was deposited into escrow for a period of up to twenty (20) months to cover certain indemnification obligations of the Sellers and to secure certain closing adjustments.

The Purchase Agreement contains negotiated representations, warranties and covenants by the Sellers and the Company, which are believed to be customary for transactions of this kind. The assertions embodied in such representations and warranties are qualified by information contained in confidential disclosure schedules that the parties exchanged in connection with signing the Purchase Agreement. In addition, these representations and warranties (i) may be intended not as statements of fact, but rather as a way of allocating risk to one of the parties if those statements prove to be inaccurate, (ii) may apply materiality standards different from what may be viewed as material to investors and (iii) were made only as of the date of the Purchase Agreement or as of such other date or dates as may be specified in the Purchase Agreement. Moreover, information concerning the subject matter of such representations and warranties may change after the date of the Purchase Agreement, which subsequent information may or may not be fully reflected in the Company’s public disclosures. Investors are urged not to rely on such representations and warranties as characterizations of the actual state of facts or circumstances at this time or any other time.

#### Planned Divestiture

Because the current product line of the Vilex Companies also includes adult offerings that are not core to the Company’s pediatrics business, the Company has begun taking the steps necessary to divest those non-core product lines of the Vilex Companies. Specifically, the Company’s Board of Directors has authorized the Company’s management team to oversee the divestiture process and, over the next several weeks, the Company intends to identify the appropriate assets to sell, to determine the appropriate price for those assets and to identify an appropriate buyer. The Company anticipates there being significant interest in the assets to be offered for sale.

### Debt Financing for Acquisition

In order to finance a portion of the cash consideration for the Acquisition, the Company entered into a First Amendment (the “Amendment”) to its Fourth Amended and Restated Loan and Security Agreement (as so amended, the “Loan Agreement”), with Squadron Capital LLC (the “Lender”), the Company’s largest investor. The Loan Agreement provides for a new \$30 million term loan facility (the “Term Loan B”) in addition to the existing \$20 million term loan facility (the “Term Loan A”) and \$15 million revolving credit facility that were established previously by the Lender. The term loan and revolving credit facilities under the Loan Agreement provide for interest only payments with interest rates equal to the greater of (a) three month LIBOR plus 8.61%, and (b) 10.00%. The maturity date for the Term Loan B, which is evidenced by that certain Term Note B, dated June 4, 2019, made payable, jointly and severally, by the Company and each of its subsidiaries party thereto (the “Term Note B”), is the earlier of: (i) the date on which any person or persons acquire (x) capital stock of the Company possessing the voting power to elect a majority of the Company’s Board of Directors (whether by merger, consolidation, reorganization, combination, sale or transfer), or (y) all or substantially all of the Company’s assets, determined on a consolidated basis; (ii) the date on which the Company sells its equity interest in, or all or substantially all of the assets of, Vilex; and (iii) May 31, 2020. The maturity date for each of the Term Loan A and the revolving credit facility is January 31, 2023. Until such time that the Term Loan B and all accrued interest thereon has been paid in full, no borrowings under the revolving loan facility are permitted.

As provided in the Amendment, Orthex has become a “Borrower” under the Loan Agreement and, as such, granted to the Lender a security interest in all of its personal property as collateral for all borrowing under the Loan Agreement. In connection with the Amendment, the Company granted a security interest in (a) the units of membership interests in Orthex held by the Company, and (b) the shares of stock of Vilex held by the Company, as collateral for borrowings under the Loan Agreement. Borrowings under the Loan Agreement are secured by substantially all of the Company’s assets and are unconditionally guaranteed by each of its subsidiaries with the exception of Vilex.

The foregoing descriptions of the Purchase Agreement, the Fourth Amended and Restated Loan and Security Agreement, the Amendment and the Term Note B are qualified in their entirety by reference to the complete texts thereof, copies of which are included as Exhibits 2.1, 10.1, 10.2 and 10.3, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

#### **Item 2.01. Completion of Acquisition or Disposition of Assets.**

On June 4, 2019, concurrently with the execution and delivery of the Purchase Agreement described in Item 1.01, the Company and the Sellers completed the transactions contemplated thereby. The information disclosed in response to Item 1.01 is incorporated herein by reference.

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

The information set forth under Item 1.01 regarding the Loan Agreement and the Term Note B is incorporated herein by reference.

#### **Item 3.02. Unregistered Sales of Equity Securities.**

The information set forth under Item 1.01 regarding the issuance of the Common Stock pursuant to the Purchase Agreement is incorporated by reference into this Item 3.02. As part of the aggregate consideration payable at the closing, the Company issued the number of shares of Common Stock set forth above. The issuance of the Common Stock was made in reliance upon an exemption provided under Section 4(a)(2) of the Securities Act of 1933, as amended.

#### **Item 7.01. Regulation FD Disclosure.**

On June 5, 2019, the Company issued a press release announcing the completion of the transactions contemplated by the Purchase Agreement described above in Item 1.01. A copy of the press release is furnished herewith as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

The information contained in this Item 7.01 (including Exhibit 99.1) is being furnished and shall not be deemed “filed” for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that Section. The information in this Current Report shall not be deemed incorporated by reference in any filing under the Securities Act or the Exchange Act, except as expressly set forth by specific reference in such a filing.

**Item 9.01. Financial Statements and Exhibits.**

(a) Financial Statements of Businesses Acquired.

To the extent required, the Company intends to file the financial statements required by Item 9.01(a) as part of an amendment to this Current Report on Form 8-K no later than 71 calendar days after the required filing date for this Current Report on Form 8-K.

(b) Pro Forma Financial Information.

To the extent required, the Company intends to file the pro forma financial information required by Item 9.01(b) as an amendment to this Current Report on Form 8-K no later than 71 days after the required filing date for this Current Report on Form 8-K.

(d) Exhibits.

| <b>Exhibit No.</b>          | <b>Description</b>   |
|-----------------------------|--|
| <a href="#"><u>2.1*</u></a> | <a href="#"><u>Equity Interest Purchase Agreement, dated June 4, 2019, by and among OrthoPediatics Corp., the Sellers and the Selling Equityholders (each as defined therein), and Abraham Lavi (as the Sellers’ representative).</u></a>  |
| <a href="#"><u>10.1</u></a> | <a href="#"><u>Fourth Amended and Restated Loan Agreement, dated as of December 31, 2017, by and among OrthoPediatics Corp., its subsidiaries named therein and Squadron Capital LLC (Incorporated by reference to Exhibit 10.1 of Registrants Form 8-K filed on January 8, 2018; SEC File No. 001-38242).</u></a> |
| <a href="#"><u>10.2</u></a> | <a href="#"><u>First Amendment to the Fourth Amended and Restated Loan Agreement, dated as of June 4, 2019, by and among OrthoPediatics Corp., its subsidiaries named therein and Squadron Capital LLC.</u></a>  |
| <a href="#"><u>10.3</u></a> | <a href="#"><u>Term Note B, dated June 4, 2019, made payable, jointly and severally, by OrthoPediatics Corp. and each of its subsidiaries party thereto.</u></a>   |
| <a href="#"><u>99.1</u></a> | <a href="#"><u>Press Release, dated June 5, 2019.</u></a>  |

\* The schedules to the Purchase Agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company agrees to furnish a copy of any schedule omitted from the Purchase Agreement to the Securities and Exchange Commission (the “SEC”) upon request.

### **Cautionary Note on Forward-Looking Statements**

This Current Report contains forward-looking statements within the meaning of the U.S. Private Securities Litigation Reform Act of 1995 and other federal securities laws. Any statements contained herein that do not describe historical facts, including but not limited to statements related to the planned divestiture of the non-core product lines of the Vilex Companies and the timing and impact of such divestiture are forward-looking statements that involve risks and uncertainties that could cause actual results to differ materially from those discussed in such forward-looking statements. Such risks and uncertainties include, among others, the risks related to the Company's ability to successfully manage the divestiture process and to complete the divestiture in order to realize the anticipated benefits, and such other risks detailed from time to time in the Company's SEC filings, including those described under "Risk Factors" in the Company's Annual Report on Form 10-K for the year ended December 31, 2018, and in subsequent filings with the SEC. Any of these risks and uncertainties could materially and adversely affect the Company's results of operations. The Company cautions you not to place undue reliance on any forward-looking statements, which speak only as of the date they are made. The Company undertakes no obligation to update publicly any forward-looking statements to reflect new information, events or circumstances after the date they were made or to reflect the occurrence of unanticipated events.

\* \* \* \* \*

**SIGNATURE**

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

OrthoPediatrics Corp.

Date: June 5, 2019

By: /s/ Daniel J. Gerritzen  
Daniel J. Gerritzen,  
General Counsel and Secretary

**EQUITY INTEREST PURCHASE AGREEMENT**

**BY AND AMONG**

**ORTHOPEDIATRICS CORP.,**

**AS PURCHASER,**

**THE SELLERS (AS DEFINED HEREIN),**

**ABRAHAM LAVI,**

**AS SELLERS' REPRESENTATIVE**

**AND**

**THE SELLING EQUITYHOLDERS (AS DEFINED HEREIN)**

**DATED AS OF JUNE 4, 2019**

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## EQUITY INTEREST PURCHASE AGREEMENT

This EQUITY INTEREST PURCHASE AGREEMENT (this "Agreement") is made and entered into as of June 4, 2019, by and among (i) OrthoPediatrics Corp., a Delaware corporation ("Purchaser"), (ii) the Persons set forth on Schedule 2.1, each referred to herein as a "Seller" and collectively as the "Sellers", (iii) Abraham Lavi, as "Sellers' Representative" for the purposes of this Agreement, and (iv) the Persons set forth as Selling Equityholders on Schedule 2.1 (each, a "Selling Equityholder" and collectively, the "Selling Equityholders").

WHEREAS, the Sellers own all of the issued and outstanding units of membership interest of Orthex, LLC, a Florida limited liability company ("Orthex"), and all of the issued and outstanding shares of stock of Vilex in Tennessee, Inc., a Tennessee corporation ("Vilex");

WHEREAS, the Sellers desire to sell to the Purchaser all of the issued and outstanding membership interests of Orthex (the "Units") and all of the issued and outstanding shares of stock of Vilex (the "Stock", together with the Units, collectively, the "Equity Interests"), and the Purchaser desire to purchase from the Sellers the Equity Interests; and

WHEREAS, Orthex and Vilex are sometimes referred to herein individually as, a "Company", and are collectively referred to herein as, the "Companies."

NOW, THEREFORE, in consideration of the mutual agreements and covenants hereinafter set forth, and for good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

### ARTICLE I PURCHASE AND SALE; CLOSING

Section 1.1 Purchase and Sale of Equity Interests. Subject to the terms and conditions set forth in this Agreement, at the Closing, the Sellers shall sell, transfer, and assign to the Purchaser and the Purchaser shall purchase and assume from the Sellers all of the Equity Interests free and clear of all Encumbrances. The portion of the Equity Interests to be transferred by each Seller to the Purchaser shall be set forth opposite such Seller's name on Schedule 2.1 attached hereto. Capitalized terms not otherwise defined herein shall have the respective meaning assigned to such term as set forth in Section 8.1 hereof.

#### Section 1.2 Purchase Price.

(a) Price. The aggregate purchase price for the Equity Interests shall be Sixty Million and 00/100 Dollars (\$60,000,000.00) (the "Purchase Price"), which has been initially determined based on a "debt free basis" and shall be payable and adjusted as set forth herein. Subject to the adjustments set forth herein, at the Closing, each of the Sellers shall receive (i) cash in the amount set forth opposite such Seller's respective name on Schedule 1.2, which in the aggregate shall be referred to as the "Cash Amount of the Purchase Price", and (ii) the number of shares of common stock of the Purchaser set forth opposite such Seller's respective name on Schedule 1.2, which in the aggregate shall be referred to as the "OrthoPediatrics Stock".

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(b) Certain Payments at Closing.

(i) Notice of Estimates. Prior to the Closing Date, the Sellers' Representative delivered to the Purchaser a written notice setting forth (A) an estimate of the Funded Indebtedness as set forth in the Payoff Letters (the "Payoff Amount") and (B) an estimate of the Transaction Expenses required to be paid pursuant to Section 1.2(b)(iii) ("Estimated Transaction Expenses"), calculated in good faith, each as of the close of business on the Closing Date.

(ii) Payment of Funded Indebtedness. Prior to the Closing Date, the Sellers' Representative delivered to the Purchaser customary payoff letters (the "Payoff Letters") from each Person to whom either or both of the Companies owes Funded Indebtedness as of the Closing, signed by the Persons to which such Funded Indebtedness is payable, setting forth, among other things, (A) the amount required to pay off in full at the Closing all Funded Indebtedness of each of the Companies held by such Person, (B) wire transfer instructions for the payment of such amounts, and (C) the commitment to release all Encumbrances, if any, which such Person may hold on either or both of the Companies or any of the assets of such parties upon receipt of the payoff amount set forth therein. At the Closing, the Purchaser will pay to each Person to whom either or both of the Companies owes Funded Indebtedness as of immediately prior to the Closing the amounts set forth in the applicable Payoff Letter by wire transfer of immediately available funds to the applicable accounts specified therein.

(iii) Payment of Transaction Expenses. At the Closing, the Purchaser will pay or cause to be paid to each Person to whom either or both of the Companies owes Transaction Expenses by wire transfer of immediately available funds to the accounts and in the amounts designated by the Sellers' Representative.

(iv) Escrow Amount. At the Closing, the Purchaser shall deposit by wire transfer of immediately available funds the Escrow Amount with UMB Bank, National Association (the "Escrow Agent") an amount equal to Three Million and 00/100 Dollars (\$3,000,000.00) (the "Escrow Amount") pursuant to that certain agreement among the Purchaser, the Sellers' Representative and the Escrow Agent (the "Escrow Agreement").

(v) Closing Net Working Capital Adjustment. The "Closing Net Working Capital Adjustment" shall mean the difference between the Preliminary Net Working Capital in the Preliminary Net Working Capital Certificate given pursuant to Section 1.2(c)(i) and the Target Net Working Capital (the "Adjustment Amount"). If the Preliminary Net Working Capital is less than the Target Net Working Capital by an amount greater than Ten Thousand and 00/100 Dollars (\$10,000.00), then the Cash Amount of the Purchase Price shall be adjusted downward "dollar for dollar" in an amount equal to the Adjustment Amount. If the Preliminary Net Working Capital is greater than the Target Net Working Capital by an amount greater than Ten Thousand and 00/100 Dollars (\$10,000.00), then the Purchase Price shall be adjusted upward "dollar for dollar" in an amount equal to the Adjustment Amount.

(vi) Cash Amount. At the Closing, the Purchaser shall pay by wire transfer of immediately available funds to the accounts and in the amounts designated by the Sellers' Representative an amount equal to (1) the Cash Amount of the Purchase Price, minus (2) the Payoff Amount, minus (3) the Estimated Transaction Expenses, minus (4) the Escrow Amount, plus or minus (5) the Closing Net Working Capital Adjustment if an adjustment to the Cash Amount of the Purchase Price is made pursuant to Section 1.2(b)(v) (the "Cash Amount").

(c) Purchase Price Adjustment.

(i) Prior to the Closing Date, the Sellers' Representative prepared and delivered to the Purchaser a statement (the "Preliminary Net Working Capital Certificate") setting forth in reasonable detail its estimate of Net Working Capital (the "Preliminary Net Working Capital") as of the close of business on the Closing Date and the calculations supporting the Sellers' Representative's estimate. The Preliminary Net Working Capital shall be calculated on a basis consistent with GAAP applied consistently with the Companies' historical accounting practices and the principles set forth on Schedule 1.2(c)(i), and Net Working Capital shall include only the components of current assets and current liabilities of each of the respective Companies as have been agreed to by the parties hereto reflected on Schedule 1.2(c)(i).

(ii) Within sixty (60) days following the Closing Date, the Purchaser shall prepare and deliver to the Sellers' Representative a statement (the "Closing Statement") setting forth in reasonable detail its calculation of (1) Net Working Capital as of the close of business on the Closing Date, and calculated on a basis consistent with GAAP applied consistently with the Companies' historical accounting practices and the principles set forth on Schedule 1.2(c)(i), and Net Working Capital shall include only the components of current assets and current liabilities of each of the respective Companies as have been agreed to by the parties hereto reflected on Schedule 1.2(c)(i), (2) actual Transaction Expenses as of the close of business on the Closing Date and (3) actual Funded Indebtedness as of the close of business on the Closing Date. If within thirty (30) days after the Sellers' Representative's receipt of the Closing Statement (the "Objection Period"), the Purchaser has not received an Objection Notice, then such Net Working Capital, Transaction Expenses and Funded Indebtedness set forth on the Closing Statement shall be deemed the Final Net Working Capital, Final Transaction Expenses and Final Funded Indebtedness, respectively, and the Cash Amount of the Purchase Price shall be adjusted (if at all) in accordance with Section 1.2(c)(vii); however, if an Objection Notice has been delivered, then Section 1.2(c)(iii) and Section 1.2(c)(iv) hereof shall apply.

(iii) If the Sellers' Representative in good faith disagrees with any portion of the Purchaser's calculation of Net Working Capital, Transaction Expenses or Funded Indebtedness as set forth in the Closing Statement, then the Sellers' Representative may, within the Objection Period, deliver a written notice to the Purchaser setting forth the Sellers' Representative's objections thereto (the "Objection Notice"). Any Objection Notice shall specify in detail any good faith and reasonable disagreement as to the amount of the Net Working Capital, Transaction Expenses and Funded Indebtedness and the Sellers' Representative's calculation of Net Working Capital, Transaction Expenses and Funded Indebtedness.

(iv) If an Objection Notice is timely received by the Purchaser within the Objection Period, the Purchaser and the Sellers' Representative shall, during the thirty (30) days following the Purchaser's receipt of such Objection Notice (the "Net Working Capital Settlement Deadline"), use their good faith, reasonable efforts to reach an agreement on the disputed items. If such an agreement is reached prior to the Net Working Capital Settlement Deadline, then the Net Working Capital, Transaction Expenses and Funded Indebtedness as so agreed shall be the Final Net Working Capital, Final Transaction Expenses and Final Funded Indebtedness and the Cash Amount of the Purchase Price shall be adjusted, if at all, in accordance with the provisions of Section 1.2(c)(vii). If the Purchaser and the Sellers' Representative are unable to reach such an agreement prior to the Net Working Capital Settlement Deadline, the Purchaser and the Sellers' Representative shall jointly retain EY located at Chase Tower, 111 Monument Circle, Suite 4000, Indianapolis, Indiana 46204 (the "Accountant") within thirty (30) days following the Net Working Capital Settlement Deadline to resolve any remaining disagreements. The Purchaser and the Sellers' Representative shall execute, if requested by the Accountant, a reasonable engagement letter, including customary indemnification provisions in favor of the Accountant. The Purchaser and the Sellers' Representative shall direct the Accountant to render a determination in writing as promptly as practicable (and in any event within thirty (30) Business Days after its retention) and the Purchaser and the Sellers' Representative shall cooperate with the Accountant during the engagement and make available the records and workpapers necessary for its review. The Accountant shall consider only those items and amounts set forth in the Objection Notice that the Purchaser and the Sellers' Representative have been unable to resolve, and the Accountant shall review only the records and workpapers submitted and base its determination solely on such submissions and the related computational materials. In resolving any disputed item, the Accountant may not assign a value to any item greater than the greatest value of such item claimed by the Purchaser or the Sellers' Representative or less than the smallest value for such item claimed by the Purchaser or the Sellers' Representative. The Accountant's determination shall be based on the definitions included herein and shall otherwise be made in accordance with this Agreement, including the principles set forth on Schedule 1.2(c)(i). The determination of the Accountant shall be conclusive and binding upon the parties hereto, and the Cash Amount of the Purchase Price shall be adjusted, if at all, in accordance with the provisions of Section 1.2(c)(vii). The Purchaser and the Sellers' Representative shall each bear fifty percent (50%) of the fees and expenses of the Accountant. The Purchaser, the Sellers' Representative and the Sellers shall each bear one hundred percent (100%) of their own related expenses other than expenses related to the Accountant.

(v) The Net Working Capital, Transaction Expenses and Funded Indebtedness either as agreed to by the Sellers' Representative and the Purchaser, or as deemed final pursuant to Section 1.2(c)(ii), or as adjusted pursuant to Section 1.2(c)(iv), shall be final and binding on the parties hereto and will be referred to as the "Final Net Working Capital," "Final Transaction Expenses," and "Final Funded Indebtedness," respectively.

(vi) The Purchaser and the Sellers' Representative shall cooperate and assist in good faith in the determination of the Final Net Working Capital, Final Transaction Expenses and Final Funded Indebtedness and in the conduct of the reviews referred to in this Section 1.2, including making available, to the extent reasonably necessary, books, records, work papers and personnel at such reasonable times as the Purchaser or the Sellers' Representative shall request and permitting (at the expense of the requesting party) the copying of records or extracts thereof reasonably requested.

(vii) The Cash Amount of the Purchase Price shall be adjusted as follows following the Closing:

(1) If the Cash Amount of the Purchase Price was adjusted by the Adjustment Amount at Closing and the Final Net Working Capital is less than the Preliminary Net Working Capital by an amount greater than Ten Thousand and 00/100 Dollars (\$10,000.00), then the Purchaser and the Sellers' Representative will cause the Purchaser to be promptly paid from the Escrow Amount the positive difference between the Final Net Working Capital and the Preliminary Net Working Capital in accordance with Section 1.2(c)(vii)(8) below.

(2) If the Cash Amount of the Purchase Price was adjusted by the Adjustment Amount at Closing and the Final Net Working Capital is greater than the Preliminary Net Working Capital by an amount greater than Ten Thousand and 00/100 Dollars (\$10,000.00), then the Purchaser shall promptly pay to the Sellers' Representative the difference between the Final Net Working Capital and the Preliminary Net Working Capital in accordance with Section 1.2(c)(vii)(7) below.

(3) If the Cash Amount of the Purchase Price was not adjusted at Closing by the Adjustment Amount and the Final Net Working Capital is less than the Target Net Working Capital by an amount greater than Ten Thousand and 00/100 Dollars (\$10,000.00), then the Purchaser and the Sellers' Representative will cause the Purchaser to be promptly paid from the Escrow Amount the positive difference between the Final Net Working Capital and the Target Net Working Capital in accordance with Section 1.2(c)(vii)(8) below.

(4) If the Cash Amount of the Purchase Price was not adjusted at Closing by the Adjustment Amount and the Final Net Working Capital is greater than the Target Net Working Capital by an amount greater than Ten Thousand and 00/100 Dollars (\$10,000.00), then the Purchaser shall promptly pay to the Sellers' Representative the difference between the Final Net Working Capital and the Target Net Working Capital in accordance with Section 1.2(c)(vii)(7) below.

(5) If the (A) Final Transaction Expenses plus Final Funded Indebtedness is greater than (B) the Payoff Amount plus Estimated Transaction Expenses, then the Purchaser and the Sellers' Representative will cause the Purchaser to be promptly paid from the Escrow Amount the difference between clause (A) and clause (B) in accordance with Section 1.2(c)(vii)(8) below.

(6) If the (A) Final Transaction Expenses plus Final Funded Indebtedness is less than (B) the Payoff Amount plus Estimated Transaction Expenses, then the Purchaser shall promptly pay the Sellers' Representative the positive difference between clause (A) and clause (B) in accordance with Section 1.2(c)(vii)(7) below.

(7) Payments required to be made pursuant to Sections 1.2(c)(vii)(2),(4) and (6), if any, shall be made by the Purchaser within five (5) Business Days after the Final Net Working Capital, Final Transaction Expenses and Final Funded Indebtedness are determined by wire transfer of immediately available funds to the account designated by the Sellers' Representative (for the benefit of the Sellers).

(8) If payments are required to be made pursuant to Section 1.2(c)(vii)(1),(3) or (5), if any, the Sellers' Representative and the Purchaser shall instruct the Escrow Agent to make such payment from the Escrow Amount within five (5) Business Days after the Final Net Working Capital, Final Transaction Expenses and Final Funded Indebtedness are determined by wire transfer of immediately available funds to the account designated by the Purchaser. In the event that the Escrow Amount is insufficient to pay to the Purchaser the amount due pursuant to Section 1.2(c)(vii)(1),(3) or (5), then the Sellers shall pay the amount due net of the Escrow Amount within five (5) Business Days after the Final Net Working Capital, Final Transaction Expenses and Final Funded Indebtedness are determined by wire transfer of immediately available funds to the account designated by the Purchaser.

(viii) To the extent permitted by Law, any payments made under Section 1.2(c), shall be deemed adjustments to the Purchase Price for U.S. federal, state and local income Tax purposes.

Section 1.3 Closing. The closing (the "Closing") of the transaction contemplated hereby shall take place contemporaneously with the execution of this Agreement expected to be on or before June 4, 2019, or on such other date (the "Closing Date") mutually agreeable by the parties, at such location as the parties mutually agree. The Closing shall be deemed effective as of 11:59 p.m. as of the Closing Date. All actions taken at the Closing shall be deemed to be performed simultaneously, and the Closing shall not have deemed to have occurred until all required actions of the parties pursuant to this Agreement have been performed.

Section 1.4 Closing Deliverables.

- (a) At the Closing, the Sellers' Representative shall deliver or cause to be delivered to the Purchaser:
- (i) with respect to the Units, Membership Interests Assignment Agreements duly executed by the Sellers owning the Units;
  - (ii) with respect to the Stock, Stock Powers duly executed by the Sellers owning the Stock;
  - (iii) a counterpart to each Related Document to which any of the Sellers, Sellers' Representative, or the Companies is a party, duly executed and delivered by a duly authorized Representative of such Person;
  - (iv) a reasonably current certificate of existence or good standing for each of the Companies issued by its jurisdiction of organization and in each jurisdiction in which the respective Company is qualified to do business;
  - (v) a copy of the articles of organization or articles of incorporation, certified by the secretary of state, and a copy of the operating agreement or bylaws (or equivalent agreement or governing document), certified by an officer or other representative of each of the Companies, each in form and substance reasonably satisfactory to the Purchaser;
  - (vi) a general release of Sellers in a form acceptable to Sellers and Purchaser, dated as of the Closing Date (the "Sellers' Release");
  - (vii) a written resignation (effective as to the Closing) in form and substance reasonably acceptable to the Purchaser from any individuals identified on Schedule 1.4(a)(vii);
  - (viii) intentionally omitted;
  - (ix) evidence of the termination of all financing statements and the release of all Encumbrances filed or outstanding against the Equity Interests or each of the Companies' assets, if any, or Payoff Letters committing to release Encumbrances upon receipt of the payoff amount set forth therein;

(x) non-competition and non-solicitation agreements executed by the Sellers and Selling Equityholders, respectively, in the forms acceptable to Purchaser, Sellers and Selling Equityholders (the “Non-Competition Agreement”);

(xi) any minute books, accountability records, equity ledger or other organizational document of each of the Companies (to be retained at Companies’ offices);

(xii) each Required Consent obtained from each Person identified on Schedule 2.5(b) whose waiver of a right or default or consent to the transactions contemplated by this Agreements is required to be obtained prior to Closing;

(xiii) intentionally omitted;

(xiv) employment agreements with certain key employees each in the form acceptable to Purchaser and such key employee;

(xv) a copyright assignment acceptable to Purchaser;

(xvi) such other agreements and documents required to be delivered by the Sellers’ Representative or Sellers at or prior to the Closing pursuant to this Agreement or as the Sellers’ Representative and the Purchaser may mutually agree.

(b) At the Closing, the Purchaser shall deliver or cause to be delivered:

(i) to the Sellers, the Cash Amount of the Purchase Price in the respective amounts specified in Section 1.2(b) to the bank account or accounts designated by the Sellers’ Representative and specified in Section 1.2(b);

(ii) certificates for shares (or book entry of shares) of the OrthoPediatrics Stock;

(iii) to the Sellers’ Representative, a counterpart to each Related Document to which such Purchaser is a party, duly executed and delivered by a duly authorized Representative of such Person;

(iv) to the Sellers’ Representative, a true and complete copy, certified by an officer of the Purchaser, of the resolutions duly and validly adopted by the Board of Directors of such Purchaser evidencing the authorization of the execution and delivery of this Agreement, the Related Documents and the consummation of the transactions contemplated hereby and thereby;

(v) to the Sellers’ Representative, a reasonably current certificate of existence or good standing (in such jurisdictions where such status is recognized) for the Purchaser issued by its jurisdiction of incorporation;

(vi) to the Sellers' Representative, a copy of the certificate of incorporation of the Purchaser, certified by the secretary of state, and a copy of the bylaws of the Purchaser, certified by an officer of the Purchaser;

(vii) such other agreements and documents required to be delivered by the Purchaser at or prior to the Closing pursuant to this Agreement or as Sellers' Representative and the Purchaser may mutually agree.

**ARTICLE II**  
**REPRESENTATIONS AND WARRANTIES**  
**OF THE SELLERS AND THE SELLING EQUITYHOLDERS**

Except as set forth in the Disclosure Schedules attached hereto (the "Disclosure Schedules"), each of the Sellers and Selling Equityholders hereby jointly and severally represent and warrant to the Purchaser as of the date of this Agreement that each statement contained in Article II is true and correct:

Section 2.1 Ownership; Good Title; Encumbrances. Each Seller is the record and beneficial owner of, and has good and valid title to, the Equity Interests set forth next to such Seller's name on Schedule 2.1 attached hereto, free and clear of all Encumbrances, and there are no restrictions on the Seller's right to transfer the Equity Interests to the Purchaser pursuant to this Agreement. Except as set forth in Schedule 2.1 attached hereto, such Seller is not a party to (a) any option, warrant, purchase right or other commitment (other than this Agreement) that could require such Seller or, after the Closing, the Purchaser, to sell, transfer or otherwise dispose of any of the Equity Interests, or (b) any voting trust, proxy or other agreement or understanding with respect to the voting of any of the Equity Interests. Assuming the Purchaser has the requisite power and authority to be the lawful respective owner of the Equity Interests, upon delivery to the Purchaser at the Closing of the Membership Interest Assignment Agreement and Stock Powers duly executed by the Sellers, and the Purchaser's payment of the Purchase Price, good and valid title to the Equity Interests of such Seller shall pass to the Purchaser, free and clear of any Encumbrances other than those arising from acts of the Purchaser.

Section 2.2 Organization; Standing; Qualification and Power. Each of the Companies is duly organized, validly existing and in good standing (in such jurisdictions where such status is recognized) under the Laws of the jurisdiction of its organization. Each of the Companies has all entity power and authority necessary to lease or operate the properties and assets owned, leased or operated by it and to carry on its business as currently conducted. Each of the Companies is qualified or licensed to do business in each jurisdiction in which ownership of its property or assets or the conduct of its business requires such qualification or license, except where the failure to be so qualified or licensed would not reasonably be expected to have a Material Adverse Effect. True and complete copies of the articles of incorporation, articles of organization, bylaws, operating agreement, or other comparable governing documents of each of the Companies, as in effect as of the date hereof, have been made available to the Purchaser. Schedule 2.2 sets forth a true and correct list of all directors, managers and officers of each of the Companies.



Section 2.3 Authority; Execution and Delivery; Enforceability. Each of the Sellers has all requisite power and authority to execute and deliver this Agreement and each of the Related Documents to which such Seller is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery by each of the Sellers of this Agreement has been, and in the case of the Related Documents to which such Seller will be a party will be when delivered, and the consummation of the transactions contemplated hereby has been, and the consummation of the transactions contemplated by the Related Documents to which such Seller will be a party will be when delivered, duly authorized by all requisite action on the part of such Seller. This Agreement has been, and upon its execution and delivery each of the Related Documents to which such Seller will be a party will be, duly and validly executed and delivered by such Seller. This Agreement constitutes, and upon its execution and delivery each of the Related Documents to which such Seller will be a party will constitute, assuming that this Agreement and each of the Related Documents to which the Purchaser will be a party have been duly authorized, executed and delivered by the Purchaser, a valid and binding obligation of such Seller, enforceable against such Seller in accordance with its terms, in each case subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally and subject to general principles of equity (regardless of whether enforceability is considered in a proceeding at law or equity).

Section 2.4 Capitalization.

(a) All of the Equity Interests are validly issued, fully paid and non-assessable. Except as set forth on Schedule 2.4(a), there are no outstanding (i) securities convertible into or exchangeable for shares or membership or other ownership interests of each of the Companies, (ii) options, warrants, calls or other rights to purchase or subscribe for shares or membership or other ownership interests of each of the Companies or (iii) Contracts of any kind to which either of the Companies is subject or bound requiring the issuance after the date hereof of (A) any shares or membership or other ownership interests of each of the Companies, (B) any convertible or exchangeable security of the type referred to in clause (i) or (C) any options, warrants, calls or other rights of the type referred to in clause (ii).

(b) Schedule 2.4(b) sets forth a complete list, as of the date hereof, of the authorized and issued and outstanding equity interests of each of the Companies and the record holders thereof. As of the date hereof, all equity interest of each of the shareholders or members of each of the Companies are duly authorized, validly issued, fully paid, non-assessable and free of preemptive rights and free and clear of any Encumbrances. Except as set forth on Schedule 2.4(b), as of the date hereof, each of the Companies does not own, directly or indirectly, any capital stock, membership interest, partnership interest, joint venture interest or other equity interest in any Person, and each of the Companies is not subject to any obligation or requirement to provide for or make any investment in any Person. Each of the Companies is not the subject of any bankruptcy, dissolution, liquidation, reorganization or similar Proceeding. There are no obligations, contingent or otherwise, of either of the Companies to repurchase, redeem or otherwise acquire any equity interests of either of the Companies. Each of the Companies is not subject to any obligation or requirement to provide funds to or make any investment (in the form of a loan, capital contribution or otherwise) in any subsidiary or any other Person.

(c) Except as set forth on Schedule 2.4(c), there are no voting trusts, proxies or other agreements or understandings to which either of the Companies is bound with respect to voting of any equity interests of either of the Companies.

(d) Except as set forth on Schedule 2.4(d), there are no stock appreciation rights, phantom stock, profit participation, stock-based performance units, or other rights, Contracts or obligations of any character (contingent or otherwise) pursuant to which any Person is or may be entitled to receive any payment or other value based on the revenues, earnings or financial performance, Equity Interest price performance or other attribute of either of the Companies or its business or assets or calculated in accordance therewith. Except as set forth on Schedule 2.4(d), neither of the Companies has adopted, and no member, manager, or officer or director of either of the Companies has ever taken any action with respect to, any stock option plan, equity incentive plan, phantom plan or other Benefit Plan entitling any current or former employees or Contractors or other personnel to receive any payment or other value based on the revenues, earnings or financial performance, Equity Interest price performance or other attribute of either of the Companies or its business or assets or calculated in accordance therewith.

Section 2.5 No Conflict; Consents.

(a) Except as set forth on Schedule 2.5(a), as of the date hereof, the execution, delivery and performance of this Agreement by each of the Sellers, and the consummation by such Seller of the transactions contemplated hereby, will not, (i) violate any provision of the organizational documents of either of the Companies, (ii) result in a violation or breach of, or constitute (with or without the giving of notice, the lapse of time or both) a default (or give rise to any right of termination or cancellation of obligations or acceleration of any obligation or to loss of a benefit) under, any Material Contract to which either of the Companies or by which either of the Companies or any of its respective properties or assets are bound or (iii) assuming that all filings, registrations and notifications have been made as contemplated by Section 2.5(b) and/or Section 3.3(b) (collectively, the “Required Actions”), violate any Law applicable to either of the Companies or by which any of its respective properties or assets are bound, other than, in the case of clauses (ii) and (iii) above, any such violations, breaches, defaults, or rights of termination or cancellation of obligations which would not, individually or in the aggregate, result in a material fine, penalty or expense or materially affect the ability of either of the Companies to conduct its business as currently conducted.

(b) Except for the consents, waivers, approvals, authorizations, filings, registrations or notifications set forth on Schedule 2.5(b) (the “Required Consents”), as of the date hereof, the execution, delivery and performance of this Agreement by each of the Sellers, and the consummation by such Seller of the transactions contemplated hereby, will not require any consent, waiver, approval, or authorization, or filing or registration with or notification (“Authorization”) to, any Governmental Authority or other Person except for: (i) any facts or circumstances related to the Purchaser; and (ii) such consents, waivers, approvals, authorizations, Permits, filings, registrations or notifications from Persons other than any Governmental Authority which, if not made or obtained, would not reasonably be expected to result in a material expense or materially affect the ability of each of the Companies to conduct its business as currently conducted or prevent or materially impair or delay the Sellers’ ability to consummate the transactions contemplated hereby.

Section 2.6 Financial Statements.

(a) Except as set forth in Schedule 2.6(a), true and complete copies of the following have been provided to the Purchaser: (i) the unaudited combined balance sheets of the Companies as of December 31, 2017 and December 31, 2018, and the unaudited combined statements of operations, changes in shareholders' or members' equity and cash flows of the Companies as of December 31, 2017 and December 31, 2018, together with all related notes and schedules thereto (the "Annual Financial Statements") and (ii) the unaudited combined balance sheet of the Companies for the fiscal quarter ended March 31, 2019, and the related unaudited statements of operations, changes in members' equity and cash flows for such periods, respectively (the "Interim Financial Statements" and, together with the Annual Financial Statements, the "Financial Statements").

(b) Except as set forth in the Financial Statements (including the notes thereto) or on Schedule 2.6(b), as of the date hereof, the Financial Statements (i) have been prepared in accordance with GAAP consistently applied during the periods involved (subject, in the case of the Interim Financial Statements, to normal adjustments which will not be material in nature or amount to each of the Companies taken as a whole) and (ii) fairly present, in all material respects, the financial position and the results of operations and cash flows of each of the Companies as of the dates and for the periods indicated therein (subject, in the case of Interim Financial Statements, to normal adjustments which will not be material in nature or amount to each of the Companies taken as a whole).

Section 2.7 No Undisclosed Liabilities; Funded Indebtedness.

(a) Except as set forth on Schedule 2.7(a), there are no Liabilities of the nature required to be disclosed in a balance sheet prepared in accordance with GAAP, of either of the Companies other than any such Liabilities (i) reflected in, reserved against or otherwise disclosed in the Financial Statements or the notes thereto, (ii) incurred since the date of the Interim Financial Statements in the ordinary course of business of each of the Companies consistent with past practice (none of which relates to any breach of Contract, breach of warranty, tort, infringement or violation of Law or arises out of any Proceeding), (iii) expressly disclosed in the Disclosure Schedules, or (iv) arising out of the performance (but not the breach) of the Material Contracts.

(b) Schedule 2.7(b) sets forth a correct and complete list of the individual components (indicating the amount and the Person to whom such Funded Indebtedness is owed) of all Funded Indebtedness with respect to each of the Companies as of the date hereof.

Section 2.8 Absence of Certain Changes. Except as set forth on Schedule 2.8, as contemplated by this Agreement or any of the Related Documents, since the date of the Interim Financial Statements until the date of this Agreement:

(a) there has been no Material Adverse Effect and no event has occurred or circumstance has arisen that, in combination with any other events or circumstances, could reasonably be expected to have or result in a Material Adverse Effect;

(b) each of the Companies has conducted its businesses in the ordinary course of business;

(c) each of the Companies has not cancelled any material debts or claims or waived any rights of material value;

(d) each of the Companies has not suffered any theft, damage, destruction or loss of or to any property or properties owned or used by it, whether or not covered by insurance, which would, individually or in the aggregate, materially impair the ability of each of the Companies to operate in the ordinary course of business;

(e) each of the Companies has not made or granted any bonus or any wage, salary or compensation increase or severance or termination payment to, or promoted, any director, officer, employee, group of employees or consultant, or entered into any employment contract or hired any employee other than bonuses, compensation increases, promotions or new hires in the ordinary course of business;

(f) each of the Companies has not sold, licensed, assigned, transferred, mortgaged, pledged or subjected to any Encumbrance any of its assets or properties (tangible or intangible), except for Permitted Encumbrances or sales or licenses in the ordinary course of business consistent with past practice;

(g) each of the Companies has not made any change in accounting principles or methods (other than actions required to be taken by GAAP), or in the manner of keeping books, accounts and records of each of the Companies which is, or may be, inconsistent with the principles or methodology by which the Financial Statements have been prepared;

(h) each of the Companies has not made, changed or rescinded any Tax election, adopted or changed any annual accounting period or any accounting method with respect to Taxes, filed any amended Tax Return, entered into any closing agreement, settlement or compromise of any proceeding with respect to any Tax claim or assessment, surrendered any right to claim a refund of Taxes, consented to any extension or waiver of the limitation period applicable to any Tax claim or assessment or taken any other similar action relating to the filing of any Tax Return or the payment of any Tax;

(i) each of the Companies has not made or granted any increase in benefits payable under any Benefit Plan, amended or terminated any Benefit Plan or adopted any new Benefit Plan;

(j) there has been no amendment or modification, waiver or express termination of any Material Contract, other than any expiration of a Material Contract in accordance with its terms or any amendment, modification or waiver that has been delivered to Purchaser prior to the date hereof;

(k) there has been no settlement, or offer or proposal to settle, any Proceeding involving or against either of the Companies or any of their respective officers, managers, managing members, members, assets or properties, or that relates to the transactions contemplated hereby; and

(l) each of the Companies has not agreed to do any of the foregoing.

Section 2.9 Compliance with Law; Permits.

(a) Each of the Companies is, and has been at all times since January 1, 2016, in compliance with all Laws applicable to each of the respective Companies, except (i) as set forth on Schedule 2.9(a) or (ii) for such instances of non-compliance which would not, individually or in the aggregate, result in a material fine, penalty or expense or materially affect the ability of either of the Companies to conduct its business as currently conducted. Except where the failure to do so would individually or in the aggregate not have a Material Adverse Effect, each of the Companies has not received any written notice of any non-compliance or investigation relating to any violation or threat to be charged with any non-compliance of any Law except for such instances of non-compliance which would not, individually or in the aggregate, be reasonably expected to result in a fine, penalty or expense or affect the ability of either of the Companies to conduct its business as currently conducted.

(b) Each of the Companies has the Permits set forth on Schedule 2.9(b) as of the date hereof, which constitute all of the Permits necessary for the conduct of the Business as now being conducted by each of the respective Companies. All such Permits are valid and in effect, and all fees and charges with respect to such Permits as of the date hereof have been paid in full. As of the date hereof, no Proceedings are pending or, to the Knowledge of the Sellers, threatened to revoke, suspend or cancel any such Permit. Subject to receipt of the Required Consents (as applicable), none of the Permits of either of the Companies will be terminated, revoked, suspended or canceled by the transactions contemplated hereby or the Related Documents.

Section 2.10 Litigation.

(a) Except as set forth on Schedule 2.10(a)(i), as of the date hereof, there is no Proceeding pending against either of the Companies or otherwise directly involving any of their assets. Except as set forth on Schedule 2.10(a)(ii), to the Knowledge of the Sellers, there is no Proceeding threatened against either of the Companies or any of its Business or assets that (i) involves a claim in excess of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) or (ii) involves a claim for an unspecified amount which would have a Material Adverse Effect.

(b) Except as set forth on Schedule 2.10(b)(i), Since January 1, 2016, there has been no Proceeding against either of the Companies or otherwise directly involving any of their assets that (i) resulted in either of the Companies incurring any fine, penalty or expense in excess of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00), (ii) resulted in the grant of any injunctive relief or any orders, writs, judgments, injunctions, decrees, rulings, verdict, awards, settlement agreements or similar orders (“Order”) imposing any obligation on either of the Companies which has not been fully performed or discharged or (iii) which had or is reasonably expected to have a Material Adverse Effect. To the Knowledge of the Sellers, there has been no occurrence of any fact, circumstance or condition that could reasonably be expected to result in any Proceeding affecting the ability of either of the Companies to conduct its business as currently conducted or with a potential exposure to either of the Companies of any fine, penalty or expense which would or could reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 2.10(b)(ii), to the Knowledge of the Sellers, there are no outstanding Order by which either of the Companies or any of its assets or properties are subject to or bound, in respect of Proceedings required to be disclosed in Schedule 2.10(b)(i).

(c) Except as set forth on Schedule 2.10(c), there is no Proceeding by either of the Companies pending or that either of the Companies intends to initiate.

Section 2.11 Employee Matters.

(a) Schedule 2.11(a) sets forth a complete and accurate list of each Benefit Plan. The Sellers have made available to the Purchaser, with respect to each Benefit Plan, (i) a true and complete copy of each writing constituting a part of such Benefit Plan (and where no such copy exists, an accurate description thereof); (ii) where applicable, a copy of any trust agreement, insurance policy or other funding arrangement; (iii) in the case of any Benefit Plan subject to ERISA, a copy of any current summary plan description and summaries of material modifications; and (iv) in the case of a Benefit Plan that is intended to be qualified under Section 401(a) of the Code (a “Qualified Benefit Plan”), a copy of the most recent determination letter from the IRS or, if the Benefit Plan is in the form of a volume submitter or prototype plan, an opinion letter from the IRS to the volume submitter or prototype practitioner that the Benefit Plan may rely on; and (v) in the case of a Benefit Plan for which a Form 5500 or Form 5500-SF is required to be filed, of copy of the three (3) most recently filed Forms 5500 and Forms 5500-SF, respectively, with schedules and financial statements attached.

(b) Except as set forth on Schedule 2.11(b), each Benefit Plan that is maintained, sponsored, contributed to, or required to be contributed to by either of the Companies primarily for the benefit of Company Employees, managers, Contractors or consultants (A) is, and has been at all times established, maintained, funded, operated and administered, and each of the Companies has performed all of its obligations under each Benefit Plan, in material compliance with its terms and applicable Laws, including applicable provisions of ERISA and the Code, and (B) that is a Qualified Benefit Plan is in the form of a volume submitter or prototype plan and can rely on an opinion letter from the IRS to the volume submitter or prototype plan sponsor, to the effect that the form of such Qualified Benefit Plan document is so qualified and that the plan and the trust related thereto are exempt from federal income Taxes under Sections 401(a) and 501(a), respectively, of the Code and, to the Knowledge of the Sellers, nothing has occurred that could reasonably be expected to cause the revocation of such determination letter or the unavailability of reliance on such opinion or otherwise would affect the qualification of such Qualified Benefit Plan. All benefits, contributions and premiums required by and due under the terms of each Benefit Plan or applicable Laws have been timely made or paid in accordance with the terms of such Benefit Plan, applicable Laws and GAAP. All returns, reports and filings required by any Governmental Authority or which must be furnished to any Person with respect to each Benefit Plan have been timely filed or furnished. To the Knowledge of the Sellers, no event has occurred and no condition exists that would subject either of the Companies by reason of its affiliation with any member of its “controlled group” (defined as any organization that is a member of a controlled group of organizations within the meaning of Sections 414(b), (c), (m) or (o) of the Code) to any material Tax, fine, lien, penalty or other Liability imposed by ERISA, the Code or other applicable Law.

(c) Except as set forth on Schedule 2.11(c), neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement (either alone or in conjunction with any other event, such as termination of employment) (i) will result in any payment becoming due to any Company Employee, manager, Contractor or consultant under any Benefit Plan; (ii) will increase any benefits to Company Employees, directors, managers, Contractors or consultants otherwise payable under any Benefit Plan; (iii) will result in any acceleration of the time of payment, funding or vesting of any such benefits to Company Employees, managers, Contractors or consultants under any Benefit Plan; (iv) could reasonably be expected to result in an obligation to materially accelerate the funding of, or contribution to any, Benefit Plan pursuant to applicable Law, regulation, contractual arrangement or otherwise; or (v) limit or restrict the ability of the Purchaser and their Affiliates to merge, amend or terminate any Benefit Plan. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will result in “excess parachute payments” within the meaning of Section 280G(b) of the Code.

(d) Except as set forth on Schedule 2.11(d), no Benefit Plan provides benefits, including death or medical benefits (whether or not insured), with respect to current or former Company Employees beyond their retirement or other termination of service, other than coverage mandated by Part 6 of Subtitle B of Title I of ERISA or Section 4980B of the Code or any similar state Law.

(e) Except as set forth on Schedule 2.11(e), neither the Companies nor any member of either of the Companies’ “controlled group” currently, or has ever in the past, maintained, sponsored, contributed to, or had any Liability under a “defined benefit plan” as defined in Section 3(35) of ERISA or any similar Law of any jurisdiction other than the United States, or a pension plan subject to the funding standards of Section 302 of ERISA or Section 412 of the Code. Neither the Companies nor any member of either of the Companies’ “controlled group” does currently or has ever in the past maintained, sponsored, contributed to, or had any Liability under a “multiemployer plan” as defined in Section 3(37) of ERISA or a “multiple employer plan” within the meaning of Section 210(a) of ERISA or Section 413(c) of the Code. Neither the Companies nor any member of either of the Companies’ “controlled group” has engaged in a transaction to which Section 4069 or Section 4212(c) of ERISA would apply.

(f) Each Benefit Plan that is subject to Section 409A of the Code has been administered in material compliance with its terms and the operational and documentary requirements of Section 409A of the Code and all applicable regulatory guidance (including notices, rulings and proposed and final regulations) thereunder. Each of the Companies does not have any obligation to gross up, indemnify or otherwise reimburse any individual for any excise Taxes, interest or penalties incurred pursuant to Section 409A of the Code.

(g) Other than routine claims for benefits submitted by participants or beneficiaries, no claim against, or Proceeding involving, either of the Companies or any fiduciary thereof is pending or, to the Knowledge of the Sellers, is threatened, which could reasonably be expected to result in any material Liability, direct or indirect (by indemnification or otherwise) of either of the Companies to any Person, and, to the Knowledge of Sellers, no event has occurred or circumstance exists that may give rise to any such Liability.

(h) Except as set forth on Schedule 2.11(h), with respect to each of the Company Employees and/or, if applicable, Contractors, (i) within the last three (3) years, there has been no, nor, to the Knowledge of the Sellers, has there been any threat of a, strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor activity or dispute; (ii) neither one of the Companies is a party to any collective bargaining agreement or other agreement (including without limitation written or oral letters of intent, side bar letters, or other agreements) with a labor or trade organization, and no labor union or similar organization currently represents the employees of either of the Companies; and (iii) neither one of the Companies has, in the last ninety (90) days, effectuated a “plant closing” or “mass layoff” as those terms are defined in WARN, without complying with the notice requirements and other provisions of WARN which would cause any material Liability to either of the Companies with respect to each of the Company Employees.

(i) All of the employees of each of the Companies are “at will” employees. To the Knowledge of Sellers, there are no facts that would indicate that the Contractors or any of the employees set forth on Schedule 2.11(i)(a) will not continue in the employ of or other relationship with each of the respective Companies after the Closing. Each of the Companies: (i) has properly classified all individuals providing services to its respective Company as Contractors (including proper classification as dependent or independent, to the extent applicable) or employees, as the case may be; and (ii) has been in compliance in all material respects with all applicable Laws pertaining to employment and employment practices to the extent they relate to the Company Employees or Contractors. Except as accrued as a current liability on the Interim Financial Statements, all wages, bonuses, unpaid vacation pay, and other compensation, if any, due and payable as of the Closing Date to all present Company Employees and Contractors of each of the Companies have been paid in full, or will be paid in full, to such Company Employees and Contractors prior to the Closing. Except as set forth on Schedule 2.11(i)(b), there are no actions, suits, claims, investigations, internal grievance procedures, or other legal proceedings against either of the Companies pending, or to the Knowledge of the Sellers, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment of any current or former Company Employee or Contractor, including, without limitation, any claim relating to unfair labor practices, common or related employer, employment discrimination, harassment, retaliation, equal pay, wage and hour law violations or any other employment related matter arising under applicable Laws, except for such actions, suits, claims, investigations, internal grievance procedures, or other legal proceedings which would not, individually or in the aggregate, result in a material fine, penalty or expense or materially affect the ability of either of the Companies to conduct its business as currently conducted.

(j) Each of the Companies has paid in full all amounts due and owing under all applicable workers’ compensation, occupational health and safety and other similar Law in all jurisdictions in which it does Business including current employer contributions, assessments and filings, experience rating surcharges, payroll premiums, non-compliance charges, contributions or any other amounts. Each of the Companies has not been subject to any special or penalty assessment or surcharge, including but not limited to, experience rating surcharges under such Laws, and there are no circumstances that would permit or result in a special or penalty assessment or surcharge under such Laws or the applicable experience rating plan or program.



(k) To the Knowledge of the Sellers, each of the Companies, and staffing or employment agencies that each member respectively uses for which each of the Companies may have joint employer liability, are in compliance with all applicable Laws including the common law relating to the employment of labor, including labor and employment practices, terms and conditions of employment, wages and hours, overtime payments, rest and meal breaks, FLSA and FMLA compliance, recordkeeping, non-discrimination, pay equity, labor relations, privacy, disability accommodation, employee leave, payroll documents, record retention, equal opportunity, immigration, occupational health and safety, severance, termination or discharge, the payment of employee welfare and retirement benefits, and employment insurance including the full payment of all required social security contributions and Taxes. To the Knowledge of the Sellers, each employee and Contractor of each of the Companies is lawfully authorized to work in the country in which the employee or Contractor is working.

(l) Each Benefit Plan that is subject to Section 4980H of the Code has been administered in compliance with Section 4980H of the Code and all applicable regulatory guidance (including notices, rulings, and proposed and final regulations) thereunder and maintained by each Seller so that the Seller would not be subject to any assessable payments under Section 4980H of the Code.

Section 2.12 Taxes. Except as set forth on Schedule 2.12, (i) all Tax Returns required to be filed by or on behalf of each of the Companies have been duly and timely filed with the appropriate Tax Authority (after giving effect to any valid extensions of time in which to make such filings); (ii) such Tax Returns are true and complete in all material respects; (iii) all Taxes of each of the Companies have been fully and timely paid when due; (iv) the unpaid Taxes of each of the Companies (A) did not exceed any payable or liability for Taxes plus any reserve for Tax liability (other than a reserve for deferred Taxes) in each case as set forth on the face of the Financial Statements (rather than in any notes thereto) and (B) do not exceed any such payable or liability for Taxes plus any such reserve as adjusted for the passage of time from the date of the relevant Financial Statement through the Closing Date in accordance with the past custom and practice of each of the Companies; (v) each of the Companies has not waived any statute of limitations in respect of income Taxes or any other material Tax or agreed to any extension of time with respect to any Tax assessment or deficiency, which waiver or extension remains open; (vi) each of the Companies has complied in all material respects with all applicable Laws relating to the collection, withholding or remittance of Taxes; (vii) each of the Companies has not been a member of a combined, consolidated, affiliated or unitary group for Tax filing purposes; (viii) each of the Companies is a not party to any Tax allocation or sharing agreement; (ix) to the Knowledge of the Sellers, no material claim has been made by any Tax Authority in a jurisdiction in which each of the Companies does not file Tax Returns that any such Person is or may be subject to taxation by that jurisdiction; (x) each of the Companies is not a resident for Tax purposes, or has any operations, outside the jurisdiction in which it was originally organized or has ever been resident for Tax purposes, engaged in a trade or business or maintained a “permanent establishment” (within the meaning of the applicable Tax conventions) outside such jurisdiction; (xi) each of the Companies has not engaged in any “reportable transaction” or “listed transaction” as defined in Treasury Regulations § 1.6011-4(b); (xii) there are no investigations, audits, actions or proceedings currently pending or threatened against either of the Companies by any Tax Authority for the assessment or collection of Taxes, no claim for the assessment or collection of Taxes has been asserted against each of the Companies, and there are no matters under discussion, audit or appeal between each of the Companies and any Tax Authority with respect to the assessment or collection of Taxes; (xiii) there are no Tax liens on any of the assets of either of the Companies other than Permitted Encumbrances; (xiv) no power of attorney has been granted by or with respect to either of the Companies with respect to any matter relating to Taxes; (xv) each of the Companies will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any (A) change in method of accounting, or use of an improper method of accounting, for any taxable period ending on or prior to the Closing Date; (B) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign income Tax law) executed on or prior to the Closing Date; (C) intercompany transactions or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provisions of state, local or foreign income Tax law) attributable to a transaction or event entered into on or before the Closing Date; (D) installment sale or open transaction disposition made on or prior to the Closing Date; or (E) prepaid amount or deferred revenue received on or prior to the Closing Date; (xvi) each of the Companies is not a party to, or bound by, any Tax indemnity, Tax sharing, Tax allocation or similar agreement relating to allocating, indemnification or sharing the payment of, or liability for, Taxes under which any such member would reasonably be expected to be liable after the Closing Date for the Tax liability of any Person or is subject to any action or proceeding of a Governmental Authority imposing on any such member any obligations or liabilities with respect to another Person’s Taxes; (xvii) no Company is a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A) (ii) of the Code and Purchaser is not required to withhold tax on the purchase of the Equity Interests by reason of Section 1445 of the Code; (xviii) no Seller or Selling Equityholder is a “foreign person” within the meaning of Section 1445 of the Code; (xix) no Company has agreed or is required to make any adjustment under Section 481(a) of the Code by reason of a change in accounting method or otherwise; (xx) since its formation, Orthex has at all times been properly classified as a partnership for U.S. federal income tax purposes (and for any applicable state and local income tax purposes) and will be so classified at all times prior to the Closing; (xxi) Vilex has been a validly electing subchapter S corporation within the meaning of Sections 1361 and 1362 of the Code at all times during its existence and Vilex will be a subchapter S corporation up to and including the day before the Closing Date; and (xxii) Vilex has no potential liability for any Tax under Sections 1374 or 1375 of the Code.

Section 2.13 Real Property.

(a) Schedule 2.13(a) sets forth a true and complete list, as of the date hereof, of all Real Property and interests in Real Property leased, subleased, licensed or otherwise used by either of the Companies (individually, a “Real Property Lease” and, collectively, the “Real Property Leases”). True, correct and complete copies of the Real Property Leases have been delivered to the Purchaser. The Real Property comprises all real property used by the Companies in the conduct of the Business. There are no Encumbrances other than the Permitted Encumbrances against each of the Companies’ interest in the Real Property. To the Knowledge of the Sellers, each of the Companies does not have any current or future capital expenditure obligations under any of the Real Property Leases that, individually or in the aggregate, exceed Twenty Five Thousand and 00/100 Dollars (\$25,000.00). Each of the Companies does not currently own and has not previously owned any Real Property. To the Knowledge of the Sellers, neither the Real Property nor the use by either of the Companies of the Real Property is in violation of any applicable Laws.

(b) To the Knowledge of the Sellers, as of the date hereof, (i) each Real Property Lease is in full force and effect, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors’ rights and remedies generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity) and (ii) neither landlord nor tenant under any of the Real Property Leases is in default thereunder in any material respect.

Section 2.14 Intellectual Property.

(a) Schedule 2.14(a) sets forth a true and complete list, as of the date hereof, of each of the following items of Intellectual Property of the Companies, and sets forth whether such Intellectual Property is owned or licensed, and the owner, licensor, and licensee, as applicable, of such Intellectual Property: trade names, trademarks, service marks, trade dress, and logos, whether or not registered, and all registrations of and applications therefor; registered copyrights and applications therefor; patents and applications therefor; domain names and registrations thereof; and social media accounts.

(b) Schedule 2.14(b) sets forth a true and complete list, as of the date hereof, of all Software (indicating part number and current version number) included in the Company Software, including whether such Company Software is owned or licensed, and the owner, licensor, and licensee, as applicable, of such Company Software.

(c) Schedule 2.14(c) sets forth a true and complete list, as of the date hereof, of all agreements (whether written or oral) relating to Intellectual Property or Software (including Company Software) to which either of the Companies is a party or is otherwise obligated, including any agreement by which either of the Companies (i) has licensed any Person under any Company Owned Intellectual Property or sublicensed any Person under any Intellectual Property owned by another Person, (such agreement, a “Company Intellectual Property License”) or (ii) is licensed under any Intellectual Property owned by another Person (a “Third Party Intellectual Property”; such agreement, a “Third Party Intellectual Property License”). The parties acknowledge and agree that Schedule 2.14(c) does not contain, and the Companies are not obligated to list or disclose, the following agreements relating to Intellectual Property or Software, provided that such Intellectual Property or Software is not utilized with a Product or Service, where either of the Companies is the licensee: (x) those agreements relating to non-customized “off-the-shelf” Software in a version that its licensor makes generally available to its customers and which any of the Companies uses pursuant to a standard shrink-wrap license agreement and (y) those agreements relating to non-customized online-delivered or online-accessible Software in a version that its licensor makes generally available to its customers and which any of the Companies uses pursuant to a standard click-wrap license agreement.

(d) The Companies, as applicable, are the owners of the entire right, title, and interest in and to the Company Owned Intellectual Property, free and clear of all Encumbrances, except for the Permitted Encumbrances. To the Knowledge of the Sellers, each of the Companies has the right to use and otherwise exploit all Intellectual Property used in or materially necessary for operations or conduct of the business of such respective Company (as such operations and businesses are currently conducted) or are necessary for the Products and Services, and, to the Knowledge of the Sellers, each of the Companies shall continue to have such rights after the Closing. Without limiting the generality of the foregoing, to the Knowledge of the Sellers, each of the Companies owns or has the right to exploit, and after Closing will continue to own or have the right to exploit, the Company Software in the same manner and to the same extent as it was used prior to the Closing by each respective Company, subject to obtaining the Required Consents.

(e) To the Knowledge of the Sellers, the Company Owned Intellectual Property is valid and enforceable. The Company Owned Intellectual Property has not been adjudged invalid or unenforceable in whole or in part. Except as set forth on Schedule 2.14(e), no claim, demand or notice has been made or given in writing, and no proceeding is pending or, to the Sellers' Knowledge, threatened, (i) contesting or challenging the validity, enforceability, use or ownership of any of the Company Owned Intellectual Property, or (ii) claiming that either of the Companies is in default under any Third Party Intellectual Property License.

(f) To the Knowledge of the Sellers, as of the date hereof (i) none of the Products or Services, nor any technology or materials used in connection therewith, including Company Owned Software, infringes upon, misappropriates or violates any Intellectual Property of any Person and (ii) no Person is infringing, misappropriating or violating the Company Owned Intellectual Property.

(g) To the Seller's Knowledge, each of the Companies has taken reasonable care, including reasonable steps, to protect such respective Company's rights in Confidential Information and trade secrets and to protect the Confidential Information and trade secrets of others who have provided such Confidential Information and trade secrets to Representatives of such respective Company in confidence. Except as set forth on Schedule 2.14(g)(i), all current and former Representatives and Contractors of Orthex who have had access to and developed Intellectual Property owned by or licensed to Orthex have executed written instruments that assign to Orthex all rights, title and interest in and to any and all (x) inventions, improvements, ideas, discoveries, writings and other works of authorship, and information relating to the Business or any of the Products or Services, and (y) Intellectual Property relating thereto. Except as set forth on Schedule 2.14(g)(ii), all current and former Representatives and Contractors of Vilex who have had access to and developed Intellectual Property owned by or licensed to Vilex have executed written instruments that assign to Vilex all rights, title and interest in and to any and all (x) inventions, improvements, ideas, discoveries, writings and other works of authorship, and information relating to the Business or any of the Products or Services, and (y) Intellectual Property relating thereto.

(h) Each of the Companies has not disclosed and, to the Seller's Knowledge, none of its former or current Representatives, consultants or Contractors has disclosed, any Confidential Information related to the Business, the Intellectual Property of the Companies and/or Company Software to any Person. The source code for all Company Owned Software is in the sole possession and custody of the owner thereof and has not been provided to any third party or any Person. To the Knowledge of the Sellers, there has been no security breach relating to, no violation of any security policy regarding, and no unauthorized access to, each of the Companies' Confidential Information, Company Owned Intellectual Property or Company Owned Software.

(i) Schedule 2.14(i) sets forth a list, as of the date hereof, of all open source software integrated into or used in connection with Company Owned Software. Except as set forth on Schedule 2.14(i), none of the Company Owned Software, to the Sellers' Knowledge, incorporates any Software (in source or object code form) licensed from another party under a license commonly referred to as an open source, free software, copyleft or community source code license (including but not limited to any library or code licensed under the GNU General Public License, GNU Lesser General Public License, Apache Software License, or any other similar license).

(j) No Company Owned Software, to the Sellers' Knowledge, contains any time bomb, virus, worm, Trojan horse, back door, drop dead device, or any other Software that would interfere with its normal operation, would allow circumvention of security controls, or is intended to cause damage to hardware, Software or data. No Company Owned Software contains any known security vulnerabilities which would allow unauthorized access to any of the Companies' computer networks, Intellectual Property, Confidential Information, or other sensitive, confidential, or legally protected information of any of the Companies.

(k) The source code for all Company Owned Software contains reasonably clear and accurate annotations and programmer's comments, and otherwise has been documented in a professional manner that is both: (i) consistent with customary code annotation conventions in the software industry; and (ii) sufficient to independently enable a programmer of reasonable skill and competence to understand, analyze and interpret program logic, correct errors, and improve, enhance, modify and support all of the Company Owned Software.

(l) All Intellectual Property of the Companies, including Company Software has been legally obtained.

Section 2.15 Material Contracts.

- (a) Except as set forth on Schedule 2.15(a), as of the date hereof, each of the Companies is not a party to any Contract:
- (i) relating to any Contract that involves performance of services or delivery of goods or materials by either of the Companies of an amount or value in excess of Fifty Thousand and 00/100 Dollars (\$50,000.00);
  - (ii) relating to any Contract that involves performance of services or delivery of goods or materials to either of the Companies of an amount or value in excess of Fifty Thousand and 00/100 Dollars (\$50,000.00);
  - (iii) relating to any Contract that was not entered into in the ordinary course of business and that involves expenditures or receipts of either of the Companies in excess of Fifty Thousand and 00/100 Dollars (\$50,000.00);
  - (iv) relating to any written employment, consulting or similar arrangements requiring payment by either of the Companies of base annual compensation in excess of Fifty Thousand and 00/100 Dollars (\$50,000.00);
  - (v) with or relating to any staffing agency for the provision of temporary labor, personnel or agency workers to either of the Companies pursuant to which either of the Companies paid more than Fifty Thousand and 00/100 Dollars (\$50,000.00) in the last fiscal year;
  - (vi) relating to any labor union or other employee representative of a group of employees relating to wages, hours and other conditions of employment;
  - (vii) relating to any written warranty, guaranty and/or other similar undertaking with respect to contractual performance extended by either of the Companies other than in the ordinary course of business;
  - (viii) pursuant to which either of the Companies has incurred or committed to incur any Funded Indebtedness;
  - (ix) that by its terms grants an Encumbrance upon any material asset of either of the Companies;
  - (x) that by its terms provides for the sale, assignment, license or other disposition of any material asset or right of either of the Companies, other than in the ordinary course of business, other than any Company Intellectual Property Licenses;
  - (xi) pursuant to which either of the Companies (other than pursuant to a Company Loan) (A) paid more than One Hundred Thousand and 00/100 Dollars (\$100,000.00) in the last fiscal year or (B) received more than One Hundred Thousand and 00/100 Dollars (\$100,000.00) in the last fiscal year and not otherwise listed in any other portion of Schedule 2.15(a);

(xii) that by its terms contains any covenant or provision currently in effect limiting the freedom of either of the Companies from engaging in a line of business or competing in any geographic area;

(xiii) that by its terms grants to either of the Companies the exclusive right to provide Products and Services;

(xiv) pursuant to which either of the Companies is by its terms obligated to make any severance, termination, change in control or similar payment to any current or former Company Employee, officer, director or manager;

(xv) containing covenants or other obligations of a Company pertaining to the non-solicitation of employees, customers or Contractors or granting any Person a right of first refusal, first offer, first negotiation or other exclusivity, requirements, output or “most favored customer” provisions or similar restrictions on the operation or scope of either of the Companies’ business or operations;

(xvi) that is a partnership or joint venture agreement in which either of the Companies participates as a general partner or joint venturer;

(xvii) pursuant to which either of the Companies has advanced or loaned any amount to any of its directors, officers or employees outside the ordinary course of business;

(xviii) with any member, manager or officer of either of the Companies or any Affiliate of the same (other than an employment agreement);

(xix) with any Governmental Authority; or

(xx) any outstanding written legally binding commitment to enter into any agreement of the type described in the foregoing subsections of this Section 2.15(a).

(b) Except as set forth in Schedule 2.15(b), each Contract that is required to be listed in Schedule 2.15(a) (each, a “Material Contract”) is in full force and effect and constitutes the legal, valid and binding obligation of each of the Companies and, to the Knowledge of the Sellers, each other party thereto, enforceable against such party in accordance with its terms, in each case subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors’ rights and remedies generally. Each of the Companies has made available to the Purchaser complete and correct copies of all written Material Contracts, together with all amendments, supplements or modifications thereto. There are no oral Material Contracts. Neither of the Companies nor, to the Knowledge of the Sellers, any other party to any Material Contract, is in breach of, or in default under, such Material Contract, in any material respect. To the Knowledge of the Sellers, as of the date hereof, no party has given any written notice of termination or cancellation of any Material Contract or that it intends to assert a breach of, or seek to terminate or cancel, any Material Contract.

Section 2.16 Insurance.

(a) Schedule 2.16(a) contains a true and complete list, as of the date hereof, of all policies of insurance in force as of the date hereof with respect to the insurance of the properties and Liabilities of each of the Companies and the remaining limits of each policy. To the Knowledge of the Sellers, as of the date hereof, such policies are in full force and effect, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally.

(b) With respect to each policy of insurance listed on Schedule 2.16(a), as of the date hereof, (i) each of the Companies has not received any written notice that it is in material default with respect to any obligations under any such policy or has received any written notice that such policy has been or shall be canceled or terminated, (ii) all premiums are paid up in full or all premium installment payments are current, and (iii) to the Knowledge of the Sellers, no such policy will terminate or lapse by reason of the transactions contemplated by this Agreement. Except as set forth on Schedule 2.16(b), with respect to such policies, from January 1, 2013 until the date of this Agreement, there have not been any Claim(s) (as that term is defined in the respective insurance policies) made against either of the Companies in which the applicable insurer has denied coverage in writing.

Section 2.17 Environmental Matters. Except as set forth on Schedule 2.17:

(a) Each of the Companies is as of the date hereof in compliance in all material respects with all Environmental Laws.

(b) With respect to the Real Property, neither Sellers nor the Companies has received any court order, demand, notice, or other written communication relating to any (i) actual, alleged, or potential violation of or failure to comply with any Environmental Law or (ii) actual or potential Liability resulting from or arising under any Environmental Law or otherwise relating to Hazardous Substances; or (iii) actual or potential Liability with respect to any off-site Environmental Law matter including but not limited to, Hazardous Substances handling, transportation, treatment, storage, management or disposal services facilities or locations used by either of the Companies.

(c) There are no pending or, to the Knowledge of the Sellers, threatened claims against the Sellers or either of the Companies resulting from any Liability or arising under or pursuant to Environmental Law, with respect to, arising from, or affecting any of the Real Property or any other asset owned or used by either of the Companies.

(d) To the Knowledge of the Sellers, there is no Hazardous Substance present on or under the Real Property in material violation of Environmental Law.

(e) To the Knowledge of the Sellers, none of the Real Property contains any (i) above-ground or underground storage tanks or (ii) landfills, surface impoundments, or Hazardous Substance disposal areas.

(f) To the Knowledge of the Sellers, no Hazardous Substances have been transported, discharged, released, spilled or disposed from the Real Property during either of the Companies' occupancy of any Real Property in material violation of any Environmental Law; no Hazardous Substances have been generated, handled, treated, stored, managed or disposed of at, on or under any of the Real Property by either of the Companies during either of such Companies' occupancy of any such Real Property in material violation of any Environmental Law; and there has been no release of Hazardous Substances at or from the Real Property by either of the Companies during either of the Companies' occupancy of any such Real Property, or arising from the operations of any members of either of the Companies in connection with its Real Property during either of such Companies' occupancy of any such Real Property or its Business, in material violation of any Environmental Laws.

(g) The Sellers have delivered to the Purchaser copies (if any) of all reports, studies, analyses, or tests initiated by or on behalf of or in the possession of the Sellers or either of the Companies pertaining to Environmental Laws, including Hazardous Substances on or under the Real Property, or concerning compliance by Sellers or either of the Companies with Environmental Laws.

(h) To the Knowledge of the Sellers, each of the Companies has all Environmental Permits necessary for its operations at each Real Property to comply with all Environmental Laws and is in material compliance with the terms of any such Environmental Permits.

Section 2.18 Title to Assets. Except as set forth on Schedule 2.18, each of the Companies has good and valid title to, or a valid leasehold interest in, all of the properties and assets that are shown as owned or reflected as leased on the Interim Financial Statements and assets acquired by each of the Companies after the date of the Interim Financial Statements, except for properties and assets disposed of in the ordinary course of business since the date of the Interim Financial Statements, free and clear of all Encumbrances other than Permitted Encumbrances. Subject to ordinary wear and tear, all material facilities, machinery, equipment, fixtures, vehicles and other properties owned, leased or used by each of the Companies are in commercially reasonable operating condition and repair and are reasonably fit and usable for the purposes for which they are being used in all material respects. The tangible properties and assets of each of the Companies are adequate and sufficient in all material respects to conduct the Business as currently conducted.

Section 2.19 Related Party Transactions. Except as set forth on Schedule 2.19, neither any Seller, any of the Companies nor any of the foregoing's respective Affiliates or any member, manager or officer of any of the Companies, (a) has, or during the last fiscal year has had, any direct or indirect interest (i) in, or is or during the last fiscal year was a director, manager officer or employee of, any Person that is a client, customer, supplier, lessor, lessee, debtor, creditor or competitor of either of the Companies, except for a passive interest in the securities of a publicly traded company or (ii) in any material property, asset or right that is owned or used by either of the Companies in the conduct of its business or (b) is, or during the last fiscal year has been, a party to any Contract or transaction with either of the Companies.



Section 2.20 Company Loans. Schedule 2.20 sets forth a true, correct and complete list of each Company Loan as of January 1, 2019, the outstanding principal balance thereunder, the name of the Obligor and the final maturity date of such Company Loan.

Section 2.21 Brokers and Finders. Except as set forth on Schedule 2.21, each of the Companies has not employed, nor is it subject to any valid claim of Liability to, any broker, finder, consultant or other intermediary in connection with the transactions contemplated by this Agreement, in each case, for which either the Purchaser or either of the Companies will have Liability following the Closing.

Section 2.22 Inventory. Any Inventory of each of the Companies reflected on the Interim Financial Statements or acquired after the date thereof consist of a quality and quantity usable and saleable within a reasonable period of time in the ordinary course of business consistent with past practice, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established. Any such Inventory is owned by either of the Companies, free and clear of all Encumbrances (except for Permitted Encumbrances), and no Inventory is held by each of the Companies on a consignment basis. Schedule 2.22 includes a list of all Inventory which either of the Companies has consigned with a third party and the physical location and dollar amount of such Inventory. For the avoidance of doubt, Orthex does not own any Inventory.

Section 2.23 Accounts Receivable. Except as set forth on Schedule 2.23, the accounts receivable reflected on the Interim Financial Statements and the accounts receivable to be reflected in the calculation of Preliminary Net Working Capital and Final Net Working Capital (a) have arisen from bona fide transactions entered into by each of the Companies involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; (b) constitute only valid, undisputed claims of each of the Companies not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice. The reserve for bad debts applicable to accounts receivable shown on the Financial Statements or, with respect to accounts receivable arising after the date of the most recent Financial Statements, on the accounting records of each of the Companies, have been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes. For the avoidance of doubt, Orthex does not own any accounts receivable.

Section 2.24 Customers and Suppliers.

(a) Schedule 2.24(a) sets forth (i) an accurate list of the ten (10) largest customers of each of the Companies, taken as a whole, for the most recent fiscal year, as measured by the consideration paid from such customer to each of the Companies and (ii) the amount of consideration paid by each such customer during such periods. Since January 1, 2018, each of the Companies has not received any written notice from any customer required to be listed on Schedule 2.24(a) that such customer (1) has ceased, or intends to cease after the Closing, to use its Products or Services, (2) has otherwise ceased or materially reduced, or intends to otherwise terminate or materially reduce, its relationship with either of the Companies (excluding any reductions in the ordinary course consistent with the customer's past practices) or (3) has requested, or has indicated it intends to request, a material change to the terms or prices at which such customer purchases Products or Services from either of the Companies including, for each of (1), (2), and (3), because of the announcement or pendency of this Agreement or the identity of the Purchaser. To the Knowledge of the Sellers, no customer required to be listed on Schedule 2.24(a) intends to take any action set forth in the preceding sentence.

(b) Schedule 2.24(b) sets forth (i) an accurate list of the ten (10) largest suppliers and/or vendors of each of the Companies, taken as a whole, for the most recent fiscal year, as measured by the consideration paid by each of the Companies to such supplier and/or vendor and (ii) the amount of consideration paid to each such supplier and/or vendor during such period. Since January 1, 2018, each of the Companies has not received any written notice from any supplier and/or vendor required to be listed on Schedule 2.24(b) that such supplier and/or vendor (1) has ceased, or intends to cease, to supply goods or services to either of the Companies or (2) has otherwise terminated or materially reduced, or intends to otherwise terminate or materially reduce, its relationship with either of the Companies, including, for each of (1) and (2), because of the announcement or pendency of this Agreement or the identity of the Purchaser. To the Knowledge of the Sellers, no supplier and/or vendor required to be listed on Schedule 2.24(b) intends to take any action set forth in the preceding sentence.

Section 2.25 Anti-Corruption.

(a) Neither of the Companies, nor any Seller, has taken any action in violation of the U.S. Foreign Corrupt Practices Act of 1977 or any other anti-corruption or anti-bribery Law in any jurisdiction applicable to either of the Companies ("Anticorruption Law"), including offering, paying, authorizing or ratifying any bribe, kickback, or other illicit payment to obtain favorable treatment in securing business or otherwise to obtain special concessions for either of the Companies. Each of the Companies has properly recorded on its Financial Statements and not made any false or fictitious entries in its books and records relating to any offer, payment, promise to pay, or authorization of the payment of any money, gift, promise to give, or authorization of the giving of anything of value, including any bribe, kickback or other illegal payment. Neither of the Companies, nor to the Knowledge of the Sellers, any of its employees, Contractors, or Representatives, are the subject of any allegation, voluntary disclosure, investigation, prosecution or other enforcement action related to any Anticorruption Law.

(b) To the Seller's Knowledge, neither of the Companies, nor any Seller, nor to the Knowledge of the Sellers, any officer, manager, broker or agent acting on behalf of either of the Companies (i) is or has been in violation of any Sanctions or (ii) has conducted any business or has engaged in making or receiving any contribution of goods, services or money to or for the benefit of any Person subject to any Sanctions, or in any country or territory subject to any Sanctions.

Section 2.26 Books and Records. Except as set forth in Schedule 2.26, the books of account and other financial records of each of the Companies, all of which have been made available to the Purchaser to the extent the Purchaser has so requested in writing, are complete and correct, represent actual, bona fide transactions, and have been maintained in accordance with applicable Law in all material respects.

Section 2.27 Bank Accounts; Powers of Attorney. Schedule 2.27 sets forth a list showing the name and address of each bank in which each of the Companies has an account or safe deposit box, the number of any such account or any such box and the names of all Persons authorized to draw thereon or to have access thereto and the names of all Persons holding powers of attorney or other similar authorizations from each of the Companies.

Section 2.28 FDA and Related Matters.

(a) Each of the Companies possesses all Registrations required to conduct its Business as currently conducted. Each such Registration is valid and subsisting in full force and effect. For the avoidance of doubt, Orthex is not required to possess any Registrations. To the Knowledge of the Sellers, as of the date hereof, neither the United States Food and Drug Administration (the “FDA”) nor any comparable Regulatory Authority or Governmental Authority is considering limiting, suspending or revoking any such Registration or changing the marketing classification or labeling of the Products of each of the Companies. To the Knowledge of the Sellers, there is no false or misleading information or material omission in any product application or other submission to the FDA or any comparable Regulatory Authority or Governmental Authority. Except as set forth on Schedule 2.28(a), each of the Companies is in compliance with, and have fulfilled and performed in all material respects their respective obligations under, each such Registration, and, as of the date hereof, to the Knowledge of the Sellers, no event has occurred or condition or state of facts exists which would constitute a breach or default or would cause revocation or termination of any such Registration. To the Knowledge of the Sellers, any third Person that is a manufacturer or contractor for each of the Companies is in compliance with all Registrations insofar as they pertain to the manufacture of product components or Products for each of the Companies.

(b) All Products developed, tested, investigated, produced, manufactured, labeled, distributed, marketed, stored, sold, imported or exported by or on behalf of each of the Companies that are subject to the jurisdiction of the FDA or any comparable Regulatory Authority have been and are being developed, tested, investigated, produced, manufactured, labeled, distributed, marketed, stored, sold, imported and exported, as applicable, in all material respects, in compliance with FDA Laws, and any comparable Laws enforced by any other Regulatory Authority that has jurisdiction over the operations of each of the Companies, including, to the Knowledge of the Sellers, those regarding non-clinical research, clinical research, establishment registration, device listing, pre-market notification, good manufacturing practices, labeling, advertising, record-keeping, device importation and exportation, adverse event reporting and reporting of corrections and removals. Except as set forth on Schedule 2.28(b), to the Knowledge of the Sellers, except as would not be material to each of the Companies, taken as a whole, any third Person that is a manufacturer or Contractor for each of the Companies is in compliance with all FDA Laws or any other applicable Law insofar as they pertain to the manufacture of product components or Products for each of the Companies.

(c) As of the date hereof, there are no Proceedings pending or, to the Knowledge of the Sellers, threatened by or on behalf of any Regulatory Authority that has jurisdiction over the operations of each of the Companies. Except as set forth in Schedule 2.28(c), as of the date hereof, neither of the Companies has received any Form FDA-483, notice of adverse finding, FDA warning letter, notice of violation or “untitled letter,” notice of FDA action for import detention or refusal, or any other notice from the FDA or any other Governmental Authority alleging or asserting noncompliance with any applicable Laws or Registrations. Except as set forth in Schedule 2.28(c), each of the Companies is not subject to any obligation arising under an administrative or regulatory action, FDA inspection, FDA warning letter, FDA notice of violation letter or other notice, response or commitment made to or with the FDA or any comparable Regulatory Authority. Each of the Companies has made all notifications, submissions, responses and reports required by FDA Laws, including any such obligation arising under any administrative or regulatory action, FDA inspection, FDA warning letter, FDA notice of violation letter, or other notice, response, or commitment made to or with the FDA or any comparable Regulatory Authority or Governmental Authority and all such notifications, submissions, responses and reports were true, complete and correct in all material respects as of the date of submission to the FDA or any comparable Regulatory Authority or Governmental Authority. To the Knowledge of the Sellers, as of the date hereof, no basis for liability exists with respect to any such notification, submission, or report.

(d) Except as set forth on Schedule 2.28(d), no Product distributed or sold by or on behalf of either of the Companies has been seized, withdrawn, recalled, detained or subject to a suspension of manufacturing, and as of the date hereof, to the Knowledge of the Sellers, there are no facts or circumstances reasonably likely to cause (i) the seizure, denial, withdrawal, recall, detention, field notification, field correction, safety alert or suspension of manufacturing relating to any such Product; (ii) a change in the labeling of any such Product; or (iii) a termination, seizure, limitation, restriction, modification or suspension of the marketing or distribution (including for commercial, investigational or any other use) of any such Product. As of the date hereof, no Proceedings in the United States or any other jurisdiction seeking the withdrawal, recall, correction, suspension, import detention, seizure or similar action of any such Product are pending or, to the Knowledge of the Sellers, threatened against either of the Companies. As of the date hereof, each of the Companies has not received any notice from a Regulatory Authority or other Governmental Authority that any Product distributed or sold by or on behalf of either of the Companies or any of its Subsidiaries cannot be developed, tested, investigated, produced, manufactured, labeled, distributed, marketed, stored, sold, imported or exported substantially in the manner presently performed or contemplated by or on behalf of either of the Companies.

(e) All preclinical and clinical investigations sponsored or conducted by or on behalf of each of the Companies (Orthex has not sponsored or conducted any preclinical or clinical investigations) have been and are being conducted in material compliance with all applicable Laws and other requirements, including good clinical practices requirements, other FDA Laws, applicable research protocols, corrective action plans, and federal and state laws, rules, regulations relating to patient privacy requirements or restricting the use and disclosure of individually identifiable health information. No clinical trial sponsored or conducted by or on behalf of either of the Companies has been terminated, materially delayed, limited or suspended prior to completion by the FDA, any other applicable Regulatory Authority, or any institutional review board that has or has had jurisdiction over such clinical trial, and neither the FDA nor any other applicable Regulatory Authority, nor any institutional review board that has or has had jurisdiction over a clinical trial conducted or sponsored by or on behalf of either of the Companies, has ordered or commenced, or, to the Knowledge of the Sellers, threatened to initiate, any action to place a clinical hold order on, or otherwise terminate, materially delay, limit, modify or suspend, any proposed or ongoing clinical trial conducted or proposed to be conducted by or on behalf of either of the Companies, or, to the Knowledge of the Sellers, alleged any violation of any FDA Law in connection with any such clinical trial.

Section 2.29 Healthcare and Other Regulatory Compliance.

(a) Neither of the Companies nor any of its officers, managers, managing employees (as such terms are defined in 42 C.F.R. § 1001.2), nor to the Knowledge of the Sellers, any agent (as such term is defined in 42 C.F.R. § 1001.2) of either of the Companies, is a party to, or bound by, any order, individual integrity agreement, corporate integrity agreement or other formal or informal agreement with any Governmental Authority concerning compliance with Federal Health Care Program Laws.

(b) Neither of the Companies nor any of its officers, managers, managing employees (as those terms are defined in 42 C.F.R. § 1001.2), nor to the Knowledge of the Sellers, any agent (as such term is defined in 42 C.F.R. § 1001.2) of either of the Companies (i) has been charged with or convicted of any criminal offense relating to the delivery of an item or service under any Federal Health Care Program; (ii) has been debarred, excluded or suspended from participation in any Federal Health Care Program; (iii) has had a civil monetary penalty assessed against it, him or her under Section 1128A of the Social Security Act of 1935, codified at Title 42, Chapter 7, of the United States Code (the “SSA”); (iv) is currently listed on the U.S. General Services Administration published list of parties excluded from federal procurement programs and non-procurement programs; or (v) is the target or subject of any current or potential investigation relating to any Federal Health Care Program-related offense. “Federal Health Care Program” has the meaning specified in Section 1128B(f) of the SSA and includes the Medicare, Medicaid and TRICARE programs.

(c) Neither of the Companies nor any of its officers, managers, managing employees (as those terms are defined in 42 C.F.R. § 1001.2), nor to the Knowledge of the Sellers, any agent (as such term is defined in 42 C.F.R. § 1001.2) of either of the Companies has engaged in any activity that is in violation of, or is cause for civil or criminal penalties, mandatory or permissive exclusion from a Federal Health Care Program or other administrative sanction under, the federal Medicare or federal or state Medicaid statutes, Section 1128, 1128A, 1128B, 1128C or 1877 of the SSA (42 U.S.C. §§ 1320a-7, 1320a-7a, 1320a-7b, 1320a-7c and 1395nn), the federal TRICARE statute (10 U.S.C. § 1071 et seq.), the civil False Claims Act of 1863 (31 U.S.C. § 3729 et seq.), criminal false claims statutes (e.g., 18 U.S.C. §§ 287 and 1001), the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. § 3801 et seq.), the anti-fraud and related provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) (e.g., 18 U.S.C. §§ 1035 and 1347), the Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h), or related regulations, or any other Laws that govern the health care industry or relationships among health care providers, suppliers, distributors, manufacturers and patients, including all state laws analogous to the foregoing (collectively, “Federal Health Care Program Laws”), including the following:

(i) knowingly and willfully making or causing to be made a false statement or representation of a material fact in any application for any benefit or payment;

(ii) knowingly and willfully making or causing to be made a false statement or representation of a material fact for use in determining rights to any benefit or payment

(iii) knowingly and willfully soliciting, arranging or receiving any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or kind (A) in return for or in connection with referring an individual to a Person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under any Federal Health Care Program; or (B) in return for purchasing, leasing or ordering, or arranging for or recommending purchasing, leasing or ordering, any good, facility, service or item for which payment may be made in whole or in part under any Federal Health Care Program;

(iv) knowingly and willfully offering, arranging or paying any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind, to any Person to induce such Person (A) to refer an individual to a Person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal Health Care Program; or (B) to purchase, lease or order, or arrange for or recommend purchasing, leasing or ordering, any good, facility, service or item for which payment may be made in whole or in part under a Federal Health Care Program unless such offer or payment fully complied with applicable statutory or regulatory safe harbors; and

(v) any other activity that violates any Law relating to prohibiting fraudulent, abusive or unlawful practices connected in any way with the provision of health care items or services or the billing for such items or services provided to a beneficiary of any Federal Health Care Program.

(d) To the Knowledge of the Sellers, no Person has filed or has threatened to file against either of the Companies an action relating to any FDA Law or Federal Health Care Program Law under any federal or state whistleblower statute, including under the False Claims Act of 1863 (31 U.S.C. § 3729 et seq.).

(e) To the Knowledge of the Sellers, each of the Companies is not in violation of the administrative simplification provisions of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, or the regulations contained in 45 C.F.R. Parts 160 and 164 (the “Federal Privacy and Security Regulations”), and each of the Companies has operated its business in compliance in all material respects with all applicable Laws, clinical trial protocols, and contractual or other requirements relating to personal information, medical records and medical or personal information privacy that regulate or limit the maintenance, use, disclosure or transmission of medical records, clinical trial data, patient information or other personal information made available to or collected by either of the Companies in connection with the operation of its business, including the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164 (subparts A and E), the Security Standards at 45 C.F.R. Parts 160 and 164 (subparts A and C) and the Standards for Electronic Transactions and Code Sets at 45 C.F.R. Parts 160 and 162 promulgated under HIPAA. To the Knowledge of the Sellers, each of the Companies is not under investigation by any Governmental Authority for a violation of HIPAA or the Federal Privacy and Security Regulations. Each of the Companies is not a “covered entity” as that term is defined in HIPAA and is not in breach of any “business associate contract,” as described in 45 C.F.R. § 164.504(e). To Sellers’ Knowledge, each of the Companies has been in compliance in all material respects with federal and state data breach Laws. To Sellers’ Knowledge, each of the Companies has entered into a business associate contract where required by 45 C.F.R. § 164.504(e).

(f) To the extent either of the Companies provides to customers or others reimbursement coding or billing advice regarding Products offered for sale by either of the Companies and procedures related thereto, such advice is (i) true, complete and correct in all material respects; (ii) in compliance with Medicare and other Federal Health Care Program Laws; (iii) conforms to the applicable American Medical Association's Current Procedural Terminology (CPT), the International Classification of Disease, Tenth Revision, Clinical Modification (ICD-10-CM) and other applicable coding systems; (iv) includes a disclaimer advising customers to contact individual payers to confirm coding and billing guidelines; and (v) has been independently verified as supporting accurate claims for reimbursement by federal, state and commercial payors.

(g) Except as has not been, and would not reasonably be expected to be, individually or in the aggregate, materially adverse to either of the Companies, taken as a whole, (i) all agreements or other arrangements between either or both of the Companies on the one hand and any physician on the other hand for services are in writing, describe bona fide services required by either or both of the Companies and provide for compensation that is no more than fair market value for such services determined as of the effective date of such agreement, and are in material compliance with the Federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)) ("AKS"); (ii) all agreements or arrangements with health care professionals for services to or investments in either or both of the Companies, directly or indirectly, to which either of the Companies as of the date of this Agreement are listed on Schedule 2.29, including true, complete and correct details as to amounts paid thereunder in 2017, 2018 and 2019; (iii) all payments made and things of value provided by either of the Companies to any health care professional for services rendered by such health care professional have been made at fair market value determined as of the effective date of any such agreement and are in material compliance with AKS; and (iv) all such agreements, arrangements, payments and things of value are in compliance in all material respects with all applicable Laws, including all Federal Health Care Program Laws.

(h) Each of the Companies has timely, accurately, and completely reported all payments and transfers of value made to physicians and teaching hospitals, as required by the Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h) and each of the Companies is in full compliance with all analogous state laws requiring the reporting of financial interactions with health care providers in all material respects.

(i) Each of the Companies and any Person acting on its behalf have complied in all material respects with all applicable privacy laws, all of the Companies' applicable policies and notices, and all of the Companies' contractual obligations regarding the protection, collection, transfer (including cross-border) and handling of personal information. Each of the Companies has not received any notice of any material claims (including notice from third parties acting on its behalf) of, or been subject to any proceedings concerning, the violation of any privacy laws, applicable privacy policies, or contractual commitments with respect to personal information. To the Knowledge of the Sellers, there are no facts or circumstances that could form the basis of any such notice or claim. None of the Companies' publicly-facing statements or notice regarding its collection and treatment of personal information are materially misleading or materially deceptive.

(j) To the Knowledge of the Sellers, there have been no breaches, security incidents, misuse of or unauthorized access to or disclosure of any personal information in the possession or control of either of the Companies or collected, used or processed by or on behalf of either of the Companies and the Companies have not provided or been required to provide any notices to any person in connection with a disclosure of personal information. Each of the Companies has taken commercially reasonable actions to safeguard the data and personal information in its possession and control. Neither of the Companies nor any third party acting at the direction or authorization of either of the Companies has paid (i) any perpetrator of any data breach incident or cyber-attack related to such data breach incident or cyber-attack or (ii) any third party with actual or alleged information about a data breach incident or cyber-attack related to such data breach incident or cyber-attack, pursuant to a request for payment from or on behalf of such perpetrator or third party.

Section 2.30 Product Warranty. To Sellers' Knowledge, each Product manufactured, sold, leased, delivered or distributed (including the featured and functionality offered thereby) or Service provided or rendered by each of the Companies complies in all material respects with all applicable contractual specifications, requirements and covenants and all express and implied warranties made by each of the Companies and is not subject to any term, condition, guaranty, warranty or other indemnity beyond the applicable terms and conditions for such Product or Service, and as of the date hereof, each of the Companies does not have any material liability for replacement, repair or other damages in connection with such Product or Service.

Section 2.31 Investment Intent. Each Seller is acquiring the OrthoPediatrics Stock sold to it for its own account for investment purposes only and not with a view to any public distribution thereof or with any intention of selling, distributing or otherwise disposing of the OrthoPediatrics Stock in a manner that would violate the registration requirements of the Securities Act or any similar provisions of any applicable Law. Each Seller agrees that any OrthoPediatrics Stock may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act and any other applicable securities Laws, except pursuant to an exemption from such registration under the Securities Act and such Laws.

Section 2.32 No Other Representations and Warranties. Except for the representations and warranties contained in this Article II (including the related portions of the Disclosure Schedules), none of Sellers, Selling Equityholders the Companies or any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Sellers, Selling Equityholders or the Companies, including any representation or warranty as to the accuracy or completeness of any information regarding the Companies furnished or made available to Purchaser and its Representatives (including any information, documents or material made available in the Data Room, management presentations or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Companies, or any representation or warranty arising from statute or otherwise in law.



Section 2.33 Independent Investigation. Sellers and the Selling Equityholders have conducted their own independent investigation, review and analysis of the business, results of operations, prospects, condition (financial or otherwise) or assets of the Purchaser, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of Purchaser for such purpose. The Sellers and Selling Equityholders acknowledge and agree that: (a) in making their decision to enter into this Agreement and to consummate the transactions contemplated hereby, each has relied solely upon its own investigation and the express representations and warranties of Purchaser set forth in ARTICLE III of this Agreement (including the related portions of the Disclosure Schedules); and (b) neither the Purchaser nor any other Person has made any representation or warranty as to Purchaser, the OrthoPediatrics Stock or this Agreement, except as expressly set forth in ARTICLE III of this Agreement (including the related portions of the Disclosure Schedules).

### **ARTICLE III REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Except as disclosed in the Purchaser SEC Documents at least five Business Days prior to the date hereof and that is reasonably apparent on the face of such disclosure to be applicable to the representation and warranty set forth herein (other than any disclosures contained or referenced therein under the captions “Risk Factors,” “Forward-Looking Statements,” “Quantitative and Qualitative Disclosures About Market Risk,” and any other disclosures contained or referenced therein of information, factors, or risks that are predictive, cautionary, or forward-looking in nature, the Purchaser hereby represents and warrants to the Sellers, as of the date of this Agreement, that each statement contained in this ARTICLE III is true and correct as it pertains to such Purchaser.

Section 3.1 Incorporation and Authority of the Purchaser. The Purchaser is duly organized, validly existing and in good standing (in such jurisdictions where such status is recognized) under the Laws of the jurisdiction of its organization. The Purchaser has all corporate power and authority necessary to lease or operate the properties and assets owned, leased or operated by it and to carry on its business as currently conducted. The Purchaser is qualified or licensed to do business in each jurisdiction in which ownership of its property or assets or the conduct of its business requires such qualification or license, except where the failure to be so qualified or licensed would not reasonably be expected to have a Purchaser Material Adverse Effect.

Section 3.2 Authority; Execution and Delivery; Enforceability. The Purchaser has all requisite corporate power and authority to execute and deliver this Agreement and each of the Related Documents to which it will be a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery by the Purchaser of this Agreement has been and, in the case of the Related Documents to which it will be a party, will be when delivered, and the consummation of the transactions contemplated hereby has been and the consummation of the transactions contemplated by the Related Documents to which it will be a party will be when delivered, duly authorized by all requisite corporate action on the part of the Purchaser. This Agreement has been, and upon its execution and delivery each of the Related Documents to which the Purchaser will be a party will be, duly and validly executed and delivered by the Purchaser. This Agreement constitutes, and upon its execution and delivery each of the Related Documents to which the Purchaser will be a party will constitute, assuming that this Agreement and each of the Related Documents to which each of the Companies, the Seller’s Representative and/or the Sellers will be a party have been duly authorized, executed and delivered by such Seller’s Representative, the Sellers, and each of the Companies as applicable, a valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms, in each case subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors’ rights and remedies generally and subject to general principles of equity (regardless of whether enforceability is considered in a proceeding at law or equity).

Section 3.3      No Conflict; Consents.

(a)            The execution, delivery and performance of this Agreement by the Purchaser, and the consummation by the Purchaser of the transactions contemplated hereby, will not (i) violate any provision of the certificate of incorporation or by-laws (or other comparable governing documents) of the Purchaser, (ii) result in a violation or breach of, or constitute (with or without the giving of notice, the lapse of time or both) a default (or give rise to any right of termination or cancellation of obligations) under, any of the terms, conditions or provisions of any Contract, to which the Purchaser is a party or by which any of its properties or assets are bound or (iii) assuming that all filings, registrations and notifications have been made as contemplated by Section 2.5(b) and/or Section 3.3(b), violate any Law applicable to such Purchaser or by which any of its properties or assets are bound, other than, in the case of clauses (ii) and (iii) above, any such violations, breaches, defaults, or rights of termination or cancellation of obligations which would not, individually or in the aggregate, result in a material fine, penalty or expense or materially affect the ability of Purchaser to conduct its business as currently conducted.

(b)            Except as set forth on Schedule 3.3(b), the execution, delivery and performance of this Agreement by the Purchaser, and the consummation by the Purchaser of the transactions contemplated hereby, will not require any consent, waiver, approval, authorization or other Permit of, or filing or registration with or notification to, any Governmental Authority, except for (i) as may be required as a result of any facts or circumstances related to the Sellers, the Seller's Representative or each of the Companies and (ii) such consents, waivers, approvals, authorizations, Permits, filings, registrations or notifications which, if not made or obtained, would not reasonably be expected to result in a material expense or materially affect the ability of the Purchaser to conduct its business as currently conducted or prevent or materially impair or delay the Purchaser's ability to consummate the transactions contemplated hereby.

(c)            Neither the Purchaser, nor any of its respective Affiliates, owns interests in any Person or is aware of any facts or circumstances pertaining to such Purchaser or its respective Affiliates (including any possible other transaction pending or under consideration by such Purchaser or any of its respective Affiliates) which (i) reasonably could be expected to prevent or materially impair or delay (A) the ability of such Purchaser to obtain the consents, authorizations, orders or approvals set forth on Section 2.5(b) and/or Section 3.3(b) or (B) the consummation of the transactions contemplated by this Agreement or (ii) could cause a Governmental Authority to seek to or impose a condition or conditions that could prevent or materially impair or delay the consummation of the transactions contemplated hereby.

Section 3.4 Litigation.

(a) As of the date hereof, there is no Proceeding pending against the Purchaser or any of its subsidiaries. To the Knowledge of the Purchaser, there is no Proceeding threatened against either the Purchaser, its subsidiaries or any of its business or assets that (i) involves a claim in excess of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) or (ii) involves a claim for an unspecified amount which would have a Purchaser Material Adverse Effect.

(b) Since January 1, 2016, there has been no Proceeding against the Purchaser that (i) resulted in the Purchaser incurring any fine, penalty or expense in excess of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00), (ii) resulted in the grant of any Order imposing any obligation on the Purchaser which has not been fully performed or discharged or (iii) which had or is reasonably expected to have a Purchaser Material Adverse Effect. To the Knowledge of the Purchaser, there has been no occurrence of any fact, circumstance or condition that could reasonably be expected to result in any Proceeding affecting the ability of either of the Purchaser to conduct its business as currently conducted or with a potential exposure to the Purchaser of any fine, penalty or expense which would or could reasonably be expected to have a Purchaser Material Adverse Effect. To the Knowledge of the Purchaser, there are no outstanding Orders by which the Company or any of its assets or properties are subject to or bound.

Section 3.5 SEC Filings; Financial Statements; Undisclosed Liabilities.

(a) Purchaser has timely filed with or furnished to, as applicable, the SEC all registration statements, prospectuses, reports, schedules, forms, statements, and other documents (including exhibits and all other information incorporated by reference) required to be filed or furnished by it with the SEC since January 1, 2017 (the "Purchaser SEC Documents"). True, correct, and complete copies of all the Purchaser SEC Documents are publicly available on EDGAR. As of their respective filing dates or, if amended or superseded by a subsequent filing prior to the date hereof, as of the date of the last such amendment or superseding filing (and, in the case of registration statements and proxy statements, on the dates of effectiveness and the dates of the relevant meetings, respectively), each of the Purchaser SEC Documents complied as to form in all material respects with the applicable requirements of the Securities Act, the Exchange Act, and the Sarbanes-Oxley Act, and the rules and regulations of the SEC thereunder applicable to such Purchaser SEC Documents. None of the Purchaser SEC Documents, including any financial statements, schedules, or exhibits included or incorporated by reference therein at the time they were filed (or, if amended or superseded by a subsequent filing prior to the date hereof, as of the date of the last such amendment or superseding filing), contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. To the Knowledge of Purchaser, none of the Purchaser SEC Documents is the subject of ongoing SEC review or outstanding SEC investigation and there are no outstanding or unresolved comments received from the SEC with respect to any of the Purchaser SEC Documents. None of Purchaser's subsidiaries is required to file or furnish any forms, reports, or other documents with the SEC.

(b) Each of the consolidated financial statements (including, in each case, any notes and schedules thereto) contained in or incorporated by reference into the Purchaser SEC Documents (the “Purchaser Financial Statements”): (i) complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto as of their respective dates; (ii) have been prepared in accordance with GAAP consistently applied during the periods involved (subject, in the case of interim financial statements, to normal adjustments which will not be material in nature or amount to the Purchaser) and (ii) fairly present, in all material respects, the financial position and the results of operations and cash flows of the Purchaser as of the dates and for the periods indicated therein (subject, in the case of interim financial statements, to normal adjustments which will not be material in nature or amount to the Purchaser).

(c) There are no Liabilities of the nature required to be disclosed in a balance sheet prepared in accordance with GAAP, of the Purchaser other than any such Liabilities (i) reflected in, reserved against or otherwise disclosed in the Purchaser Financial Statements or the notes thereto, or (ii) incurred since the date of the latest interim financial statement of Purchaser in the ordinary course of business of the Purchaser consistent with past practice (none of which relates to any breach of Contract, breach of warranty, tort, infringement or violation of Law or arises out of any Proceeding).

(d) Purchaser is in compliance with all of the applicable listing and corporate governance rules of the NASDAQ, except for any non-compliance that would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect.

Section 3.6 No MAE. Since January 1, 2019, there has been no Purchaser Material Adverse Effect and no event has occurred or circumstance has arisen that, in combination with any other events or circumstances, could reasonably be expected to have or result in a Purchaser Material Adverse Effect;

Section 3.7 Issuance of OrthoPediatrics Stock. The OrthoPediatrics Stock will, when issued, be validly issued, fully paid and non-assessable and not subject to any pre-emptive rights. The OrthoPediatrics Stock will be issued in compliance with all applicable state and securities laws governing private placements. The issuance of the OrthoPediatrics Stock pursuant to this Agreement is and will be exempt from registrations provisions of the Securities Act and the registration and qualification provisions of all applicable state securities laws.

Section 3.8 Capital Structure. The authorized capital stock of Purchaser consists of: (i) 50,000,000 shares of Purchaser Common Stock; and (ii) 5,000,000 shares of preferred stock, par value \$0.00025 per share, of Purchaser (the “Purchaser Preferred Stock”). As of the date of this Agreement: (A) 14,678,233 shares of Purchaser Common Stock were issued and outstanding (not including shares held in treasury); (B) zero shares of Purchaser Common Stock were issued and held by Purchaser in its treasury; and (C) no shares of Purchaser Preferred Stock were issued and outstanding or held by Purchaser in its treasury. All of the outstanding shares of capital stock of Purchaser are duly authorized, validly issued, fully paid, and non-assessable, and not subject to any pre-emptive rights. No subsidiary of Purchaser owns any shares of Purchaser Common Stock.

Section 3.9 Brokers and Finders. Except as set forth on Schedule 3.9, as of the date hereof, the Purchaser has not, nor has any of its respective Affiliates employed, nor is it subject to any valid claim of Liability to, any broker, finder, consultant or other intermediary in connection with the transactions contemplated by this Agreement.

Section 3.10 No Other Representations and Warranties. Except for the representations and warranties contained in this Article III (including the related portions of the Disclosure Schedules), neither the Purchaser nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Purchaser, including any representation or warranty as to the accuracy or completeness of any information regarding the Purchaser furnished or made available to Sellers and their Representatives (including any information, documents or material made available through document exchange, management presentations or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Purchaser, or any representation or warranty arising from statute or otherwise in law.

Section 3.11 Independent Investigation. Purchaser has conducted its own independent investigation, review and analysis of the business, results of operations, prospects, condition (financial or otherwise) or assets of the Companies, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of Sellers, the Selling Equityholders and the Companies for such purpose. Purchaser acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Purchaser has relied solely upon its own investigation and the express representations and warranties of Sellers and the Selling Equityholders set forth in ARTICLE II of this Agreement (including the related portions of the Disclosure Schedules); and (b) none of Sellers, Selling Equityholders, the Companies or any other Person has made any representation or warranty as to Sellers, the Selling Equityholders, the Company or this Agreement, except as expressly set forth in ARTICLE II of this Agreement (including the related portions of the Disclosure Schedules).

#### **ARTICLE IV** **CERTAIN COVENANTS**

Section 4.1 Confidentiality. From the date of this Agreement until the three (3) year anniversary of the Closing Date, except as required by any applicable Law or legal process, the Sellers, the Selling Equityholders, and the Sellers' Representative shall treat and hold all Confidential Information as confidential and refrain from using any of the Confidential Information (except in connection with this Agreement). Notwithstanding the foregoing sentence, except as required by applicable Law or legal process, the Sellers, the Selling Equityholders and the Sellers' Representative shall treat and hold any Confidential Information which is a trade secret (as defined by Florida state law as of the date hereof) as confidential and refrain from using such trade secret (except in connection with this Agreement) for so long as such Confidential Information remains a trade secret. In the event that any of the Sellers, the Selling Equityholders or the Sellers' Representative is requested or required pursuant to written or oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand or similar process to disclose any Confidential Information, such Person shall notify the Purchaser promptly of the request or requirement so that the Purchaser may seek an appropriate protective order or waive compliance with the provisions of this Section 4.1. If, in the absence of a protective order or the receipt of a waiver hereunder, such Person is required to disclose any Confidential Information, such Person may disclose the Confidential Information; *provided, however*, that such Person shall use reasonable best efforts to obtain, at the request and sole expense of the Purchaser, an order or other assurance that confidential treatment will be accorded to such portion of the Confidential Information required to be disclosed as the Purchaser shall designate.

Section 4.2 Publicity. The parties hereto shall consult with each other before issuing any press release or otherwise making any public statements with respect to this Agreement or the transactions contemplated hereby. No party shall, and no party shall permit any of its or their Affiliates or its or their Representatives to, issue any press release or otherwise make any public announcement concerning this Agreement, the identity of the Sellers or Selling Equityholders or the transactions contemplated hereby without the prior written consent of the Purchaser or the Sellers' Representative, as the case may be (which consent shall not be unreasonably withheld, conditioned or delayed), except as such release or announcement may be required by Law or the rules or regulations of any United States or foreign securities exchange, in which case the party required to make the press release or public announcement shall allow the other parties reasonable time to comment on such release or announcement in advance of such issuance.

Section 4.3 Directors' and Officers' Indemnification and Insurance. Purchaser agrees that all rights to indemnification, advancement of expenses and exculpation by the Companies now existing in favor of each Person (other than any indemnification for a claim brought by or on behalf of Seller or a Selling Equityholder) who is now, or has been at any time prior to the date hereof or who becomes prior to the Closing Date, an officer, manager or director of a Company, as provided in any organizational document of a Company, in each case as in effect on the date of this Agreement, or pursuant to any other agreements in effect on the date hereof and listed on a Disclosure Schedule hereto, shall survive the Closing Date and shall continue in full force and effect in accordance with their respective terms. The obligations of Purchaser and the Companies under this Section shall not be terminated or modified in such a manner as to adversely affect any director, manager or officer to whom this Section applies without the consent of such affected director, manager or officer (it being expressly agreed that the directors, managers and officers to whom this Section applies shall be third-party beneficiaries of this Section, each of whom may enforce the provisions of this Section). In the event Purchaser, a Company or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in either such case, proper provision shall be made so that the successors and assigns of Purchaser or a Company, as the case may be, shall assume all of the obligations set forth in this Section.

Section 4.4 Employee Benefits.

(a) From the Closing Date and until not less than twelve (12) months following the Closing, subject to applicable Law, the Purchaser shall cause each of the Companies to maintain and perform all material obligations in connection with the Benefit Plans and other agreements of the Companies that have accrued or otherwise become vested, earned or due as a result of, or prior to, the Closing. Provided, however, nothing herein shall prevent the Purchaser from causing either of the Companies to amend the terms of any Benefit Plan, to the extent permitted by ERISA, the Code and applicable law, including but not limited to the right to amend, to alter, to freeze, to merge, or to terminate such Benefit Plan. The Purchaser acknowledges and agrees that the Purchaser shall continue to provide any coverage required under Part 6 of Subtitle B of Title I of ERISA or Section 4980B of the Code with respect to any of the Benefit Plans maintained by either of the Companies.

(b) The parties acknowledge that (i) the transactions contemplated under this Agreement shall not, by themselves, constitute a termination of employment of any employee of either of the Companies and (ii) the terms set forth in this Section 4.4 do not create any right in any Company Employee or other Person to continued employment with either of the Companies, the Purchaser or any of their respective Affiliates. The Purchaser shall be responsible for all severance or termination Liabilities related to the termination of employment of any Company Employee on or after the Closing Date.

Section 4.5 Release of Guarantee. Within thirty (30) days following the Closing, the Purchaser will use its reasonable best efforts to obtain a release of Abraham Lavi's personal guarantee with respect to the Lease between Orthex and CDR Presidential, LLC, dated as of July 18, 2018, relating to 4000 Hollywood Boulevard, Suite 620N, Hollywood, Florida 33021.

Section 4.6 Books and Records. In order to facilitate the resolution of any claims made against or incurred by Sellers or the Selling Equityholders prior to the Closing, or for any other reasonable purpose, for a period of six years after the Closing, Purchaser shall: (i) retain the books and records (including personnel files) of the Companies relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of the Companies; and (ii) upon reasonable notice, afford the Representatives of Sellers or the Selling Equityholders reasonable access (including the right to make, at Sellers' and the Selling Equityholders' expense, photocopies), during normal business hours, to such books and records.

Section 4.7 Change of Name. As of and following the Closing, the Sellers and Selling Equityholders shall cease to use the names "Orthex", "Vilex", and any similar names.

## **ARTICLE V**

### **TAX MATTERS**

Section 5.1 Tax Returns; Refunds.

(a) The Sellers shall have responsibility for, and shall pay or cause to be paid when due, any and all Taxes relating to each of the Companies for or relating to any Tax period (or portion thereof, including Straddle Periods) ending on or before the Closing Date and the Sellers' Representative shall timely prepare and file or cause to be timely prepared and filed with the appropriate Tax Authorities all Tax Returns required to be filed with respect to each of the Companies with respect to any taxable period ending on or prior to the Closing Date (such Tax Returns, "Pre-Closing Tax Returns"). Such Pre-Closing Tax Returns shall include but not be limited to Vilex's Form 1120S and Orthex's Form 1065 (and state equivalents thereof) for the short tax year beginning on January 1, 2019 and ending on the Closing Date. All Pre-Closing Tax Returns shall be prepared on a basis consistent with past practice and prior Tax reporting positions (except as otherwise required by applicable Law), and the Sellers' Representative shall provide the Purchaser, at least twenty (20) calendar days prior to the applicable deadline for filing any such Tax Return, a copy of such Tax Return for the Purchaser's review and comment, along with any related tax notices and audits for such Pre-Closing Tax Period. The Sellers' Representative shall make all changes reasonably requested by the Purchaser to such Tax Returns. The Sellers' Representative shall forward to the Purchaser any tax notices or audits received in connection with the Straddle Period promptly following receipt thereof. The Purchaser shall timely prepare and file or cause to be timely prepared and filed with the appropriate Tax Authorities all Tax Returns required to be filed after the Closing Date with respect to each of the Companies other than any Pre-Closing Tax Return required to be filed (or caused to be filed) by the Sellers' Representative pursuant to this Section 5.1(a). All such Tax Returns prepared by the Purchaser with respect to the Straddle Period shall be prepared on a basis consistent with past practice and prior Tax reporting positions (except as otherwise required by applicable Law), and the Purchaser shall provide the Sellers' Representative, at least twenty (20) calendar days prior to the applicable deadline for filing any such Tax Return with respect to the Straddle Period, a copy of the Tax Return for the Sellers' Representative's review and comment. The Purchaser shall make all changes reasonably requested by the Sellers' Representative to such Tax Returns.

(b) Any Tax refunds that are received by the Purchaser or either of the Companies, and any amounts credited against Tax to which the Purchaser or either of the Companies become entitled, that relate to Pre-Closing Tax Periods and are attributable to Transaction Tax Deductions shall be for the account of the Sellers, and the Purchaser shall pay over to the Sellers' Representative (for the benefit of the Sellers) any such refund or the amount of any such credit (net of costs and expenses incurred in connection therewith after the Closing Date by any either of the Companies and/or the Purchaser) within ten (10) days after receipt thereof or entitlement thereto. In addition, if the Purchaser or either of the Companies realizes any reduction in its Liability for Taxes with respect to any taxable period (or portion thereof) ending after the Closing Date resulting, directly or indirectly, from a Transaction Tax Deduction, the Purchaser shall pay the amount of such reduction (net of costs and expenses incurred in connection therewith by either of the Companies and/or the Purchaser) to the Sellers' Representative (for the benefit of the Sellers) within ten (10) days after actually realizing such reduction. The Purchaser or either of the Companies shall be deemed to actually realize a reduction in its Taxes as of the date the Tax Return that reflects such reduction is actually filed and based on a with/without calculation taking into account such Transaction Tax Deduction as the last item on the relevant Tax Return. Notwithstanding anything else herein, neither the Purchaser nor either of the Companies shall be required to prepare and file any Tax Return or otherwise arrange its Tax affairs in a manner that maximizes the Tax benefits available as a result of the Transaction Tax Deductions.

Section 5.2 Transfer Taxes. Notwithstanding any other provision of this Agreement to the contrary, all transfer, documentary, sales, use, value added, excise, stamp, registration and other such Taxes (including all applicable real estate transfer taxes) imposed by or payable to any jurisdiction or any Governmental Authority arising from the transactions contemplated hereby (collectively, "Transfer Taxes") shall be borne fifty percent (50%) by the Sellers and fifty percent (50%) by the Purchaser. All necessary Tax Returns with respect to all such Transfer Taxes shall be filed by, and the relevant Transfer Tax shall be remitted by, the party required to do so under applicable Law or the administration thereof. The parties shall make such payments to each other party as necessary to effect the first sentence of this Section 5.2. For the avoidance of doubt, Transfer Taxes do not include income Taxes.



Section 5.3 Cooperation; Records Retention.

(a) The Sellers and the Purchaser shall reasonably cooperate, and shall cause their respective Affiliates, officers, directors, managers, employees, agents, auditors and the Sellers' Representative and the Purchaser, respectively, to reasonably cooperate, in preparing and filing all Tax Returns or amended Tax Returns, resolving all disputes and audits relating to Taxes, determining any Tax liability or right to refund of Taxes or effectuating the terms of this Agreement, including by provision of any required power-of-attorney (or other form of authorization) and maintaining and making available to each other all records necessary in connection with Taxes.

(b) The Purchaser shall retain all Tax Returns, schedules, and work papers and all material records and other documents relating thereto of each of the Companies until the expiration of the later of (i) the seventh anniversary of the Closing Date or (ii) the date on which Taxes may no longer be assessed under the applicable statutes of limitation, including any waivers or extensions thereof. Thereafter, the Purchaser shall not destroy or dispose of any such Tax Returns, schedules, work papers or any other material records or other documents relating thereto without giving written notice to the Sellers' Representative of such pending destruction or disposal and offering the Sellers' Representative the right to copy such documents and information. The Purchaser shall be entitled to destroy or dispose of any such Tax Returns, schedules, work papers and all material records and other documents relating thereto described in such notice if the Sellers' Representative fails to request copies thereof within ninety (90) days after receipt of the notice described in this Section 5.3.

Section 5.4 Straddle Period. For purposes of this Agreement, in the case of any Straddle Period, the amount of any (i) Taxes based on or measured by income or receipts of each of the Companies for the Pre-Closing Tax Period and (ii) all other Taxes that otherwise can be reasonably allocated to the Pre-Closing Tax Period shall be determined based on an interim closing of the books as of the close of business on the Closing Date. The amount of any Taxes of each of the Companies for a Straddle Period to be attributed to the Pre-Closing Tax Period that is not susceptible to allocation based on the methodology described in the preceding sentence shall be determined by multiplying the amount of such Tax for the entire taxable period by a fraction the numerator of which is the number of days in the taxable period ending on the Closing Date and the denominator of which is the number of days in such Straddle Period.

Section 5.5 Conduct After Closing.

(a) Purchaser shall provide notice to Sellers' Representative upon receipt of any written notice from a Tax Authority of a Tax Proceeding for a Tax period ending on or prior to the Closing Date, if, as a result of such Tax Proceeding, (i) Sellers could reasonably be expected to have an indemnification obligation under this Agreement or (ii) the Tax Proceeding involves a Flow-Through Income Tax Return (a "Covered Tax Proceeding"). Within ten days of the receipt of notice from Purchaser of a Covered Tax Proceeding, Sellers' Representative may elect to control, at Sellers' expense, the contest or resolution of such Covered Tax Proceeding unless the resolution of such Covered Tax Proceeding could affect the Tax liability or Tax reporting positions of a Company or Purchaser in a Tax period (or portion thereof) beginning after the Closing Date (which Covered Tax Proceeding shall instead be governed by the succeeding sentence); provided that Sellers' Representative shall (1) keep Purchaser reasonably informed with respect to the status of such Covered Tax Proceeding, including by giving Purchaser advance notice of, and opportunity to attend, any in-person or telephonic meetings, (2) provide copies to Purchaser of any written correspondence or other submissions received from a Tax Authority with respect to such Covered Tax Proceeding, (3) provide copies of any written correspondence to be provided to any Tax Authority in connection with such Covered Tax Proceeding to Purchaser for Purchaser's review and comment, with all reasonable comments of Purchaser to be reflected in such submission, and (4) provide to Purchaser (at Purchaser's sole cost and expense) reasonable participation rights with respect to any such Covered Tax Proceeding; provided further that Sellers' Representative shall not enter into any settlement of, or otherwise compromise, any such Covered Tax Proceeding without the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed). In the case of a Covered Tax Proceeding (i) which Seller does not timely elect to control pursuant to the preceding sentence or (ii) the resolution of which could materially affect the Tax liability or Tax reporting positions of a Company or Purchaser in a Tax period (or portion thereof) beginning after the Closing Date, Purchaser shall control such Covered Tax Proceeding, provided that Purchaser shall (1) keep Sellers' Representative reasonably informed with respect to the status of such Covered Tax Proceeding, including by giving Sellers' Representative advance notice of, and opportunity to attend, any in-person or telephonic meetings, (2) provide copies to Sellers' Representative of any written correspondence or other submissions received from a Tax Authority with respect to such Covered Tax Proceeding, (3) provide copies of any written correspondence to be provided to any Tax Authority in connection with such Covered Tax Proceeding to Sellers' Representative for Sellers' Representative's review and comment, with all reasonable comments of Sellers' Representative to be reflected in such submission, and (4) provide to Sellers' Representative (at Sellers' sole cost and expense) reasonable participation rights with respect to any such Covered Tax Proceeding.

(b) Purchaser shall, at the request of Sellers' Representative, cause a Company to file Tax Returns or amended Tax Returns for any Pre-Closing Tax Period at Sellers' sole cost and expense unless Purchaser determines in good faith that no reasonable basis exists for such refund. Purchaser shall cooperate with Sellers' Representative as may be reasonably necessary to enable Sellers' Representative to prepare any such Tax Return or amended Tax Return. Except as provided in this Section 5.6(b), any Tax refund received by Purchaser or a Company with respect to any such Tax Return or amended Tax Return shall belong to Sellers and Purchaser shall or shall cause a Company to transfer any such Tax refund to Sellers' Representative promptly upon receipt thereof. Any contrary provision of this Section 5.5 notwithstanding, (i) in the event that any such refund (or credit) is required to be repaid to a Tax Authority, Sellers shall repay an amount equal to such refund (or credit) to Purchaser (plus any penalties, interest, or other charges) within fifteen (15) days after repayment of such refund (or credit) by Purchaser, a Company or any of their Affiliates to such Tax Authority and (ii) the amount of any refund (or credit) that is required to be paid to the Sellers' Representative (A) shall be reduced by the amount of any out-of-pocket costs and expenses (including additional Taxes) that Purchaser, a Company or any of their respective Affiliates incur (or will incur) with respect to such refund (or credit), and (B) shall not include any refund (or credit) (which shall be for the benefit of Purchaser, a Company or their respective Affiliates) that (X) results from the carryback of any net operating loss, capital loss or other Tax attribute generated or incurred in any Tax period (or portion of any Straddle Period) beginning after the Closing Date, (Y) is included in the computation of Final Net Working Capital, or (Z) any Company is required to pay over to another Person under any Contract executed on or before the Closing Date.

(c) Without the prior consent of the Sellers' Representative, which consent shall not be unreasonably withheld, conditioned or delayed, (i) except as otherwise required by applicable Law (the Purchaser shall notify the Sellers' Representative in the event the Purchaser has determined that such requirement applies), the Purchaser shall not, and shall not permit its Affiliates to, take any action on the Closing Date or after the Closing that could reasonably be expected to affect the Tax Liability of the Sellers or any of their Affiliates (including each of the Companies) for any taxable year or period (or portion thereof) ending on or prior to the Closing Date, (ii) except as provided in Sections 5.1(a) or 5.5(b) or as otherwise required by applicable Law (the Purchaser shall notify the Sellers' Representative in the event Purchaser has determined that such requirement applies), the Purchaser shall not file or cause or permit either of the Companies to file any amended Tax Return, or take any action relating to a Tax Return (including the provision of an extension of the period of limitations for assessment of any Tax), with respect to any period ending on or prior to the Closing Date, make any Tax election or effect any change in Tax accounting method affecting any such period and (iii) none of the Purchaser, either of the Companies, nor any of their Affiliates shall make any election under Sections 338 or 336(e) of the Code and the Treasury Regulations thereunder (or any similar state or local provision) with respect to the transactions contemplated by this Agreement.

Section 5.6 Intended Tax Treatment. The parties hereto acknowledge and agree that, pursuant to IRS Revenue Ruling 99-6, 1999-1 C.B. 432, Situation 2, the purchase of the Units pursuant hereto will be treated for federal, state, and local income Tax purposes (the "Intended Tax Treatment"): (i) with respect to Sellers, as a sale of such Units by Sellers in exchange for the portion of the Purchase Price allocated to Orthex (and the relief of related partnership liabilities), and (ii) with respect to the Purchaser, as a liquidating distribution of partnership assets and liabilities to Sellers of the Units, immediately followed by the Purchaser's purchase of former partnership assets from Sellers of the Units in exchange for the portion of the Purchase Price allocated to Orthex (and the assumption of former related partnership liabilities). As a result of such purchase and sale, the status of Orthex as a partnership for federal income tax purposes will terminate under Section 708(b)(1)(A) of the Code. None of the parties hereto shall take any position for income Tax purposes that is inconsistent with the Intended Tax Treatment described in this Section 5.6.

Section 5.7 Allocation. Consistent with the Intended Tax Treatment, the parties hereto agree that the Purchase Price, as adjusted pursuant to this Agreement, plus any other items that are required for federal income Tax purposes to be treated as consideration for the purchase of Orthex's assets (the "Total Allocable Price"), shall be allocated (the "Allocation") among the assets of Orthex in a manner consistent with the principles of Section 1060 of the Code (and any similar provision of state or local law, as appropriate) based upon the relative fair market values thereof in accordance with the methodology set forth on Schedule 5.7. Within sixty (60) days following the Closing Date, the Purchaser shall prepare and deliver to the Sellers' Representative for the Sellers' Representative's prompt review and comment, the draft Allocation ("Draft Allocation") and all supporting schedules for such Draft Allocation. The Sellers' Representative shall have thirty (30) days after the receipt of the Draft Allocation to propose in good faith any changes to the Purchaser's Draft Allocation. If the Sellers' Representative does not object to the Draft Allocation within such thirty (30) day period, such Draft Allocation shall become final. If the Sellers' Representative objects to any portion of the Draft Allocation in writing within thirty (30) days after receipt of the Draft Allocation, the Purchaser and the Sellers' Representative shall act in good faith to resolve any such dispute in the thirty (30) days following the Purchaser's receipt of the Sellers' Representative's written objection. If the Purchaser and the Sellers' Representative do not reach agreement within such thirty (30) day period with respect to all items objected to by the Sellers' Representative with respect to the Draft Allocation, the Purchaser and the Sellers' Representative will jointly select the Accountant to determine any items upon which agreement has not been so reached. The Accountant shall determine all items upon which agreement has not been so reached with respect to the Draft Allocation within thirty (30) days after the submission of such items to the Accountant. The Purchaser and the Sellers' Representative shall each bear fifty percent (50%) of the fees and expenses of the Accountant. The Purchaser, the Sellers' Representative and the Sellers shall each bear one hundred percent (100%) of their own related expenses other than expenses related to the Accountant. The Parties will file timely any forms and statements required under federal, state and local income Tax Laws consistent with the Draft Allocation as agreed to or as finally determined by the Accountant, as the case may be (the "Final Allocation Schedule"). The Final Allocation Schedule will be revised to take into account any subsequent adjustments to the Purchase Price and any changes to the assumed liabilities or other consideration required to be taken into account under applicable Law, in the manner provided by Sections 751(a) and 1060 of the Code and the Treasury Regulations thereunder. The Purchaser, on the one hand, and Sellers' Representative, on the other hand, each agree to promptly notify the other in writing upon receipt of notice of any pending or threatened Tax audit or assessment challenging the Final Allocation Schedule.

Section 5.8 Tax Consequences. Notwithstanding anything to the contrary herein or in any Related Documents, the Purchaser does not represent, warrant or guarantee any particular Tax result with respect to any payment provided to any Person hereunder or under any Related Documents, and such Person will be responsible for any Taxes imposed thereon with respect to any such payment.

## **ARTICLE VI INDEMNIFICATION**

Section 6.1 Survival. Subject to the limitations and other provisions in this Agreement, (i) the representations and warranties set forth in Section 2.1 (Ownership; Good Title; Encumbrance), Section 2.2 (Organization; Standing; Qualification and Power), Section 2.3 (Authority; Execution and Delivery; Enforceability), Section 2.4 (Capitalization), Section 2.12 (Taxes), Section 2.21 (Brokers and Finders) in this Agreement (the “Fundamental Reps”) shall survive and remain in full force and effect at all times from and after the Closing for the longer of: (A) twenty (20) months or (B) ninety (90) days after the expiration of the applicable statute of limitations (including any extensions); (ii) the representations and warranties set forth in Section 3.1 (Incorporation and Authority of Purchaser); Section 3.2 (Authority; Execution and Delivery; Enforceability); Section 3.8 (Capital Structure); and Section 3.9 (Brokers and Finders) in this Agreement (the “Purchaser Fundamental Reps”) shall survive and remain in full force and effect for the longer of: (A) twenty (20) months or (B) ninety (90) days after the expiration of the applicable statute of limitations (including any extensions); and (iii) all other representations and warranties set forth in this Agreement, and the right to assert a claim for indemnification with respect thereto pursuant to Section 6.2 or Section 6.3, shall survive the Closing solely for purposes of this ARTICLE VI and shall terminate on the twenty (20) month anniversary of the Closing Date and shall thereafter be of no further force or effect. The covenants and agreements of the parties set forth in this Agreement shall not survive the Closing except with respect to those covenants and agreements that by their terms contemplate performance in whole or in part after the Closing, which shall remain in full force and effect until the date by which such covenant or agreement is required to be performed. The period for which a representation, warranty, covenant or agreement survives the Closing is referred to herein as the “Survival Period”. The obligations in this ARTICLE VI to indemnify and hold harmless any Indemnified Party, shall terminate and be of no further force or effect, in respect of a breach of any representation or warranty, at the end of the Survival Period and, in respect of a breach of any covenant, when such covenant terminates or expires pursuant to the terms hereof; *provided, however*, that such obligations to indemnify and hold harmless shall not terminate with respect to any item as to which the Indemnified Party shall have made, before the expiration of the applicable Survival Period, a bona fide claim by delivering a notice of such claim (stating in reasonable detail the basis of such claim) pursuant to Section 6.6 to the Indemnifying Party, and the representation or warranty, covenant or agreement that is the subject of such indemnification claim (and right of the Indemnified Party to indemnification therefor) shall survive with respect to such claim until fully resolved.

Section 6.2 Indemnification by the Purchaser. Subject to the other terms, conditions and limitations of this Agreement (including the provisions of Sections 6.1, 6.4, 6.5, and 6.6), from and after the Closing, the Purchaser shall indemnify and defend the Sellers, the Selling Equityholders and their Affiliates and their respective officers, directors and managers (or Persons serving in similar capacities), employees, successors and assigns (the "Seller Indemnified Parties") against, and hold the Seller Indemnified Parties harmless from, and shall pay and reimburse each of them for, all Losses incurred or sustained by, or imposed upon, any of the Seller Indemnified Parties to the extent arising out of:

- (a) any inaccuracy or breach by the Purchaser of any representation or warranty made by the Purchaser in this Agreement; or
- (b) any breach of or failure by the Purchaser to perform or comply with any covenant or agreement of the Purchaser in this Agreement.

Section 6.3 Indemnification by the Sellers and Selling Equityholders. Subject to the other terms, conditions and limitations of this Agreement (including the provisions of Sections 6.1, 6.4, 6.5, and 6.6), from and after the Closing, the Sellers and the Selling Equityholders, jointly and severally, shall indemnify and defend the Purchaser and their Affiliates and their respective officers, directors and managers (or Persons serving in similar capacities), employees, successors and assigns (the "Purchaser Indemnified Parties") against, and hold the Purchaser Indemnified Parties harmless from, and shall pay and reimburse each of them for, all Losses incurred or sustained by, or imposed upon, any of the Purchaser Indemnified Parties to the extent resulting from or arising out of:

- (a) any inaccuracy of or breach by a Seller or Selling Equityholder of any representation or warranty made by such Seller or Selling Equityholder in this Agreement or the Selling Equityholder Agreement and Acknowledgment;

(b) any breach of or failure by the Sellers' Representative, a Seller, or a Selling Equityholder to perform or comply with any covenant or agreement of such Person in this Agreement or the Selling Equityholder Agreement and Acknowledgment; or

(c) (A) any Taxes (or the non-payment thereof) of, or with respect to, the Companies for any Pre-Closing Tax Period which is attributable to the portion of such period ending on the Closing Date, including any tax assessment resulting from application of the centralized partnership audit regime enacted by the Bipartisan Budget Act of 2015, (B) all Taxes of any Person for a Pre-Closing Tax Period for which any of the Companies is liable under Treasury Regulations § 1.1502-6 (or any similar provision of state, local or federal Law), as a transferee or successor, under any Tax agreement by contractual obligation, or otherwise (for the avoidance of doubt, excluding, in each of (A) and (B) of this paragraph, any Taxes to the extent the amount of the liability was specifically reserved for as a liability in Final Net Working Capital), and any withholding Tax imposed or otherwise due with respect to any payment under this Agreement.

Section 6.4 Limitations on Indemnification.

(a) Notwithstanding anything to the contrary set forth in this Agreement:

(i) the maximum aggregate amount of indemnifiable Losses that may be recovered from the Sellers or the Selling Equityholders by the Purchaser Indemnified Parties pursuant to Section 6.3(a) (other than with respect to claims for inaccuracy or breach of Fundamental Reps) shall be Nine Million and 00/100 Dollars (\$9,000,000.00);

(ii) in no event shall the aggregate amount of Losses for which the Sellers or the Selling Equityholders are obligated to indemnify the Purchaser Indemnified Parties under Section 6.3 exceed the Purchase Price;

(iii) the maximum aggregate amount of indemnifiable Losses that may be recovered from a Purchaser by the Seller Indemnified Parties pursuant to Section 6.2(a) (other than with respect to claims for inaccuracy or breach of Purchaser Fundamental Reps) shall be Nine Million and 00/100 Dollars (\$9,000,000.00);

(iv) in no event shall the aggregate amount of Losses for which the Purchaser is obligated to indemnify the Seller Indemnified Parties under Section 6.2 exceed the Purchase Price;

(v) the Sellers and Selling Equityholders shall not be liable to any Purchaser Indemnified Party for any claim for indemnification pursuant to Section 6.3(a) (other than with respect to claims for inaccuracies in or breaches of the Fundamental Reps) unless and until the aggregate amount of indemnifiable Losses that may be recovered from the Sellers and Selling Equityholders equals or exceeds Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00) (the "Basket Amount"), in which case the Sellers shall be liable for all indemnifiable Losses in excess of the Basket Amount;

(vi) the Purchaser shall not be liable to any Seller Indemnified Party for any claim for indemnification pursuant to Section 6.2(a) (other than with respect to claims for inaccuracies in or breaches of Purchaser Fundamental Reps) unless and until the aggregate amount of indemnifiable Losses that may be recovered from the Purchaser equals or exceeds the Basket Amount, in which case the Purchaser shall be liable for all indemnifiable Losses in excess of the Basket Amount;

(vii) no Indemnified Party shall be entitled to recover any amount relating to any matter arising under one provision of this Agreement to the extent such Indemnified Party (or other Purchaser Indemnified Parties in the event of a Purchaser Indemnified Party, or other Seller Indemnified Parties in the event of a Seller Indemnified Party) has already recovered such amount with respect to such matter pursuant to that or other provisions of this Agreement;

(viii) no Indemnified Party shall be entitled to recover any Loss to the extent that the Loss comprising a claim (or part thereof) with respect to such matter has been included in the calculation of the Closing Net Working Capital Adjustment; and

(ix) in no event shall an Indemnifying Party have liability to the Indemnified Party for any consequential, special, incidental, punitive or exemplary damages, except if and to the extent any such damages are recovered against an Indemnified Party pursuant to a Third Party Claim.

(b) The parties acknowledge and agree that, following the Closing, their sole and exclusive remedy with respect to any and all claims relating to this Agreement and the transactions contemplated hereby (other than claims arising from fraud or intentional or willful misconduct) shall be pursuant to the indemnification provisions set forth in this ARTICLE VI. In furtherance of the foregoing, each party hereby waives on its own behalf and (in the case of the Purchaser, on behalf of the Purchaser Indemnified Parties (including each of the Companies following the Closing) and in the case of Sellers, on behalf of the Seller Indemnified Parties) to the fullest extent permitted under Law, any and all claims it may have against any of the other parties or their Affiliates arising under or based upon this Agreement, any document or certificate delivered in connection herewith, any Law or otherwise, except pursuant to the indemnification provisions set forth in this ARTICLE VI. Nothing in this Section 6.4(b) shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any Person's fraudulent, intentional or willful misconduct.

Section 6.5 Computation of Indemnity Payments.

(a) The amount payable under this ARTICLE VI in respect of any Loss shall be calculated net of any insurance proceeds or other amounts under indemnification agreements with third parties received by the Indemnified Party on account thereof (net of any actual collection costs and reserves, deductibles, premium adjustment and retrospectively rated premiums).

(b) In the event that an insurance or other recovery is made at any time after an indemnification payment by the Indemnifying Party has been made with respect to any indemnified Loss, then, to the extent of the amount of such indemnification payment, a refund equal to the aggregate net amount of the recovery (less the costs of recovery to the Indemnified Party and net of any deductibles, premium adjustment and retrospectively rated premiums) shall be made promptly to the applicable Indemnifying Party. The party making any indemnification payment hereunder shall be subrogated to all rights of the Indemnified Party in respect of any Losses indemnified by such party.

(c) Notwithstanding anything to the contrary contained herein, for purposes of determining the amount of any Losses that is the subject matter of a claim for indemnification under Section 6.2(a) or Section 6.3(a), each representation and warranty contained in this Agreement (including the schedules) shall be read without regard and without giving effect to any qualification regarding materiality, Material Adverse Effect or other terms of similar import or effect contained in a representation and warranty (as if such standard or qualification were deleted from such representation and warranty).

Section 6.6      Procedures for Indemnification.

(a) Any Person making a claim for indemnification under this ARTICLE VI is referred to herein as an “Indemnified Party”. The Person from whom indemnification is sought is referred to herein as the “Indemnifying Party”. Promptly after receiving notice of any Proceeding, investigation, demand or other claim against the Indemnified Party by a third party (a “Third Party Claim”), the Indemnified Party shall provide written notice of such claim (any such written notice, an “Indemnification Notice”) to: (i) the Purchaser subject to the indemnification claim, if the Third Party Claim arises under Section 6.2 and (ii) the Sellers’ Representative, if the Third Party Claim arises under Section 6.3. Each such Indemnification Notice shall describe in reasonable detail the applicable Third Party Claim, including the facts giving rise to such claim for indemnification hereunder, the amount or method of computation of the amount of such claim (if known); *provided*, that the failure to so notify an Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder except to the extent that the Indemnifying Party is actually prejudiced by such failure. The Indemnified Party shall also provide such other information with respect thereto as the Indemnifying Party may reasonably request.

(b) Any Indemnifying Party shall be entitled to participate in the defense of such Third Party Claim at such Indemnifying Party’s expense, and at its option shall be entitled to assume the defense thereof within ten (10) Business Days after receipt of the Indemnification Notice if the Indemnifying Party acknowledges in writing the Indemnifying Party’s obligation to indemnify the Indemnified Party against any Losses that may result from such Third Party Claim and by appointing a reputable counsel reasonably acceptable to the Indemnified Party to be the lead counsel in connection with such defense; *provided*, that the Indemnified Party shall be entitled to participate in the defense of such Third Party Claim and to employ counsel of its choice for such purpose; *provided*, that the fees and expenses of such separate counsel shall be borne by the Indemnified Party and shall not be recoverable from such Indemnifying Party under this ARTICLE VII.



(c) Upon assumption of the defense of any such Third Party Claim by the Indemnifying Party, the Indemnified Party will not pay, or permit to be paid, any part of the Third Party Claim, unless the Indemnifying Party consents in writing to such payment. Notwithstanding anything to the contrary herein, the Indemnifying Party shall not compromise or settle, or admit any Liability with respect to, any Third Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed), unless the relief (i) is not in respect of a Third Party Claim for Taxes, (ii) consists solely of money damages (all of which the Indemnifying Party shall pay) and (iii) includes a provision whereby the plaintiff or claimant in the matter releases the Indemnified Party from all Liability with respect thereto; *provided, however*, that if the Indemnified Party fails to consent to such settlement or compromise and such settlement or compromise does not include injunctive relief, the Liability of the Indemnifying Party with respect to such Third Party Claim under this Agreement shall be limited to the amount that would have otherwise been payable had the Indemnifying Party entered into such settlement or compromise.

(d) In all cases, the Indemnified Party shall provide its reasonable cooperation with the Indemnifying Party in defense of claims or litigation relating to Third Party Claims, including by making employees, information and documentation reasonably available. If the Indemnifying Party shall not, within ten (10) Business Days of receiving the Indemnification Notice, notify the Indemnified Party that it shall assume the defense of any such Third Party Claim, or fails to defend or withdraws from the defense of any such Third Party Claim or the Indemnifying Party is any Seller and the claim(s) relate to or arise in connection with any Purchaser Defensible Matter, the Indemnified Party may defend against such matter in a manner consistent with the above provisions regarding conduct of the defense by the Indemnified Party; *provided*, that the Indemnified Party may not settle any such matter without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed). Any of following shall constitute a "Purchaser Defensible Matter": (i) the claim for indemnification relates to or arises in connection with any criminal or quasi-criminal proceeding, action, indictment, allegation or investigation, (ii) the Indemnified Party reasonably believes an adverse determination with respect to the Third Party Claim would materially injure the Indemnified Party's future business prospects; (iii) the claim seeks an injunction or other equitable relief against the Indemnified Party, or (iv) the estimated Loss is less than (and would not cause the aggregate of all Losses to exceed) the Basket Amount.

(e) The Indemnified Party shall provide written notice of claim that is not a Third Party Claim to: (i) the Purchaser subject to the indemnification claim, if such claim arises under Section 6.2 and (ii) the Sellers' Representative, if such claim arises under Section 6.3. Such claim shall describe in reasonable detail the facts giving rise to any claim for indemnification hereunder, the amount or method of computation of the amount of such claim (if known); *provided*, that the failure to so notify an Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder except to the extent that (and only to the extent that) the Indemnifying Party is materially prejudiced by such failure. The Indemnified Party shall also provide such other information with respect thereto as the Indemnifying Party may reasonably request. In the event that the Indemnifying Party does not notify the Indemnified Party that it disputes such claim within thirty (30) days from receipt of the claim notice, the Indemnifying Party will be deemed to have acknowledged liability for such claim and the Escrow Agent and/or the Sellers, as appropriate, shall promptly pay such claim. If the Indemnifying Party disputes the validity or amount of any such claim, the Indemnifying Party shall so notify the Indemnified Party in writing within thirty (30) days after receipt of the claim notice specifying in reasonable detail the points of disagreement. If any dispute is not resolved within thirty (30) days after the Indemnified Party receives a dispute notice, then either of such parties can initiate an action pursuant to Section 7.10.

(f) Subject to this ARTICLE VI, within ten (10) days after any final decision, judgment or award shall have been rendered by a Governmental Authority with competent jurisdiction (and a resolution of any appeal therefrom and the expiration of the time in which to appeal therefrom), or a settlement shall have been consummated, or the Indemnified Party and the Indemnifying Party shall have arrived at a mutually binding agreement, in each case, with respect to a claim hereunder (i) if the claim for indemnification was brought pursuant to Section 6.2, the indemnifying Purchaser shall pay or cause to be paid all sums due and owing to the Seller Indemnified Party in immediately available funds to an account specified by the Seller Indemnified Party and (ii) if the claim for indemnification was brought pursuant to Section 6.3, the Purchaser and the Sellers' Representative shall cause the Escrow Agent to pay to the Purchaser (payable by wire transfer of immediately available U.S. funds in accordance with the written payment instructions furnished by the Purchaser to the Escrow Agent), from the Escrow Amount, any sums due and owing in accordance with this ARTICLE VI, and if the sums due and owing to the Purchaser Indemnified Party exceed the remaining Escrow Amount, the Indemnifying Party shall pay or cause to be paid all additional sums due and owing to the Purchaser Indemnified Party in immediately available funds to an account specified by the Purchaser Indemnified Party. Any of the Escrow Amount remaining, net of any of the amount of any outstanding, unresolved claims of Losses brought pursuant to Section 6.3 (the amounts set forth, the "Reserve Amounts"), shall automatically transfer to the Sellers' Representative (for the benefit of the Sellers) and such funds shall be released and distributed to the Sellers' Representative or its designee (for the benefit of the Sellers) after the date that is twenty (20) months following the Closing Date. The Reserve Amounts shall be disbursed by the Escrow Agent, promptly after the unresolved indemnification claims to which they relate are finally resolved in accordance with this ARTICLE VI as confirmed by a joint written direction of the Sellers' Representative and the Purchaser or a final, non-appealable judgment of a court of competent jurisdiction.

Section 6.7 Characterization of Indemnification Payments. Unless otherwise required by Law, all payments made pursuant to this ARTICLE VI shall be treated for all Tax purposes as adjustments to the Purchase Price.

## **ARTICLE VII**

### **GENERAL PROVISIONS**

Section 7.1 Expenses. Except as otherwise set forth herein, all costs and expenses, including fees and disbursements of Representatives incurred in connection with this Agreement, the Related Documents and the transactions contemplated hereby and thereby, will be paid by the party incurring such costs and expenses, whether or not the Closing will have occurred.

Section 7.2 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, or if by facsimile or email, upon written confirmation of receipt by facsimile, e-mail or otherwise, (b) on the first Business Day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier or (c) on the earlier of confirmed receipt or the fifth Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

(i) if to the Purchaser:

OrthoPediatrics Corp.  
2850 Frontier Drive  
Warsaw, Indiana 46582  
Telephone: (574) 268-6379  
Facsimile: (574) 269-3692  
Attention: Mark Throdahl, Chief Executive Officer  
Daniel Gerritzen, General Counsel and Vice President of Legal  
Email: [mthrodahl@orthopediatrics.com](mailto:mthrodahl@orthopediatrics.com)  
[dgerritzen@orthopediatrics.com](mailto:dgerritzen@orthopediatrics.com)

with a copy to:

Bingham Greenebaum Doll LLP  
2700 Market Tower  
10 W. Market Street  
Indianapolis, Indiana 46204  
Telephone: (317) 635-8900  
Facsimile: (317) 236-9907  
Attention: Jeremy E. Hill, Esq.  
Tonya Vachirasomboon, Esq.  
Email: [JHill@bgdlegal.com](mailto:JHill@bgdlegal.com)  
[TVachirasomboon@bgdlegal.com](mailto:TVachirasomboon@bgdlegal.com)

(ii) if to the Sellers' Representative, the Sellers, or the Selling Equityholders:

Abraham Lavi  
8229 Banpo Bridge Way  
Delray Beach, Florida 33446  
Email: [Abraham.lavi@gmail.com](mailto:Abraham.lavi@gmail.com)

with a copy to:

Warner Norcross + Judd LLP  
900 Fifth Third Center  
111 Lyon St., NW  
Grand Rapid, Michigan 49503  
Telephone: (616) 752-2137  
Attention: Stephen C. Waterbury  
Facsimile: (616) 752-2500  
Email: [swaterbury@wnj.com](mailto:swaterbury@wnj.com)

Section 7.3 Severability. It is the desire and intent of the parties hereto that the provisions of this Agreement be enforced to the fullest extent permissible under the Laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Agreement shall be adjudicated by a court of competent jurisdiction to be invalid, prohibited or unenforceable for any reason, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 7.4 Enforcement; Specific Performance. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the parties shall be entitled to specific performance of the terms hereof, including an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in the Indiana State or federal court sitting in South Bend, St. Joseph County, Indiana (and appellate courts from any of the foregoing), this being in addition to any other remedy to which such party is entitled at law or in equity. Each of the parties hereby further waives (i) any defense in any action for specific performance that a remedy at law would be adequate and (ii) any requirement under any Law to post security as a prerequisite to obtaining equitable relief.

Section 7.5 Entire Agreement. This Agreement and the Related Documents (including the Exhibits and Schedules hereto and thereto) contain the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings relating to such subject matter. None of the parties to this Agreement shall be liable or bound to any other party in any manner by any representations, warranties or covenants relating to such subject matter except as specifically set forth herein or in the Related Documents.

Section 7.6 Assignment. This Agreement and the rights and obligations hereunder shall not be assignable or transferable by any of the parties hereto without the prior written consent of the Purchaser and the Sellers' Representative; however, the Purchaser may assign its rights and obligations under this Agreement to any successor purchaser of substantially all of the assets of either of the Companies or any of the Equity Interests. Any attempted assignment in violation of this Section 7.6 shall be null and void.

Section 7.7 No Third-Party Beneficiaries. Except as set forth in Section 4.3, ARTICLE VI, and Section 7.12, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing in this Agreement expressed or implied shall give or be construed to give to any Person, other than the parties hereto and such successors and permitted assigns, any legal or equitable rights under this Agreement.

Section 7.8 Amendment. This Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing signed by the Sellers' Representative and the Purchaser and otherwise as expressly set forth herein.

Section 7.9 Waiver. No failure or delay of any party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have hereunder. Any agreement on the part of any party to any such waiver shall be valid only if set forth in a written instrument executed and delivered by a duly authorized officer on behalf of such party.

Section 7.10 Governing Law; Jurisdiction.

(a) This Agreement and all disputes, claims or controversies relating to, arising out of, or in connection with this Agreement shall be governed by and construed in accordance with the internal Laws of the State of Florida without regard to the Laws of any other jurisdiction that might be applied because of the conflicts of Laws rules of the State of Florida.

(b) Each party irrevocably agrees that any Proceeding arising out of or relating to this Agreement or the Related Documents brought by any other party or its successors or assigns shall be brought and determined in the State of Indiana or federal court sitting in South Bend, St. Joseph County, Indiana (and appellate courts from any of the foregoing), and each party hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such Proceeding arising out of or relating to this Agreement or the Related Documents and the transactions contemplated hereby and thereby. Each party agrees not to commence any Proceeding relating thereto except in the courts described above in Indiana, other than Proceedings in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in Indiana as described herein. Each party further agrees that notice as provided herein shall constitute sufficient service of process and each party further waives any argument that such service is insufficient. Each party hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any Proceeding arising out of or relating to this Agreement, the Related Documents or the transactions contemplated hereby or thereby, (a) any claim that it is not personally subject to the jurisdiction of the courts in Indiana as described herein for any reason, (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) that (i) the Proceeding in any such court is brought in an inconvenient forum, (ii) the venue of such Proceeding is improper or (iii) this Agreement or the Related Documents, or the subject matter hereof or thereof, may not be enforced in or by such courts.

Section 7.11 Waiver of Jury Trial. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE RELATED DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY.

Section 7.12 No Recourse. Notwithstanding anything that may be expressed or implied in this Agreement, each party hereto covenants, agrees and acknowledges that no recourse hereunder, or under any documents or instruments delivered in connection herewith, shall be had against any of the Sellers', the Selling Equityholders', the Purchaser's, each of the Companies' or any of their respective Affiliates' former, current or future direct or indirect equity holders, Controlling Persons, stockholders, directors, officers, employees, agents, members, managers, general or limited partners or assignees (each a "Related Party" and collectively, the "Related Parties"), in each case other than the Sellers, the Selling Equityholders, the Purchaser, the Companies, or any of their respective successors and permitted assignees under this Agreement, whether by the enforcement of any assessment or by any legal or equitable Proceeding, or by virtue of any applicable Law, it being expressly agreed and acknowledged that no personal Liability whatsoever shall attach to, be imposed on or otherwise be incurred by any of the Related Parties, as such, for any Liability of any of the Sellers, the Selling Equityholders, the Purchaser, the Companies, or any of their Affiliates under this Agreement or any documents or instruments delivered in connection herewith for any claim based on, in respect of or by reason of such Liabilities or their creation; *provided, however*, nothing in this Section 7.12 shall relieve or otherwise limit the Liability of any of the Sellers, the Selling Equityholders, the Purchaser, the Companies, or any Affiliate, as such, for any breach or violation of its obligations under such agreements, documents or instruments.

Section 7.13 Sellers' Representative.

(a) Each Seller and Selling Equityholder has irrevocably constituted and appointed Sellers' Representative as its true and lawful agent and attorney-in-fact, with full power of substitution to perform the duties of Sellers' Representative under the terms of this Agreement and to act in such Seller's and Selling Equityholder's name, place and stead with respect to all transactions contemplated by and all terms and provisions of this Agreement and the Related Documents, and to act on such Seller's and Selling Equityholder's behalf in any Proceeding involving this Agreement or any Related Document, and to do or refrain from doing all such further acts and things. The Sellers' Representative shall have all rights and powers set forth herein in addition to all the rights and powers it shall deem necessary or appropriate in connection with the transactions contemplated by this Agreement and the Related Documents, including the power:

(i) to receive on behalf of, and to distribute (after (A) payment of any unpaid expenses and Liabilities chargeable to Sellers, Selling Equityholders or either of the Companies prior to the Closing in connection with the transactions contemplated by this Agreement and the Related Documents and (B) payment of any expenses incurred by Sellers' Representative in its capacity as such, including the expenses of attorneys and accountants) all amounts payable to such Seller under the terms of this Agreement and the Related Documents;

(ii) to do or refrain from doing any further act or deed on behalf of such Seller or Selling Equityholder which Sellers' Representative deems necessary or appropriate in its sole discretion relating to the subject matter of this Agreement and the Related Documents, as fully and completely as such Seller or Selling Equityholder could do if personally present;

(iii) to amend this Agreement on behalf of Sellers and Selling Equityholders; and

(iv) to replace itself as Sellers' Representative; however, in the event that Sellers' Representative resigns, dies or is otherwise unable to serve as Sellers' Representative, then Alexis A. Lavi shall become the Sellers' Representative.

(b) Sellers' Representative shall have no liability to any Seller or Selling Equityholder as the representative of any Seller or Selling Equityholder or as the attorney-in-fact of any Seller or Selling Equityholder except for liability arising from actions taken in bad faith by Sellers' Representative on behalf of, or in the name of, such Seller or Selling Equityholder. The Purchaser shall have the absolute right and authority to rely upon the acts taken or omitted to be taken by the Sellers' Representative on behalf of the Sellers and Selling Equityholders, and the Purchaser shall have no duty to inquire as to the acts and omissions of the Sellers' Representative. Each Seller and Selling Equityholder hereby acknowledges and agrees that (1) all deliveries by the Purchaser or the Purchaser to the Sellers' Representative shall be deemed deliveries to the Sellers and Selling Equityholders, (2) the Purchaser or the Purchaser shall not have any Liability with respect to any aspect of the distribution or communication of such deliveries between the Sellers' Representative and any Seller or Selling Equityholder and (3) any disclosure made to the Sellers' Representative by or on behalf of the Purchaser shall be deemed to be a disclosure made to each Seller and Selling Equityholder. Each Seller and Selling Equityholder hereby agrees that any payment made by or on behalf of the Purchaser or the Purchaser to the Sellers' Representative on such Seller's and Selling Equityholder's behalf (including payments under the Escrow Agreement) shall be deemed a direct payment to such Seller or Selling Equityholder, and such Seller and Selling Equityholder shall have no recourse to the Purchaser or the Purchaser in the event that such payment is not delivered to such Seller or Selling Equityholder by the Sellers' Representative for any reason.

Section 7.14 Disclosure Schedules. The information set forth in this Agreement and the Disclosure Schedules attached hereto is disclosed solely for purposes of this Agreement, and no information set forth herein or therein shall be deemed to be an admission by any party hereto to any third party of any matter whatsoever (including any violation of Law or breach of Contract). Notwithstanding anything to the contrary set forth in the Disclosure Schedules or in this Agreement, the information and disclosures set forth in any section of the Disclosure Schedules shall be deemed to be disclosed and incorporated by reference in any other section of the Disclosure Schedules as though fully set forth in such section of the Disclosure Schedules for which applicability of such information and disclosure is reasonably apparent on its face to an independent third party that such item is applicable to such other section. The fact that any item of information is disclosed in any section of the Disclosure Schedules shall not be construed to mean that such information is required to be disclosed by this Agreement. Such information and the dollar thresholds set forth herein shall not be used as a basis for interpreting the terms "material" or "Material Adverse Effect" or other similar terms in this Agreement.

Section 7.15 Interpretation. The headings set forth in this Agreement, in any Exhibit or Disclosure Schedule hereto and in the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Except when the context requires otherwise, any reference in this Agreement to any Article, Section, clause, Schedule or Exhibit shall be to the Articles, Sections and clauses of, and Schedules and Exhibits to, this Agreement. The words “include,” “includes” and “including” are deemed to be followed by the phrase “without limitation” and the term “dollar” or “\$” means lawful currency of the United States. Reference to any Person includes such Person’s successors and assigns to the extent such successors and assigns are permitted by the terms of any applicable agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually. Reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof. Reference to any Law means such Law as amended, modified, codified, replaced or re-enacted, in whole or in part, including rules, regulations, enforcement procedures and any interpretations promulgated thereunder, all as in effect on the date hereof. Any reference to the masculine, feminine or neuter gender shall include such other genders and any reference to the singular or plural shall include the other, in each case unless the context otherwise requires. All Exhibits and Disclosure Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Where a document or other information is described as being “delivered to” or “made available to” Purchaser, it shall be construed to mean that such document or other information was actually delivered to the Purchaser or the Purchaser or one of its representatives or posted to the Companies’ virtual data room maintained by ShareVault® (the “Data Room”) no later than three (3) Business Days prior to the date of this Agreement.

Section 7.16 No Presumption Against Drafting Party. The parties hereto each acknowledge that they have been represented by counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of Law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting party has no application and is expressly waived.

Section 7.17 Conflicts and Privilege. It is acknowledged by the parties hereto that the Companies, some or all of the Sellers and Selling Equityholders, and the Sellers’ Representative have retained Warner Norcross + Judd LLP (“WNJ”) to act as their counsel in connection with the transactions contemplated hereby and that WNJ has not acted as counsel for any other party in connection with the transactions contemplated hereby and that none of the other parties has the status of a client of WNJ for conflict of interest or any other purposes as a result thereof. Buyer hereby agrees that, in the event that a dispute arises after the Closing between Purchaser, the Sellers, the Selling Equityholders or the Sellers’ Representative, WNJ may represent the Sellers, Selling Equityholders or the Sellers’ Representative in such dispute even though the interests of the Sellers, Selling Equityholders or Sellers’ Representative may be directly adverse to Purchaser, the other Sellers, the other Selling Equityholders or the Companies, and even though WNJ may have represented the Companies in a matter substantially related to such dispute, or may be handling ongoing matters for Purchaser or the Companies. Purchaser further agrees that, as to all communications among WNJ and the Companies, the Sellers, the Selling Equityholders and/or the Sellers’ Representative that relate in any way to the transactions contemplated by this Agreement, the attorney-client privilege and the expectation of client confidence belongs to the Sellers’ Representative and may be controlled by the Sellers’ Representative and shall not pass to or be claimed by Purchaser or the Companies. Notwithstanding the foregoing, in the event that a dispute arises between Purchaser or the Companies and a third Person other than a party to this Agreement after the Closing, the Companies may assert the attorney-client privilege to prevent disclosure of confidential communications by WNJ to such third Person; provided, however, that the Companies may waive such privilege without the prior written consent of the Sellers’ Representative.



Section 7.18 Execution of Agreement. This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the parties and delivered to the other party. Facsimile or electronic mail transmission of counterpart signatures to this Agreement shall be acceptable and binding.

## **ARTICLE VIII CERTAIN DEFINITIONS**

### Section 8.1 Certain Defined Terms

As used in this Agreement, the following terms shall have the following meanings:

“401(k) Plan” has the meaning ascribed to such term in Section 4.4(c).

“Accountant” has the meaning ascribed to such term in Section 1.2(c)(iv).

“Adjustment Amount” has the meaning ascribed to such term in Section 1.2(b)(v).

“Affiliate” means, with respect to a specified Person, any other Person that directly or indirectly Controls, is Controlled by, or is under common Control with, such first Person.

“AKS” has the meaning ascribed to such term in Section 2.29(h).

“Agreement” has the meaning ascribed to such term in the preamble.

“Allocation” has the meaning ascribed to such term in Section 5.7.

“Annual Financial Statements” has the meaning ascribed to such term in Section 2.6(a).

“Anticorruption Law” has the meaning ascribed to such term in Section 2.25(a).

“Authorization” has the meaning ascribed to such term in Section 2.5(b).

“Basket Amount” has the meaning ascribed to such term in Section 6.4(a)(iv).

“Benefit Plan” means any “employee benefit plan,” as defined in Section 3(3) of ERISA, and each Compensatory Arrangement, benefit, profit-sharing, stock or unit option, stock or unit purchase, stock or unit ownership, phantom or other equity, pension, retirement, supplemental retirement income, excess benefit, fringe benefit, holiday pay, vacation pay, paid time off, supplemental unemployment insurance, post-retirement medical or life insurance, health, welfare, sick leave, short-term disability, long-term disability, medical, hospitalization, life insurance, other insurance or employee benefit plan, policy, program or practice, whether formal or informal, oral or written, established, maintained or contributed to or required to be maintained or contributed to by either of the Companies under which any current or former Company Employees, directors, managers, Contractors or consultants or beneficiaries or dependents of any such person, are entitled to benefits or under which either of the Companies has any present or future Liability, excluding any plans, agreements and arrangements that are mandated by Law.

“Business” means the business of the development, manufacture, sale, licensing, and distribution of orthopedic implants, instruments and devices, and software and printed material related thereto, as engaged in by any of the Companies on the date hereof.

“Business Day” means any day other than (i) any Saturday or Sunday or (ii) any other day on which banks located in Warsaw, Indiana are required or authorized by Law to be closed for business.

“Cash Amount” has the meaning ascribed to such term in Section 1.2(b)(vi).

“Cash Amount of Purchase Price” has the meaning ascribed to such term in Section 1.2(a).

“Closing” has the meaning ascribed to such term in Section 1.3.

“Closing Date” has the meaning ascribed to such term in Section 1.3.

“Closing Net Working Capital Adjustment” has the meaning ascribed to such term in Section 1.2(b)(v).

“Closing Statement” has the meaning ascribed to such term in Section 1.2(c)(ii).

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

“Company” or “Companies” has the meaning ascribed to such term in the recitals.

“Company Loan” means Funded Indebtedness of a Person owing to either of the Companies.

“Company Employee” means any employee of either of the Companies.

“Company Owned Intellectual Property” means all Intellectual Property that is owned by, or purported to be owned by, in whole or in part, by any of the Companies, and includes Company Owned Software.

“Company Intellectual Property License” has the meaning ascribed to such term in Section 2.14(d).

“Company Owned Software” means all Company Software that is owned or purported to be owned, in whole or in part, by any of the Companies.

“Company Software” means all Software that (i) is material to the operation of the business of any of the Companies; (ii) is distributed, sold, licensed, marketed or otherwise provided to third parties by any of the Companies; and/or (iii) is licensed to, is used or held for use by any of the Companies in connection with its work for Customers or its Products or Services, and includes Company Owned Software.

“Compensatory Arrangement” means any written or oral employment, directorship, management, consulting, compensation, incentive, bonus, change in control, severance, or termination, or similar agreement between either of the Companies and any current or former Company Employee, director, manager, Contractor or consultant to which any current or former Company Employee, director, manager, Contractor or consultant is entitled to benefits.

“Confidential Information” means any confidential or proprietary information or trade secrets of any of the Companies or the Purchaser or their Affiliates, including personnel information, know-how, data, databases, business plans, advertising and marketing plans or systems, business and sales methods or systems, financial data (including sales and profit figures), customer and client lists, customer, client, dealer, distributor, staffing, vendor and supplier information (including principal contacts, addresses and telephone numbers, purchasing history, payment information and any other information). Notwithstanding the foregoing, Confidential Information does not include information that is or becomes generally available to and known by the public other than as a result of a breach of the confidentiality obligations set forth in this Agreement.

“Contract” means any written or enforceable oral contract, agreement, license, sublicense, lease, sublease, sales order, purchase order, credit agreement, indenture, mortgage, note, bond or warrant (including all amendments, supplements and modifications thereto), except any common law contracts with employees of each of the Companies or any of their Affiliates.

“Contractor” means an individual who meets the common law test of an independent contractor, including as articulated in IRS Rev. Rul. 87-41, 1987-1 C.B. 296.

“Control” means (including, with correlative meanings, “controlled by,” “controlling” and “under common control with”), with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by Contract or otherwise.

“Customer” means any third party that owns, operates, or possesses, or has the right to own, operate, or possess, a Product or Service.

“Data Room” has the meaning ascribed to such term in Section 7.15.

“Disclosure Schedules” has the meaning ascribed to such term in the introductory paragraph to ARTICLE II.

“Dollars” or “\$” means U.S. dollars.

“Draft Allocation” has the meaning ascribed to such term in Section 5.7.

“EDGAR” means Electronic Data Gathering, Analysis, and Retrieval database of the SEC.

“Encumbrance” means any lien, encumbrance, security interest, pledge, mortgage, easement, deed of trust, hypothecation or restriction on transfer of title or voting, whether imposed by agreement, understanding, Law, equity or otherwise, except for any restrictions on transfer generally arising under any applicable federal or state securities Laws.

“Environmental Law” means any applicable federal, provincial, municipal or local or foreign statute, code, ordinance, rule, regulation, permit, approval, license, judgment, order, writ, decree, common law, injunction or other authorization in effect on the date hereof or at a previous time, relating to (a) threatened or actual of any of the following: emissions, discharges, releases escapes, injections, spills or dumping releases of Hazardous Substances into the environment, including into ambient air, soil, sediments, land surface or subsurface, buildings or facilities, surface water, groundwater, publicly-owned treatment works or septic systems; (b) the generation, treatment, storage, disposal, use, handling, manufacturing, transportation, shipment or remediation of Hazardous Substances; or (c) otherwise relating to the pollution or protection of the natural environment, health and safety, waste generation management, handling treatment, transportation or disposal, protection of environmentally sensitive areas.

“Environmental Permit” means any approval, authorization, registration, license or other permission of any kind required under Environmental Law in respect of the Business.

“Escrow Agent” has the meaning ascribed to such term in Section 1.2(b)(iv).

“Escrow Agreement” has the meaning ascribed to such term in Section 1.2(b)(iv).

“Escrow Amount” has the meaning ascribed to such term in Section 1.2(b)(iv).

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

“Estimated Transaction Expenses” has the meaning ascribed to such term in Section 1.2(b)(i).

“Equity Interests” has the meaning ascribed to such term in the recitals.

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

“FDA” has the meaning ascribed to such term in Section 2.28(a).

“Federal Health Care Program” has the meaning ascribed to such term in Section 2.29(b).

“Federal Health Care Program Laws” has the meaning ascribed to such term in Section 2.29(c).

“Federal Privacy and Security Regulations” has the meaning ascribed to such term in Section 2.29(e).

“FIRPTA Certificate” has the meaning ascribed to such term in Section 1.4(a)(v).

“Final Allocation Schedule” has the meaning ascribed to such term in Section 5.7.

“Final Funded Indebtedness” has the meaning ascribed to such term in Section 1.2(c)(v).

“Final Net Working Capital” has the meaning ascribed to such term in Section 1.2(c)(v).

“Final Transaction Expenses” has the meaning ascribed to such term in Section 1.2(c)(v).

“Financial Statements” has the meaning ascribed to such term in Section 2.6(a).

“Flow-Through Income Tax Return” means any federal, state, local or non-U.S. Tax Returns that report income with respect to a Company but with respect to which the direct or indirect beneficial owners of the Company are required to pay the related Tax (including, for the avoidance of doubt, Internal Revenue Service Form 1120-S or Form 1065 and any similar state or local Tax form).

“FLSA” means the Fair Labor Standards Act of 1938, as amended.

“FMLA” means the Family and Medical Leave Act of 1993, as amended.

“Fundamental Reps” has the meaning ascribed to such term in Section 6.1.

“Funded Indebtedness” of any Person means, without duplication, the aggregate amount (including the current portions thereof) of: (i) all obligations of such Person for borrowed money (including outstanding letters of credit, solely to the extent drawn) and obligations issued or incurred in substitution or exchange for obligations for borrowed money; (ii) any other obligation of such Person evidenced by notes, debentures, bonds or other similar instruments; (iii) all indebtedness for the deferred purchase price of property or services represented by a note or other security; (iv) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (v) all interest expense accrued but unpaid on or relating to obligations described in clauses (i) through (iv) above; (vi) all obligations under any lease or similar arrangement, which obligations are required to be classified and accounted for under GAAP as capital leases on a consolidated balance sheet of each of the Companies as of such date computed in accordance with GAAP; (vii) any fees, prepayment or redemption premiums or penalties, breakage costs, unpaid fees or expenses and other monetary obligations associated with the repayment of such obligations; and (viii) all obligations of the type referred to in clauses (i) through (vii) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations.

“GAAP” means generally accepted accounting principles in the United States, as in effect from time to time.

“Governmental Authority” means any federal, state, provincial, local, municipal, foreign or other government, governmental, regulatory, Taxing or administrative agency, department, court, commission, board, bureau, tribunal or other authority or instrumentality.

“Hazardous Substance” means any solid, liquid, gas, odor, radiation or other pollutant, hazardous, dangerous or toxic substance, material, mixture, or waste of any description whatsoever which is prohibited, controlled, restricted or regulated under any Environmental Law or which is otherwise a threat or potential threat to human health, safety or the environment.

“HIPAA” has the meaning ascribed to such term in Section 2.29(e).

“Indemnification Notice” has the meaning ascribed to such term in Section 6.6(a).

“Indemnified Party” has the meaning ascribed to such term in Section 6.6(a).

“Indemnifying Party” has the meaning ascribed to such term in Section 6.6(a).

“Intellectual Property” means all domestic and foreign intellectual property and proprietary rights, including, without limitation all: (i) trade names, trademarks, service marks, trade dress, and logos, whether registered or not, and all registrations of and applications to register any of the foregoing, including the goodwill symbolized thereby or associated therewith; (ii) inventions, patents, patent applications, utility models, statutory invention registrations, mask works, invention disclosures, and industrial designs, and all reissues, divisional, renewal, extensions, provisionals, continuations and continuations-in-part thereof; (iii) copyrights in original works of authorship and registrations and applications therefor; (iv) internet domain names and registrations therefor; (v) rights in all Software; (vi) proprietary and confidential know-how and trade secrets in any form, including hardware, Software, and methods and (vii) the right to recover for damages and profits for past and future infringement of any part of the foregoing.

“Intended Tax Treatment” has the meaning ascribed to such term in Section 5.6.

“Interim Financial Statements” has the meaning ascribed to such term in Section 2.6(a).

“Inventory” means all inventory, finished goods, raw materials, work in progress, packaging, supplies, parts and other inventories.

“IRS” means Internal Revenue Service.

“Knowledge” means, (i) when used with respect to the Sellers, the actual knowledge of any of the Selling Equityholders, or knowledge that such persons would reasonably be expected to discover or otherwise become aware of after due and reasonable inquiry of the other members of the Management Team, none of whom shall have any personal Liability regarding such knowledge except as otherwise provided in this Agreement, and (ii) when used with respect to the Purchaser, the actual knowledge of Mark Throdahl, President and Chief Executive Officer of the Purchaser, Fred Hite, Chief Financial Officer of the Purchaser, and Daniel Gerritzen, General Counsel and Vice President of Legal and Human Resources of the Purchaser, none of whom shall have any personal Liability regarding such knowledge.

“Law” means any law, international treaty, statute, ordinance, official standard, rule, regulation, code, binding case law or principle of common law, enacted or promulgated by any Governmental Authority.

“Liability” or “Liabilities” means debts, commissions, duties, fees, salaries, performance or delivery penalties, warranty liabilities and other liabilities and obligations of any nature (whether pecuniary or not, including obligations to perform or forebear from performing acts or services and whether direct or indirect, known or unknown, fixed or contingent, liquidated or unliquidated, accrued or unaccrued, matured or unmatured, determinable or undeterminable), and fines or penalties.

“Loss” means and includes any and all Liabilities, losses, damages, expenses (including reasonable attorney’s fees), costs, fines, fees, penalties and obligations.

“Management Team” means the Persons set forth on Schedule 8.1.

“Material Adverse Effect” means any event, change, occurrence or effect that (i) has had or would reasonably be expected to have a material adverse effect on the Business, assets, liabilities, financial condition or results of operations of each of the Companies, taken as a whole or (ii) would reasonably be expected to prevent, materially delay or materially impede the performance by any Seller of its respective obligations under this Agreement or the consummation of the transactions contemplated hereby, in each case, other than any event, change, occurrence or effect resulting from (A) changes in general economic, financial market, business or geopolitical conditions provided that such changes do not materially and disproportionately affect each of the Companies relative to other entities in the industry, (B) changes in any applicable Laws or applicable accounting regulations or principles or interpretations thereof, provided that such changes do not materially and disproportionately affect each of the Companies relative to other entities in the industry, (C) any outbreak or escalation of hostilities or war or any act of terrorism, (D) the public announcement of this Agreement and the Related Documents and the transactions contemplated hereby and thereby or the identity of the Purchaser, (E) compliance with this Agreement, including any effect on each of the Companies resulting from failure to take any action to which the Sellers’ Representative sought and the Purchaser refused consent under this Agreement, including the impact thereof on the relationships of each of the Companies with customers, suppliers, distributors, consultants, employees or Contractors or other third parties with whom each of the Companies has any relationship, and (F) any failure by each of the Companies to meet any internal or external projections or forecasts (provided that this clause (F) shall not prevent a determination that the change or event or other facts or occurrences giving rise to or contributing to such failure has resulted in a Material Adverse Effect).

“Material Contract” has the meaning ascribed to such term in Section 2.15(b).

“Membership Interests Assignment Agreement” means each of the assignment agreements with respect to the Units in a form acceptable to Purchaser.

“NASDAQ” means NASDAQ Stock Market.

“Net Working Capital” means the amount of working capital of each of the Companies in the aggregate calculated in accordance with Schedule 1.2(c)(i), prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby.

“Net Working Capital Settlement Deadline” has the meaning ascribed to such term in Section 1.2(c)(iv).

“Non-Competition Agreement” has the meaning ascribed to such term in Section 1.4(a)(x).

“Notified Body” means an entity licensed, authorized or approved by the applicable Governmental Authority to assess and certify the conformity of a medical device with the requirements of Council Directive 93/42/EEC of 14 June 1993 concerning medical devices, as amended from time to time, and applicable harmonized standards.

“Objection Notice” has the meaning ascribed to such term in Section 1.2(c)(iii).

“Objection Period” has the meaning ascribed to such term in Section 1.2(c)(ii).

“Obligor” means the Person obligated to make payments with respect to a Company Loan.

“Order” has the meaning ascribed to such term in Section 2.10(b).

“Orthex” has the meaning ascribed to such term in the recitals.

“OrthoPediatrics Stock” has the meaning ascribed to the term in Section 1.2(a).

“Payoff Amount” has the meaning ascribed to such term in Section 1.2(b)(i).

“Payoff Letters” has the meaning ascribed to such term in Section 1.2(b)(ii).

“Permit” means any permit, license, approval, consent, registration, certification, endorsement or qualification granted by or obtained from any Governmental Authority pursuant to Law.

“Permitted Encumbrances” means (i) statutory liens for current Taxes not yet due or delinquent (or which may be paid without interest or penalties) or the validity or amount of which is being contested in good faith by appropriate Proceedings, (ii) mechanics’, carriers’, workers’, repairers’ and other similar liens arising or incurred in the ordinary course of business relating to obligations as to which there is no default on the part of each of the Companies for a period greater than sixty (60) days, or the validity or amount of which is being contested in good faith by appropriate Proceedings, or pledges, deposits or other liens securing the performance of bids, trade Contracts, leases or statutory obligations (including workers’ compensation, unemployment insurance or other social security legislation), (iii) zoning, entitlement, conservation restriction and other land use and environmental regulations by Governmental Authorities; and (iv) all exceptions, restrictions, easements, imperfections of title, charges, rights-of-way and other Encumbrances (other than those securing any Funded Indebtedness or applicable to any Equity Interests) that do not materially interfere with the present use of the assets of each of the Companies, taken as a whole.

“Person” means and includes any domestic or foreign individual, partnership, corporation, limited liability company, group, association, joint stock company, trust, estate, joint venture, unincorporated organization or any other form of business or professional entity or Governmental Authority (or any department, agency or political subdivision thereof).

“Pre-Closing Tax Returns” has the meaning ascribed to such term in Section 5.1(a).



“Pre-Closing Tax Period” means (i) any Tax period ending on or before the Closing Date and (ii) in the case of any Straddle Period, the portion of such period up to and including the Closing Date.

“Preliminary Net Working Capital” has the meaning ascribed to such term in Section 1.2(c)(i).

“Preliminary Net Working Capital Certificate” has the meaning ascribed to such term in Section 1.2(c)(i).

“Proceeding” means any claim, action, suit, arbitration or proceeding against any third party or before any Governmental Authority or arbitrator or any audit, examination or investigation commenced, brought or conducted by any Governmental Authority.

“Products” means any of the commercial products provided by or contemplated by any of the Companies at any time to any third party, whether or not sold to such third party.

“Purchase Price” has the meaning ascribed to such term in Section 1.2(a).

“Purchaser” has the meaning ascribed to such term in the preamble.

“Purchaser Common Stock” means Purchaser’s common stock, par value \$0.00025 per share.

“Purchaser Defensible Matter” has the meaning ascribed to such term in Section 6.6(d).

“Purchaser Financial Statements” has the meaning ascribed to such term in Section 3.5(b).

“Purchaser Indemnified Parties” has the meaning ascribed to such term in Section 6.3.

“Purchaser Material Adverse Effect” means any event, change, occurrence or effect that (i) has had or would reasonably be expected to have a material adverse effect on the Purchaser’s business, assets, liabilities, financial condition or results of operations of the Purchaser, taken as a whole or (ii) would reasonably be expected to prevent, materially delay or materially impede the performance by Purchaser of its respective obligations under this Agreement or the consummation of the transactions contemplated hereby, in each case, other than any event, change, occurrence or effect resulting from (A) changes in general economic, financial market, business or geopolitical conditions provided that such changes do not materially and disproportionately affect the Purchaser relative to other entities in the industry, (B) changes in any applicable Laws or applicable accounting regulations or principles or interpretations thereof, provided that such changes do not materially and disproportionately affect the Purchaser relative to other entities in the industry, (C) any outbreak or escalation of hostilities or war or any act of terrorism, (D) the public announcement of this Agreement and the Related Documents and the transactions contemplated hereby and thereby, (E) compliance with this Agreement, and (F) any failure by Purchaser to meet any internal or external projections or forecasts (provided that this clause (F) shall not prevent a determination that the change or event or other facts or occurrences giving rise to or contributing to such failure has resulted in a Purchaser Material Adverse Effect).

“Purchaser Preferred Stock” has the meaning ascribed to such term in Section 3.8.

“Purchaser SEC Documents” has the meaning ascribed to such term in Section 3.5.

“Qualified Benefit Plan” has the meaning ascribed to such term in Section 2.11(a).

“Real Property” means the real property owned, leased or subleased by each of the Companies, together with all buildings, structures and facilities located thereon.

“Real Property Lease” has the meaning ascribed to such term in Section 2.13(a).

“Registrations” shall mean authorizations, approvals, clearances, consents, licenses, permits, certificates, exemptions or registrations issued or otherwise made available by any Regulatory Authority or Governmental Authority (including 510(k) pre-market notification clearances, de novo classifications, pre-market approvals, investigational device exemptions, product recertifications, manufacturing approvals and authorizations, CE Marks, pricing and reimbursement approvals, labeling approvals, registration notifications or their foreign equivalent) that are required for the research, investigation, development, production, manufacture, labeling, distribution, marketing, storage, shipping, transportation, export, import, use or sale of the products of each of the Companies.

“Regulatory Authority” shall mean the FDA and any other Governmental Authority that regulates the research, investigation, development, production, marketing, distribution, storage, shipping, transport, advertising, labeling, promotion, sale, export, import, use, handling and control, safety, efficacy, reliability or manufacturing of medical devices or human cells, tissues, and cellular and tissue-based products, and any Notified Body.

“Related Documents” means the Escrow Agreement, Sellers’ Release, Non-Competition Agreements, the Membership Interest Assignment Agreements, Stock Powers, Selling Equityholder Agreement and Acknowledgment, and each other agreement, instrument, certificate and document delivered as a condition to the Closing or otherwise in connection with the transactions contemplated by this Agreement.

“Related Parties” and “Related Party” have the meanings ascribed to such terms in Section 7.12.

“Representatives” means, with respect to any Person, such Person’s directors, managers, officers, employees, agents and advisors (including accountants, consultants, investment bankers, legal counsel and other experts) and other representatives.

“Required Actions” has the meaning ascribed to such term in Section 2.5(a).

“Required Consent” has the meaning ascribed to such term in Section 2.5(b).

“Reserve Amounts” has the meaning ascribed to such term in Section 6.6.

“Restricted Business” has the meaning ascribed to such term in Section 4.6(a).

“Restricted Territory” has the meaning ascribed to such term in Section 4.6(a).

“Sanctions” means economic or financial sanctions or trade embargoes or restrictive measures enacted, imposed, administered or enforced from time to time by (i) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or the U.S. Department of Commerce (ii) the United Nations Security Council; (iii) the European Union or any of its member states; or (iv) Her Majesty’s Treasury.

“Sarbanes-Oxley Act” means Sarbanes-Oxley Act of 2002 (including the rules and regulations promulgated thereunder).

“SEC” means the United States Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Seller Indemnified Parties” has the meaning ascribed to such term in Section 6.2.

“Seller” or “Sellers” has the meaning ascribed to such term in the preamble.

“Sellers’ Release” has the meaning ascribed to such term in Section 1.4(a)(vi).

“Sellers’ Representative” has the meaning ascribed to such term in the preamble.

“Selling Equityholder” or “Selling Equityholders” has the meaning ascribed to such term in the preamble.

“Selling Equityholder Agreement and Acknowledgment” means that certain Selling Equityholder Agreement and Acknowledgment entered into among the Purchaser, Sellers, Selling Equityholders, and Sellers’ Representative, dated June 4, 2019.

“Services” means any of the commercial services provided by or contemplated by any of the Companies at any time to any third party, whether or not sold to such third party.

“Software” means all computer software, firmware, programs and databases, in any form, including source code, object code, make files, user interfaces, development tools, library functions, compilers, Internet websites, web content and links, all versions, updates, corrections, enhancements, replacements, and modifications thereof, and all documentation related thereto.

“SSA” has the meaning ascribed to such term in Section 2.29(b).

“Stock” has the meaning ascribed to such term in the recitals.

“Stock Power” means each of the stock powers with respect to the Stock in a form acceptable to Purchaser.

“Straddle Period” means any Tax period that begins before but ends after the Closing Date.

“Survival Period” has the meaning ascribed to such term in Section 6.1.

“Target Net Working Capital” means Nine Million Ninety-Nine Thousand and 00/100 Dollars (\$9,099,000.00).

“Tax” or “Taxes” means, with respect to any Person, all income taxes (including any tax on or based upon net income, gross income, or income as specially defined, or earnings, profits, or selected items of income, earnings or profits) and all gross receipts, value-added (VAT or IVA), sales, use, escheat, unclaimed property, goods and services, harmonized sales, ad valorem, transfer, registration, real or personal property, franchise, license, withholding, payroll, employment, social security, social insurance or windfall profits taxes, alternative or add-in minimum taxes, employment insurance premiums, customs duties, tariffs, excise, or other taxes of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts imposed by any Tax Authority on such Person.

“Tax Authority” means any Governmental Authority or any quasi-governmental or private body having jurisdiction over the assessment, determination, collection or imposition of any Tax.

“Tax Proceeding” means any action, litigation, claim, charge, audit, inquiry, investigation or other proceeding (whether civil, criminal, or administrative) commenced, brought by a Tax Authority with respect to or relating to any Tax or Tax Return.

“Tax Return” means any return, report, certificate, election, designation, form or similar statement or document (including any related or supporting information or schedule attached thereto and any information return, amended Tax return, claim for refund or declaration of estimated Tax) required or permitted to be supplied to, or filed with, a Tax Authority in connection with the determination, assessment or collection of any Tax or the administration of any Laws relating to any Tax.

“Territory” has the meaning ascribed to such term in Section 4.6(a).

“Third Party Claim” has the meaning ascribed to such term in Section 6.6(a).

“Third Party Intellectual Property” has the meaning ascribed to such term in Section 2.14(d).

“Third Party Intellectual Property License” has the meaning ascribed to such term in Section 2.14(d).

“Total Allocable Price” has the meaning ascribed to such term in Section 5.7.

“Transaction Expenses” means (a) all unpaid fees, costs, charges, expenses and obligations that are incurred by or on behalf of the Sellers or any of their Affiliates (including, prior to the Closing, each of the Companies) in connection with or relating to the consummation of the transactions contemplated by this Agreement and the Related Documents and (b) one-half of the Escrow Agent’s fees payable upon the execution and delivery of the Escrow Agreement. For the avoidance of doubt, Transaction Expenses shall exclude all fees, costs, charges, expenses and obligations that are incurred (i) by the Purchaser or any of their Affiliates and (ii) by each of the Companies in connection with any action or activity necessary for the Purchaser to satisfy their obligations set forth herein or in any of the Related Documents.

“Transaction Tax Deductions” means any item of loss or deduction resulting from or attributable to (i) transaction bonuses, change-in-control payments, severance payments, retention payments, or similar payments made to employees or other service providers of each of the Companies, (ii) fees, expenses, and interest (including unamortized original issue discount and any other amounts treated as interest for U.S. federal income Tax purposes and any prepayment penalty or breakage fees or accelerated deferred financing fees) incurred by each of the Companies with respect to the payment of any indebtedness, (iii) the amount of investment banking, legal, and accounting fees and expenses paid or payable by each of the Companies, (iv) accelerated vesting of restricted stock held by employees of each of the Companies, and (v) any amount of any deductions for U.S. federal income Tax purposes as a result of the exercise or payment for cancellation of employee or other compensatory options, in each case arising in connection with the transactions contemplated by this Agreement and as determined by the Sellers’ Representative in good faith.

“Transfer Taxes” has the meaning ascribed to such term in Section 5.2.

“Treasury Regulations” means the Federal income tax regulations, including any temporary or proposed regulations, promulgated under the Code, in effect as of the date hereof.

“Unit” has the meaning ascribed to such term in the recitals.

“Vilex” has the meaning ascribed to such term in the recitals.

“WARN” means the Worker Adjustment and Retraining Notification Act, as amended, and the rules and regulations promulgated thereunder.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the undersigned have each executed, or caused to be executed by their respective duly authorized representative, this Equity Interest Purchase Agreement as of the date first written above.

**PURCHASER:**

**ORTHOPEDIATRICS CORP.**

By: /s/ Mark Throdahl

Mark Throdahl, Chief Executive Officer

[Signature page to Equity Interest Purchase Agreement]

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IN WITNESS WHEREOF, the undersigned Sellers' Representative has executed this Equity Interest Purchase Agreement as of the date first written above on behalf of the Sellers.

**SELLERS:**

By /s/ Abraham Lavi  
Abraham Lavi, as Sellers' Representative on each Seller's behalf

IN WITNESS WHEREOF, the undersigned Sellers' Representative has executed this Equity Interest Purchase Agreement as of the date first written above.

**SELLERS' REPRESENTATIVE:**

By /s/ Abraham Lavi  
Abraham Lavi

IN WITNESS WHEREOF, the undersigned Sellers' Representative has executed this Equity Interest Purchase Agreement as of the date first written above on behalf of the Sellers.

**SELLING EQUITYHOLDERS:**

By /s/ Abraham Lavi  
Abraham Lavi, as Sellers' Representative on each Seller's behalf

[Signature page to Equity Interest Purchase Agreement – Continued]

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**FIRST AMENDMENT TO  
FOURTH AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT**

This FIRST AMENDMENT TO FOURTH AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this “**Amendment**”) is entered into as of June 4, 2019, by and among Squadron Capital LLC, a Delaware limited liability company (“**Lender**”), OrthoPediatrics Corp., a Delaware corporation (“**OrthoPediatrics**”), OrthoPediatrics US Distribution Corp., a Delaware corporation, (“**OrthoPediatrics US Distribution**”), OrthoPediatrics EU Limited, a company incorporated and registered in England and Wales (“**OrthoPediatrics EU**”), OrthoPediatrics Aus Pty Ltd., a company organized under the laws of Australia (“**OrthoPediatrics Aus**”) and OrthoPediatrics NZ Ltd., a company organized under the laws of New Zealand (“**OrthoPediatrics NZ**”) and together with OrthoPediatrics, OrthoPediatrics US Distribution, OrthoPediatrics EU and OrthoPediatrics Aus, “**Borrowers**” and individually a “**Borrower**”).

RECITALS:

A. Lender made loans and certain other financial accommodations to Borrowers as evidenced by that certain Fourth Amended and Restated Loan and Security Agreement dated as of December 31, 2017, among Borrowers and Lender (as amended, the “**Existing Loan and Security Agreement**”).

B. Borrowers and Lender hereby agree to amend the Existing Loan and Security Agreement as described in this Amendment.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated into this Amendment and made a part hereof, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Incorporation of Recitals. Borrowers and Lender hereby agree that all of the Recitals in this Amendment are hereby incorporated into and made a part hereof.

2. Capitalized Terms. Except as otherwise defined in this Amendment, each capitalized term used herein shall have the same meaning as that assigned to it in the Existing Loan and Security Agreement, and such definitions shall be incorporated herein by reference, as if fully set forth herein.

3. Amendments to Existing Loan and Security Agreement.

A. Section 1.1 of the Existing Loan and Security Agreement is hereby amended by inserting the following new definitions in alphabetical order:

“Equity Interest Purchase Agreement”: The Equity Interest Purchase Agreement dated as of June 4, 2019 among OrthoPediatrics, the “Sellers” as defined therein, the “Sellers’ Representative” as defined therein and the “Selling Equityholders” as defined therein.

“First Amendment Date”: June 4, 2019.

“Orthex”: Orthex, LLC, a Florida limited liability company.

“Term Loan B”: The term as defined in Section 2.1(b).

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“Term Loan B Maturity Date”: The earliest to occur (unless sooner terminated by acceleration or otherwise) of:

- (a) there occurs any transaction or series of transactions pursuant to which any Person(s) in the aggregate acquire(s) (x) capital stock of OrthoPediatrics possessing the voting power to elect a majority of OrthoPediatrics’ Board of Directors (whether by merger, consolidation, reorganization, combination, sale or transfer of OrthoPediatrics’ capital stock) or (y) all or substantially all of OrthoPediatrics’ assets determined on a consolidated basis;
- (b) the sale of all of the Equity Interests in, or the sale of all or substantially all of the assets of, Vilex; and
- (c) May 31, 2020.

“Term Note B”: The term as defined in Section 2.1(b).

“Vilex”: Vilex in Tennessee, Inc., a Tennessee corporation.

B. Section 1.1 of the Existing Loan and Security Agreement is hereby amended by amending and restating the following definition:

“Loan Documents”: Collectively, this Agreement, the Term Note A, the Term Note B, the Revolving Note, the Incumbency Certificates, the Closing Certificate, security agreements and collateral agreements in connection with the pledge of Collateral of the Non U.S. Loan Parties and all documents, certificates, agreements and other written matter heretofore, now and/or from time to time hereafter executed by and/or on behalf of Borrowers and delivered to Lender, or issued by Lender upon the application and/or other request of, and on behalf of, Borrowers in any way relating to, evidencing or securing the Term Loan A, Term Loan B, Revolving Loan and all Modifications thereto and thereof.

C. Section 2.1 of the Existing Loan and Security Agreement is hereby amended by amending and restating the heading as “Term Loans”.

D. Section 2.1(a) of the Existing Loan and Security Agreement is hereby amended by amending and restating the heading as “Term Loan A”.

E. The Existing Loan and Security Agreement is hereby amended by inserting the following new Section 2.1(b) immediately after Section 2.1(a):

(b) Term Loan B. Subject to the terms and provisions hereof, Lender shall lend to Borrowers and Borrowers shall borrow a term loan in the principal amount of \$30,000,000 (the “Term Loan B”). The Term Loan B shall be evidenced by the term note made payable by the Borrowers, jointly and severally, to the order of the Lender in the form attached as Exhibit A-1 hereto (the “Term Note B”). The Term Loan B, the obligations of the Borrowers and the rights and remedies of the Lender are pari passu with the Term Loan A and the Revolving Loan and senior to all other Indebtedness of the Borrowers. The entire amount of the proceeds of the Term Loan B shall be disbursed in full on the First Amendment Date.

F. Section 2.2(a) of the Existing Loan and Security Agreement is hereby amended by (i) inserting in the sixth sentence therein, “the Term Loan B,” immediately following “the Term Loan A” and (ii) inserting the following sentence immediately following the sixth sentence therein:

Notwithstanding anything to the contrary contained herein, no borrowings of the Revolving Loan shall be permitted until the outstanding principal amount of the Term Loan B and all accrued interest thereon has been paid in full.

G. Section 2.3 of the Existing Loan and Security Agreement is hereby amended by inserting in the first sentence therein, “the Term Note B,” immediately following “the Term Note A”.

H. Section 3.1 of the Existing Loan and Security Agreement is hereby amended by (i) deleting the reference to “(b)” and inserting in place thereof “(c)” and (ii) inserting the following new Section 3.1(b) immediately following Section 3.1(a):

(b) Term Loan B. The Term Loan B shall bear interest at the Applicable Rate; provided that (i) the Applicable Rate shall be adjusted as of each January 1, and July 1 of each year during the term of the Term Loan B, (ii) following the Term Loan B Maturity Date, whether by acceleration or otherwise, the Term Loan B shall bear interest at the Default Rate and (iii) following the occurrence of any Event of Default under Section 9.1 hereof (including after acceleration or judgment), the Term Loan B shall bear interest at the Default Rate. Interest in respect of the Term Loan B shall be calculated based on a 360 day year for the actual number of days elapsed.

I. Section 3.2 of the Existing Loan and Security Agreement is hereby amended by inserting “, Term Loan B” immediately following “Term Loan A” in the second and fourth lines thereof.

J. Section 3.3(a) of the Existing Loan and Security Agreement is hereby amended by inserting “, Term Loan B” in the heading immediately following “Term Loan A” and by inserting the following sentence at the end of the section:

Borrowers promise to pay, jointly and severally, to the order of Lender the Term Loan B, plus all accrued but unpaid interest on the Term Loan B on the Term Loan B Maturity Date.

K. Section 3.5(a) of the Existing Loan and Security Agreement is hereby amended by inserting “, Term Loan B” immediately following “Term Loan A” in the second line thereof and inserting “Term Loan B, then to” immediately following “first to the” in the third line thereof.

L. Section 4.1 of the Existing Loan and Security Agreement is hereby amended by (i) deleting “and” and inserting “,” after “OrthoPediatrics” in the second line thereof, (ii) inserting “and Orthex” after “OrthoPediatrics US Distribution” in the third line thereof and (iii) inserting the following new sentence at the end of the section:

Notwithstanding anything to the contrary contained herein, the Obligations of the Borrowers with respect to the Term Loan B shall be secured solely by the Equity Interests of Vilex and Orthex owned by OrthoPediatrics and the personal Property of Orthex owned by Orthex; *provided, however*, that (i) during the continuance of an Event of Default, all such Equity Interests and personal Property shall secure all Obligations hereunder and (ii) upon payment in full of the principal of the Term Loan B including all accrued interest thereon, the Equity Interests and personal Property of Orthex shall secure all Obligations hereunder.

M. Section 5 of the Existing Loan and Security Agreement is hereby amended by inserting “, the Term Loan B” immediately following “the Term Loan A” in the first line thereof.

N. Section 5.6 of the Existing Loan and Security Agreement is hereby amended by inserting “, the Term Loan B” immediately following “the Term Loan A” in the third line thereof.

O. Section 6.9 of the Existing Loan and Security Agreement is hereby amended by inserting the following sentence at the end of the section:

OrthoPediatics shall use the proceeds of the Term Loan B solely to acquire the shares of stock of Vilex and the membership interests of Orthex pursuant to the Equity Interest Purchase Agreement.

P. Section 7.4(b) of the Existing Loan and Security Agreement is hereby amended by inserting “, the Term Loan B” immediately following “the Term Loan A” in the fourth line thereof.

Q. Section 7.7 of the Existing Loan and Security Agreement is hereby amended by amending and restating the section as follows:

7.7 Sale of Assets. No Borrower will lease, sell or otherwise dispose of its Property to any other Person, except (i) sales of Inventory in the ordinary course of business, (ii) the sale of all of the Equity Interests in, or the sale of all or substantially all of the assets of, Vilex or (iii) the license of any Intellectual Property of Orthex.

R. Section 7.9 of the Existing Loan and Security Agreement is hereby amended by (i) inserting “; and” in place of “.” at the end of clause (b) and (ii) inserting the following new clause (c) immediately following clause (b):

(c) Investments by OrthoPediatics pursuant to the Equity Interest Purchase Agreement.

S. Section 8.3 of the Existing Loan and Security Agreement is hereby amended by inserting “, the Term Loan B” immediately following “the Term Loan A” in the first line thereof.

T. Section 8.3(a) of the Existing Loan and Security Agreement is hereby amended by inserting “, the Term Loan B” immediately following “the Term Loan A” in the fourth line thereof.

U. Section 8.3(b) of the Existing Loan and Security Agreement is hereby amended by inserting “, the Term Loan B” immediately following “the Term Loan A” in the third line thereof.

V. Section 8.3(d) of the Existing Loan and Security Agreement is hereby amended by inserting “, the Term Loan B” immediately following “the Term Loan A” in the second line thereof.

W. Section 9.1(a) of the Existing Loan and Security Agreement is hereby amended by amending and restating the section as follows:

(a) Borrowers shall fail to pay (i) interest under the Term Loan A, the Term Loan B, the Revolving Loan or other Obligations under this Agreement within 10 calendar days after the same becomes due, (ii) principal and accrued interest under the Term Loan A and the Revolving Note on the Maturity Date and (iii) principal and accrued interest under the Term Loan B on the Term Loan B Maturity Date;

X. Section 9.4 of the Existing Loan and Security Agreement is hereby amended by inserting “, the Term Loan B” immediately following “the Term Loan A” in the second line thereof.

Y. Section 11.13 of the Existing Loan and Security Agreement is hereby amended by inserting “, the Term Loan B” immediately following “the Term Loan A” in the second sentence thereof.

Z. The Existing Loan and Security Agreement is hereby amended by inserting Exhibit A hereto as Exhibit A-1 thereto.

4. Joinder to Existing Loan and Security Agreement.

A. Effective as of the date of this Amendment, Orthex hereby acknowledges that it has received and reviewed a copy of the Existing Loan and Security Agreement, and acknowledges and hereby:

(i) joins in the execution of, and becomes a party to, the Existing Loan and Security Agreement as a Borrower thereunder, as indicated by its signature below;

(ii) agrees to be bound by all representations, warranties, covenants, agreements, liabilities and acknowledgements of a Borrower under the Existing Loan and Security Agreement with the same force and effect as if Orthex was an original signatory to the Existing Loan and Security Agreement;

(iii) assumes all rights and interests and agrees to perform all applicable duties and Obligations of a Borrower under the Existing Loan and Security Agreement;

(iv) as collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Obligations of Borrowers and Orthex, grants to Lender a lien on and security interest in, all of Orthex’s right, title and interest in, to and under the personal Property of Orthex and expressly assumes all obligations and liability of a debtor thereunder;

(v) adds the information in Exhibit B attached hereto to the Schedules to the Existing Loan and Security Agreement; and

(vi) agrees to execute a Joinder to the Revolving Note and Second Amended and Restated Term Note A in a form acceptable to Lender.

B. Orthex hereby makes the representations and warranties set forth in Section 5 of the Existing Loan and Security Agreement as of the date hereof and confirms that such representations and warranties are true and correct.

C. Orthex covenants and agrees to be bound by and to comply with the affirmative and negative covenants set forth in Sections 6 and Z of the Existing Loan and Security Agreement as if Orthex was an original party to the Existing Loan and Security Agreement.

5. Representations, Warranties and Covenants. Each Borrower hereby represents, warrants and covenants to Lender as follows:

A. no Unmatured Default or Event of Default has occurred and is continuing under the Existing Loan and Security Agreement or any other Loan Document;

B. the representations and warranties of such Borrower in the Existing Loan and Security Agreement and each other Loan Document are true and correct in all material respects as of the date hereof as though each of said representations and warranties was made on the date hereof (except, in each case for representations and warranties which by their terms are expressly applicable to an earlier date, in which case, such representations and warranties shall be true and correct in all material respects as of such earlier date); and

C. this Amendment has been duly authorized, executed and delivered on behalf of such Borrower and this Amendment constitutes the legal, valid and binding obligation of such Borrower, enforceable in accordance with its terms except as enforceability may be limited by applicable bankruptcy, insolvency or laws affecting creditor's rights generally and by general principles of equity.

6. Conditions Precedent. The obligation of Lender to enter into this Amendment is subject to the following conditions precedent:

A. Borrowers shall have entered into, executed and delivered to Lender:

(i) this Amendment;

(ii) the Term Note B in the form attached hereto as Exhibit A; and

(iii) Certificate(s) and assignment(s) separate from certificate executed in blank for the shares of stock of Vilex;

B. Orthex shall have entered into, executed and delivered to Lender:

(i) the Joinder to Revolving Note and Second Amended and Restated Term Note A;

(ii) the Grant of Patent Security Agreement covering patents filed by Orthex; and

(iii) Grant of Trademark Security Agreement covering trademarks filed by Orthex.

(iv) Certificate(s) and assignment(s) separate from certificate executed in blank for the shares of stock of Vilex.

C. Lender shall have received a certificate from the Secretary of Borrowers (i) attesting to the resolutions of the Board of Directors authorizing its execution, delivery and performance of this Amendment, (ii) authorizing specific officers of Borrowers to execute this Amendment, and (iii) attesting to the incumbency and signature of specific officers of Borrowers.

7. Waiver of Claims. Each Borrower hereby acknowledges, agrees and affirms that it currently possesses no claims, defenses, offsets, recoupment or counterclaims of any kind or nature against or with respect to the enforcement of the Existing Loan and Security Agreement or any other Loan Document or any amendments thereto (collectively, the “**Claims**”), nor does any Borrower now have knowledge of any facts that would or might give rise to any Claims. If facts now exist which would or could give rise to any Claim against or with respect to the enforcement of the Existing Loan and Security Agreement or any other Loan Document, as amended hereby, each Borrower hereby unconditionally, irrevocably and unequivocally waives to the extent permitted by applicable law and fully releases any and all such Claims as if such Claims were the subject of a lawsuit (other than the defense of payment in full), adjudicated to final judgment from which no appeal could be taken and therein dismissed with prejudice.

8. Ratification of Existing Loan and Security Documents. From and after the date hereof, the Existing Loan and Security Agreement and the other Loan Documents shall be deemed to be amended and modified as provided herein, and, except as so amended and modified, the Existing Loan and Security Agreement and the other Loan Documents shall continue in full force and effect and the Existing Loan and Security Agreement and the applicable provisions of this Amendment shall be read, taken and construed as one and the same instrument. Each Borrower hereby remakes, ratifies and reaffirms all of its Obligations under the terms of the Existing Loan and Security Agreement and the other Loan Documents and any other document to which it is a party evidencing, creating or securing the Loans, as of the date hereof after giving effect to the amendments contained herein including, without limitation, the granting of a security interest thereunder. On and after the date hereof, the term “Loan and Security Agreement” used in any document evidencing the Loan shall mean the Existing Loan and Security Agreement as amended hereby. Except as expressly set forth in this Amendment, nothing in this Amendment shall constitute a waiver or relinquishment of (a) any Unmatured Default or Event of Default under any of the Loan Documents, (b) any of the agreements, terms or conditions contained in any of the Loan Documents, (c) any rights or remedies of Lender with respect to the Loan Documents, or (d) the rights of Lender to collect the full amounts owing to them under the Loan Documents.

9. Consents. Each Borrower hereby represents that this Amendment does not violate any provision of any instrument, document, contract or agreement to which such party is a party, or each Borrower hereby represents that it has obtained all requisite consents under those third party instruments prior to entering into this Amendment.

10. Further Assurances. The parties hereto, shall, at any time and from time to time, following the execution of this Amendment, execute and deliver all such further instruments and take all such further action as may be reasonably necessary or appropriate in order to carry out the provisions of this Amendment.

11. Counterparts. This Amendment may be executed in any number of counterparts, and by the different parties hereto and thereto on the same or separate counterparts, each of which, when so executed and delivered, shall be deemed to be an original; all the counterparts for this Amendment shall together constitute one and the same agreement. Delivery of a counterpart to this Amendment by facsimile or electronic transmission shall constitute delivery of an original counterpart hereto.

12. Representation by Counsel. Each Borrower hereby represents that it has been represented by competent counsel of its choice in the negotiation and execution of this Amendment; that it has read and fully understands the terms hereof, that such party and its counsel have been afforded an opportunity to review, negotiate and modify the terms of this Amendment, and that it intends to be bound hereby.

13. No Third Party Beneficiaries. The terms and provisions of this Amendment shall be for the sole benefit of the parties hereto and their respective successors and assigns; no other person, firm, entity or corporation shall have any right, benefit or interest under this Amendment.

14. Governing Law. The provision of Section 11.15 of the Existing Loan and Security Agreement is hereby incorporated herein by reference.

15. WAIVER OF TRIAL BY JURY. TO THE EXTENT PERMITTED BY LAW, BORROWERS AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AMENDMENT OR THE OTHER LOAN DOCUMENTS OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY IN CONNECTION HEREWITH. EACH BORROWER HEREBY EXPRESSLY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR LENDER TO ENTER INTO THIS AMENDMENT.

***THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.***

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Fourth Amended and Restated Loan and Security Agreement dated as of the date first written above.

**ORTHOPEDIATRICS CORP.**

By: /s/ Mark Throdahl  
\_\_\_\_\_  
Mark Throdahl  
President & Chief Executive Officer

**ORTHOPEDIATRICS US DISTRIBUTION CORP.**

By: /s/ Mark Throdahl  
\_\_\_\_\_  
Mark Throdahl  
President & Chief Executive Officer

**ORTHOPEDIATRICS EU LIMITED**

By: /s/ Fred Hite  
\_\_\_\_\_  
Name: Fred Hite  
Title: Chief Financial Officer

**ORTHOPEDIATRICS AUS PTY LTD**

By: /s/ Fred Hite  
\_\_\_\_\_  
Name: Fred Hite  
Title: Chief Financial Officer

**ORTHOPEDIATRICS NZ LTD**

By: /s/ Fred Hite  
\_\_\_\_\_  
Name: Fred Hite  
Title: Chief Financial Officer

**ORTHEX, LLC**

By: /s/ Fred Hite  
\_\_\_\_\_  
Name: Fred Hite  
Title: Manager

First Amendment to  
Fourth Amended and Restated Loan and Security Agreement

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LENDER:

**SQUADRON CAPITAL LLC**

By: /s/ David R. Pelizzon

Name: David R. Pelizzon

Title: President

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First Amendment to  
Fourth Amended and Restated Loan and Security Agreement

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Exhibit A

TERM NOTE B

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TERM NOTE B

\$30,000,000

June 4, 2019

FOR VALUE RECEIVED, the undersigned, OrthoPediatrics Corp., a Delaware corporation ("**OrthoPediatrics**"), OrthoPediatrics US Distribution Corp., a Delaware corporation, ("**OrthoPediatrics US Distribution**"), OrthoPediatrics EU Limited, a company incorporated and registered in England and Wales ("**OrthoPediatrics EU**"), OrthoPediatrics Aus Pty Ltd., a company organized under the laws of Australia ("**OrthoPediatrics Aus**"), OrthoPediatrics NZ Ltd., a company organized under the laws of New Zealand ("**OrthoPediatrics NZ**") and Orthex, LLC, a Florida limited liability company ("**Orthex**" and together with OrthoPediatrics, OrthoPediatrics US Distribution, OrthoPediatrics EU, OrthoPediatrics Aus and OrthoPediatrics NZ, "**Borrowers**" and individually a "**Borrower**"), jointly and severally promise to pay to the order of Squadron Capital LLC, a Delaware limited liability company (the "**Lender**"), at the place and times provided in the Fourth Amended and Restated Loan and Security Agreement referred to below, the principal sum of \$30,000,000, together with all accrued and unpaid interest under this Term Note B ("**Term Note B**") pursuant to that certain Fourth Amended and Restated Loan and Security Agreement, dated as of the date hereof (as amended, supplemented, modified or restated from time to time, the "**Fourth Amended and Restated Loan and Security Agreement**") by and among Borrowers and Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Fourth Amended and Restated Loan Agreement.

The unpaid principal amount of this Term Note B from time to time outstanding is subject to mandatory repayment as provided in the Fourth Amended and Restated Loan and Security Agreement and shall bear interest as provided in Section 3.1(b) of the Fourth Amended and Restated Loan and Security Agreement. This Term Note B may be voluntarily prepaid from time to time as provided in the Fourth Amended and Restated Loan and Security Agreement. All payments of principal and interest on this Term Note B shall be payable in lawful currency of the United States of America in immediately available funds to such account as the Lender shall specify from time to time by notice to the Borrowers. The principal and all accrued and unpaid interest under this Term Note B shall be due and payable on the Term Loan B Maturity Date.

This Term Note B is entitled to the benefits of, and evidences Obligations incurred under, the Fourth Amended and Restated Loan Agreement, to which reference is made for a description of the security for this Term Note B and for a statement of the terms and conditions on which Borrowers are permitted and required to make prepayments and repayments of principal of the Obligations evidenced by this Term Note B and on which such Obligations may be declared to be immediately due and payable.

THIS TERM NOTE B SHALL BE GOVERNED, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS, WITHOUT REFERENCE TO THE CONFLICTS OR CHOICE OF LAW PRINCIPLES THEREOF.

Each Borrower hereby waives all requirements as to diligence, presentment, demand of payment, protest and (except as required by the Fourth Amended and Restated Loan and Security Agreement) notice of any kind with respect to this Term Note B.

*\* \* Signature Page to Follow \* \**

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IN WITNESS WHEREOF, the undersigned has executed this Term Note B as of the day and year first written above.

**BORROWERS:**

**ORTHOPEDIATRICS CORP.**

By: \_\_\_\_\_  
Name: Mark Throdahl  
Title: President and Chief Executive Officer

**ORTHOPEDIATRICS U.S. DISTRIBUTION CORP.**

By: \_\_\_\_\_  
Name: Mark Throdahl  
Title: President and Chief Executive Officer

**ORTHOPEDIATRICS EU LIMITED**

By: \_\_\_\_\_  
Name: Fred Hite  
Title: Chief Financial Officer

**ORTHOPEDIATRICS AUS PTY LTD**

By: \_\_\_\_\_  
Name: Fred Hite  
Title: Chief Financial Officer

**ORTHOPEDIATRICS NZ LTD**

By: \_\_\_\_\_  
Name: Fred Hite  
Title: Chief Financial Officer

**ORTHEX, LLC**

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

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Exhibit B

ADDENDUM TO SCHEDULES

[Omitted from filing.]

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TERM NOTE B

\$30,000,000

June 4, 2019

FOR VALUE RECEIVED, the undersigned, OrthoPediatics Corp., a Delaware corporation ("**OrthoPediatics**"), OrthoPediatics US Distribution Corp., a Delaware corporation, ("**OrthoPediatics US Distribution**"), OrthoPediatics EU Limited, a company incorporated and registered in England and Wales ("**OrthoPediatics EU**"), OrthoPediatics Aus Pty Ltd., a company organized under the laws of Australia ("**OrthoPediatics Aus**"), OrthoPediatics NZ Ltd., a company organized under the laws of New Zealand ("**OrthoPediatics NZ**") and Orthex, LLC, a Florida limited liability company ("**Orthex**" and together with OrthoPediatics, OrthoPediatics US Distribution, OrthoPediatics EU, OrthoPediatics Aus and OrthoPediatics NZ, "**Borrowers**" and individually a "**Borrower**"), jointly and severally promise to pay to the order of Squadron Capital LLC, a Delaware limited liability company (the "**Lender**"), at the place and times provided in the Fourth Amended and Restated Loan and Security Agreement referred to below, the principal sum of \$30,000,000, together with all accrued and unpaid interest under this Term Note B ("**Term Note B**") pursuant to that certain Fourth Amended and Restated Loan and Security Agreement, dated as of the date hereof (as amended, supplemented, modified or restated from time to time, the "**Fourth Amended and Restated Loan and Security Agreement**") by and among Borrowers and Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Fourth Amended and Restated Loan Agreement.

The unpaid principal amount of this Term Note B from time to time outstanding is subject to mandatory repayment as provided in the Fourth Amended and Restated Loan and Security Agreement and shall bear interest as provided in Section 3.1(b) of the Fourth Amended and Restated Loan and Security Agreement. This Term Note B may be voluntarily prepaid from time to time as provided in the Fourth Amended and Restated Loan and Security Agreement. All payments of principal and interest on this Term Note B shall be payable in lawful currency of the United States of America in immediately available funds to such account as the Lender shall specify from time to time by notice to the Borrowers. The principal and all accrued and unpaid interest under this Term Note B shall be due and payable on the Term Loan B Maturity Date.

This Term Note B is entitled to the benefits of, and evidences Obligations incurred under, the Fourth Amended and Restated Loan Agreement, to which reference is made for a description of the security for this Term Note B and for a statement of the terms and conditions on which Borrowers are permitted and required to make prepayments and repayments of principal of the Obligations evidenced by this Term Note B and on which such Obligations may be declared to be immediately due and payable.

THIS TERM NOTE B SHALL BE GOVERNED, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS, WITHOUT REFERENCE TO THE CONFLICTS OR CHOICE OF LAW PRINCIPLES THEREOF.

Each Borrower hereby waives all requirements as to diligence, presentment, demand of payment, protest and (except as required by the Fourth Amended and Restated Loan and Security Agreement) notice of any kind with respect to this Term Note B.

*\* \* Signature Page to Follow \* \**

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IN WITNESS WHEREOF, the undersigned has executed this Term Note B as of the day and year first written above.

**BORROWERS:**

**ORTHOPEDIATRICS CORP.**

By: /s/ Mark Throdahl

Name: Mark Throdahl

Title: President & Chief Executive Officer

**ORTHOPEDIATRICS US DISTRIBUTION CORP.**

By: /s/ Mark Throdahl

Name: Mark Throdahl

Title: President & Chief Executive Officer

**ORTHOPEDIATRICS EU LIMITED**

By: /s/ Fred Hite

Name: Fred Hite

Title: Chief Financial Officer

**ORTHOPEDIATRICS AUS PTY LTD**

By: /s/ Fred Hite

Name: Fred Hite

Title: Chief Financial Officer

**ORTHOPEDIATRICS NZ LTD**

By: /s/ Fred Hite

Name: Fred Hite

Title: Chief Financial Officer

**ORTHEX, LLC**

By: /s/ Fred Hite

Name: Fred Hite

Title: Manager

Term Note B

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## OrthoPediatrics Announces Acquisition of Vilex and Novel External Fixation Technology

*The Company to host conference call today at 8:30am ET*

**WARSAW, Indiana, June 5, 2019** — OrthoPediatrics Corp. (“OrthoPediatrics”) (NASDAQ:KIDS), a company focused exclusively on advancing the field of pediatric orthopedics, is pleased to announce that it has acquired Vilex in Tennessee, Inc. (“Vilex”) and Orthex, LLC (collectively, “Vilex”), including its Orthex Hexapod circular fixation technology and proprietary CORA-based x-ray planning software, for a total of \$60 million, consisting of \$50 million in cash and \$10 million in stock. The transaction will be financed, in part, with \$30 million of new debt provided by Squadron Capital LLC on similar terms to the other debt it has provided OrthoPediatrics.

Vilex is primarily a foot and ankle surgery company with a product portfolio targeting pediatric patients and adults that generated \$11.8 million in total sales, which are derived primarily from the U.S., and approximately \$2.9 million of net income in full year 2018. Its Orthex Hexapod technology is its most rapidly growing system, reaching sales of \$3.1 million in 2018, increasing more than 50% year-over-year since receiving FDA clearance in March 2016. Orthex is used to treat pediatric congenital deformities and limb length discrepancies such as fibula and tibia hemimelia, radial clubhand, ankle equinus, Blount’s disease, genu recurvatum, and multiapical deformities. Vilex also sells a range of 13 families of surgical products, some of which are used to treat pediatric conditions of the extremities such as flatfoot reconstruction, subtalar arthroereisis, and arthrodesis procedures of small bones.

The Orthex Hexapod system offers unique hardware, including its easily calibrated struts and infection-reducing Hydroxy-apatite coated pins. However, its key advantage is the patented point and click software, which dramatically simplifies deformity correction planning. This software was developed by Abraham Lavi, PhD, founder of Vilex, in conjunction with Dr. Dror Paley, founder of the Paley Institute of West Palm Beach, Florida. Dr. Paley is a pioneer of the Ilizarov method in the United States and has conducted more than 17,000 limb lengthening and reconstruction procedures, while also developing more than 100 new surgical procedures. He is also the author of *Principles of Deformity Correction*.

Mark Throdahl, President and CEO of OrthoPediatrics, commented, “This transaction closes the biggest gap in our Trauma & Deformity product offering. It increases our coverage of the Trauma & Deformity market from 60% to 80%, while also adding a number of foundational products in pediatric foot and ankle surgery in anticipation of the imminent launch of our PediFoot system. It also expands OP’s surgeon base to those deformity correction surgeons who treat children but may not practice in pediatric hospitals.”

Mr. Throdahl added, “We continue to believe in the power of focus and intend to remain exclusively focused on pediatric applications going forward. As such, we plan to identify a potential buyer for Vilex’s adult product line who is focused on the adult orthopedic space and is a synergistic fit for Vilex’s personnel, sales force and assets. The transaction could include an exclusive license of the Orthex technology for adult Foot & Ankle applications. We are confident there will be industry interest in this transaction, but we can make no assurances that such a sale will occur or its potential timing.”

Abe Lavi, Chairman of Vilex, commented, “Vilex is pleased to complete this transaction with an established company like OrthoPediatrics, which has worldwide distribution reach and extraordinary brand equity with pediatric orthopedic surgeons. The potential impact of the Orthex technology, combined with OrthoPediatrics’ product offering and developing pipeline, is enormous, and we look forward to OrthoPediatrics’ ability to capitalize specifically on the pediatric applications of our products. Going forward, I am confident that Vilex will receive the support of a company with the ability to maintain and grow Vilex’s leadership in the extremities market.”

Stifel Nicolaus & Company, Incorporated acted as financial advisor to OrthoPediatrics’ Board of Directors. Bingham Greenebaum Doll LLP served as legal counsel to OrthoPediatrics on the transaction. Warner Norcross & Judd LLP served as legal counsel to Vilex.



## **Conference Call and Webcast Information**

OrthoPediatics will hold a conference call and webcast today at 8:30am ET to discuss the acquisition, followed by a question and answer session. To listen to the live conference call, please dial (855) 289-4603 for domestic callers and (614) 999-9389 for international callers. The conference ID number is 6492524. A live webcast of the conference call will be available online from the investor relations page of the OrthoPediatics' corporate website at [www.orthopediatrics.com](http://www.orthopediatrics.com).

A replay of the webcast will remain available on OrthoPediatics' website, [www.orthopediatrics.com](http://www.orthopediatrics.com). In addition, a telephonic replay of the call will be available until June 12, 2019. The replay dial-in numbers are (855) 859-2056 for domestic callers and (404) 537-3406 for international callers. Please use the replay conference ID number 6492524.

## **About Vilex**

Vilex, founded in 1996, is a private company and Tennessee-based manufacturer of precision engineered extremity solutions, specializing in internal and external fixation devices for foot and ankle, pediatrics, deformity correction, and reconstructive surgery. Vilex sells its products throughout the United States and in international markets such as Colombia, Mexico, Brazil, Canada, and Israel. Vilex products are sold to orthopedic and podiatric surgeons, although the new Orthex technologies have to-date been adopted primarily by pediatric orthopedic specialists.

## **About OrthoPediatics Corp.**

Founded in 2006, OrthoPediatics is an orthopedic company focused exclusively on providing a comprehensive product offering to the pediatric orthopedic market to improve the lives of children with orthopedic conditions. OrthoPediatics currently markets 26 surgical systems that serve three of the largest categories within the pediatric orthopedic market. These systems span trauma and deformity correction, scoliosis, and sports medicine/other procedures. OrthoPediatics' global sales organization is focused exclusively on pediatric orthopedics and the Company distributes its products in the United States and 41 international countries.

## **Investor Contacts**

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