

## TRADEMARK ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
ReGen Biologics, Inc.		05/11/2011	CORPORATION: DELAWARE
RECEIVING PARTY DATA			
Name:	Sports Medicine Holding Company, LLC		
Street Address:	One Paragon Drive, Suite 125		
Internal Address:	c/o Ivy Capital Partners, LLC		
City:	Montvale		
State/Country:	NEW JERSEY		
Postal Code:	07645		
Entity Type:	LIMITED LIABILITY COMPANY: DELAWARE		
PROPERTY NUMBERS Total: 5			
Property Type	Number	Word Mark	
Registration Number:	3674026		
Registration Number:	3308864	CMI	
Registration Number:	2032386	REGEN	
Registration Number:	3345499	REGEN BIOLOGICS	
Registration Number:	2300495	SHARPSHOOTER	
CORRESPONDENCE DATA			
Fax Number:			
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
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Email:	alberto.zacapa@dlapiper.com		
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Address Line 1:	500 Eighth Street, NW		
Address Line 4:	Washington, DISTRICT OF COLUMBIA 20004		

OP \$140.00 3674026

ATTORNEY DOCKET NUMBER:	378354-000001
NAME OF SUBMITTER:	Ryan C. Compton
Signature:	/Ryan C. Compton/
Date:	10/18/2013

**Total Attachments: 51**

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EXECUTION COPY

**ASSET PURCHASE AGREEMENT**

Among

**REGEN BIOLOGICS, INC.,**

**RBIO, INC.**

and

**SPORTS MEDICINE HOLDING COMPANY, LLC**

dated as of

May 11, 2011

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## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "**Agreement**"), dated as of May 11, 2011, is entered into among REGEN BIOLOGICS, INC., a Delaware corporation ("**ReGen**"), RBIO, INC., a Delaware corporation ("**RBIO**") and, together with ReGen, the "**Seller**") and SPORTS MEDICINE HOLDING COMPANY, LLC, a Delaware limited liability company ("**Buyer**").

### RECITALS:

WHEREAS, Seller is the Debtor in a Chapter 11 reorganization proceeding in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") in the case captioned In re ReGen Biologics, Inc., Chapter 11 petition nos. 1--11083 and 11-11084 (the "**Bankruptcy Case**").

WHEREAS, Seller and the Subsidiary are engaged in the business of developing, manufacturing and marketing medical devices principally for use in the surgical sports medicine market (the "**Business**");

WHEREAS, Seller wishes to sell and assign to Buyer, and Buyer wishes to purchase and assume from Seller, substantially all the assets, and certain specified liabilities, of the Business, subject to the terms and conditions set forth herein; and

WHEREAS, the Parties desire to consummate the transactions contemplated by this Agreement as promptly as practicable after the Bankruptcy Court enters the Sale Order approving such transactions;

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

### ARTICLE I DEFINITIONS

The following terms have the meanings specified or referred to in this **Article I**:

"**Accounts Receivable**" has the meaning set forth in **Section 2.01(b)**.

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

"**Acquisition Proposal**" has the meaning set forth in **Section 6.03(a)**.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" has the meaning set forth in the preamble.



“**Alternate Transaction**” means a transaction or series of related transactions pursuant to which Seller (i) accepts a Qualified Bid, other than that of Buyer, as the highest or best offer, or (ii) directly or indirectly sells, transfers, leases or otherwise disposes of, including through an asset sale, stock sale, merger, reorganization or other similar transaction (by Seller or otherwise), including pursuant to a stand-alone plan of reorganization or liquidation, all or substantially all of the Purchased Assets (or agrees to do any of the foregoing) in a transaction or series of transactions to a party or parties other than Buyer.

“**Approved Budgets**” has the meaning set forth in **Section 2.01(d)**.

“**Assigned Contracts**” has the meaning set forth in **Section 2.01(d)**.

“**Assignment and Assumption Agreement**” has the meaning set forth in **Section 3.02(a)(ii)**.

“**Assignment and Assumption of Lease**” has the meaning set forth in **Section 3.02(a)(iv)**.

“**Assumed Liabilities**” has the meaning set forth in **Section 2.03**.

“**Auction**” means the auction for the sale of Purchased Assets conducted by Seller if any other Qualified Bid is received pursuant to the Sale Scheduling and Procedures Order.

“**Bankruptcy Case**” has the meaning set forth in the recitals.

“**Bankruptcy Code**” means title 11 of the United States Code, as amended and in effect from time to time.

“**Bankruptcy Court**” has the meaning set forth in the recitals.

“**Benefit Plan**” has the meaning set forth in **Section 4.19(a)**.

“**Bill of Sale**” has the meaning set forth in **Section 3.02(a)(i)**.

“**Books and Records**” has the meaning set forth in **Section 2.01(m)**.

“**Break-up Fee**” has the meaning set forth in **Section 9.02(a)**.

“**Business**” has the meaning set forth in the recitals.

“**Business Day**” means any day except Saturday, Sunday or any other day on which commercial banks located in New York are authorized or required by Law to be closed for business.

“**Buyer**” has the meaning set forth in the preamble.

“**Buyer Closing Certificate**” has the meaning set forth in **Section 7.03(f)**.

“**Buyer Group**” has the meaning set forth in **Section 11.03**.

“**Cash Payment Amount**” means the greater of (x) \$535,000 or (y) \$1.0 million less (i) all Specified Expenses and (ii) all Assumed Liabilities due in respect of periods prior to the Closing.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

“**Closing**” has the meaning set forth in **Section 3.01**.

“**Closing Date**” has the meaning set forth in **Section 3.01**.

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

“**Contracts**” means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

“**Credit Bid**” means the bid by the Buyer to acquire substantially all of the assets of Seller at the Auction for the combination of the Cash Payment Amount and by crediting the remaining amount of such bid, if successful, on the Closing Date against the amount of the Seller’s Secured Debt.

“**DIP Loan**” means that certain DIP Loan and Security Agreement, dated as of April 21, 2011, between Buyer and Seller.

“**Disclosure Schedules**” means the Disclosure Schedules delivered by Seller and Buyer concurrently with the execution and delivery of this Agreement.

“**Dollars or \$**” means the lawful currency of the United States.

“**Employees**” means those Persons employed by Seller in connection with the Business immediately prior to the Closing.

“**Employment-related Claim**” means any claim with respect to any Employee Benefit Plan of Seller or any ERISA Affiliate or any Title IV Plan, any violation of ERISA, any breach of any employment or labor Contract or any unfair labor practice charges, grievances or complaints.

“**Encumbrance**” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“**Environmental Claim**” means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“**Environmental Law**” means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b)

concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term "Environmental Law" includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

**"Environmental Notice"** means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

**"Environmental Permit"** means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

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

**"Excluded Assets"** has the meaning set forth in **Section 2.02**.

**"Excluded Contracts"** has the meaning set forth in **Section 2.02(a)**.

**"Excluded Liabilities"** has the meaning set forth in **Section 2.04**.

**"Expense Reimbursement"** means the documented actual out-of-pocket costs and expenses (including, without limitation, reasonable fees and expenses of counsel) incurred by Buyer and/or its Affiliates in connection with the negotiation, documentation and implementation of this Agreement and the transactions contemplated by this Agreement and participation in the Bankruptcy Case up to a maximum of \$150,000.

**"FIRPTA Certificate"** has the meaning set forth in **Section 7.02(l)**.

**"GAAP"** means United States generally accepted accounting principles in effect from time to time.

**"Governmental Authority"** means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

**"Governmental Order"** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“**Hazardous Materials**” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

“**HSR Act**” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“**Insurance Policies**” has the meaning set forth in **Section 4.15**.

“**Intellectual Property**” means all of the following and similar intangible property and related proprietary rights, interests and protections, however arising, pursuant to the Laws of any jurisdiction throughout the world: (a) trademarks, service marks, trade names, brand names, logos, trade dress and other proprietary indicia of goods and services, whether registered, unregistered or arising by Law, and all registrations and applications for registration of such trademarks, including intent-to-use applications, and all issuances, extensions and renewals of such registrations and applications; (b) internet domain names, whether or not trademarks, registered in any generic top level domain by any authorized private registrar or Governmental Authority; (c) original works of authorship in any medium of expression, whether or not published, all copyrights (whether registered, unregistered or arising by Law), all registrations and applications for registration of such copyrights, and all issuances, extensions and renewals of such registrations and applications; (d) confidential information, formulas, designs, devices, technology, know-how, research and development, inventions, methods, processes, compositions and other trade secrets, whether or not patentable; and (e) patented and patentable designs and inventions, all design, plant and utility patents, letters patent, utility models, pending patent applications and provisional applications and all issuances, divisions, continuations, continuations-in-part, reissues, extensions, reexaminations and renewals of such patents and applications.

“**Intellectual Property Assets**” means all Intellectual Property that is owned by Seller and used in or necessary for the conduct of the Business as currently conducted.

“**Intellectual Property Assignments**” has the meaning set forth in **Section 3.02(a)(iii)**.

“**Intellectual Property Licenses**” means all licenses, sublicenses and other agreements by or through which other Persons, including Seller's Affiliates, grant Seller exclusive or non-exclusive rights or interests in or to any Intellectual Property that is used in or necessary for the conduct of the Business as currently conducted.

“**Intellectual Property Registrations**” means all Intellectual Property Assets that are subject to any issuance, registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names and copyrights, issued and reissued patents and pending applications for any of the foregoing.

“**Interim Balance Sheet**” has the meaning set forth in **Section 4.04**.

“**Interim Balance Sheet Date**” has the meaning set forth in **Section 4.04**.

“**Interim Financial Statements**” has the meaning set forth in **Section 4.04**.

“**Inventory**” has the meaning set forth in **Section 2.01(c)**.

“**Knowledge of Seller or Seller's Knowledge**” or any other similar knowledge qualification, means the actual or constructive knowledge of any director or officer of Seller or its Subsidiary, after due inquiry.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“**Leased Real Property**” has the meaning set forth in **Section 4.10**.

“**Leases**” has the meaning set forth in **Section 4.10**.

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

“**Material Adverse Effect**” means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, prospects, condition (financial or otherwise) or assets of the Business, (b) the value of the Purchased Assets, or (c) the ability of Seller to consummate the transactions contemplated hereby on a timely basis.

“**Material Contracts**” has the meaning set forth in **Section 4.07(a)**.

“**Material Customers**” has the meaning set forth in **Section 4.14(a)**.

“**Material Suppliers**” has the meaning set forth in **Section 4.14(b)**.

“**Motion**” has the meaning set forth in **Section 9.01**.

“**Permits**” means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

“**Permitted Encumbrances**” has the meaning set forth in **Section 4.08(a)**.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“**Post-Closing Tax Period**” means any taxable period beginning after the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period beginning after the Closing Date.

“**Pre-Closing Tax Period**” means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

“**Purchase Price**” means the sum of (i) the Credit Bid, (ii) the Cash Payment Amount and (iii) the Assumed Liabilities.

“**Purchased Assets**” has the meaning set forth in **Section 2.01**.

“**Qualified Benefit Plan**” has the meaning set forth in **Section 4.19(b)**.

“**Qualified Bids**” means bids for substantially all of the Seller’s assets in the Auction.

“**RBIO**” has the meaning set forth in the preamble.

“**ReGen**” has the meaning set forth in the preamble.

“**Release**” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“**Representative**” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“**Sale Hearing**” means the hearing of the Bankruptcy Court to consider the entry of the Sale Order.

“**Sale Order**” means an order of the Bankruptcy Court authorizing and approving the sale of the Purchased Assets by Seller to Buyer and the sale and assignment by Seller and assumption by Buyer of the Assigned Contracts selected by Buyer, substantially in the form affixed hereto as Exhibit A (subject to such changes as the Buyer may consent to in its sole discretion).

“**Sale Scheduling and Procedures Order**” means the order of the Bankruptcy Court authorizing and approving procedures for soliciting Qualified Bids and conducting the Auction, and approving payment of the Expense Reimbursement on the terms and conditions set forth herein, substantially in the form attached hereto as Exhibit B (subject to such changes as the Buyer may consent to in its sole discretion).

“**Seller**” has the meaning set forth in the preamble.

“**Seller Closing Certificate**” has the meaning set forth in **Section 7.02(i)**.

“**Seller’s Secured Debt**” means all amounts owed by Seller under (i) the Amended and Restated Subscription and Security Agreement, dated as of June 15, 2010, between the Seller and certain Bridge A Investors, as amended, (ii) the Amended and Restated Subscription and Security Agreement, dated as of December 27, 2010, between the Seller and certain Bridge B Investors, (iii) the Credit Agreements dated as of November 30, 1998 and March 14, 2000 between the Seller and Sulzer Medica USA Holding Company, the predecessor-in-interest of Zimmer Holdings, Inc, (iv) the Subscription and Security Agreement, dated as of March 11, 2011, as amended as of April 7, 2011, between the Buyer and the Seller and (v) the DIP Loan.

“**Specified Expenses**” means all administrative and other expenses incurred by Seller on and after March 25, 2011 (including, without limitation, fees of Pillsbury Winthrop Shaw Pittman LLP) through the Closing and funded from the proceeds of borrowings under Seller’s Secured Debt in respect of this Agreement, the Bankruptcy Case and the transactions related thereto.

“**Subsidiary**” means ReGen’s wholly-owned subsidiary ReGen Biologics AG, a company limited by shares organized under the laws of Switzerland.

“**Tangible Personal Property**” has the meaning set forth in **Section 2.01(f)**.

“**Taxes**” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, documentary, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, social security, disability, estimated, excise, severance, environmental (including taxes under Code Section 59A), stamp, occupation, premium, property (real or personal), real property gains, value added, windfall profits, capital profits, customs, duties, alternative or add-on minimum, or other taxes, fees, assessments or charges of any kind whatsoever, whether computed on a separate or consolidated, unitary, or combined basis or in any other manner, whether disputed or not and including any obligation to indemnify or otherwise assume or succeed to the Tax liability of any other person, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

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

“**Transaction Documents**” means this Agreement, the Bill of Sale, the Assignment and Assumption Agreement, Intellectual Property Assignments, Assignment and Assumption of Leases, and the other agreements, instruments and documents required to be delivered at the Closing.

“**WARN Act**” means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses.

## ARTICLE II PURCHASE AND SALE

**Section 2.01 Purchase and Sale of Assets.** Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, upon the terms and conditions set forth herein, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of any Encumbrances (including, without limitation, any Environmental Claims and Employment-related Claims, to the fullest extent permitted by Law), other than Permitted Encumbrances, all of Seller's right, title and interest in, to and under all of the assets, properties and rights of every kind and nature, whether real, personal or mixed, tangible or intangible (including goodwill), wherever located, whether directly or indirectly held, and whether now existing or hereafter acquired (other than the Excluded Assets), which relate to, or are used or held for use in connection with, the Business (collectively, the “**Purchased Assets**”), including, without limitation, the following:

- (a) cash and cash equivalents;
- (b) all accounts or notes receivable held by Seller, and any security, claim, remedy or other right related to any of the foregoing (“**Accounts Receivable**”);
- (c) all inventory, finished goods, raw materials, work in progress, packaging, supplies, parts and other inventories (“**Inventory**”);
- (d) all Contracts, including Intellectual Property Licenses, set forth on **Section 2.01(d)** of the Disclosure Schedules (the “**Assigned Contracts**”);
- (e) all Intellectual Property Assets;

(f) all furniture, fixtures, equipment, machinery, tools, vehicles, office equipment, supplies, computers, telephones and other tangible personal property (the "**Tangible Personal Property**");

(g) all Leased Real Property;

(h) all Permits, including Environmental Permits, which are held by Seller and required for the conduct of the Business as currently conducted or for the ownership and use of the Purchased Assets, including, without limitation, those listed on **Section 4.17(b)** and **Section 4.18(b)** of the Disclosure Schedules;

(i) all rights to any Actions of any nature available to or being pursued by Seller to the extent related to the Business, the Purchased Assets or the Assumed Liabilities, whether arising by way of counterclaim or otherwise;

(j) all prepaid expenses, credits, advance payments, claims, security, refunds, rights of recovery, rights of set-off, rights of recoupment, deposits, charges, sums and fees (including any such item relating to the payment of Taxes);

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

(l) all insurance benefits, including rights and proceeds, arising from or relating to the Business, the Purchased Assets or the Assumed Liabilities;

(m) originals, or where not available, copies, of all books and records, including, but not limited to, books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, customer lists, customer purchasing histories, price lists, distribution lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, research and development files, records and data (including all correspondence with any Governmental Authority), sales material and records (including pricing history, total sales, terms and conditions of sale, sales and pricing policies and practices), strategic plans, internal financial statements, marketing and promotional surveys, material and research and intellectual property files relating to the Intellectual Property Assets and the Intellectual Property Licenses ("**Books and Records**");

(n) all shares of or other ownership interests in the Subsidiary; and

(o) all goodwill and the going concern value of the Business.

**Section 2.02 Excluded Assets.** Notwithstanding the foregoing, the Purchased Assets shall not include the following assets (collectively, the "**Excluded Assets**");

(a) Contracts that are not Assigned Contracts (the "**Excluded Contracts**");

(b) the corporate seals, organizational documents, minute books, stock books, Tax Returns, books of account or other records having to do with the corporate organization of Seller;

(c) the assets, properties and rights specifically set forth on **Section 2.02(c)** of the Disclosure Schedules; and

(d) the rights which accrue or will accrue to Seller under the Transaction Documents.



**Section 2.03 Assumed Liabilities.** Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge only the following Liabilities of Seller (collectively, the “**Assumed Liabilities**”), and no other Liabilities:

(a) all Liabilities in respect of the Assigned Contracts but only to the extent that such Liabilities thereunder are required to be performed after the Closing Date, were incurred in the ordinary course of business and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Seller on or prior to the Closing; and

(b) those Liabilities of Seller set forth in the Initial Budget Report or any Interim Budget Report (in each case, as defined in the DIP Loan agreement) (x) which reports have been approved by Buyer, in its capacity as lender under the DIP Loan (such reports the “**Approved Budgets**”), and (y) have not been paid by Seller on the Closing Date.

**Section 2.04 Excluded Liabilities.** Notwithstanding the provisions of **Section 2.03** or any other provision in this Agreement to the contrary, Buyer shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of Seller or any of its Affiliates of any kind or nature whatsoever other than the Assumed Liabilities (the “**Excluded Liabilities**”). Seller shall, and shall cause each of its Affiliates to, pay and satisfy in due course all Excluded Liabilities which they are obligated to pay and satisfy. Without limiting the generality of the foregoing, the Excluded Liabilities shall include, but not be limited to, the following:

(a) any Liabilities of Seller arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby, including, without limitation, fees and expenses of counsel, accountants, consultants, advisers and others;

(b) any Liability for (i) Taxes of Seller (or any stockholder or Affiliate of Seller) or relating to the Business, the Purchased Assets or the Assumed Liabilities for any Pre-Closing Tax Period; (ii) Taxes that arise out of the consummation of the transactions contemplated hereby or that are the responsibility of Seller pursuant to **Section 6.14**; or (iii) other Taxes of Seller (or any stockholder or Affiliate of Seller) of any kind or description (including any Liability for Taxes of Seller (or any stockholder or Affiliate of Seller) that becomes a Liability of Buyer under any common law doctrine of de facto merger or transferee or successor liability or otherwise by operation of contract or Law);

(c) any Liabilities relating to or arising out of the Excluded Assets;

(d) any Liabilities in respect of any pending or threatened Action arising out of, relating to or otherwise in respect of the operation of the Business or the Purchased Assets to the extent such Action relates to such operation on or prior to the Closing Date;

(e) any product Liability or similar claim for injury to a Person or property which arises out of or is based upon any express or implied representation, warranty, agreement or guaranty made by Seller, or by reason of the improper performance or malfunctioning of a product, improper design or manufacture, failure to adequately package, label or warn of hazards or other related product defects of any products at any time manufactured or sold or any service performed by Seller;

(f) any recall, design defect or similar claims of any products manufactured or sold or any service performed by Seller;

(g) any Liabilities of Seller arising under or in connection with any Benefit Plan providing benefits to any present or former employee of Seller;

(h) any Liabilities of Seller for any present or former employees, agents or independent contractors of Seller, including, without limitation, any Liabilities associated with any claims for wages or other benefits, workers' compensation, severance, retention, termination or other payments;

(i) any Environmental Claims, or Liabilities under Environmental Laws, to the extent arising out of or relating to facts, circumstances or conditions existing on or prior to the Closing or otherwise to the extent arising out of any actions or omissions of Seller;

(j) any trade accounts payable of Seller (i) to the extent not accounted for on the Interim Balance Sheet; (ii) which constitute intercompany payables owing to Affiliates of Seller; (iii) which constitute debt, loans or credit facilities to financial institutions; or (iv) which did not arise in the ordinary course of business;

(k) any Liabilities of the Business relating or arising from unfulfilled commitments, quotations, purchase orders, customer orders or work orders that (i) do not constitute part of the Purchased Assets issued by the Business' customers to Seller on or before the Closing; (ii) did not arise in the ordinary course of business; or (iii) are not validly and effectively assigned to Buyer pursuant to this Agreement;

(l) any Liabilities to indemnify, reimburse or advance amounts to any present or former officer, director, employee or agent of Seller (including with respect to any breach of fiduciary obligations by same);

(m) any Liabilities under the Excluded Contracts or any other Contracts (i) which are not validly and effectively assigned to Buyer pursuant to this Agreement; (ii) which do not conform to the representations and warranties with respect thereto contained in this Agreement; or (iii) to the extent such Liabilities arise out of or relate to a breach by Seller of such Contracts prior to Closing;

(n) any Liabilities associated with debt, loans or credit facilities of Seller and/or the Business owing to financial institutions; and

(o) any Liabilities arising out of, in respect of or in connection with the failure by Seller or any of its Affiliates to comply with any Law or Governmental Order.

**Section 2.05 Purchase Price.** Pursuant to Section 363(k) of the Bankruptcy Code, Buyer shall be permitted to Credit Bid for the Purchased Assets at the Auction up to the full amount of the Seller's Secured Debt of \$14.2 million as of April 7, 2011, together with any additional amounts of Seller's Secured Debt incurred thereafter. In the event the Buyer is the successful bidder at the Auction, at the Closing the Buyer shall pay the Cash Payment Amount by wire transfer of immediately available funds and shall receive the Purchased Assets, free and clear of all Encumbrances, taxes and interests pursuant to Section 363(b) of the Bankruptcy Code. Two (2) Business Days prior to the Closing, Buyer shall send to Seller a calculation of the final Cash Payment Amount to be paid at the Closing.

**Section 2.06 Assigned Contracts.** Buyer may, in its sole discretion and with five (5) Business Days prior notice to the Seller, add and remove Contracts from the list of Assigned Contracts on **Schedule 2.01(d)** of the Disclosure Schedules at any time prior to the Closing.

**Section 2.07 Allocation of Purchase Price.** Seller and Buyer agree that the Credit Bid, the Cash Payment Amount and the Assumed Liabilities (plus other relevant items) shall be allocated among the Purchased Assets for all purposes (including Tax and financial accounting) as determined by Buyer in its sole discretion, in consultation with Seller. Buyer and Seller and their Affiliates shall report, act and file Tax Returns (including, but not limited to Internal Revenue Service Form 8594) in all respects and for all purposes consistent with such allocation prepared by Buyer. Seller shall timely and properly prepare, execute, file and deliver all such documents, forms and other information as Buyer may reasonably request to prepare such allocation. Neither Buyer nor Seller shall take any position (whether in audits, tax returns or otherwise) that is inconsistent with such allocation unless required to do so by applicable law.

**Section 2.08 Withholding Tax.** Buyer shall be entitled to deduct and withhold from the Cash Payment Amount all Taxes that Buyer may be required to deduct and withhold under any provision of Tax Law. All such withheld amounts shall be treated as delivered to Seller hereunder.

**Section 2.09 Third Party Consents.** To the extent that Seller's rights under any Contract or Permit constituting a Purchased Asset, or any other Purchased Asset, may not be assigned to Buyer without the consent of another Person which has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Seller, at its expense, shall use its reasonable best efforts to obtain any such required consent(s) as promptly as possible. If any such consent shall not be obtained or if any attempted assignment would be ineffective or would impair Buyer's rights under the Purchased Asset in question so that Buyer would not in effect acquire the benefit of all such rights, Seller, to the maximum extent permitted by law and the Purchased Asset, shall act after the Closing as Buyer's agent in order to obtain for it the benefits thereunder and shall cooperate, to the maximum extent permitted by Law and the Purchased Asset, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer. Notwithstanding any provision in this **Section 2.09** to the contrary, Buyer shall not be deemed to have waived its rights under **Section 7.02(d)** hereof unless and until Buyer either provides written waivers thereof or elects to proceed to consummate the transactions contemplated by this Agreement at Closing.

**Section 2.10 Treatment of Certain Administrative Expenses.** Buyer and Seller shall cooperate in advance of the Closing Date to identify administrative expenses of the Seller in the Bankruptcy Case which have been incurred, but are unpaid, as of the Closing Date. Not less than two (2) Business Days prior to the Closing Date, Seller shall prepare a schedule of such expenses, which shall be subject to Buyer's approval (not to be unreasonably withheld). Notwithstanding anything to the contrary in this Agreement, (i) except as otherwise set forth in the following sentence, any administrative expenses identified on such schedule shall remain liabilities of the Seller following the Closing Date and shall not be assumed by the Buyer and (ii) Seller shall retain a portion of its cash on hand at the Closing Date equal to the lesser of (x) the amount of such identified administrative expenses included in the Approved Budgets and (y) the total amount of the Seller's cash on hand at the Closing Date. In the event that amount of the administrative expenses included in the Approved Budgets exceeds Seller's cash on hand as of the Closing Date due to the failure of Buyer to advance funds required to be advanced under the DIP Loan to pay such expenses prior to the Closing Date, Buyer shall assume the obligation to pay such expenses to the extent of such excess.

**Section 2.11 Insurance and Liability Matters.** In the event that Buyer assumes the Seller's general business and liability, product liability and umbrella coverage insurance policies in existence on the Closing Date, or is named as an additional insured with respect to such policies, Buyer shall cause Seller to remain an insured party or an additional insured with respect to such policies following the Closing Date, to the extent permitted under such policies. Notwithstanding the foregoing, Buyer is not assuming any liability in respect of any claims, including product liability claims as a result of this **Section 2.11**, and Seller retains all such liability.

**ARTICLE III  
CLOSING**

**Section 3.01 Closing.** Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the "**Closing**") shall take place at the offices of DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, New York 10003, at 10:00 a.m., local time, on the second Business Day after all of the conditions to Closing set forth in **Article VII** are either satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), or at such other time, date or place as Seller and Buyer may mutually agree upon in writing. The date on which the Closing is to occur is herein referred to as the "**Closing Date**".

**Section 3.02 Closing Deliverables.**

(a) At the Closing, Seller shall deliver to Buyer the following:

(i) a bill of sale in form and substance satisfactory to Buyer (the "**Bill of Sale**") and duly executed by Seller, transferring the tangible personal property included in the Purchased Assets to Buyer;

(ii) an assignment and assumption agreement in form and substance satisfactory to Buyer (the "**Assignment and Assumption Agreement**") and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Purchased Assets and the Assumed Liabilities;

(iii) assignments in form and substance satisfactory to Buyer (the "**Intellectual Property Assignments**") and duly executed by Seller, transferring all of Seller's right, title and interest in and to the Intellectual Property Assets and the Intellectual Property Licenses to Buyer;

(iv) with respect to each Lease, an Assignment and Assumption of Lease in form and substance satisfactory to Buyer (each, an "**Assignment and Assumption of Lease**") and duly executed by Seller;

(v) a power of attorney in form and substance satisfactory to Buyer and duly executed by Seller;

(vi) the Seller Closing Certificate;

(vii) the FIRPTA Certificate;

(viii) the certificates of a duly authorized officer of the Seller required by **Section 7.02(j)** and **Section 7.02(k)**; and

(ix) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement.

(b) At the Closing, Buyer shall deliver to Seller the following:

(i) the Cash Payment Amount.

(ii) the Assignment and Assumption Agreement duly executed by Buyer;

- (iii) with respect to each Lease, an Assignment and Assumption of Lease duly executed by Buyer;
- (iv) the Buyer Closing Certificate;
- (v) California and New Jersey resale certificates and, if reasonably requested by Seller, any additional resale certificates relating to any Inventory included in the Purchased Assets; and
- (vi) the certificates of the authorized officer of the Buyer required by **Section 7.03(g)** and **Section 7.03(h)**.

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

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, each of ReGen and RBIO jointly and severally represents and warrants to Buyer that the statements contained in this **Article IV** are true and correct as of the date hereof.

**Section 4.01 Organization and Qualification of Seller and Subsidiary.** Except as set forth in **Section 4.01** of the Disclosure Schedules, each Seller is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware and has full corporate power and authority as debtor-in-possession subject to the Bankruptcy Code to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as currently conducted subject to the Bankruptcy Code. **Section 4.01** of the Disclosure Schedules sets forth each jurisdiction in which Seller is licensed or qualified to do business, and Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of the Purchased Assets or the operation of the Business as currently conducted makes such licensing or qualification necessary. Subsidiary is a limited liability stock corporation (*Aktiengesellschaft*) duly organized, validly existing and in good standing under the Laws of Switzerland, registered with the commercial register of the canton of Zug, and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as currently conducted by it.

**Section 4.02 Authority of Seller.** Subject to the approval of the Bankruptcy Court, including the entry of the Sale Order by the Bankruptcy Court:

(a) Seller has full corporate power and authority to enter into this Agreement and the other Transaction Documents to which Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby.

(b) The execution and delivery by Seller of this Agreement and any other Transaction Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Seller.

(c) This Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, 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, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

(d) When each other Transaction Document to which Seller is or will be a party has been duly executed and delivered by Seller (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Seller enforceable against it in accordance with its terms, 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, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

**Section 4.03 No Conflicts; Consents.** The execution, delivery and performance by Seller of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Seller or Subsidiary; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller, the Business or the Purchased Assets; (c) except as set forth in **Section 4.03** of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Assigned Contract or Permit to which Seller or Subsidiary is a party or by which Seller or the Business is bound or to which any of the Purchased Assets are subject; or (d) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on the Purchased Assets. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Seller or Subsidiary in connection with the execution and delivery of this Agreement or any of the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, except for such filings as may be required under the HSR Act.

**Section 4.04 Financial Statements.** The Seller's financial books and records have been made available to or delivered to Buyer. The Seller's unaudited financial statements consisting of the consolidated balance sheet of the Business as of March 31, 2011, the related statement of income and retained earnings for the three month period then ended and the consolidating trial balance as of March 31, 2011 and for the three month period then ended (the "**Interim Financial Statements**") have been delivered to the Buyer. The Interim Financial Statements were prepared in good faith based on the books and records of the Business and fairly present the operations and financial position of the Business as of their date or for the period then ended, as applicable. The consolidated balance sheet of the Business as of March 31, 2011 is referred to herein as the "**Interim Balance Sheet**" and the date thereof as the "**Interim Balance Sheet Date**". Set forth in **Section 4.04** of the Disclosure Schedules are (i) the Interim Balance Sheet and (ii) the statement of income included in the Interim Financial Statements.

**Section 4.05 Undisclosed Secured Liabilities.** Seller has no secured Liabilities with respect to the Business, except (a) those which are adequately reflected or reserved against in the Interim Balance Sheet as of the Interim Balance Sheet Date, and (b) those which are set forth in **Section 4.05** of the Disclosure Schedule and have been incurred in the ordinary course of business consistent with past practice since the Interim Balance Sheet Date and which are not, individually or in the aggregate, material in amount.

**Section 4.06 Absence of Certain Changes, Events and Conditions.** Except as set forth in **Section 4.06** of the Disclosure Schedules, since the Interim Balance Sheet Date, and other than in the ordinary course of business consistent with past practice, there has not been any:

(a) event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) declaration or payment of any dividends or distributions on or in respect of any of Seller's capital stock or redemption, purchase or acquisition of Seller's capital stock;

(c) material change in any method of accounting or accounting practice for the Business, except as required by GAAP or as disclosed in the notes to the Interim Financial Statements;

(d) material change in cash management practices and policies, practices and procedures with respect to collection of Accounts Receivable, establishment of reserves for uncollectible Accounts Receivable, accrual of Accounts Receivable, inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue and acceptance of customer deposits;

(e) entry into any Contract that would constitute a Material Contract;

(f) incurrence, assumption or guarantee of any indebtedness for borrowed money in connection with the Business except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice;

(g) transfer, assignment, sale or other disposition of any of the Purchased Assets shown or reflected in the Interim Balance Sheet, except for the sale of Inventory in the ordinary course of business;

(h) cancellation of any debts or claims or amendment, termination or waiver of any rights constituting Purchased Assets;

(i) transfer, assignment or grant of any license or sublicense of any material rights under or with respect to any Intellectual Property Assets or Intellectual Property Licenses;

(j) material damage, destruction or loss, or any material interruption in use, of any Purchased Assets, whether or not covered by insurance;

(k) acceleration, termination, material modification to or cancellation of any Assigned Contract or Permit;

(l) material capital expenditures which would constitute an Assumed Liability;

(m) imposition of any Encumbrance upon any of the Purchased Assets;

(n) grant of any bonuses, whether monetary or otherwise, or any general wage or salary increases in respect of any Employees, other than as provided for in any written agreements or consistent with past practice, or change in the terms of employment for any Employee;

(o) entry into or termination of any employment agreement or collective bargaining agreement covering any of the Employees, written or oral, or modification of the terms of any such existing agreement;

(p) loan to, or entry into any other transaction with, any Employees;

(q) purchase, lease or other acquisition of the right to own, use or lease any property or assets in connection with the Business for an amount in excess of \$10,000, individually (in the case of a lease, per annum) or \$20,000 in the aggregate (in the case of a lease, for the entire term of the lease, not

including any option term), except for purchases of Inventory or supplies in the ordinary course of business consistent with past practice;

(r) adoption, amendment, modification or termination of any bonus, profit sharing, incentive, severance, or other plan, Contract or commitment for the benefit of any Employees (or any such action taken with respect to any other Benefit Plan); or

(s) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

**Section 4.07 Material Contracts.**

(a) **Section 4.07(a)** of the Disclosure Schedules lists each of the following Contracts (x) by which any of the Purchased Assets are bound or affected or (y) to which Seller or Subsidiary is a party or by which it is bound in connection with the Business or the Purchased Assets (such Contracts, together with all Contracts concerning the occupancy, management or operation of any Leased Real Property (including without limitation, brokerage contracts) listed or otherwise disclosed in **Section 4.10** of the Disclosure Schedules and all Contracts relating to Intellectual Property set forth in **Section 4.11(c)** and **Section 4.11(e)** of the Disclosure Schedules, being "**Material Contracts**"):

(i) all Contracts involving aggregate consideration in excess of \$10,000 and which, in each case, cannot be cancelled without penalty or without more than 90 days' notice;

(ii) all Contracts that require Seller to purchase or sell a stated portion of the requirements or outputs of the Business or that contain "take or pay" provisions;

(iii) all Contracts that provide for the indemnification of any Person or the assumption of any Tax, environmental or other Liability of any Person;

(iv) all Contracts that relate to the acquisition or disposition of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);

(v) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts;

(vi) all employment agreements and Contracts with independent contractors or consultants (or similar arrangements) and which are not cancellable without material penalty or without more than 90 days' notice;

(vii) except for Contracts relating to trade receivables, all Contracts relating to indebtedness (including, without limitation, guarantees);

(viii) all Contracts with any Governmental Authority;

(ix) all Contracts that limit or purport to limit the ability of Seller to compete in any line of business or with any Person or in any geographic area or during any period of time;

(x) all joint venture, partnership or similar Contracts;



(xi) all Contracts for the sale of any of the Purchased Assets or for the grant to any Person of any option, right of first refusal or preferential or similar right to purchase any of the Purchased Assets;

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

(xiii) all collective bargaining agreements or Contracts with any labor organization, union or association; and

(xiv) all other Contracts that are material to the Purchased Assets or the operation of the Business and not previously disclosed pursuant to this **Section 4.07**.

(b) Each Material Contract is valid and binding on Seller or Subsidiary, as applicable, in accordance with its terms and 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, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity). Except as set forth in **Section 4.07** of the Disclosure Schedules, none of Seller, Subsidiary or, to Seller's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) in any material respect, or has provided or received any notice of any intention to terminate, any Material Contract. Except as set forth in **Section 4.07** of the Disclosure Schedules, to Seller's Knowledge, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer. There are no material disputes pending or, to Seller's Knowledge, threatened under any Assigned Contract.

**Section 4.08 Title to Purchased Assets.** Seller has good and valid title to, or a valid leasehold interest in, all of the Purchased Assets. All such Purchased Assets (including leasehold interests) are free and clear of Encumbrances except for the following (collectively referred to as "**Permitted Encumbrances**"):

(a) those items set forth in **Section 4.07(b)** of the Disclosure Schedules;

(b) liens for Taxes not yet due and payable or being contested in good faith by appropriate procedures and for which there are adequate accruals or reserves on the Interim Balance Sheet;

(c) mechanics', carriers', workmen's, repairmen's or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the Business or the Purchased Assets;

(d) easements, rights of way, zoning ordinances and other similar encumbrances affecting Leased Real Property which are not, individually or in the aggregate, material to the Business or the Purchased Assets, which do not prohibit or interfere with the current operation of any Leased Real Property and which do not render title to any Leased Real Property unmarketable; or

(e) liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to the Business or the Purchased Assets.

**Section 4.09 Condition and Sufficiency of Assets.** Except as set forth in **Section 4.09** of the Disclosure Schedules, the buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property included in the Purchased Assets are structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The Purchased Assets are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the Business as currently conducted. None of the Excluded Assets are material to the Business.

**Section 4.10 Leased Real Property.**

(a) **Section 4.10** of the Disclosure Schedules sets forth each parcel of real property leased by Seller and used in or necessary for the conduct of the Business as currently conducted (together with all rights, title and interest of Seller in and to leasehold improvements relating thereto, including, but not limited to, security deposits, reserves or prepaid rents paid in connection therewith, collectively, the "**Leased Real Property**"), and a true and complete list of all leases, subleases, licenses, concessions and other agreements (whether written or oral), including all amendments, extensions renewals, guaranties and other agreements with respect thereto, pursuant to which Seller holds any Leased Real Property (collectively, the "**Leases**"). Seller has delivered to Buyer a true and complete copy of each Lease. With respect to each Lease:

(i) such Lease is valid, binding, enforceable and in full force and effect, and Seller enjoys peaceful and undisturbed possession of the Leased Real Property;

(ii) Except as set forth in **Section 4.10** of the Disclosure Schedules, Seller is not in breach or default under such Lease, and no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute such a breach or default, and Seller has paid all rent due and payable under such Lease;

(iii) Except as set forth in **Section 4.10** of the Disclosure Schedules, Seller has not received nor given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by Seller under any of the Leases and, to the Knowledge of Seller, no other party is in default thereof, and no party to any Lease has exercised any termination rights with respect thereto;

(iv) Seller has not subleased, assigned or otherwise granted to any Person the right to use or occupy such Leased Real Property or any portion thereof; and

(v) Seller has not pledged, mortgaged or otherwise granted an Encumbrance on its leasehold interest in any Leased Real Property.

(b) Seller has not received any written notice of (i) material violations of building codes and/or zoning ordinances or other governmental or regulatory Laws affecting the Leased Real Property, (ii) existing, pending or threatened condemnation proceedings affecting the Leased Real Property, or (iii) existing, pending or threatened zoning, building code or other moratorium proceedings, or similar matters which could reasonably be expected to materially and adversely affect the ability to operate the Leased Real Property as currently operated. Neither the whole nor any material portion of any Leased Real Property has been damaged or destroyed by fire or other casualty.

(c) The Leased Real Property is sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitutes all of the real property necessary to conduct the Business as currently conducted.

**Section 4.11 Intellectual Property.**

(a) **Section 4.11(a)** of the Disclosure Schedules lists all (i) Intellectual Property Registrations and (ii) Intellectual Property Assets that are not registered but that are material to the operation of the Business. All required filings and fees related to the Intellectual Property Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Intellectual Property Registrations are otherwise in good standing. Seller has provided Buyer with true and complete copies of file histories, documents, certificates, office actions, correspondence and other materials related to all Intellectual Property Registrations.

(b) Except as set forth in **Section 4.11(b)** of the Disclosure Schedules, Seller owns, exclusively or jointly with other Persons, all right, title and interest in and to the Intellectual Property Assets, free and clear of Encumbrances, other than Permitted Encumbrances. Without limiting the generality of the foregoing, Seller has entered into binding, written agreements with every current and former employee of Seller, and with every current and former independent contractor, whereby such employees and independent contractors (i) assign to Seller any ownership interest and right they may have in the Intellectual Property Assets; and (ii) acknowledge Seller's exclusive ownership of all Intellectual Property Assets. Seller has provided Buyer with true and complete copies of all such agreements. Seller is in full compliance with all legal requirements applicable to the Intellectual Property Assets and Seller's ownership and use thereof.

(c) **Section 4.11(c)** of the Disclosure Schedules lists all Intellectual Property Licenses. Seller has provided Buyer with true and complete copies of all such Intellectual Property Licenses. All such Intellectual Property Licenses are valid, binding and enforceable between Seller and the other parties thereto, and Seller and such other parties are in full compliance with the terms and conditions of such Intellectual Property Licenses.

(d) The Intellectual Property Assets and Intellectual Property Licenses as currently or formerly owned, licensed or used by Seller, and the conduct of the Business as currently and formerly conducted by Seller have not, do not and will not infringe, violate or misappropriate the Intellectual Property of any Person. Seller has not received any communication, and no Action has been instituted, settled or, to Seller's Knowledge, threatened that alleges any such infringement, violation or misappropriation, and none of the Intellectual Property are subject to any outstanding Governmental Order.

(e) **Section 4.11(e)** of the Disclosure Schedules lists all licenses, sublicenses and other agreements pursuant to which Seller grants rights or authority to any Person with respect to any Intellectual Property Assets or Intellectual Property Licenses. Seller has provided Buyer with true and complete copies of all such agreements. All such agreements are valid, binding and enforceable between Seller and the other parties thereto, 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, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity), and Seller and such other parties are in full compliance with the terms and conditions of such agreements. To Seller's Knowledge, no Person has infringed, violated or misappropriated, or is infringing, violating or misappropriating, any Intellectual Property Assets.

**Section 4.12 Inventory.** All Inventory, whether or not reflected in the Interim Balance Sheet, consists of a quality usable and salable in the ordinary course of business consistent with past practice, except for expired, 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. All Inventory is owned by Seller free and clear of all Encumbrances other than Permitted Encumbrances, and no Inventory is held on a consignment basis. The quantities of each item of Inventory (whether raw materials, work-in-process or finished goods) are not excessive, but are reasonable in the present circumstances of Seller.

**Section 4.13 Accounts Receivable.** The Accounts Receivable reflected on the Interim Balance Sheet and the Accounts Receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by Seller 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 Seller 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; and (c) subject to a reserve for bad debts shown on the Interim Balance Sheet or, with respect to Accounts Receivable arising after the Interim Balance Sheet Date, on the accounting records of the Business, are collectible in full within 90 days after billing. The reserve for bad debts shown on the Interim Balance Sheet or, with respect to Accounts Receivable arising after the Interim Balance Sheet Date, on the consolidated accounting records of the Seller and Subsidiary have been estimated in good faith based on the anticipated collectibility of the accounts.

**Section 4.14 Customers and Suppliers.**

(a) **Section 4.14(a)** of the Disclosure Schedules sets forth with respect to the Business (i) each customer who has paid aggregate consideration to Seller or Subsidiary for goods or services rendered in an amount greater than or equal to \$10,000 for each of the two most recent fiscal years (collectively, the “**Material Customers**”); and (ii) the amount of consideration paid by each Material Customer during such periods. Except as set forth in **Section 4.14(a)** of the Disclosure Schedules, neither Seller nor Subsidiary has received any notice or threat that any of the Material Customers has ceased, or intends to cease after the Closing, to use the goods or services of the Business or to otherwise terminate or materially reduce its relationship with the Business.

(b) **Section 4.14(b)** of the Disclosure Schedules sets forth with respect to the Business (i) each supplier to whom Seller or Subsidiary has paid consideration for goods or services rendered in an amount greater than or equal to \$10,000 for each of the two most recent fiscal years (collectively, the “**Material Suppliers**”); and (ii) the amount of purchases from each Material Supplier during such periods. Except as set forth in **Section 4.14(b)** of the Disclosure Schedules, neither Seller nor Subsidiary has received any notice or threat that any of the Material Suppliers has ceased, or intends to cease, to supply goods or services to the Business or to otherwise terminate or materially reduce its relationship with the Business.

**Section 4.15 Insurance.** **Section 4.15** of the Disclosure Schedules sets forth (a) a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, fiduciary liability and other casualty and property insurance maintained by Seller or its Affiliates and relating to the Business, the Purchased Assets or the Assumed Liabilities (collectively, the “**Insurance Policies**”); and (b) with respect to the Business, the Purchased Assets or the Assumed Liabilities, a list of all pending insurance claims and the insurance claims history for Seller since January 1, 2009. Except as set forth on **Section 4.15** of the Disclosure Schedules, (i) there are no insurance claims related to the Business, the Purchased Assets or the Assumed Liabilities pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights; (ii) neither Seller nor any

of its Affiliates has received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies (iii) all premiums due on such Insurance Policies have either been paid or, if not yet due, accrued; (iv) all such Insurance Policies (a) are in full force and effect and enforceable in accordance with their terms; (b) are provided by carriers who are financially solvent; and (c) have not been subject to any lapse in coverage; (v) none of Seller or any of its Affiliates is in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to the Business and are sufficient for compliance with all applicable Laws and Contracts to which Seller is a party or by which it is bound. True and complete copies of the Insurance Policies have been made available to Buyer.

**Section 4.16 Legal Proceedings; Governmental Orders.**

(a) Except as set forth in **Section 4.16(a)** of the Disclosure Schedules, there are no Actions pending or, to Seller's Knowledge, threatened against or by Seller or Subsidiary (a) relating to or affecting the Business, the Purchased Assets or the Assumed Liabilities; or (b) that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To Seller's Knowledge, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) Except as set forth in **Section 4.16(b)** of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against, relating to or affecting the Business. Seller and Subsidiary are in compliance with the terms of each Governmental Order set forth in **Section 4.16(b)** of the Disclosure Schedules. To Seller's Knowledge, no event has occurred or circumstances exist that may constitute or result in (with or without notice or lapse of time) a violation of any such Governmental Order.

**Section 4.17 Compliance With Laws; Permits.**

(a) Except as set forth in **Section 4.17(a)** of the Disclosure Schedules, Seller and Subsidiary have complied, and is now complying, in all material respects, with all Laws applicable to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets.

(b) All material Permits required for Seller and Subsidiary to conduct the Business as currently conducted or for the ownership and use of the Purchased Assets have been obtained by Seller or Subsidiary, as applicable, and are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. **Section 4.17(b)** of the Disclosure Schedules lists all current Permits issued to Seller which are related to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets, including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in **Section 4.17(b)** of the Disclosure Schedules.

**Section 4.18 Environmental Matters.**

(a) The operations of Seller and Subsidiary with respect to the Business and the Purchased Assets are currently and have been in compliance with all Environmental Laws in all material respects. Seller and Subsidiary have not received from any Person, with respect to the Business or the Purchased Assets, any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) Seller and Subsidiary have obtained and are in material compliance with all Environmental Permits (each of which is disclosed in **Section 4.18(b)** of the Disclosure Schedules) necessary for the conduct of the Business as currently conducted or the ownership, lease, operation or use of the Purchased Assets and all such Environmental Permits are in full force and effect and shall be maintained in full force and effect by Seller or Subsidiary, as applicable, through the Closing Date in accordance with Environmental Law, and Seller is not aware of any condition, event or circumstance that might prevent or impede, after the Closing Date, the conduct of the Business as currently conducted or the ownership, lease, operation or use of the Purchased Assets. With respect to any such Environmental Permits, Seller has undertaken, or will undertake prior to the Closing Date, all measures necessary to facilitate transferability of the same, and Seller is not aware of any condition, event or circumstance that might prevent or impede the transferability of the same, and has not received any Environmental Notice or written communication regarding any material adverse change in the status or terms and conditions of the same.

(c) None of the Business or the Purchased Assets or any real property currently or formerly owned, leased or operated by Seller in connection with the Business is listed on, or, to Seller's Knowledge, has been proposed for listing on, the National Priorities List (or CERCLIS) under CERCLA, or any similar state list.

(d) There has been no Release of Hazardous Materials in contravention of Environmental Law with respect to the Business or the Purchased Assets or any real property currently or formerly owned, leased or operated by Seller or Subsidiary in connection with the Business, and Seller has not received an Environmental Notice that any of the Business or the Purchased Assets or real property currently or formerly owned, leased or operated by Seller in connection with the Business (including soils, groundwater, surface water, buildings and other structure located thereon) has been contaminated with any Hazardous Material which could reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or term of any Environmental Permit by, Seller.

(e) **Section 4.18(e)** of the Disclosure Schedules contains a complete and accurate list of all active or abandoned aboveground or underground storage tanks owned or operated by Seller in connection with the Business or the Purchased Assets.

(f) **Section 4.18(f)** of the Disclosure Schedules contains a complete and accurate list of all off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by Seller and any predecessors in connection with the Business or the Purchased Assets as to which Seller may retain liability, and none of these facilities or locations has been placed or proposed for placement on the National Priorities List (or CERCLIS) under CERCLA, or any similar state list, and Seller has not received any Environmental Notice regarding potential liabilities with respect to such off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by Seller.

(g) Seller has not retained or assumed, by contract or operation of Law, any liabilities or obligations of third parties under Environmental Law.

(h) Seller has provided or otherwise made available to Buyer and listed in **Section 4.18(h)** of the Disclosure Schedules: (i) any and all environmental reports, studies, audits, records, sampling data, site assessments, risk assessments, economic models and other similar documents with respect to the Business or the Purchased Assets or any real property currently or formerly owned, leased or operated by Seller in connection with the Business which are in the possession or control of Seller or Subsidiary related to compliance with Environmental Laws, Environmental Claims or an Environmental Notice or the Release of Hazardous Materials; and (ii) any and all material documents concerning planned or anticipated capital expenditures required to reduce, offset, limit or otherwise control pollution and/or

emissions, manage waste or otherwise ensure compliance with current or future Environmental Laws (including, without limitation, costs of remediation, pollution control equipment and operational changes).

(i) Seller is not aware of or reasonably anticipates, as of the Closing Date, any condition, event or circumstance concerning the Release or regulation of Hazardous Materials that might, after the Closing Date, prevent, impede or materially increase the costs associated with the ownership, lease, operation, performance or use of the Business or the Purchased Assets as currently carried out.

**Section 4.19 Employee Benefit Matters.**

(a) **Section 4.19(a)** of the Disclosure Schedules contains a true and complete list of each non-equity benefit, retirement, employment, compensation, incentive, change in control, severance, vacation, paid time off, fringe-benefit and other similar agreement, plan, policy, program and other arrangement (and any amendments thereto), whether or not reduced to writing, in effect and covering one or more Employees, former employees and the beneficiaries and dependents of any such Employee or former employee of the Business, and is maintained, sponsored, contributed to, or required to be contributed to by Seller, or under which Seller has or may have any liability for premiums or benefits (as listed on **Section 4.19(a)** of the Disclosure Schedules, each, a “**Benefit Plan**”).

(b) With respect to each Benefit Plan, Seller has made available to Buyer, to the extent within Seller’s possession, accurate, current and complete copies of each of the following: (i) where the Benefit Plan has been reduced to writing, the plan document together with all amendments; (ii) where the Benefit Plan has not been reduced to writing, a written summary of all material plan terms; (iii) where applicable, copies of any trust agreements, custodial agreements, insurance policies, administration agreements and similar agreements, and investment management or investment advisory agreements; (iv) copies of any summary plan descriptions, employee handbooks or similar employee communications relating to any Benefit Plan; and (v) in the case of any Benefit Plan that is intended to be qualified under Section 401(a) of the Code, a copy of the most recent determination letter from the Internal Revenue Service.

(c) Except as set forth in **Section 4.19(b)** of the Disclosure Schedules, each Benefit Plan that is intended to be qualified under Section 401(a) of the Code (a “**Qualified Benefit Plan**”) has received a favorable and current determination letter from the Internal Revenue Service, or with respect to a prototype plan, can rely on an opinion letter from the Internal Revenue Service to the prototype plan sponsor, to the effect that such Qualified Benefit Plan 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 nothing has occurred that could reasonably be expected to cause the revocation of such determination letter from the Internal Revenue Service or the unavailability of reliance on such opinion letter from the Internal Revenue Service, as applicable. Except as set forth in **Section 4.19(c)** of the Disclosure Schedules, nothing has occurred with respect to any Benefit Plan that could reasonably be expected to subject Buyer or any of its Affiliates, with respect to any period on or after the Closing Date, to a penalty under Section 502 of ERISA or to an excise tax under the Code, or subject the assets of any of the foregoing Persons to a lien under Section 412(n) of the Code.

(d) Neither Seller nor any of its Affiliates (i) has any assets subject to a lien for unpaid contributions to any Benefit Plan which would become a liability of Buyer or (ii) is engaged in any transaction which would give rise to liability under Section 4069 or Section 4212(c) of ERISA which would become a liability of Buyer.

(e) Except as set forth in **Section 4.19(e)** of the Disclosure Schedules and other than as required under Section 601 et. seq. of ERISA, no Benefit Plan provides benefits or coverage in the nature of health, life or disability insurance following retirement or other termination of employment (other than death benefits when termination occurs upon death).

(f) Except as set forth in **Section 4.19(f)** of the Disclosure Schedules, there is no pending or, to Seller's Knowledge, threatened action relating to a Benefit Plan that can reasonably be expected to result in a liability to Buyer or its Affiliates on or after the Closing Date.

(g) From January 1, 2009 to the date hereof, each Benefit Plan that is subject to Section 409A of the Code has been operated in compliance with such section and all applicable regulatory guidance (including, without limitation, proposed regulations, notices, rulings, and final regulations).

(h) Except as set forth in **Section 4.19(h)** of the Disclosure Schedules, no Benefit Plan exists that could (i) result in the payment to any Employee of any money or other property; or (ii) accelerate or provide any other rights or benefits (including funding of compensation or benefits through a trust or otherwise) to any Employee, except as a result of any partial plan termination resulting from this Agreement, in each case, as a result of the execution of this Agreement or otherwise related in any way to the transactions contemplated by this Agreement.

#### **Section 4.20 Employment Matters.**

(a) **Section 4.20(a)** of the Disclosure Schedules contains a list of all persons who are Employees or are consultants or contractors of the Business performing services that would typically be performed, in the normal course of business, by employees of a company as of the date hereof, and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full or part time); (iii) hire date; (iv) current annual base compensation rate; (v) commission, bonus or other incentive-based compensation; and (vi) a description of the fringe benefits provided to each such individual as of the date hereof. Except as set forth in **Section 4.20(a)** of the Disclosure Schedules, as of the date hereof, all commissions and bonuses payable to Employees, consultants, or contractors of the Business for services performed on or prior to the date hereof have been paid in full and there are no outstanding agreements, understandings or commitments of Seller with respect to any commissions, bonuses or increases in compensation.

(b) Except as set forth in **Section 4.20(b)** of the Disclosure Schedules, neither Seller nor Subsidiary is a party to, or bound by, any collective bargaining or other Contract with a labor organization representing any of its Employees, and there are no labor organizations representing, purporting to represent or, to Seller's Knowledge, attempting to represent any Employee. Except as set forth in **Section 4.20(b)** of the Disclosure Schedules, there has never been, nor has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor activity or dispute affecting Seller, Subsidiary or any of their Employees.

(c) Seller and Subsidiary are and have been in compliance in all material respects with the terms of the collective bargaining agreements and other Contracts listed on **Section 4.20(b)** of the Disclosure Schedules and all applicable Laws pertaining to employment and employment practices to the extent they relate to the Employees, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, health and safety, workers' compensation, leaves of absence and unemployment insurance. All individuals characterized and treated by Seller or Subsidiary as consultants or contractors of the Business are properly treated as independent contractors under all applicable Laws. There are no Actions against



Seller or Subsidiary pending, or to the Seller's Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment of any current or former employee, consultant or independent contractor of the Business, including, without limitation, any claim relating to unfair labor practices, employment discrimination, harassment, retaliation, equal pay or any other employment related matter arising under applicable Laws.

(d) Seller has complied in all material respects with the WARN Act and it has no plans to undertake any action in the future that would trigger the WARN Act.

**Section 4.21 Taxes.** Except as set forth in **Section 4.21** of the Disclosure Schedules:

(a) All Tax Returns of Seller and Subsidiary required to be filed for any Pre-Closing Tax Period have been, or will be, timely filed. Such Tax Returns are, or will be, true, complete and correct in all respects. All Taxes due and owing by Seller (whether or not shown on any Tax Return) and Subsidiary have been, or will be, timely paid.

(b) There are no Encumbrances for Taxes upon any of the Purchased Assets nor, to Seller's Knowledge, is any taxing authority in the process of imposing any Encumbrances for Taxes on any of the Purchased Assets (other than for current Taxes not yet due and payable).

(c) The unpaid Taxes of Subsidiary (A) did not, as of the Interim Balance Sheet Date, exceed the reserve for Tax Liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Interim Balance Sheet (rather than in any notes thereto) and (B) do not exceed that reserve as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of Subsidiary in filing its Tax Returns.

(d) Subsidiary has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any Employee, independent contractor, creditor, customer, shareholder or other party, filed all Tax Returns and reports with respect to employee Tax withholding and complied with all information reporting and backup withholding provisions of applicable Law.

(e) No (i) extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of Subsidiary; (ii) power of attorney has been granted by Subsidiary with respect to any Tax matter which is currently in force and (iii) claim has ever been made by an authority in a jurisdiction where Subsidiary does not file Tax Returns that Subsidiary is or may be subject to taxation by that jurisdiction.

(f) All deficiencies asserted, or assessments made, against Subsidiary as a result of any examinations by any taxing authority have been fully paid. Subsidiary is not a party to any Action, or any pending or threatened Action, by any taxing authority.

(g) Seller is not a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2.

(h) Subsidiary is not, and has never been, a party to, or a promoter of, a "reportable transaction" within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b).

**Section 4.22 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Seller.

**Section 4.23 Full Disclosure.** No representation or warranty by Seller in this Agreement and no statement contained in the Disclosure Schedules to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

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

Buyer represents and warrants to Seller that the statements contained in this **Article V** are true and correct as of the date hereof.

**Section 5.01 Organization of Buyer.** Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the state of Delaware.

**Section 5.02 Authority of Buyer.** Buyer has full limited liability company power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite limited liability company action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms. When each other Transaction Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms.

**Section 5.03 No Conflicts; Consents.** The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of formation, operating agreement or other organizational documents of Buyer; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) except as set forth in **Section 5.03** of the Disclosure Schedules, require the consent, notice or other action by any Person under any Contract to which Buyer is a party. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, except for such filings as may be required under the HSR Act and such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which, in the aggregate, would not have a Material Adverse Effect.

**Section 5.04 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer.

**Section 5.05 Sufficiency of Funds.** Buyer has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Cash Payment Amount and consummate the transactions contemplated by this Agreement.

**Section 5.06 Legal Proceedings.** There are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

## ARTICLE VI COVENANTS

**Section 6.01 Conduct of Business Prior to the Closing.** From the date hereof until the earlier of (i) the Closing or (ii) the termination of this Agreement pursuant to Article X, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), Seller shall, and shall cause Subsidiary to, (x) conduct the Business in the ordinary course of business consistent with past practice; and (y) use reasonable best efforts to maintain and preserve intact its current Business organization, operations and franchise and to preserve the rights, franchises, goodwill and relationships of its Employees, customers, lenders, suppliers, regulators and others having relationships with the Business. Without limiting the foregoing, from the date hereof until the Closing Date, Seller shall, and shall cause Subsidiary to:

(a) preserve and maintain all Permits required for the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets;

(b) pay the debts, Taxes and other obligations of the Business when due, to the extent such actions are consistent with the orders of the Bankruptcy Court and the requirements of the lender under the DIP Loan;

(c) continue to collect Accounts Receivable in a manner consistent with past practice, without discounting such Accounts Receivable;

(d) maintain the properties and assets included in the Purchased Assets in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear;

(e) continue in full force and effect without modification all Insurance Policies, except as required by applicable Law;

(f) defend and protect the properties and assets included in the Purchased Assets from infringement or usurpation;

(g) perform all of its obligations under all Assigned Contracts;

(h) maintain the Books and Records in accordance with past practice;

(i) comply in all material respects with all Laws applicable to the conduct of the Business or the ownership and use of the Purchased Assets; and

(j) not take or permit any action that would cause any of the changes, events or conditions described in **Section 4.06** to occur.

**Section 6.02 Access to Information.** From the date hereof until the earlier of (i) the Closing or (ii) the termination of this Agreement pursuant to Article X, Seller shall, at reasonable business hours and upon reasonable advance notice (a) afford Buyer and its Representatives full and free access to and the right to inspect all of the Real Property, properties, assets, premises, Books and Records, Contracts

and other documents and data related to the Business; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Business as Buyer or any of its Representatives may reasonably request; and (c) instruct the Representatives of Seller to cooperate with Buyer in its investigation of the Business. Any investigation pursuant to this **Section 6.02** shall be conducted in such manner as not to interfere unreasonably with the conduct of the Business or any other businesses of Seller. No investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement.

**Section 6.03 Alternative Transaction.**

Until such time as the Bankruptcy Court has approved the bidding procedures:

(a) Seller shall not, and shall not authorize or permit any of its Affiliates or any of its or their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. Seller shall immediately cease and cause to be terminated, and shall cause its Affiliates and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal. For purposes hereof, "**Acquisition Proposal**" means any inquiry, proposal or offer from any Person (other than Buyer or any of its Affiliates) relating to the direct or indirect disposition, whether by sale, merger or otherwise, of all or any portion of the Business or the Purchased Assets.

(b) In addition to the other obligations under this **Section 6.03**, Seller shall promptly (and in any event within three Business Days after receipt thereof by Seller or its Representatives) advise Buyer orally and in writing of any Acquisition Proposal, any request for information with respect to any Acquisition Proposal, or any inquiry with respect to or which could reasonably be expected to result in an Acquisition Proposal, the material terms and conditions of such request, Acquisition Proposal or inquiry, and the identity of the Person making the same.

(c) Seller agrees that the rights and remedies for noncompliance with this **Section 6.03** shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Buyer and that money damages would not provide an adequate remedy to Buyer.

(d) Upon approval of the bidding procedures by the Bankruptcy Court, Seller may solicit and receive Acquisition Proposals in accordance with such bidding procedures.

**Section 6.04 Notice of Certain Events.**

(a) From the date hereof until the Closing, Seller shall promptly notify Buyer in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by Seller hereunder not being true and correct or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in **Section 7.02** to be satisfied;

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and

(iv) any Actions commenced or, to Seller's Knowledge, threatened against, relating to or involving or otherwise affecting the Business, the Purchased Assets or the Assumed Liabilities that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to **Section 4.16** or that relates to the consummation of the transactions contemplated by this Agreement.

(b) Buyer's receipt of information pursuant to this **Section 6.04** shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement (and shall not be deemed to amend or supplement the Disclosure Schedules).

**Section 6.05 Employees and Employee Benefits.**

(a) Commencing on the Closing Date, Seller shall terminate all Employees of the Business who are actively at work on the Closing Date, and, at Buyer's sole discretion, Buyer may, but shall not be required to, offer employment, on an "at will" basis, to any or all of such Employees.

(b) Seller shall be solely responsible, and Buyer shall have no obligations whatsoever for, any compensation or other amounts payable to any Employee (or former Employee) of Seller, including, without limitation, hourly pay, commission, bonus, salary, accrued vacations, fringe, pension or profit sharing benefits, or severance pay payable to any Employee (or former Employee) of Seller for any period relating to the service with Seller at any time prior to the Closing Date and Seller shall pay all such amounts to all entitled Employees on or prior to the Closing Date.

(c) Seller shall remain solely responsible for the satisfaction of all claims for medical, dental, life insurance, health accident or disability benefits brought by or in respect of Employees (or former Employees) or agents of Seller which claims relate to events occurring prior to the Closing Date. Seller also shall remain solely responsible for all worker's compensation claims of any Employees (or former Employees) or agents of Seller which relate to events occurring prior to the Closing Date. Seller shall pay, or cause to be paid, all such amounts to the appropriate persons as and when due.

(d) Each Employee of the Business who becomes employed by Buyer in connection with the transaction may be given service credit for purpose of benefit plans offered by Buyer for his or her period of service with the Seller prior to the Closing Date; *provided, however*, that (i) such credit shall be given pursuant to payroll or plan records, at the election of Buyer, in its sole and absolute discretion; and (ii) such service crediting shall be permitted and consistent with Buyer's benefit plans.

**Section 6.06 Confidentiality.** From and after the Closing, Seller shall, and shall cause its Affiliates to, hold, and shall use its reasonable best efforts to cause its or their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Business, except to the extent that Seller can show that such information (a) is generally available to and known by the public through no fault of Seller, any of its Affiliates or their respective Representatives; or (b) is lawfully acquired by Seller, any of its Affiliates or their respective Representatives from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If Seller or any of its Affiliates or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, Seller shall promptly notify Buyer in writing and shall disclose only that portion of such information which

Seller is advised by its counsel in writing is legally required to be disclosed, *provided that* Seller shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

**Section 6.07 Reserved.**

**Section 6.08 Governmental Approvals and Consents.**

(a) Each party hereto shall, as promptly as possible, (i) make, or cause to be made, all filings and submissions (including those under the HSR Act) required under any Law applicable to such party or any of its Affiliates; and (ii) use reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the other Transaction Documents. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) Seller and Buyer shall use reasonable best efforts to give all notices to, and obtain all consents from, all third parties that are described in **Section 4.03** and **Section 5.03** of the Disclosure Schedules.

(c) Without limiting the generality of the parties' undertakings pursuant to subsections (a) and (b) above, each of the parties hereto shall use all reasonable best efforts to:

(i) respond to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or any other Transaction Document;

(ii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any other Transaction Document; and

(iii) in the event any Governmental Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or any other Transaction Document has been issued, to have such Governmental Order vacated or lifted.

(d) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Seller or Buyer with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each party shall give notice to the other party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

(e) Notwithstanding the foregoing, nothing in this **Section 6.08** shall require, or be construed to require, Buyer or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Buyer or any of its Affiliates; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the transactions contemplated by this Agreement and the other Transaction Documents; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

**Section 6.09 Books and Records.**

(a) In order to facilitate the resolution of any claims made against or incurred by Seller prior to the Closing, or for any other reasonable purpose, for a period of two years after the Closing, Buyer shall:

(i) retain the Books and Records (including personnel files) relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of Seller; and

(ii) upon reasonable notice, afford the Seller's Representatives reasonable access (including the right to make, at Seller's expense, photocopies), during normal business hours, to such Books and Records.

(b) In order to facilitate the resolution of any claims made by or against or incurred by Buyer after the Closing, or for any other reasonable purpose, for a period of the shorter of (i) two years following the Closing or (ii) the Seller's corporate existence, Seller shall:

(i) retain the books and records (including personnel files) of Seller which relate to the Business and its operations for periods prior to the Closing; and

(ii) upon reasonable notice, afford the Buyer's Representatives reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such books and records.

(c) Neither Buyer nor Seller shall be obligated to provide the other party with access to any books or records (including personnel files) pursuant to this **Section 6.09** where such access would violate any Law.

**Section 6.10 Closing Conditions.** From the date hereof until the Closing, each party hereto shall use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in **Article VII** hereof.

**Section 6.11 Public Announcements.** Unless otherwise required by applicable Law or stock exchange requirements (based upon the reasonable advice of counsel), the Seller shall not make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the Buyer, and the parties shall cooperate as to the timing and contents of any such announcement.

**Section 6.12 Bulk Sales Laws.** The parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer; it being understood that any Liabilities arising out of the failure of Seller to comply with the requirements and provisions of any bulk sales, bulk

transfer or similar Laws of any jurisdiction which would not otherwise constitute Assumed Liabilities shall be treated as Excluded Liabilities.

**Section 6.13 Receivables.** From and after the Closing, if Seller or any of its Affiliates receives or collects any funds relating to any Accounts Receivable or any other Purchased Asset, Seller or its Affiliate shall remit such funds to Buyer within five Business Days after its receipt thereof. From and after the Closing, if Buyer or its Affiliate receives or collects any funds relating to any Excluded Asset, Buyer or its Affiliate shall remit any such funds to Seller within five Business Days after its receipt thereof.

**Section 6.14 Transfer Taxes.** The Buyer and the Seller shall use best efforts to avoid all transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the other Transaction Documents. Seller shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Buyer shall cooperate with respect thereto as necessary).

**Section 6.15 [Reserved].**

**Section 6.16 Further Assurances.** Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

## ARTICLE VII CONDITIONS TO CLOSING

**Section 7.01 Conditions to Obligations of All Parties.** The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) The filings of Buyer and Seller pursuant to the HSR Act, if any, shall have been made and the applicable waiting period and any extensions thereof shall have expired or been terminated.

(b) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(c) Seller shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in **Section 4.03** and Buyer shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in **Section 5.03**, in each case, in form and substance reasonably satisfactory to Buyer and Seller, and no such consent, authorization, order and approval shall have been revoked.

(d) The Bankruptcy Court shall have entered the Sale Scheduling and Procedures Order and the Sale Order substantially in the forms affixed hereto as Exhibits B and A, respectively (subject to such changes as the Buyer may consent to in its sole discretion), and provided such other relief as may be necessary or appropriate to allow the consummation of the transactions contemplated by this Agreement. The Sale Order shall have become a final and nonappealable order, unless this condition has been waived in writing by Buyer in its sole discretion.



(e) There shall not be in effect, at the Closing Date, any injunction or other binding order of any court or other tribunal having jurisdiction over Seller that prohibits the sale of the Purchased Assets to Buyer. The Sale Order shall not have been reversed or vacated, and shall not be subject to a stay pending appeal. The stay provided for in Section 6004(h) of the Bankruptcy Code shall have been waived by the Bankruptcy Court.

**Section 7.02 Conditions to Obligations of Buyer.** The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment (or, with respect to any obligation other than Bankruptcy Court approval of the Sale Scheduling and Procedures Order and Sale Order, waiver thereof by Seller in writing), at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Seller contained in **Section 4.01, Section 4.02, Section 4.04** and **Section 4.21(a)**, the representations and warranties of Seller contained in this Agreement, the other Transaction Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Seller contained in **Section 4.01, Section 4.02, Section 4.04** and **Section 4.21(a)** shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(b) Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date; *provided, that*, with respect to agreements, covenants and conditions that are qualified by materiality, Seller shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) No Action shall have been commenced against Buyer or Seller, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any transaction contemplated hereby.

(d) All approvals, consents and waivers that are listed on **Section 4.03** of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Buyer at or prior to the Closing.

(e) From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

(f) Seller shall have delivered to Buyer duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in **Section 3.02(a)**.

(g) Buyer shall have received all Permits that are necessary for it to conduct the Business as conducted by Seller as of the Closing Date.

(h) All Encumbrances relating to the Purchased Assets shall have been released in full, other than Permitted Encumbrances, and Seller shall have delivered to Buyer written evidence, in form satisfactory to Buyer in its sole discretion, of the release of such Encumbrances.

(i) Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Seller, that each of the conditions set forth in **Section 7.02(a)** and **Section 7.02(b)** have been satisfied (the "**Seller Closing Certificate**").

(j) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Seller certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Seller authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(k) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Seller certifying the names and signatures of the officers of Seller authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

(l) Buyer shall have received a certificate dated as of the Closing Date, sworn under penalties of perjury and in the form and substance required under Treasury Regulations Section 1.1445-2(b) (the "**FIRPTA Certificate**") that Seller is not a foreign person within the meaning of Section 1445 of the Code duly executed by Seller.

(m) Seller shall have delivered to Buyer such other documents or instruments as Buyer reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

**Section 7.03 Conditions to Obligations of Seller.** The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment (or, with respect to any obligation other than Bankruptcy Court approval of the Sale Scheduling and Procedures Order and Sale Order, waiver thereof by Buyer in writing), at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Buyer contained in **Section 5.01**, **Section 5.02** and **Section 5.04**, the representations and warranties of Buyer contained in this Agreement, the other Transaction Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Buyer contained in **Section 5.01**, **Section 5.02** and **Section 5.04** shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date; *provided, that*, with respect to agreements, covenants and conditions that are qualified by materiality, Buyer shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any material transaction contemplated hereby.

(d) All approvals, consents and waivers that are listed on **Section 5.03** of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Seller at or prior to the Closing.

(e) Buyer shall have delivered to Seller duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in **Section 3.02(b)**.

(f) Seller shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in **Section 7.03(a)** and **Section 7.03(b)** have been satisfied (the "**Buyer Closing Certificate**").

(g) Seller shall have received a certificate of an authorized officer of Buyer certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Buyer authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(h) Seller shall have received a certificate of an authorized officer of Buyer certifying the names and signatures of the officers of Buyer authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

(i) Buyer shall have delivered to Seller such other documents or instruments as Seller reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

## **ARTICLE VIII RESERVED**

## **ARTICLE IX BANKRUPTCY MATTERS**

**Section 9.01 Motion.** Seller has filed with the Bankruptcy Court a motion (the "**Motion**") seeking the Bankruptcy Court's approval of the Sale Scheduling and Procedures Order and the scheduling of the sale of assets contemplated by this Agreement, and has obtained the Bankruptcy Court's approval of the procedures therefor attached as Exhibit B. Seller has sought approval of the Sale Order attached as Exhibit A to this Agreement.

**Section 9.02 Reserved.**

**Section 9.03 Reserved.**

**Section 9.04 Assumption of Assigned Contracts.** Pursuant to Section 365 of the Bankruptcy Code and as requested by parties to the Assigned Contracts and required by the Bankruptcy Court, Buyer shall provide adequate assurance of future performance under and with respect to the Assigned Contracts.

After the Closing Date, Seller shall be released from any further liability under the Assigned Contracts as provided for under Section 365(k) of the Bankruptcy Code.

**Section 9.05 Procedure.** To the extent practicable under the circumstances, Seller shall provide Buyer with drafts of any and all pleadings and proposed orders to be filed or submitted in connection with this Agreement for Buyer's prior review and comment. The Sale Scheduling and Procedures Order and Sale Order shall be in substantially the forms affixed hereto as Exhibits B and A, respectively, and any changes thereto shall be subject to Seller's and Buyer's approval, with such approval to be in the sole discretion of each Party. Seller shall seek approval of the Sale Scheduling and Procedures Order and the Sale Order. In the event the entry of the Sale Order shall be appealed, Seller (to the best of its ability) and Buyer shall each defend such appeal.

**Section 9.06 Buyer Protections.** Seller shall pay to Buyer the Break-up Fee or Expense Reimbursement in accordance with the terms and subject to the conditions set forth in **Section 10.02**.

## ARTICLE X TERMINATION

### Section 10.01 Termination.

This Agreement may be terminated at any time prior to the Closing:

- (a) by mutual written agreement executed by Seller and Buyer; or
- (b) automatically and without any action or notice by either Seller to Buyer, or Buyer to Seller, immediately upon approval by the Bankruptcy Court of an Alternate Transaction;
- (c) by Buyer, by notice to Seller:
  - (i) if the Auction has not concluded by June 1, 2011;
  - (ii) if Seller accepts an Alternate Transaction;
  - (iii) if Seller declares that a Person other than Buyer is the winning bidder upon completion of the Auction;
  - (iv) if the Bankruptcy Court has not entered the Sale Order by June 13, 2011 (or such later date as Buyer may have designated in writing to Seller);
  - (v) if there has been a material breach by Seller of any representation, warranty or covenant contained in this Agreement which (x) has rendered the satisfaction of any condition to the obligation of Buyer to consummate the transactions contemplated in this Agreement impossible, or is not curable or, if curable, has not been cured within ten (10) days following receipt by Seller of written notice of such violation or breach from Buyer, and (y) has not been waived by Buyer;
  - (vi) if an order, decree or ruling is issued, or any other action by a Governmental Entity is taken, to restrain, enjoin or otherwise prohibit the transfer of the Purchased Assets contemplated by this Agreement;

(vii) at any time after June 30, 2011, if the Closing shall not have occurred by that date;

(viii) if Seller's Bankruptcy Case shall be dismissed; or

(ix) if there shall be excluded from the Purchased Assets the Lease to the principal manufacturing center of Seller or other Contract, if such Lease or other Contract is identified by Buyer as an Assigned Contract and is not assignable pursuant to the Bankruptcy Code or otherwise without the Consent of any Person other than Seller, to the extent that such Consent shall not have been given prior to the Closing.

(d) by Seller, by notice to Buyer, if there has been a material breach by Buyer of any representation, warranty or covenant contained in this Agreement which (x) has rendered the satisfaction of any condition to the obligation of Seller to consummate the transactions contemplated in this Agreement impossible, or is not curable or, if curable, has not been cured within ten (10) days following receipt by Buyer of written notice of such breach from Seller, and (y) has not been waived by Seller;

(e) by Seller, by notice to Buyer:

(i) if Seller accepts an Alternate Transaction;

(ii) if Seller declares that a Person other than Buyer is the winning bidder upon completion of the Auction; or

(iii) if an order, decree or ruling is issued, or any other action by a Governmental Entity is taken, to restrain, enjoin or otherwise prohibit the transfer of the Purchased Assets contemplated by this Agreement.

#### **Section 10.02 Break-up Fee; Expense Reimbursement.**

(a) If this Agreement is terminated by Seller or by Buyer, other than pursuant to **Section 10.01(a)** or **10.01(d)**, and Seller accepts an Alternate Transaction on or before the 180th day following the date of termination of this Agreement, Buyer shall be entitled to payment of a break-up fee in the amount of \$500,000 (the "**Break-up Fee**"), payable at Seller's closing with the successful bidder or Buyer in the Alternate Transaction, from the sale proceeds.

(b) If this Agreement is terminated by Seller or by Buyer, other than pursuant to **Section 10.01(a)** or **10.01(d)**, and Seller accepts an Alternate Transaction on or before the 180th day following the date of termination of this Agreement, Seller shall promptly upon demand by Buyer pay the Expense Reimbursement to Buyer in immediately available funds, without need for further order of or from the Bankruptcy Court, upon receipt by Seller of reasonable substantiation of the amount of the Expense Reimbursement.

(c) Seller hereby acknowledges that the obligation to pay the Break-up Fee or the Expense Reimbursement (to the extent due hereunder) shall survive the termination of this Agreement, and shall be a super-priority administrative expense priority obligation of Seller and its bankruptcy estate under Section 364(c)(1) of the Bankruptcy Code with priority over all expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code, subject to any super-majority claims of Seller' post-petition lenders.

**Section 10.03 Effect of Termination.** In the event of termination of this Agreement in accordance with this Agreement, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

(a) as set forth in this **Article IX** and **Section 6.06**, **Section 10.02(a)** and **Article XI** hereof; and

(b) that nothing herein shall relieve any party hereto from liability for any wilful breach of any provision hereof.

**ARTICLE XI**  
**MISCELLANEOUS**

**Section 11.01 Expenses.** Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred; *provided, however*, Buyer and Seller shall be equally responsible for all filing and other similar fees payable in connection with any filings or submissions under the HSR Act.

**Section 11.02 Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 11.02**):

If to Seller:	ReGen Biologics, Inc. 411 Hackensack Avenue Hackensack, NJ 07601 Attention: Gerald E. Bisbee, Jr., Ph.D. Telecopy: 201.651.5141
with a copy to:	Pillsbury Winthrop Shaw Pittman LLP 1650 Tysons Boulevard McLean, VA 22102 Attention: David C. Main, Esq. Telecopy: 703.770.7901
If to Buyer:	Sports Medicine Holding Company, LLC c/o Ivy Capital Partners, LLC One Paragon Drive, Suite 125 Montvale, NJ 07645 Attention: Robert W. Pangia Telecopy: 201.573.8403
with a copy to:	DLA Piper LLP (US) 1251 Avenue of the Americas, 27th Floor

New York, NY 10020  
Attention: Jamie Knox, Esq.  
Telecopy: 212.884.8692

**Section 11.03 Tax Matters.** Any agreement between Seller and any of its Subsidiaries regarding allocation or payment of Taxes or amounts in lieu of Taxes shall be deemed terminated at and as of the Closing. Buyer and Seller agree to utilize, or cause their respective Affiliates to utilize, the standard procedure set forth in Revenue Procedure 2004-53 with respect to wage reporting.

**Section 11.04 Interpretation.** For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

**Section 11.05 Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 11.06 Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 11.07 Entire Agreement.** This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

**Section 11.08 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, including any trustee or estate representative appointed in the Chapter 11 case or any successor Chapter 7 case. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

**Section 11.09 No Third-party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 11.10 Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**Section 11.11 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of New York.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE BANKRUPTCY COURT OF THE STATE OF DELAWARE, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURT AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **SECTION 11.11(c)**.




**Section 11.12 Specific Performance.** The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

**Section 11.13 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

REGEN BIOLOGICS, INC.

By 

Name: Gerald E. Bisbee, Jr., Ph.D.

Title: President and CEO


SPORTS MEDICINE HOLDING  
COMPANY, LLC

By \_\_\_\_\_

Name:

Title:

RBIO, INC.

By 

Name: Gerald E. Bisbee, Jr., Ph.D.

Title: President and CEO

[Signature Page to Asset Purchase Agreement]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

REGEN BIOLOGICS, INC.

By \_\_\_\_\_

Name:

Title:

SPORTS MEDICINE HOLDING  
COMPANY, LLC

By Robert W. Parize

Name:

Title:

RBIO. INC.

By \_\_\_\_\_

Name:

Title:

REGISTRATION OF TRADEMARKS

Section 4.11  
Intellectual Property (continued)

*Disclosures related to Section 4.11(a), Intellectual property registrations (continued)*


Following is a list of trademark assets

Country	Mark	No.	Goods	Status
Australia	REGEN	1098705	Medical products for soft tissue growth and repair including implants	Registered 2/14/06; renewal due 2/14/16
Australia	SHARPSHOOTER	755095	Medical devices and medical apparatus and instruments	Registered 2/16/98; renewal due 2/16/18
Canada	SHARPSHOOTER	550388	Surgical, medical, dental and veterinary apparatus and instruments including soft tissue repair devices; artificial limbs, eyes and teeth; orthopedic articles; suture materials	Registered 9/7/01; renewal due 9/7/16
E.U.	CMI	4795787	Soft tissue repair devices for use in suturing in orthopedic surgery	Registered 2/7/07; renewal due 12/21/15
E.U.	MENAFLEX	8163057	Medical and surgical implants but not including artificial teeth	Registered 10/7/09; renewal due 3/18/19
E.U.	REGEN	4796165	Surgical, medical, dental and veterinary apparatus and instruments; orthopedic articles; suture materials; medical and surgical implants; but not including artificial teeth	Registered 9/3/07; renewal due 12/21/15
			Surgical implants comprising living tissue, used to repair, reinforce, and restore human meniscus tissue	
			Surgical implants composed of artificial materials, used to repair, reinforce, and restore human meniscus tissue	
			Veterinary preparations; medical products for soft tissue growth and repair	
			Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopedic articles; suture materials; medical products for soft tissue growth and repair; medical devices; not including dermatological and hair care products	

Section 4.11  
Intellectual Property (continued)

Disclosures related to Section 4.11(a), Intellectual property registrations (continued)

Continuation of trademark list

Country	Mark	No.	Goods	Status
E.U.	REGEN BIOLOGICS	4796231	Veterinary preparations; medical products for soft tissue growth and repair  Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopedic articles; suture materials; medical devices	Registered 8/24/07; renewal due 12/21/15
E.U.	SHARPSHOOTER	755504	Surgical, medical, dental and veterinary apparatus; instruments and devices; soft tissue repair devices	Registered 5/18/99; renewal due 2/17/18
South Africa	MENAFLEX	2009/0480 8	Surgical implants comprising living tissue; used to repair, reinforce, and restore human meniscus tissue	Filed 3/18/09; pending
South Africa	MENAFLEX	2009/0480 9	Surgical implants composed of artificial materials, used to repair, reinforce, and restore human meniscus tissue	Filed 3/18/09; pending
Switzerland	CMI	544399	Implants used to facilitate the growth of new tissue	Registered 3/31/06; renewal due 2/20/16
Switzerland	REGEN	544400	Medical devices	Registered 3/31/06; renewal due 2/20/16
United States <sup>1</sup>		3674026	Medical products, namely, biocompatible implants comprised of living tissue for soft tissue growth and repair  Medical devices and instruments used in implant procedures and for the surgical repair of tissue; Medical products, namely, biocompatible implants comprised of synthetic tissue for soft tissue growth and repair	Registered 8/25/09; renewal due 8/25/15
United States <sup>1</sup>	CMI	3308864	Surgical implants comprising a porous matrix of processed biocompatible and bioresorbable collagen fibers used to facilitate the growth of tissue in the human knee	Registered 10/9/07; renewal due 10/9/13
United States <sup>1</sup>	REGEN	2032386	Medical devices, namely, implantable scaffolds for regeneration of natural tissue for prosthetic menisci	Registered 1/21/97; renewal due 1/21/17

Section 4.11  
Intellectual Property (continued)

*Disclosures related to Section 4.11(a), Intellectual property registrations (continued)*

Continuation of trademark list

Country	Mark	No.	Goods	Status
United States <sup>1</sup>	REGEN BIOLOGICS	3345499	Medical products, namely, biocompatible implants for soft tissue growth and repair	Registered 11/27/07; renewal due 11/27/13
United States <sup>1</sup>	SHARPSHOOTER	2300495	Medical devices and instruments used in implant procedures and for the surgical repair of tissue Soft tissue repair devices for use in orthopedic surgery	Registered 12/14/99; renewal due 12/14/19

<sup>1</sup>All U.S. Trademarks currently assigned to Off Madison Avenue with reversion back to Seller when lien against indicated trademarks is satisfied. Settlement agreement and release of lien currently pending court approval.

*Disclosures related to Section 4.11(a), Intellectual property not registered*

Following is a list of intellectual property that is not registered

- Trade secrets, including manufacturing processes
- In-process development projects, for which patents have not been sought
- Copyrightable training, surgical technique, and marketing materials

Following is a list of domain names:

- Regenbio.biz
- Regenbiologics.biz
- Menaplasty.com
- Meniplasty.com
- Sharpshooterai.com
- Sharpshooterallinside.com
- Regenbio.info
- Regenbiologics.info
- Regenbio.net