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

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FORM 8-K

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

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October 4, 2018

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**Date of Report (date of earliest event  
reported)**

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**Establishment Labs Holdings Inc.  
(Exact name of registrant as specified in its charter)**

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**British Virgin Islands  
(State or other jurisdiction of  
incorporation or organization)**

**001-38593  
(Commission File No.)**

**Not applicable  
(I.R.S. Employer  
Identification Number)**

**Building B15 and 25  
Coyol Free Zone  
Alajuela  
Costa Rica  
(Address of principal executive offices) (Zip Code)**

**+506 2434 2400**

**(Registrant's telephone number, including area code)**

**N/A**

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

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2) of this chapter.

Emerging growth company

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

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

### **Spain Asset Purchase Agreement**

On October 1, 2018, Establishment Labs Holdings Inc. (the “Company”), through a wholly owned subsidiary, European Distribution Center Motiva BVBA (“BVBA”), entered into an asset purchase agreement (the “Spain Asset Purchase Agreement”) with Motiva Matrix Spain SL (the “Spain Seller”) to purchase certain assets from the Spain Seller. The assets purchased included all existing inventory previously sold by the Company to the Spain Seller and all customer relationships and contracts. The aggregate purchase price for the assets purchased was the aggregate sum of book value of the inventory at the time of the transaction (subject to certain adjustments as set forth in the Spain Asset Purchase Agreement) plus a cash payment of one million six hundred sixteen thousand euros (€1,616,000.00) to be paid to the Spain Seller no later than December 1, 2018 following repayment by the Spain Seller to the Company of outstanding debt in the amount of one million nine hundred seventy-seven thousand six hundred eighty-six euros and ninety-eight cents (€1,977,686.98).

### **Germany Asset Purchase Agreement**

On October 3, 2018, BVBA entered into an asset purchase agreement (the “Germany Asset Purchase Agreement”) with Menke Med GmbH (the “Germany Seller”) to purchase certain assets from the Germany Seller. The assets purchased included all existing inventory previously sold by the Company to the Germany Seller and all customer relationships and contracts. The aggregate purchase price for the assets purchased was the aggregate sum of book value of the inventory at the time of the transaction plus a cash payment of up to a maximum of one million nine hundred twenty thousand euros (€1,920,000) to be paid out in installments upon the achievement of certain milestones as set forth in the Germany Asset Purchase Agreement.

### **Germany Agency Agreement**

Concurrently with the Germany Asset Purchase Agreement, BVBA also entered into a commercial agency agreement (the “Agency Agreement”) with the Germany Seller whereby the Germany Seller was appointed as its exclusive commercial agent in Germany to promote, market and sell the Company’s products in the country.

The foregoing descriptions of the Spain Asset Purchase Agreement, Germany Asset Purchase Agreement and Agency Agreement do not purport to be complete and are qualified in their entirety by reference to the complete text of the Spain Asset Purchase Agreement, Germany Asset Purchase Agreement and the Agency Agreement, which are filed hereto as Exhibit 2.1, Exhibit 2.2 and Exhibit 2.3, respectively, and are incorporated herein by reference.

## **Item 8.01 Other Events.**

The Company issued a press release on October 4, 2018 announcing the transactions contemplated by the Spain Asset Purchase Agreement, Germany Asset Purchase Agreement and Agency Agreement. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

### Exhibit No. Description

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|------|---|
| 2.1  | <a href="#"><u>Asset Purchase Agreement by and among European Distribution Center Motiva BVBA and Motiva Matrix Spain SL, dated as of October 1, 2018</u></a> |
| 2.2  | <a href="#"><u>Asset Purchase Agreement by and among European Distribution Center Motiva BVBA and Menke Med GmbH, dated as of October 3, 2018</u></a>         |
| 2.3  | <a href="#"><u>Commercial Agency Agreement by and among European Distribution Center Motiva BVBA and Menke Med GmbH, dated as of October 3, 2018</u></a>      |
| 99.1 | <a href="#"><u>Press Release of Establishment Labs Holdings Inc. dated October 4, 2018.</u></a>   |
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**SIGNATURES**

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

**ESTABLISHMENT LABS HOLDINGS INC.**

Dated: October 4, 2018

By: /s/ Renee Gaeta

Name: Renee Gaeta

Title: Chief Financial Officer

**ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (along with the exhibits and schedules hereto, this “Agreement”) is dated October 01, 2018 (the “Closing Date”) and shall produce final effects on October 29, 2018 (the “Effective Date”), and is entered into between EUROPEAN DISTRIBUTION CENTER MOTIVA BVBA, a corporation organized under the laws of Belgium, having its registered office Nijerheidsstraat 96, 2160 Wommelgem, Handelsregisetr te Antwerpen, with company ID number 881512541 (“Motiva”), and Motiva Matrix Spain SL, a corporation organized under the laws of Spain, having its registered office at, Plaza de Sixto Machado 3, 38009 Santa Cruz de Tenerife, Spain, VAT number B76690734 (the “Company”). Motiva and the Company are each referred to herein as a “Party”, and collectively as the “Parties”. All capitalized terms used throughout this Agreement and otherwise not defined herein shall have the meaning provided in Schedule 1 attached hereto.

**RECITALS**

WHEREAS, the Company is engaged in the business of selling, marketing and distributing breast implants in the Territory (the “Business”), and owns or has the right to use all of the Transferred Assets; and

WHEREAS, on the terms and subject to the conditions set forth herein, among other things, the Company desires to sell, transfer and assign to Motiva, and Motiva desires to purchase from the Company, the Transferred Assets;

WHEREAS, Motiva agrees to advance a portion of the Purchase Price to enable the Company to continue running its Business;

NOW THEREFORE, in consideration of the mutual promises, covenants, agreements and understandings contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Purchase of Transferred Assets.

1.1 Purchase of Transferred Assets. Subject to the terms and conditions of this Agreement, the Company agrees to sell, convey, assign, transfer and deliver to Motiva, and Motiva will purchase and acquire from the Company free and clear of any Liens, all of Company’s right, title and interest in and to the following (collectively, the “Transferred Assets”):

- (a) All of Company’s existing Valid Motiva Inventory including all accessories related to such Motiva Inventory, all of which shall have been maintained in saleable condition;
- (b) All of Company’s rights under those contracts, purchase orders and other agreements related to the sales of Motiva Products by the Company, a list of which is set forth on Schedule 2 attached hereto (the “Purchased Contracts”); with it being understood that all such agreements will be assigned to Motiva in connection with the execution of this Agreement;

**CONTRATO DE COMPRAVENTA DE ACTIVOS**

Este Contrato de Compraventa de Activos (en conjunto con sus Anexos, en adelante el “Contrato”) de fecha 01 de octubre del 2018 (en adelante la “Fecha de Cierre”) el cual tendrá efecto definitivo el 29 de octubre del 2018 (en adelante la “Fecha Efectiva”) el cual es suscrito entre EUROPEAN DISTRIBUTION CENTER MOTIVA BVBA, una empresa organizada bajo las disposiciones y legislación de Bélgica, con oficina registrada en Nijerheidsstraat 96, 2160 Wommelgem, Handelsregisetr te Antwerpen, con número de identificación de empresa número 881512541 (en adelante “Motiva”), y Motiva Matrix Spain SL, una empresa organizada bajo las disposiciones y legislación de España, con oficina registrada en Plaza de Sixto Machado 3, 38009 Santa Cruz de Tenerife, España, número de identificador de contribuyente al impuesto de valor agregado VAT number B76690734, (en adelante “la Compañía”). Motiva y la Compañía se denominan de forma independiente en Adelante como la “Parte”, y de forma conjunta como las “Partes”. Todos los títulos y términos utilizados a lo largo del Contrato y los que no hayan sido definidos tendrán la definición determinada en el Anexo 1 adjunto a este Contrato.

**CONSIDERANDOS**

Que, la Compañía está consolidada en el negocio de la venta, mercadeo y distribución de implantes mamarios en el Territorio (en adelante el “Negocio”), y le pertenecen o tiene el derecho al uso de los Activos Transferidos; y

Que, bajo los términos y sujeto a las condiciones aquí acordadas entre otras cosas, la Compañía desea vender, transferir y ceder a favor de Motiva, y Motiva desea comprar de la Compañía, los Activos Transferidos;

Que, Motiva acuerda dar por avanzado una porción del Precio de Compraventa para permitir a la Compañía continuar con la operación del Negocio;

POR LO TANTO, en consideración de las promesas, pactos acuerdos y entendimientos contenidos en este Contrato, de los cuales se reconoce aquí la recepción y el alcance suficiente, las Partes acuerdan lo siguiente:

1 Compraventa de los Activos Transferidos.

1.1 Compraventa de los Activos Transferidos. De conformidad con los términos y condiciones de este Contrato, la Compañía acuerda vender, transmitir, ceder, transferir y entregar a Motiva, y Motiva comprará y adquirirá de la Compañía libre de toda anotación y gravamen, todos los derechos de la Compañía, titularidad e intereses en y para los siguientes (en adelante los “Activos Transferidos”):

- (a) Todo el Inventario Válido Motiva existente de la Compañía incluyendo todos aquellos accesorios relacionados con el Inventario de Motiva, todos los cuales deberán haber sido conservados en condiciones para ser vendidos;
- (b) Todos los derechos de la Compañía bajo Contratos, órdenes de compra y otros contratos relacionados con las ventas de los productos de Motiva a la Compañía, lista constituida en el Anexo 2 de este Contrato (en adelante los “Contratos de Compraventa”); entendido esto que los contratos serán cedidos a favor de Motiva de conformidad con el presente Contrato;

(c) All lists and records pertaining to customer accounts, suppliers, distributors, personnel and agents included as part of the Purchased Contracts or the Transferred Assets and all books, records, ledgers, files, price lists, documents, correspondence, lists, studies and reports and other written materials to the extent related exclusively to the Transferred Assets; provided, that in the event such materials do not relate exclusively, but do relate to the Transferred Assets, a redacted copy of such materials;

(d) All authorizations, permits and approvals (and applications for the foregoing) related to the import, distribution and/or sale of Motiva Products, including, without limitation, all registrations and regulatory approvals granted by governmental authorities; and

(e) All trademarks, domain names, and promotional materials that contain the Trademark (as defined in the Distribution Agreement) or any other mark or identifier that may be confusingly similar to the Trademark, and all copyrights and intellectual property rights within the foregoing.

## 2. Purchase Price and repayment by the Company.

2.1 The aggregate purchase price for the Transferred Assets (the "Purchase Price") shall be:

(a) a cash payment (in Euros) equal to the value of the existing Motiva Products inventory as of the Effective Date in accordance with Sections 1.1(a) and (4) with such amount to be paid by Motiva no later than December 01, 2018;

(b) a cash payment (Euros) made by Motiva for the Transferred Assets in Section 1.1(b) through (e) in the amount of one million six hundred sixteen thousand euros (€1.616.000,00) inclusive of any and all value added taxed (VAT) liability as per the following schedule plan:

- Four hundred thousand euros (€400.000,00) paid between October 01 and October 05 2018;

'- The remaining amount of the Purchase Price owed to Company following repayment by Company to Motiva of the Company Debt in accordance with Section 2.2, paid no later than December 01, 2018;

2.2 The Company acknowledges to owe to Motiva a total amount of one million nine hundred seventy-seven thousand and six hundred eighty six Euros and ninety-eight cents (€1.977.686,98) ("Company Debt") for debt under the Distribution Agreement. The Parties agree to adjust the Purchase Price by the difference between the Company Debt and the Motiva Inventory Amount and agree to complete the payment by December 01, 2018.

3. Closing Date and Effective Date of the Agreement. The closing shall take place on the Closing Date. The Agreement will enter in full effect for all the rest of the obligations by the Effective Date, if not differently and explicitly established in the body of the Agreement.

(c) Todas las listas y documentación relacionados con las cuentas de los clientes, proveedores, distribuidores, empleados y agentes parte de los Contratos de Compraventa o de los Activos Transferidos y todos los libros, información, diarios, archivos, listas de precios, documentos, correspondencias, listas, estudios y reportes y otro material escrito relacionados de forma exclusiva a los Activos Transferidos; siempre que en el evento de que estos materiales no sean relacionados de forma exclusiva, pero si tengan alguna relación con los Activos Transferidos, se tenga una copia de ese material;

(d) Toda autorización, permisos y aprobaciones (y aplicaciones) relacionadas con la importación, distribución y/o venta de los productos de Motiv, incluidos pero no limitados a los registros y aprobaciones otorgados por autoridades gubernamentales; y

(e) Todas las marcas, nombres de dominio, y material promocional que contenga la marca (tal y como se define en el Contrato de Distribución) o cualquier otra marca o identificador que pueda ocasionar confusión por la similitud con la Marca, y todos aquellos derechos de autor y derechos de propiedad intelectual dentro de lo anteriormente mencionado.

## 2. Precio de Compraventa y pago por la Compañía.

2.1 El Precio de Compraventa total por los Activos Transferidos (en adelante el "Precio de Compraventa") estará compuesto por lo siguiente:

(a) Un pago en efectivo (en euros) equivalente al valor del Inventario de Productos de Motiva existente en la Fecha Efectiva de conformidad con las Secciones 1.1.(a) y (4) cuyo pago deberá ser pagado por Motiva a más tardar el 01 de diciembre del 2018;

(b) Un pago en efectivo (euros) hecho por Motiva por los Activos Tranferidos en la Sección 1.1.(b) hasta la (e) por la suma de un millón seiscientos dieciséis mil euros (1.616.000,00€) incluida cualquier contingencia de impuesto al valor agregado (VAT) coorespondiente de conformidad con el siguiente esquema de pagos:

- Cuatrocientos mil euros (400.000,00€) pagaderos entre el 01 y 05 de octubre del 2018;

- La suma remanente del Precio de Compraventa adeudado a la Compañía, posterior al repago a Motiva por la Compañía de la deuda de la Compañía con Motiva de conformidad con la Sección 2.2, a más tardar el 01 de Diciembre del 2018;

2.2 La Compañía reconoce poseer de Motiva una suma total a un millón novecientos setenta y siete mil seiscientos ochetan y seis euros con noventa y ocho centavos (1.977.686,98€) (en adelante la "Deuda de la Compañía") por la deuda dentro del Contrato de Distribución. Las Partes acuerdan ajustar el Precio de Compraventa por la diferencia entre la Deuda de la Compañía y el Monto del Inventario Motiva y acuerdan completar la totalidad del Precio el 01 de diciembre del 2018.

3. Fecha de Cierre y Fecha Efectiva del Contrato. El cierre será en la Fecha de Cierre. El Contrato entrará en vigencia y surtirá efectos para el resto de las obligaciones aquí contenidas en la Fecha Efectiva, salvo que se establezca expresamente de forma diferente en el Contrato.

4. Motiva Inventory. A physical inspection and accounting of inventory of the Motiva Products acquired and held by the Company (such product, the "Motiva Inventory") shall be taken on or immediately after the Effective Date, and such Motiva Inventory that is reasonably determined by Motiva or its representatives to be of saleable quality, fit for the purpose for which they are intended, saleable and useable in the ordinary course of business, free of defects and damage and having a remaining minimum shelf-life of not less than fifty percent (50%) (such Motiva Inventory, "Valid Motiva Inventory") shall be valued at the amount paid by the Company to Motiva or its Affiliates for such Motiva Inventory (the aggregate value of the Valid Motiva Inventory, the "Motiva Inventory Amount"). All inventory with less than fifty (50%) percent of its shelf life will be purchased at a twenty five (25%) percent discount of the original purchased price by the Company to Motiva. Such physical inspection and accounting of the Motiva Products shall be conducted by Motiva or its representatives jointly with the Company or its representatives, and each Party shall be responsible for any costs incurred by them in connection with their involvement in conducting the physical inventory. Motiva shall pay the Motiva Inventory Amount as per section 2.1 (a).

5. Representations and Warranties Regarding the Company. In order to induce Motiva to enter into this Agreement and consummate the Transactions, the Company hereby represents and warrants to Motiva that the statements contained in this Section 5 are true, complete and correct as of the date hereof.

5.1 Authority for Agreement. The execution, delivery and performance by the Company of this Agreement and all other instruments and agreements to be executed by the Company pursuant hereto, have been duly authorized by all necessary action. This Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally, and the effect of rules of law governing the availability of equitable remedies.

5.2 Consents and Approvals. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any Governmental Entity or other party is required on the part of the Company in connection with the consummation of the Transactions or to perform the related covenants and agreements contemplated hereby.

4 Inventario de Motiva. Una inspección física y auditoría del inventario de los Productos de Motiva adquiridos y poseídos por la Compañía (dicho producto, el "Inventario de Motiva") se llevará a cabo inmediatamente después de la Fecha Efectiva, y el Inventario de Motiva que sea razonablemente determinado por Motiva o sus representantes de calidad para su venta, aptos para el propósito para el que están destinados, vendibles y utilizables en el curso ordinario de su Negocio, libres de defectos y daños y que tengan una vida útil mínima restante de no menos del cincuenta por ciento (50%) (tal Inventario de Motiva, "Monto del Inventario de Motiva") se valorará por el monto pagado por la Compañía a Motiva o sus afiliadas por dicho Inventario de Motiva (el valor total del Inventario de Motiva Válido, el "Importe del Inventario de Motiva"). Todo inventario con menos del cincuenta (50%) por ciento de su vida útil se comprará con un descuento del veinticinco (25%) por ciento del valor original de compra por parte de la Compañía a Motiva; Dicha inspección física y auditoría de los Productos de Motiva será conducida por Motiva o sus representantes de forma conjunta con la Compañía o sus representantes, y cada Parte será responsable de cubrir los costos incurridos por ellos en relación con su participación en la realización del inventario físico. Motiva pagará el Monto del Inventario de Motiva de conformidad con la sección 2.1 (a).

5. Representaciones y Garantías de la Compañía. Con el fin de incentivar a Motiva a celebrar este Contrato y consumir las Transacciones, la Compañía por este medio representa y garantiza a Motiva que las declaraciones contenidas en esta Sección 5 son verdaderas, completas y correctas a la fecha del presente.

5.1 Capacidad para contratar. La ejecución, entrega y desempeño de este Contrato por parte de la Compañía y todos los demás instrumentos y acuerdos que la Compañía debe ejecutar de conformidad con este documento, han sido debidamente autorizados por todos los medios necesarios. Este Contrato ha sido debidamente ejecutado y suscrito por la Compañía y constituye obligaciones legales, válidas y vinculantes de la Compañía, exigibles frente a la Compañía de acuerdo con sus términos, excepto que pueda verse limitado por bancarrota, insolvencia, reorganización u otras leyes de aplicación general relacionadas o que afecte la aplicación de los derechos de acreedores en general, y el efecto de las normas de derecho que rigen la disponibilidad de recursos equitativos.

5.2 Consentimientos y Aprobaciones. No se requiere consentimiento, aprobación, orden o autorización de, o registro, calificación, designación, declaración o presentación ante, cualquier Entidad Gubernamental u otra entidad por parte de la Compañía en relación con la consumación de las Transacciones o para realizar los convenios relacionados y acuerdos contemplados en este Contrato.

5.3 No Conflict. Neither the execution and delivery of the this Agreement nor the performance of the provisions hereof or the transactions contemplated hereby will (a) violate or conflict with the Company's Organizational Documents; (b) violate or conflict with any Law, rule, regulation, writ, judgment, injunction, decree, determination, award or other order of any Governmental Entity, domestic or foreign, that is applicable to the Company; or (c) result in a breach of any of the terms or conditions of, or constitute a default under, any mortgage, note, bond, indenture, agreement, license or other instrument or obligation to which The Company is a party or by which any of its properties or assets may be bound or affected.

#### 5.4 Assets and Properties.

(a) The Company has good and marketable title to all Transferred Assets free and clear of any Lien or restrictions on transfer, and has the legal right to use all Transferred Assets. Upon completion of the Transactions, Motiva will acquire good title to all of the Transferred Assets, free and clear of any Liens. With the exception of the Inventory in transit or located with customers, no Transferred Asset is located at a location other than a location owned or leased by the Company.

(b) Each Transferred Asset is suitable and in adequate operating condition as of the Closing Date for the purposes for which it is presently used by the Company.

5.5 Intellectual Property. The conduct of the Business has not infringed or otherwise violated, and does not and will not infringe or otherwise violate any Intellectual Property rights of any Person, and there is, and has been, no pending or, to the Company's Knowledge, threatened claim alleging any such infringement or violation. To the Company's Knowledge, the Company is not violating, and has not violated, any confidentiality or non-disclosure agreement with any third party, including any customer or supplier of the Company, and there is, and has been, no pending or, to The Company's Knowledge, threatened claim alleging any such violation.

5.6 Purchased Contracts. The Company has delivered to Motiva a copy of each of the Purchased Contracts. The conveyance of Purchased Contracts shall include Purchased Contracts that have been reduced to writing and a written summary of each oral Purchased Contract. Each of the Purchased Contracts is valid, binding and in full force and effect, without any material violation, breach or default of the Company thereunder. To The Company's Knowledge of any breach or anticipated breach by the other party or parties to any of the Purchased Contracts. The Company has not received notice nor does it have reasonable grounds to believe that any party to any such Purchased Contract intends to cancel or terminate any such Purchased Contract or to exercise or not exercise any options thereunder or to seek a renegotiation or adjustment of any material provisions thereof.

5.3 Conflicto. Ni la ejecución ni la suscripción del presente Contrato ni el cumplimiento de las disposiciones del mismo ni las transacciones contempladas en este Contrato: (a) violará o entrará en conflicto con los Documentos de la Organización de la Empresa; (b) viola o entra en conflicto con ninguna ley, regla, regulación, mandato judicial, sentencia, medida cautelar, decreto, determinación, adjudicación u otra orden emitida por cualquier entidad gubernamental, nacional o extranjera, que sea aplicable a la Compañía; o (c) resulte en el incumplimiento de cualquiera de los términos o condiciones de, o constituya un incumplimiento en virtud de, cualquier hipoteca, pagaré, fianza, contrato, licencia u otro instrumento u obligación de la cual la Compañía sea parte o mediante el cual cualquiera de sus propiedades o activos puede estar atado o afectado.

#### 5.4 Activos y Propiedades.

(a) La Compañía posee la titularidad y por ende puede enajenar todos los Activos Transferidos libres de cualquier gravamen o restricciones en su transferencia, y tiene el derecho legal de usar todos los Activos Transferidos. Una vez completadas las Transacciones, Motiva adquirirá la titularidad de todos los Activos Transferidos, libres de cualquier anotación y gravamen. Con la excepción del Inventario en tránsito o el que se encuentra en manos de clientes, ningún Activo Transferido está ubicado en un lugar que no sea propiedad o esté arrendado por la Compañía.

(b) Cada Activo Transferido es adecuado y se encuentra en condiciones de funcionamiento adecuadas a partir de la Fecha de Cierre para los fines para los que la Compañía lo utiliza actualmente.

5.5. Propiedad Intelectual. La ejecución del Negocio no ha infringido ni violado de alguna manera, y no infringe ni infringirá de algún modo los derechos de Propiedad Intelectual de ninguna Persona, y no ha habido a conocimiento de la Compañía, alegato o amenaza de infracción o violación de este tipo. Según los conocimientos de la Compañía, la Compañía no está violando, y no ha violado, ningún acuerdo de confidencialidad o no divulgación con ningún tercero, incluido ningún cliente o proveedor de la Compañía, y no hay, ni ha estado, pendiente para el conocimiento de la Compañía, amenaza de reclamo alegando alguna violación.

5.6 Contratos Adquiridos. La Compañía ha entregado a Motiva una copia de cada uno de los Contratos Adquiridos. El envío de los Contratos Adquiridos incluirá los Contratos Adquiridos que se han reducido a la escritura y un resumen escrito de cada Contrato Adquirido oral. Cada uno de los Contratos Adquiridos es válido, vinculante y está en plena vigencia y efecto, sin ninguna violación material o incumplimiento de la Compañía en virtud del mismo. Al conocimiento de la Compañía de cualquier incumplimiento o incumplimiento previsto por la otra parte o partes en cualquiera de los Contratos Adquiridos. La Compañía no ha recibido notificación ni tiene motivos razonables para creer que una de las partes de dicho Contrato Adquirido pretenda rescindir dicho Contrato Adquirido o ejercer o no ejercer cualquier opción en virtud del mismo o buscar una renegociación o ajuste de cualquier material disposiciones de los mismos.

5.7 Litigation. As of the Effective Date, with respect to the Transferred Assets, there are no actions, suits, proceedings (including any arbitration proceedings), orders, investigations or claims pending or threatened against the Company by any third party at law or in equity, or before or by any Governmental Entity.

5.8 Inventory. The Inventory is (a) of good and merchantable quality, fit for the purpose for which they are intended, and saleable and useable in the ordinary course of business; (b) free of defects and damage; and (c) to the Company's knowledge, in quantities adequate and not excessive in relation to the circumstances of the Business and in accordance with the Company's past inventory stocking practice.

5.9 Non-Disparagement. The Company, or any of its employee's representatives, officers, directors, and agents, shall not make disparaging remarks about Motiva or its operations, products or services, whether orally or in writing, whether online or otherwise, and whether during or after the termination of the Company's affiliation with Motiva.

5.10 Disclosure. No representation or warranty by The Company contained in this Agreement, and no statement contained in any other instrument delivered to or to be delivered by or on behalf of the Company pursuant to this Agreement, contains any untrue statement of a material fact or omits to state any material fact necessary, in light of the circumstances under which it was made, in order to make the statements herein or therein not misleading.

6. Representations and Warranties of Motiva. In order to induce the Company to enter into this Agreement and consummate the Transactions, Motiva hereby represents and warrants to the Company that the statements contained in this Section 6 are true, complete and correct:

6.1 Organization and Authority. Motiva is an entity duly formed and validly existing under the Laws of the jurisdiction of its incorporation. Motiva has the requisite power and authority to enter into and to perform this Agreement.

6.2 Authority for Agreement. The execution, delivery and performance by Motiva of this Agreement and all other instruments and agreements to be executed by Motiva pursuant hereto, have been duly authorized by all necessary action. This Agreement has been duly executed and delivered by Motiva and constitutes the legal, valid and binding obligations of Motiva, enforceable against Motiva in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization or other Laws of general application relating to or affecting the enforcement of creditors' rights generally, and the effect of rules of law governing the availability of equitable remedies.

7. Closing Deliveries.

7.1 Deliveries of The Company. At the Closing, the Company will deliver or cause to be delivered to Motiva:

5.7 Litigios. Hasta la Fecha Efectiva, en relación con los Activos Transferidos, no existen acciones, demandas, procedimientos (incluido cualquier procedimiento de arbitraje), órdenes, investigaciones o reclamos pendientes o amenazas contra la Compañía por parte de un tercero legal o en equidad, o por cualquier Entidad Gubernamental.

5.8 Inventario. El Inventario es (a) de buena y comerciable calidad, adecuado para el propósito para el que están destinados, y es vendible y utilizable en el curso ordinario del Negocio; (b) libre de defectos y daños; y (c) al conocimiento de la Compañía, está en cantidades adecuadas y no excesivas en relación con las condiciones del Negocio de acuerdo con la práctica previa en relación con los inventarios de la Compañía.

5.9 No denigración. La Compañía, o cualquiera de sus representantes, oficiales, directores y agentes, no deben hacer comentarios despectivos sobre Motiva o sus operaciones, productos o servicios, ya sea oralmente o por escrito, ya sea en línea o de otro tipo, durante o después de la terminación de la asociación de la Compañía con Motiva.

5.10 No Divulgación. Ninguna representación o garantía por parte de la Compañía contenida en este Contrato, y ninguna declaración contenida en cualquier otro instrumento suscrito o a punto de ser suscrito por o en nombre de la Compañía de conformidad con este Contrato, contiene declaraciones falsas de algún hecho material u omite algún hecho material necesario, a la luz de las circunstancias bajo las cuales fue hecho, que haga que las declaraciones aquí hechas no sean engañosas.

6. Representaciones y Garantías de Motiva. Con el fin de incentivar a la Compañía a celebrar este Contrato y consumir las Transacciones, Motiva por este medio representa y garantiza a la Compañía que las declaraciones contenidas en esta Sección 6 son verdaderas, completas y correctas:

6.1 Capacidad para contratar. Motiva es una compañía debidamente constituida y existente bajo las leyes de la jurisdicción donde se haya constituido. Motiva tiene plena capacidad y facultades suficientes para celebrar este Contrato.

6.2 Autoridad para Contratar. La ejecución, suscripción y desempeño por parte de Motiva de este Contrato y todos los demás instrumentos y acuerdos que Motiva ejecute en virtud del mismo, han sido debidamente autorizados por todas las acciones necesarias. Este Contrato ha sido debidamente ejecutado y suscrito por Motiva y constituye obligaciones legales, válidas y vinculantes de Motiva, ejecutables frente a Motiva de conformidad con sus términos, salvo que pueda estar limitado por quiebra, insolvencia, reorganización u otras leyes de aplicación general relacionadas o que afecten la aplicación de los derechos de acreedores en general, y el efecto de las normas de derecho que rigen la disponibilidad de recursos equitativos.

7. Entregables para el Cierre.

7.1 Entregables de la Compañía. Al cierre, la Compañía entregará a Motiva:

(a) Conveyance Documents. This Agreement executed by the Company, and such other deeds, bills of sale and other instruments of assignment as Motiva reasonably deems necessary in order to effect the sale of the Transferred Assets including the assignment of the Purchased Contracts to Motiva, evidence of the last twelve months revenue prior to the date of the execution of this agreement, the customer list including the price list in the format delivered by Motiva, evidence of the inventory count, evidence of the termination and payment of severance to all employees, and termination of all sub distribution agreements.

(b) Consents and Waivers. Copies of all consents, approvals, releases from and filings with Governmental Entities and other third parties, including parties to the Purchased Contracts that are required in order to effect the Transactions (the "Required Consents").

#### 8. Covenants and Additional Agreements.

8.1 Non-Competition. As of the Closing Date, and for a period of three (3) years after the later end of this Agreement, the Company shall not, whether individually or in partnership or jointly or in conjunction with any other person, as principal, agent, consultant, contractor, employer, employee or in any other manner, directly or indirectly, perform services for, or establish, control, own a beneficial interest in, manufacture, distribute, sell or offer for sale, directly or indirectly, or use any other means with a view to marketing or be otherwise commercially involved in any endeavor, activity or business in the Territory that is a Competing Business, with respect to the Motiva Business. For the avoidance of doubt, this provision is not intended to prohibit the Company from providing services to a Competing Business if the services the Company provides to such Competing Business are unrelated to the Motiva Business and would not involve the use of confidential information of Motiva or its subsidiaries and affiliates. The Company warrants that its shareholders or other owners or equity holders are bound by this provision and expressly acknowledges and agrees that the Company will also be liable for violations of this provision by its shareholders or other owners or equity holders. As of the Closing Date the Company shall enter into agreements obligating the Company and its affiliates to (i) not compete directly with Motiva its subsidiaries and affiliates for a period of three (3) years following the execution of this Agreement and (ii) for the Company's representatives, officers, directors, and agents not to compete directly with Motiva its subsidiaries and affiliates for a period of three (3) years following the execution of this Agreement. Furthermore, the Company acknowledges and represents that consideration for the covenants in this Section 8.1 has been paid in full by Motiva as part of the Purchase Price in this Agreement.

Any breach by the Company (or its shareholders or other owners or equity holders) shall be subject to penalty clause of the total amount of the Purchase Price, which shall be in addition to, and not in lieu of, any proven damages arising due to the breach. The Parties expressly state that the said amount is reasonable taking into account the circumstances of the case and they expressly agree that they will not attempt to challenge its validity.

(a) Documentos para el traspaso. Este Contrato celebrado por la Compañía, y otras escrituras, cartas de venta y otros instrumentos de cesión que Motiva razonablemente considere necesarios para efectuar la venta de los Activos Transferidos, incluida la cesión de los Contratos Adquiridos a Motiva, evidencia de las ventas de los últimos 12 meses previos a la fecha de ejecución de este documento, la lista de clientes en el formato entregado por Motiva con su respectiva lista de precios, evidencia del conteo de inventario, evidencia de la terminación y pago de liquidación de todos los empleados, y la terminación de todos los contratos de subdistribución.

(b) Consentimientos y Renuncias. Copias de todos los consentimientos, aprobaciones, liberaciones y presentaciones ante las Entidades Gubernamentales y terceros, incluidas las partes en los Contratos Adquiridos que se requieren para efectuar las Transacciones (en adelante los "Consentimientos Requeridos").

#### 8. Pactos y acuerdos adicionales.

8.1 No competencia. A partir de la Fecha de Cierre, y por un período de tres (3) años después del final de este Contrato, la Compañía no podrá, ya sea individualmente o conjuntamente con cualquier otra persona, como principal, agente, consultor, contratista, empleador, empleado o de cualquier otra manera, directa o indirectamente, realizar servicios para, o establecer, controlar, poseer un interés beneficioso en, fabricar, distribuir, vender u ofrecer en venta, directa o indirectamente, o usar cualquier otro medio con el fin de comercializar o estar involucrado comercialmente en cualquier empresa, actividad o Negocio dentro del Territorio que sea considerado un Negocio competente de los Negocios que ofrece Motiva. Con el fin de evitar dudas, esta disposición no tiene la intención de prohibirle a la Compañía brindar servicios a una empresa que desarrolle Negocios en competencia si los servicios que la Compañía proporciona a dicha empresa no están relacionados con el Negocio de Motiva y no involucrarían el uso de información confidencial de Motiva o sus subsidiarias y afiliadas. La Compañía garantiza que sus accionistas u otros propietarios o accionistas están obligados por esta disposición y expresamente reconoce y acepta que la Compañía también será responsable por violaciones de esta disposición por parte de sus accionistas u otros propietarios o accionistas. A la fecha de cierre, la Compañía deberá suscribir acuerdos que obligan a la Compañía y sus afiliadas a (i) no competir directamente con Motiva, sus subsidiarias y afiliadas por un período de tres (3) años posteriores a la ejecución de este Contrato y (ii) los representantes, funcionarios, directores y agentes de la Compañía no compitan directamente con Motiva, sus subsidiarias y afiliadas por un período de tres (3) años posteriores a la ejecución de este Contrato. Además, la Compañía reconoce y representa en consideración de los convenios en esta Sección 8.1 que éstas han sido pagada en su totalidad por Motiva como parte del Precio de Compra en este Contrato.

Cualquier incumplimiento por parte de la Compañía (o sus accionistas u otros propietarios o accionistas) estará sujeto a una cláusula de penalización de el monto total del Precio de Compraventa, que será adicional a, y no en lugar de, cualquier daño probado que surja debido al incumplimiento. Las Partes expresamente declaran que dicho monto es razonable teniendo en cuenta las circunstancias del caso y expresamente acuerdan que no intentarán impugnar su validez.

8.2 Non-Solicitation. The Company will not for a period of three (3) years after the Closing Date, for any reason, directly or indirectly, solicit, entice, or in any other manner persuade or attempt to persuade, any customer, client, employee, supplier, distributor, or contractor of Motiva its subsidiaries and affiliates (in any case with whom the Company had business contact in the last three (3) years of the Company's association with Motiva) to discontinue or alter to the detriment of Motiva his, her or its employment, relationship or business with Motiva. Furthermore, The Company acknowledges and represents that consideration for the covenants in this Section 8.2 has been paid in full by Motiva as part of the Purchase Price in this Agreement.

8.3 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration and other similar Taxes and fees (including any penalties and interest) incurred in connection with the purchase and sale of the Transferred Assets pursuant to this Agreement, in Spain, shall be borne and paid by The Company, and The Company shall file all necessary Tax Returns and other documentation with respect to all such Taxes and fees. The Company and Motiva shall cooperate in good faith to minimize, to the fullest extent possible under such Laws, the amount of any such transfer Tax payable in connection therewith. Any tax liability in Belgium related to EDC Motiva BVBA not covered by the preceding sentences shall be the responsibility of Motiva.

8.4 Confidential Information. The Parties hereby covenant and agree that, from and after the Closing Date, each party shall, except with the prior written consent of the other party or on behalf of the other Party and/or its Affiliates, keep confidential and not disclose to any other Person any confidential information that is proprietary in nature regarding the Business and existing as of the Closing Date, provided that (a) each Party may disclose on a confidential basis certain summary financial information relating to the Transactions to any professional advisor, and (b) each Party may disclose information otherwise necessary in order to enforce the terms of this Agreement or defend against any claim made under this Agreement. The obligation of the Parties under this Section 8.4 shall not apply to information which: (i) is or becomes publicly known without breach of the commitment provided for in this Section 8.4; (ii) is available from a third-party not under an obligation to keep such information confidential; or (iii) is required to be disclosed by Law, provided, however, that in any such case under this clause (iii), the Party which has to disclose the confidential information, shall notify the other Party as early as reasonably practicable prior to disclosure to allow the other Party to take appropriate measures to preserve the confidentiality of such information. Notwithstanding the foregoing, for purposes of this Agreement, as of the Closing Date, all information included in, regarding or arising from the Transferred Assets shall be deemed the confidential information solely of Motiva.

8.2 No Contratación. La Compañía no podrá, durante un período de tres (3) años después de la Fecha de Cierre, por ningún motivo, directa o indirectamente, solicitar, atraer o de cualquier otro modo persuadir o intentar persuadir a cualquier cliente, empleado, proveedor, distribuidor, o contratista de Motiva, sus subsidiarias y afiliadas (en cualquier caso con quien sea que La Compañía haya tenido contacto comercial en los últimos three (3) años a la asociación de la Compañía con Motiva) para descontinuar o alterar en perjuicio de Motiva su empleo, relación o Negocio con Motiva. Además, la Compañía reconoce y representa que la consideración de los convenios en esta Sección 8.2 ha sido pagada en su totalidad por Motiva como parte del Precio de Compra en este Contrato.

8.3 Impuestos de Traspaso. Toda transferencia, venta, uso, sello, registro y otros impuestos y tarifas similares (incluidas las multas e intereses) incurridos en relación con la compra y venta de los Activos Transferidos de conformidad con este Contrato, y que sean exigibles en España, serán asumidos y pagados por la Compañía, y la Compañía presentará todas las Declaraciones de impuestos necesarias y otra documentación con respecto a tales Impuestos y tarifas. La Compañía y Motiva cooperarán bajo la buena fe para minimizar, en la medida de lo posible en virtud de dichas leyes, el monto del impuesto de traspaso a pagar en relación con el mismo. Cualquier contingencia fiscal en Bélgica relacionada con EDC Motiva BVBA no cubierta en lo descrito anteriormente será responsabilidad de Motiva.

8.4 Información confidencial. Las Partes se comprometen y acuerdan que a partir y después de la Fecha de Cierre, cada parte, salvo que exista previo consentimiento por escrito de la otra parte o en nombre de la otra parte y/o sus afiliados, a mantener de forma confidencial y no divulgar a ninguna persona información confidencial cuya naturaleza sea propiedad exclusiva del Negocio y en existencia a la Fecha de Cierre, siempre que (a) cada Parte podrá divulgar de manera confidencial alguna información financiera relacionada con las Transacciones a cualquier asesor profesional, y (b) cada Parte podrá divulgar información que de otro modo sería necesaria para hacer cumplir los términos de este Contrato o para defenderse contra cualquier reclamo hecho bajo este Contrato. La obligación de las Partes en virtud de esta Sección 8.2 no se aplicará a la información que: (i) sea o se convierta en información a conocer públicamente sin incumplimiento del compromiso estipulado en esta Sección 8.4; (ii) esté disponible por parte de un tercero que no está obligado a mantener dicha información confidencial; o (iii) está obligado a ser revelado por la Ley, con la condición, sin embargo, que en cualquier caso bajo esta cláusula (iii), la Parte que divulgará la información confidencial, deberá notificar a la otra Parte tan pronto como sea razonablemente posible, antes de divulgar para permitir a la otra Parte tomar las medidas apropiadas para preservar la confidencialidad de dicha información. Sin perjuicio de lo anterior, para los efectos del presente Contrato, a partir de la Fecha de Cierre, toda la información incluida en relación con, o que surja de los Activos Transferidos se considerará información confidencial de Motiva.

8.5 Consents. Nothing in this Agreement shall be construed as an attempt to assign any contract, agreement, or license included in the Transferred Assets which is by its terms or by Law nonassignable without the consent of the other party or parties thereto, unless such consent shall have been given, or as to which all the remedies for the enforcement thereof enjoyed by the Company would, as a matter of law, pass to Motiva as an incident of the assignments provided for by this Agreement. In order, however, to provide Motiva the full realization and value of every contract, of the character described in the immediately preceding sentence, the Company agrees that prior to Closing, it will, at the request and under the direction of Motiva, in the name of the Company or otherwise as Motiva shall specify, take commercially reasonable actions (a) to assure that the rights of the Company under such contracts shall be preserved for the benefit of Motiva and (b) to facilitate receipt of the consideration to be received by the Company in and under every such contract, which consideration shall be held for the benefit of, and shall be delivered to Motiva.

8.6 Further Assurances. At any time and from time to time after the Closing Date, the parties hereto shall (a) furnish upon reasonable request to each other such information, documents, instruments of transfer or assignment, files and books and records, (b) promptly execute, acknowledge, and deliver any such documents, instruments of transfer or assignment, files and books and records, and (c) do all such further acts and things, as such other party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents referred to herein.

#### 9. Survival of Representations and Warranties; Indemnification.

9.1 Survival of Representations and Warranties. Except as otherwise set forth in this Section 9.1, all of the representations and warranties of the Company, and Motiva contained in this Agreement or any other agreement, schedule or certificate delivered by the Company, or Motiva pursuant to this Agreement shall survive for five (5) years after the Closing Date. If a party hereto determines that there has been a breach by any other party hereto of any such representation or warranty and notifies the breaching party in writing prior to the expiration of the survival period applicable to such representation and warranty (which notice shall identify the nature of such claim with reasonable specificity and such party's reasonable estimate of the value of such claim), such representation or warranty and liability therefor shall survive, but only with respect to the specified breach which is specified in such notice, until such breach has been resolved, but no party shall have any liability after such five (5) year period for any alleged breaches of representations and warranties not specifically specified in a writing delivered within such five (5) year period. Notwithstanding any term in this Section 9.1, (a) claims related to any intentional misrepresentation or fraud by the Company or Motiva in connection with this Agreement and the Transactions, and the representations and warranties contained in Sections 5 of this Agreement shall survive indefinitely.

#### 9.2 Indemnification.

8.5 Consentimientos. Nada bajo este Contrato se interpretará como un intento de ceder ningún contrato, acuerdo o licencia incluidos en los Activos Transferidos, que sea por sus términos o por la Ley como no asignable sin el consentimiento previo de la otra parte o partes del mismo, a menos que dicho consentimiento haya sido dado, o en relación con el cual todos los recursos para la ejecución de los mismos hayan sido ejercidos por la Compañía, como cuestión de derecho, pasare a Motiva como un incidente en relación con las asignaciones previstas en este Contrato. Sin embargo, con el fin de proporcionar a Motiva de plena efectividad y valor de cada contrato, la Compañía acuerda que antes del Cierre, y bajo la dirección de Motiva y en nombre de la Compañía tomará acciones que sean comercialmente razonables para (a) asegurar que los derechos de la Compañía bajo tales contratos se conservarán para el beneficio de Motiva y (b) para facilitar la recepción de la contraprestación que recibirá la Compañía por cada uno de dichos contratos, cuya contraprestación se llevará a cabo en su beneficio y se entregará a Motiva.

8.6 Garantías Adicionales. En cualquier momento posterior a la Fecha de Cierre, las partes deberán: (a) suministrar, bajo petición razonable información, documentos, instrumentos de transferencia o cesión, archivos, libros y registros, (b) ejecutar rápidamente, reconocer y entregar dichos documentos, instrumentos de traspaso o cesión, archivos y libros y registros, y (c) hacer todos los demás actos adicionales, que la otra parte podrá solicitar de forma razonable con el propósito de llevar a cabo el objeto de este Contrato y los documentos a los que se refiere este documento.

#### 9. Continuidad de las Representaciones y Garantías; indemnización.

9.1 Continuidad de Representaciones y Garantías. Salvo lo dispuesto en esta Sección 9.1, todas las declaraciones y garantías de La Compañía y Motiva contenidas en este Contrato o cualquier otro acuerdo, anexo o certificado entregado por La Compañía o Motiva de conformidad con este Contrato sobrevivirán por cinco (5) años después de la Fecha de Cierre. Si una de las partes determina que ha habido una infracción por parte de la otra parte en relación con alguna representación o garantía y notifica por escrito al infractor antes de la expiración de este período de supervivencia aplicable (la notificación deberá indicar la naturaleza de tal reclamo con detalle y especificidad razonable y la estimación razonable del valor de dicho reclamo), dicha representación o garantía y responsabilidad subsistirán, pero solamente en relación con la parte específica en la que se dio el incumplimiento especificado en la notificación hasta que dicho incumplimiento se haya resuelto, pero ninguna parte tendrá responsabilidad alguna después de dicho período de los cinco (5) años por presuntas violaciones de las representaciones y garantías que no hayan sido especificadas en un escrito entregado dentro del periodo de los cinco (5) años. No obstante cualquier término indicado en esta Sección 9.1, (a) los reclamos relacionados con cualquier tergiversación o fraude intencional por parte de la Compañía o Motiva en relación con este Contrato y sus Transacciones, y las declaraciones y garantías contenidas en las Secciones 5 de este Contrato sobrevivirán indefinidamente.

#### 9.2 Indemnizaciones.

(a) Indemnification by the Company. Subject to the limitations set forth in this Section 9, from and at all times after the Effective Date, the Company shall indemnify Motiva, its Affiliates, and their directors, officers, managers, shareholders, members, partners, employees, agents, representatives, successors and permitted assigns (the "Motiva Indemnified Parties") and save and hold each of them harmless from and against and pay on behalf of or reimburse Motiva Indemnified Parties as and when incurred for any and all liabilities, obligations, demands, claims, actions, suits, proceedings, investigations, causes of action, assessments, judgments, losses, costs, damages, deficiencies, Taxes, fines or expenses (whether or not arising out of third party claims), including, without limitation, interest, penalties, reasonable attorneys' fees and all reasonable amounts paid in investigation, defense or settlement of any of the foregoing (collectively, "Damages"), which any Motiva Indemnified Party may suffer or incur to the extent resulting from or arising out of:

(i) Any misrepresentation or breach or inaccuracy of any representation or warranty of the Company under this Agreement or in any agreement, schedule or certificate delivered or to be delivered by or on behalf of the Company to Motiva pursuant to this Agreement;

(ii) any liability or obligation of the Company or related to the Business (including any indebtedness of the Company);

(iii) any Taxes with respect to operation of the Business by the the Company;

(iv) any nonfulfillment, breach or violation of any covenant or agreement on the part of the Company under this Agreement;

(v) any unpaid transaction expenses of The Company;

(vi) the Purchased Contracts and

(vii) any claim, liability or obligation arising from the Distribution Agreements entered into by the Company with DM7 Hospitalaria, Karam Medical and MIO SL.

(b) Indemnification by Motiva with respect to the Company. Subject to the limitations set forth in this Section 9, from, and at all times after, the date of this Agreement, Motiva shall indemnify the Company and their agents, representatives, successors and permitted assigns (the "The Company Indemnified Parties") and save and hold each of them harmless from and against and pay on behalf of or reimburse as and when incurred for any and all Damages which The Company may suffer or incur to the extent resulting from or arising out of:

(i) any misrepresentation, breach or inaccuracy of any representation or warranty of Motiva under this Agreement or in any agreement, schedule or certificate delivered or to be delivered by or on behalf of Motiva to the Company pursuant to this Agreement; and

(ii) any nonfulfillment, breach or violation of any covenant or agreement on the part of Motiva under this Agreement.

(a) Indemnización de La Compañía. Sujeto a las limitaciones establecidas en esta Sección 9, la Compañía indemnizará a Motiva, sus afiliadas y directores, funcionarios, gerentes, accionistas, miembros, socios, empleados, agentes, representantes, sucesores y cesionarios permitidos (en adelante las "Partes indemnizadas de Motiva") en todo momento posterior a la Fecha Efectiva y se mantendrán indemnes y pagar en nombre de o reembolsar a las Partes Indemnizadas de Motiva cuando incurran en cualquier y todas las responsabilidades, demandas, reclamos y acciones, juicios, procedimientos, investigaciones, causas de acción, evaluaciones, sentencias, pérdidas, costos, daños, impuestos, multas o gastos (ya sea que surjan o no de reclamos de terceros), incluidos pero no limitados a intereses, sanciones, los honorarios de abogados y todos aquellos gastos que hayan sido pagados de forma razonable en la investigación, defensa o liquidación de cualquiera de los anteriores (denominados colectivamente, "Daños"), que cualquier Parte indemnizada de Motiva pueda sufrir o incurrir en la medida en que resulte de o surja de:

(i) cualquier tergiversación o incumplimiento o inexactitud de cualquier representación o garantía de la Compañía bajo este Contrato o en cualquier otro acuerdo, anexo o certificado entregado en nombre de la Compañía a Motiva de conformidad con este Contrato;

(ii) cualquier responsabilidad u obligación de la Compañía o relacionada con el Negocio (incluyendo cualquier deuda de la Compañía);

(iii) cualquier impuesto con respecto a la operación del Negocio por parte de La Compañía;

(iv) cualquier falta, incumplimiento o violación de cualquier convenio o acuerdo por parte de la Compañía bajo este Contrato;

(v) cualquier gasto de la transacción no pagado de la Compañía;

(vi) los Contratos Adquiridos y

(vii) cualquier reclamación, responsabilidad u obligación derivada de los Contratos de Distribución firmados por la Compañía con DM7 Hospitalaria, Karam Medical and MIO SL.

(b) Indemnización de Motiva en relación con la Compañía. Sujeto a las limitaciones establecidas en esta Sección 9, desde, y en todo momento después de la fecha de este Contrato, Motiva indemnizará a la Compañía y sus agentes, representantes, sucesores y cesionarios autorizados (denominado las "Partes Indemnizadas de la Compañía") y guardará y mantendrá indemne a cada uno de ellos y pagará en nombre de o reembolsará a medida que se incurra en cualquiera y todos los Daños que la Compañía pueda sufrir o incurrir en la medida resultante o que surja de:

(i) cualquier tergiversación, incumplimiento o inexactitud de cualquier representación o garantía de Motiva en virtud de este Contrato o en cualquier otro acuerdo, cronograma o certificado entregado por o en nombre de Motiva a la Compañía de conformidad con este Contrato y

(ii) cualquier falta, incumplimiento o violación de cualquier convenio o acuerdo por parte de Motiva en virtud de este Contrato.

(c) Due Diligence and Right to Indemnification. No information or Knowledge obtained in any investigation or otherwise shall affect or be deemed to modify any representation or warranty contained herein or the conditions to the obligations of the parties to consummate the Transactions or the rights of the parties to indemnification pursuant to Section 9. The waiver of any condition based on the accuracy of any warranty or representation, or on the performance of or compliance with any covenant or agreements, will not affect the right to indemnification or any other remedy based on such warranties, representations, covenants and agreements.

9.3 Tax Consequences. Any indemnity payment made under Section 9 with respect to a breach by either Party shall be deemed to be an adjustment in the Purchase Price, unless a contrary treatment is required under applicable Law.

9.4 Sole and Exclusive Remedy. The parties hereto agree and acknowledge that, except in the case of intentional misrepresentation, fraud or intentional or willful breach of this Agreement, the rights to indemnification provided for in this Section 9 shall be the sole and exclusive remedy (regardless of the theory or cause of action pled) for monetary damages of the Company Indemnified Parties on the one hand, or Motiva Indemnified Parties, on the other hand, as the case may be, after the Closing for and with respect to any misrepresentation, breach or inaccuracy of any representation or warranty of a party hereto and for any nonfulfillment, breach or violation of any covenant or agreement contained in this Agreement by a party hereto, and each party to this Agreement hereby waives to the fullest extent permitted by law, any other rights or remedies that may arise under any applicable Law in connection therewith; provided, however, that nothing herein will limit in any way any party's rights hereunder or otherwise, to specific performance, injunctive relief or other non-monetary equitable relief.

9.5 Release of Claims. Company acknowledges that by the Effective Date it will terminate the Distribution Agreement entered into between the Company and Establishment Labs S.A on 06 de Agosto del 2015 (the "Distribution Agreement"). Company acknowledges and agrees that it has no claims of any nature arising from or relating to the Distribution Agreement, and fully and irrevocably releases Motiva from any liability thereunder.

## 10. Miscellaneous.

10.1 Entire Agreement. This Agreement and the other documents, agreements and instruments delivered pursuant hereto and thereto (together with the recitals, the schedules and exhibits hereto) embody the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter.

10.2 Fees and Expenses. Except as otherwise expressly provided in this Agreement, Motiva, on the one hand, and the Company, on the other hand, each will pay all of their own fees, costs and expenses (including fees, costs and expenses of legal counsel, investment bankers, accountants, brokers or other representatives and consultants and appraisal fees, costs and expenses) in connection with the preparation and negotiation of this Agreement.

c) Debida diligencia y derecho a indemnización. Ninguna información o conocimiento obtenido en cualquier investigación afectará o se considerará que modifica cualquier declaración o garantía contenida en este documento o las obligaciones de las partes para consumir las Transacciones o los derechos de las partes a indemnización de conformidad con la Sección 9. La renuncia de cualquier condición que se base en la exactitud de cualquier garantía o representación, o en el desempeño o cumplimiento de cualquier convenio o acuerdos, no afectará el derecho a indemnización o cualquier otro recurso basado en tales garantías, representaciones, convenios y acuerdos.

9.3 Consecuencias fiscales. Cualquier pago de indemnización realizado en virtud de la Sección 9 con respecto a un incumplimiento de cualquiera de las Partes se considerará como un ajuste en el Precio de Compraventa, a menos que se requiera un tratamiento contrario en virtud de la Ley aplicable.

9.4 Recurso único y exclusivo. Las partes acuerdan y reconocen que, salvo en el caso de tergiversación de forma intencional, fraude o incumplimiento deliberado o doloso de este Contrato, los derechos de indemnización previstos en esta Sección 9 serán el único y exclusivo recurso (independientemente de la teoría o causa de acción) por daños monetarios de las Partes Indemnizadas de la Compañía, por un lado, o de las Partes Indemnizadas de Motiva, por otro lado, según sea el caso, después del Cierre y con respecto a cualquier tergiversación, incumplimiento o inexactitud de cualquier representación o garantía de alguna de las partes y cualquier falta, incumplimiento o violación de cualquier convenio o acuerdo contenido en este Contrato por una de las partes, y cada parte de este Contrato renuncia a la máxima medida permitida por la ley, cualquier otro derecho o recurso que puede surgir bajo cualquier ley aplicable en conexión con la condición, siempre que nada de lo aquí contenido limitará de ninguna manera los derechos de ninguna de las partes en virtud del presente o de alguna otra manera, a un cumplimiento específico, medida cautelar u otro recurso no monetario equivalente.

9.5 Liberación de reclamo. La Compañía reconocen que para la Fecha Efectiva ha rescindido el Acuerdo de Distribución celebrado entre la Compañía y Establishment Labs S.A el 06 de Agosto del 2015 (el "Acuerdo de Distribución"). La Compañía reconoce y acepta que no tiene ningún reclamo de ninguna naturaleza que surja de o esté relacionado con el Acuerdo de distribución, y libera total e irrevocablemente a Motiva de cualquier responsabilidad en virtud del mismo.

## 10. Misceláneos.

10.1 Integridad del Contrato. El presente Contrato y los demás documentos, acuerdos e instrumentos suscritos en virtud de este (junto con los considerandos, los anexos) representan el acuerdo y entendimiento completo entre las partes con respecto al mismo objeto y sustituyen todo acuerdo anterior y entendimiento relacionado con dicho objeto.

10.2 Honorarios y gastos. Salvo que se indique expresamente lo contrario en este Contrato, tanto Motiva como la Compañía pagará todos los honorarios, costos y gastos en los que cada uno incurra (incluyendo honorarios, costos y gastos de asesores legal, banqueros de inversión, contadores, corredores u otros representantes y consultores y honorarios por avalúos y sus costos y gastos) en relación con la preparación y negociación de este Contrato.

10.3 Amendments and Waivers. Except as otherwise set forth herein or therein, no term, condition or covenant of this Agreement may be amended or waived (either generally or in a particular instance and either retroactively or prospectively), without the prior written consent of both Motiva and the Company.

10.4 Successors and Assigns. The Company may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Motiva. The provisions of this Agreement shall be binding upon, and inure to the benefit of, the respective successors and permitted assigns of the parties hereto. Motiva shall have the right assign this agreement upon written notice to the Company. The Company cannot object the assignment of the agreement from Motiva to third parties.

10.5 Notices. All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be delivered by electronic mail, or courier, certified or registered mail, return receipt requested, postage prepaid:

If to the Company, to:

Email: carlos.garcia@motivaes.com

Attention: Carlos García Rodríguez

If to Motiva, to:

Address: Establishment Labs, Building B25

Coyol Free Trade Zone, Alajuela

Costa Rica, 20113

Email: jlivanu@establishmentlabs.com

Attention: General Counsel

Except as otherwise provided in this Agreement, all notices and communications hereunder shall be deemed to have been duly given (a) when transmitted by electronic mail, or, (b) in the case of a courier, one (1) days after the date of delivery, in each case given or addressed as aforesaid.

10.6 Counterparts. This Agreement may be executed in two or more counterparts, and by different parties hereto on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by electronic mail in PDF or similar format shall be effective as delivery of a mutually executed counterpart to this Agreement.

10.7 Headings; Gender. The headings of the sections, subsections and paragraphs of this Agreement have been added for convenience only and shall not be deemed to be a part of this Agreement. Wherever reference is made herein to the male, female or neuter genders, such reference shall be deemed to include any of the other genders, as the context may require.

10.3 Enmiendas y exenciones. Salvo que se establezca lo contrario en el presente Contrato, ningún término, condición o pacto de este Contrato puede modificarse o renunciarse (ya sea en general o en un caso particular y retroactivo o prospectivo), sin el consentimiento previo por escrito tanto de Motiva y la Compañía.

10.4 Sucesores y Cesionarios. La Compañía no podrá ceder ninguno de sus derechos ni delegar ninguna de sus obligaciones bajo este Contrato sin el previo consentimiento por escrito de Motiva. Las disposiciones de este Contrato serán vinculantes y redundarán en beneficio de los respectivos sucesores y cesionarios autorizados por las partes del presente Contrato. Motiva tendrá el derecho de ceder este Contrato mediante previa notificación por escrito a la Compañía. La Compañía no podrá objetar la cesión del Contrato de Motiva a terceros.

10.5 Notificaciones. Toda notificación, solicitud, consentimiento y cualquier otra comunicación bajo este Contrato se hará por escrito y se enviarán por correo electrónico o mensajería, correo certificado o certificado, se solicitará acuse de recibo y el sello prepago:

Para la Compañía, a:

Correo electrónico: carlos.garcia@motivaes.com

Atención: Carlos García Rodríguez

Para Motiva, a:

Dirección: Establishment Labs, Edificio B25

Zona Franca Coyol, Alajuela

Costa Rica, 20113

Correo electrónico: jlivanu@establishmentlabs.com

Atención: Consejero General

Salvo que se disponga lo contrario en este Contrato, toda notificación o comunicación se considerará entregada debidamente (a) cuando se transmiten por correo electrónico, o, (b) en el caso de un servicio de mensajería, un (1) día después de la fecha de la entrega, en cada caso dado o abordado como se mencionó anteriormente.

10.6 Ejecución en tantos. Este Contrato puede ser ejecutado en dos o más tantos y con las contrapartes separadas, cada una de las cuales se considerará original, pero todas juntas constituirán el mismo instrumento. La entrega de una copia ejecutada de una página de firma a este Contrato por correo electrónico en formato PDF o similar se tendrá por efectiva como la suscripción mutua a este Contrato.

10.7 Títulos; Género. Los títulos de las secciones, subsecciones y párrafos de este Contrato se han insertado solo por conveniencia y no se consideran parte de este Contrato. Cuando se haga referencia aquí a los géneros masculino, femenino o neutro, dicha referencia se incluirá de conformidad al contexto.

10.8 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, and the parties hereto shall amend or otherwise modify this Agreement to replace any prohibited or invalid provision with an effective and valid provision that gives effect to the intent of the Parties to the maximum extent permitted by applicable Law.

10.9 Specific Performance. The parties hereto acknowledge and agree that any party hereto would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any breach of this Agreement by any party could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which any party may be entitled, at law or in equity, such party shall also be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary, and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

10.10 Third Party Beneficiaries. Except as otherwise expressly provided herein, nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement, any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement.

10.11 Governing Law. All issues, questions and disputes concerning the validity, interpretation, enforcement, performance or termination of this Agreement, and all matters of extra-contractual and/or tort liability, if any, arising out of or in relation with this Agreement, shall be governed by and construed in accordance with Belgian law, without giving effect to any other choice-of-law or conflict-of-laws rules or provisions (Belgian, foreign or international) that would cause the laws of any jurisdiction other than Belgium to be applicable, and excluding the UN Convention on Contracts for the International Sale of Goods (1980) ("Vienna Convention") (if applicable).

10.12 Dispute Resolution. The Company and Motiva agree, on behalf of themselves, that any legal Action based on or arising out of this Agreement or for recognition and enforcement of any judgment in respect thereof brought by a party hereto, or their respective successors or assigns will be resolved in accordance with the following procedure:

(1) the Parties shall attempt to resolve the dispute through the conciliation mechanism in accordance with the Mediation Rules of the Belgian Centre for Arbitration and Mediation CEPANI;

10.8 Divisibilidad. Siempre que sea posible, cada una de las disposiciones de este Contrato se interpretará de tal forma que sea efectiva y válida de conformidad a la Ley aplicable, pero si se considera que alguna disposición de este Contrato está prohibida o es inválida según la ley aplicable, dicha disposición será ineficaz solo para el alcance de tal prohibición o invalidez, sin invalidar el resto de dicha disposición o las disposiciones restantes de este Contrato, y las partes de éste deberán enmendar o modificar el Contrato para reemplazar cualquier disposición prohibida o inválida con una disposición que sea válida y efectiva para darle efecto a la intención de las Partes en la máxima medida permitida por la ley aplicable.

10.9 Cumplimiento específico. Las partes reconocen y aceptan que cualquiera de las partes se vería irreparablemente dañada si alguna de las disposiciones de este Contrato no se lleva a cabo de conformidad con sus términos específicos y que cualquier incumplimiento de este Contrato por una de las partes no podrá ser compensado adecuadamente en todos los casos por daños monetarios. En consecuencia, además de cualquier otro derecho o recurso al que cualquier parte pueda tener derecho, por ley o en equidad, dicha parte también tendrá derecho a hacer cumplir cualquier disposición de este Contrato mediante un decreto de desempeño específico y a un acuerdo temporal, preliminar y medida cautelar permanente para evitar infracciones o amenazas de incumplimiento de cualquiera de las disposiciones de este Contrato, sin ninguna obligación.

10.10 Terceros Beneficiarios. Salvo que se indique expresamente lo contrario, nada de lo referido en este Contrato será interpretado como derechos legales, remedios o reclamos otorgados a personas que no sean las partes de este Contrato.

10.11 Ley aplicable. Todos los asuntos, preguntas y disputas en relación con la validez, interpretación, cumplimiento, aplicación o terminación de este Contrato, y todos los demás asuntos de responsabilidad extracontractual, si los hubiere, que surjan de o en relación con este Contrato, se regirán e interpretarán de conformidad con la legislación belga, sin tener ningún efecto otra regla, ley o disposición (belgas, extranjeras o internacionales) que causarían que las leyes de cualquier jurisdicción distinta de la belga sean aplicables, y excluyendo la Convención de las Naciones Unidas sobre los Contratos de Compraventa Internacional de Mercaderías (1980) (en adelante "Convención de Viena") (si corresponde).

10.12 Resolución de disputas. La Compañía y Motiva acuerdan, en nombre de ellos mismos, que cualquier acción legal basada o derivada de este Contrato o para el reconocimiento y ejecución de cualquier juicio con respecto a este Contrato presentado por una de las partes, o sus respectivos sucesores o cesionarios, se resolverá de conformidad con el siguiente procedimiento:

(1) las Partes intentarán resolver la disputa a través del mecanismo de conciliación de conformidad con las Reglas de Mediación del Centro Belga de Arbitraje y Mediación CEPANI;

(2) If, within fifteen (15) business days from the request for mediation, the Parties have not reached a settlement, the dispute shall be settled under the CEPANI Rules of Arbitration by three (3) arbitrators appointed in accordance with those Rules, who must decide based on the law, including as to the admissibility and probatory value of evidence. The Belgian Centre for Arbitration and Mediation Cepani will be the institution responsible for administering the arbitration process. The seat of the arbitration shall be Brussels (Belgium). The arbitration shall be conducted in English.

10.13 Prevailing Party. In the event of a Dispute, the prevailing party in any Action in connection therewith shall be entitled to recover from such other party its costs and expenses incurred in connection with such Action, including, without limitation, reasonable legal fees and associated costs.

10.14 Publicity. Except as required by applicable Law, no publicity, release, disclosure or announcement of or concerning this Agreement or the Transactions shall be issued by The Company without the advance written consent of Motiva; provided, however, that The Company shall be permitted to make disclosures concerning this Agreement to its accountants, attorneys and financial advisors.

10.15 References. When a reference is made in this Agreement to a Section, subsection, Exhibit or Schedule, such reference shall be to a Section, subsection, exhibit or schedule of this Agreement unless otherwise indicated. The headings contained in this Agreement, in any schedules and in the table of contents to this Agreement, are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made part of this Agreement as if set forth in full herein. Any capitalized term used in any Exhibit or Schedule, including the Disclosure Schedules, and not otherwise defined shall have the meaning given to such term in this Agreement. Unless the context clearly requires otherwise, whenever the words "include", "includes", "including", "such as" or terms of similar meaning are used in this agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof", "herein", "hereby" and "hereunder" and terms of similar meaning when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The term "or" is not exclusive. The word "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends, and such phrase shall not mean simply "if". The definitions contained in this Agreement are applicable to the singular as well as to the plural forms of such terms. Any agreement or instrument defined or referred to herein means such agreement or instrument as from time to time amended, modified or supplemented. References to a Person are also to its permitted successors and assigns. Pronouns of one gender shall include all genders. The headings in this Agreement are for reference only, and shall not affect the interpretation of this Agreement. All references to "Euros" or "€" shall be the official currency of the European Union unless otherwise specified.

(2) Si, dentro de los quince (15) días hábiles desde la solicitud de mediación, las Partes no han llegado a un acuerdo, la disputa se resolverá conforme a las Reglas de Arbitraje de CEPANI por tres (3) árbitros designados de conformidad con esas reglas, quién debe decidir basado en la ley, en relación con la admisibilidad y el valor probatorio de la evidencia. El Centro Belga de Arbitraje y Mediación Cepani será la institución responsable de manejar el proceso de arbitraje. La sede del arbitraje será Bruselas (Bélgica). El arbitraje se llevará a cabo en inglés.

10.13 Parte prevaleciente. En la eventualidad de una disputa, la parte ganadora tendrá derecho a recuperar de la otra parte los costos y gastos incurridos en relación con dicha acción, incluidos, pero no limitados entre otros a los honorarios legales y otros costos asociados.

10.14 Publicidad. A menos que la ley aplicable lo exija, la Compañía no publicará, divulgará ni anunciará este Contrato ni las Transacciones relacionadas con éste, sin el previo consentimiento por escrito de Motiva; con la condición, sin embargo, de que a la Compañía se le permita hacer divulgaciones sobre este Contrato a sus contadores, abogados y asesores financieros.

10.15 Referencias. Cuando se haga una referencia en este Contrato a una Sección, subsección o anexo, dicha referencia será a una Sección, subsección o anexo de este Contrato, salvo que se indique lo contrario. Los títulos incluidos en este Contrato, en cualquier tema y en el índice de este Contrato, son sólo para fines de referencia y no afectarán en modo alguno el significado o la interpretación de este Contrato. Todos los Anexos adjuntos al presente Contrato o mencionados en este documento se incorporan y forman parte de este Contrato. Cualquier término en mayúscula utilizado en cualquier Anexo, incluidos los Programas de Divulgación, y que no esté definido de otra manera tendrá el significado dado a dicho término en este Contrato. A menos que el contexto claramente requiera lo contrario, siempre que las palabras "incluir", "incluye", "incluyendo", "como" o términos de significado similar que se usen en este Contrato, se considerarán seguidas de las palabras "sin limitación". "Las palabras" aquí ", "por la presente", "debajo "y" a continuación" y términos de significado similar que se usen en este Contrato se referirán a este Contrato como un todo y no como una disposición particular de este Contrato. El término "o" no es exclusivo. La palabra "extensión" en la frase "en la medida" significa el grado en que un sujeto u otra cosa se extiende, y tal frase no debe significar simplemente "si". Las definiciones contenidas en este Contrato son aplicables tanto a las formas en singular como a las formas plurales de dichos términos. Cualquier acuerdo o instrumento definido o referido aquí significa que se reforma, modifica o complementa de vez en cuando. Las referencias a una persona también se refieren a sus sucesores y cesionarios. Los pronombres de un género incluirán todos los géneros. Los títulos en este Contrato son solo para referencia, y no afectarán la interpretación de este Contrato. Todas las referencias a "Euros" o "€" serán la moneda oficial de la Unión Europea a menos que se especifique lo contrario.

10.16 Construction. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any Person. The information contained in this Agreement and in the Disclosure Schedules and Exhibits hereto is disclosed solely for purposes of this Agreement, and no information contained herein or therein shall be deemed to be an admission by any party hereto to any third party of any matter whatsoever (including, without limitation, any violation of Law or breach of contract).

10.17 Languages of the contract and prevailing language. This Agreement is executed in double language (English and Spanish). In case of conflict between the two versions the English one shall prevail.

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10.16 Construcción. El lenguaje utilizado en este Contrato se considerará como el idioma elegido por las partes para expresar su intención mutua, y no se aplicará ninguna regla de interpretación estricta contra ninguna Persona. La información contenida en este Contrato y en los Anexos y Divulgaciones de este documento será divulgada únicamente para los fines del presente Contrato, y ninguna información contenida en este documento se considerará como una admisión por parte de terceros a ningún tema del Contrato (incluyendo, sin limitación, cualquier violación de la Ley o incumplimiento contractual).

10.17 Idiomas del Contrato e idioma predominante. Este Contrato se ejecuta en doble idioma (inglés y español). En caso de conflicto entre las dos versiones, prevalecerá la versión en inglés.

**[RESTO DE LA PAGINA SE DEJA EN BLANCO  
INTENCIONALMENTE]**

WITNESS WHEREOF, the undersigned have hereunto set their hands under seal as of the day and year first above written.

**MOTIVA:**

**EUROPEAN DISTRIBUTION CENTER MOTIVA BVBA**

By: /s/ Salvador Dada

Name: Salvador Dada

Title: COO/Manager

**THE COMPANY:**

**Motiva Matrix Spain SL**

By: /s/ Carlos García Rodríguez

Name: Carlos García Rodríguez

Title: CEO

**Schedule I**

**Terms and Definitions**

Terms Defined. As used herein, the following terms have the respective meanings set forth below or set forth in the referenced Section of this Agreement:

“Action” – means suit, claim, action, arbitration, proceeding or investigation.

“Affiliate” – means and includes, at any time with respect to any Person (the “applicable Person”), each Person:

(a) that directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, the applicable Person;

(b) that beneficially owns or holds five percent (5%) or more of any class of the Voting Equity of the applicable Person;

(c) five percent (5%) or more of the Voting Equity (or in the case of a Person that is not a corporation, five percent (5%) or more of the equity interest) of which is beneficially owned or held by the applicable Person; or

(d) that is an officer, director or manager (or a member of the immediate family of an officer, director or manager) of the applicable Person;

EN FE DE LO ANTERIOR, los suscritos han puesto abajo sus sello en el día y año indicado arriba.

**MOTIVA:**

**EUROPEAN DISTRIBUTION CENTER MOTIVA BVBA**

Por: /s/ Salvador Dada

Nomre: Salvador Dada

Título: COO/Manager

**LA COMPAÑIA:**

**Motiva Matrix Spain SL**

Por: Carlos García Rodríguez

Nombre: Carlos García Rodríguez

Título: CEO

**Anexo 1**

**Términos y Definiciones**

Términos Definidos. De conformidad con el uso dado en el presente Contrato, los siguientes términos tienen los significados respectivos establecidos a continuación o establecidos en la sección a la que se hace referencia en este Contrato:

"Acción" - significa demanda, reclamo, acción, arbitraje, procedimiento o investigación.

"Afiliado" - significa e incluye, en cualquier momento con respecto a cualquier Persona (en adelante la "Persona aplicable"), a cada Persona:

(a) que directa o indirectamente a través de uno o más intermediarios controla, o está controlado por, o está bajo control común con, la persona correspondiente;

(b) que posee o retiene beneficiosamente el cinco por ciento (5%) o más de cualquier clase del Capital de la Persona aplicable;

(c) cinco por ciento (5%) o más del Capital Accionario (o en el caso de una Persona que no sea una corporación, cinco por ciento (5%) o más del interés patrimonial) del cual es de propiedad o titularidad beneficiaria la Persona aplicable; o

(d) que es un funcionario, director o gerente (o un miembro de la familia inmediata de un funcionario, director o gerente) de la Persona;

at such time; provided, however, that for purposes of this Agreement no Person holding any one or more of the shares of Equity of The Company shall be deemed to be an Affiliate solely by virtue of the ownership of such Securities.

"Business Day" – means a day other than a Saturday, a Sunday or a day on which the national banks located in New York, New York are required by Law (other than a general banking moratorium or holiday for a period exceeding four (4) consecutive days) to be closed.

"Competing Business" means a person or organization which is engaged in or about to be engaged in a business that competes with the Business.

"Distribution Agreement" means that certain Distribution Agreement, dated as of August 06, 2015, between the Company and establishment Labs S.A, as amended by the parties on 26 January, 2018 and on 14 May, 2018 and .

"Equity" – means, with respect to any Person, any class of preferred, common or other capital share, share capital or similar equity interest of such Person.

"Governmental Entity" means individually, and "Government Entities" means collectively, any federal, state or local or foreign government, any political subdivision thereof or any court, administrative or regulatory agency, department, instrumentality, body or commission or other governmental authority or agency, domestic or foreign.

"Intellectual Property" – means all proprietary information (whether or not protectable by patent, copyright, trademark or trade secret rights) and intellectual property rights throughout the world, including, without limitation, all trade names, trademarks (including common-law trademarks), service marks, domain names, web addresses, websites, social media accounts, art work, packaging, plates, emblems, brands, logos, insignia, works of authorship, and copyrights, and their registrations, applications and renewals, and all goodwill associated therewith, and all of their content and data, all domestic and foreign patents and patent applications, all moral, common law and economic rights of authors and inventors, all technology, know-how, show-how, inventions, discoveries, trade secrets, processes, formulae, drawings, designs, schematics, specifications, algorithms, systems, forms, technical and business information, data, databases, computer programs and software, object and source code, product information and development work-in-progress and all documentary evidence of any of the foregoing, all licenses, sublicenses or like agreements for any of the foregoing, and all other intellectual property or proprietary rights.

en ese momento; sin embargo, a los efectos del presente Contrato ninguna Persona que posea una o más de las acciones del Patrimonio de la Compañía se considerará un afiliado únicamente en virtud de la propiedad de dichos Valores.

"Día Hábil" significa un día que no sea un sábado, un domingo o un día en que la Ley exija que los bancos nacionales ubicados en Nueva York, Nueva York (aparte de una moratoria bancaria o feriado general por un período superior a cuatro (4) días consecutivos) para ser cerrado.

"Negocio competidor" se refiere a una persona u organización que participa en o está a punto de participar en un Negocio que compite con el Negocio.

"Contrato de Distribución" se refiere al Contrato de Distribución, fechado el 06 de Agosto de 2015, entre la Compañía y establishment Labs S.A enmendado por las Partes el 26 de enero del 2018, y el 14 de mayo del 2018.

"Patrimonio neto" - significa, con respecto a cualquier Persona, cualquier clase de capital preferente, común u otro capital social, capital social o intereses de capital similares de dicha Persona.

"Entidad Gubernamental" significa individualmente, y "Entidades Gubernamentales" significa colectivamente, cualquier gobierno federal, estatal o local o extranjero, cualquier subdivisión política del mismo o cualquier tribunal, agencia administrativa o reguladora, departamento, instrumentalidad, organismo o comisión u otra autoridad gubernamental o agencia, nacional o extranjera.

"Propiedad intelectual": toda la información patentada (independientemente de que esté protegida por patentes, derechos de autor, marcas registradas o secretos comerciales) y derechos de propiedad intelectual en todo el mundo, incluidos, entre otros, todos los nombres comerciales, marcas comerciales (incluidas marcas de derecho consuetudinario), marcas de servicio, nombres de dominio, direcciones web, sitios web, cuentas de redes sociales, obras de arte, empaques, placas, emblemas, marcas, logotipos, insignias, obras de autor y derechos de autor, y sus registros, aplicaciones y renovaciones, y todo el fondo de comercio asociado con eso, y todos sus contenidos y datos, todas las patentes y solicitudes de patentes nacionales y extranjeras, todos los derechos morales, de common law y económicos de autores e inventores, toda tecnología, know-how, show-how, inventos, descubrimientos, secretos comerciales, procesos, fórmulas, dibujos, diseños, esquemas, especificaciones, algoritmos, sistemas, formularios, información técnica y comercial, datos, bases de datos, programas informáticos y software, objetos y agrios código de acceso, información del producto y trabajo en curso de desarrollo y toda evidencia documental de cualquiera de los anteriores, todas las licencias, sublicencias o acuerdos similares a cualquiera de los anteriores, y todos los demás derechos de propiedad intelectual o de propiedad.

“Inventory” – means and includes goods owned and held by the Company for sale, lease or resale or furnished or to be furnished under contracts for services, and raw materials, goods in process, materials, component parts and supplies used or consumed, or held for use or consumption, in the Business (including all components, merchandise, raw materials, work in progress and finished goods), which are held at, or are in transit from or to the locations at which the Business is conducted, or located at suppliers’ premises on consignment, in each case, which are used or held for use by the Company in the conduct of the Business, including any of the foregoing purchased subject to any conditional sales or title retention agreement in favor of any other Person, together with all rights of the Company against suppliers of such inventories.

“Knowledge” – means, with respect to the Seller, the actual knowledge of any executive officer, and any successor to the positions or duties of such persons, in each case after due care and after reasonable inquiry. Such individuals will be deemed to have knowledge of a particular fact, circumstance, event or other matter if (a) such individual has knowledge of such fact, circumstance, event or other matter, (b) such fact, circumstance, event or other matter is reflected in one or more documents (whether written or electronic) contained in books and records of such individual that would reasonably be expected to be reviewed by such individual in the customary performance of his or her duties or (c) such fact, circumstance, event or other matter would be known to such individual had he or she made reasonable inquiry of appropriate employees and personnel.

“Laws” means all statutes, laws, codes, ordinances, regulations, rules, orders, judgments, writs, injunctions, acts or decrees of any Governmental Entity.

“Lien” – means any mortgage, lien, option, encumbrance, assignment, restriction, pledge, claim, security interest, hypothecation, adverse claim, easement, encroachment, right of way, burden, title defect, title retention agreement, voting trust agreement, right of first refusal, preemptive right, put, call, restriction on transfer, charge or other encumbrance, restriction or limitation.

“Inventario”: significa e incluye los bienes que posee y mantiene la Compañía para su venta, arrendamiento o reventa, que se proporcionan o se otorgan bajo contratos de servicios, y materias primas, bienes en proceso, materiales, componentes y suministros utilizados o consumidos, o mantenidos para uso o consumo, en el Negocio (incluidos todos los componentes, mercancías, materias primas, trabajos en curso y productos terminados), que se mantienen en, o están en tránsito desde o hacia los lugares en los que se realiza el Negocio, o ubicados en las instalaciones de los proveedores en consignación, en cada caso, que se usan o retienen para uso de la Compañía en la realización del Negocio, incluida cualquiera de las anteriores, sujetas a cualquier venta condicional o acuerdo de retención del título a favor de cualquier otra persona, junto con todos los derechos de la Compañía contra los proveedores de dichos inventarios.

"Conocimiento": significa, con respecto al Vendedor, el conocimiento real de cualquier funcionario ejecutivo y cualquier sucesor de los puestos o deberes de dichas personas, en cada caso después de la atención debida y después de una investigación razonable. Se considerará que dichas personas tienen conocimiento de un hecho, circunstancia, evento u otro asunto particular si (a) dicho individuo tiene conocimiento de tal hecho, circunstancia, evento u otro asunto, (b) tal hecho, circunstancia, evento u otro asunto se refleja en uno o más documentos (ya sean escritos o electrónicos) contenidos en libros y registros de dicho individuo que razonablemente se esperaría que fueran revisados por dicho individuo en el desempeño acostumbrado de sus funciones o (c) tal hecho, circunstancia, un evento u otro asunto se conocería si él o ella hiciera una investigación razonable de los empleados y el personal apropiados.

"Leyes" significa todos los estatutos, leyes, códigos, ordenanzas, reglamentos, reglas, órdenes, sentencias, autos, mandamientos, decretos de cualquier Entidad Gubernamental.

"Gravamen" significa cualquier hipoteca, derecho de retención, opción, gravamen, cesión, restricción, prenda, reclamo, interés de seguridad, hipoteca, reclamación adversa, servidumbre, usurpación, derecho de vía, carga, defecto del título, contrato de retención del título, contrato de fideicomiso de voto, derecho de tanteo, derecho de preferencia, put, call, restricción de transferencia, cargo u otro gravamen, restricción o limitación.

"Material Adverse Effect" – means any change, circumstance, event or effect that, individually or in the aggregate, is materially adverse to the business, assets, liabilities, Properties, prospects, financial condition or results of operations of the Company; provided, however, that none of the following shall be deemed in themselves, either alone or in combination, to constitute, and none of the following shall be taken into account in determining whether there has been or would reasonably be expected to be, a Material Adverse Effect: any adverse change or effect attributable to (i) the announcement or pendency of the Transactions; (ii) conditions affecting the industry in which the Company participates, the European economy as a whole or the capital markets in general or the markets in which the Company operates (so long as the foregoing do not disproportionately affect the Company); (iii) compliance with the terms of, or the taking of any action required by, this Agreement or any related action; (iv) any change in applicable Laws or the interpretation thereof; (v) actions required to be taken under applicable Laws; (vi) any change in accounting requirements or principles or any change in related Laws, rules or regulations or the interpretation thereof; (vii) any matter set forth in the Disclosure Schedules to this Agreement; (viii) natural disasters, epidemics or pandemics or (ix) the commencement, continuation or escalation of a war, material armed hostilities or other material international or national calamity or act of terrorism.

"Motiva Business" means the business carried on by Motiva its subsidiaries and affiliates from time to time prior to the end of the Company's affiliation with Motiva its subsidiaries and affiliates, which involves medical technology focused on improving patient safety and aesthetic outcomes, initially in the breast aesthetics and reconstruction market.

"Motiva Products" means those products listed on Exhibit B attached to this Agreement.

"Organizational Documents" – means the articles or certificate of formation or incorporation, bylaws, limited liability company agreement, operating agreement, partnership agreement or other governing documents of an entity.

"Order" – means any order or decree, judgment, injunction, ruling or other order, whether temporary, preliminary or permanent, that is enacted, issued, promulgated, enforced or entered by any Governmental Entity of competent jurisdiction.

"Permitted Liens" – means (i) statutory Liens for current Taxes or other governmental charges not yet due and payable; and (ii) statutory mechanics', carriers', workers', repairers' and similar statutory Liens arising or incurred in the ordinary course of business for amounts which are not delinquent.

"Signing" – Execution of this Agreement, i.e. exchange of signatures necessary for the execution of this agreement.

"Efecto Adverso Material" - significa cualquier cambio, circunstancia, evento o efecto que, individualmente o en conjunto, sea materialmente adverso al Negocio, activos, pasivos, Propiedades, perspectivas, situación financiera o resultados de operaciones de la Compañía; provisto, sin embargo, que ninguno de los siguientes se considerará en sí mismo, solo o en combinación, para constituir, y ninguno de los siguientes se tomará en cuenta para determinar si ha habido, o se esperaría razonablemente que lo hubiera, un Efecto adverso: cualquier cambio o efecto desfavorable atribuible a (i) el anuncio o la tramitación de las Transacciones; (ii) condiciones que afectan la industria en la que participa la Compañía, la economía europea en su conjunto o los mercados de capitales en general o los mercados en los que opera la Compañía (siempre que lo anterior no afecte desproporcionadamente a la Compañía); (iii) el cumplimiento de los términos de, o la adopción de cualquier acción requerida por este Acuerdo o cualquier acción relacionada; (iv) cualquier cambio en las leyes aplicables o la interpretación de las mismas; (v) acciones requeridas para ser tomadas bajo las Leyes aplicables; (vi) cualquier cambio en los requisitos o principios contables o cualquier cambio en las leyes, normas o reglamentaciones relacionadas o la interpretación de los mismos; (vii) cualquier asunto establecido en los Programas de Divulgación de este Acuerdo; (viii) desastres naturales, epidemias o pandemias o (ix) el comienzo, la continuación o la escalada de una guerra, hostilidades armadas materiales u otra calamidad internacional o nacional importante o acto de terrorismo.

"Motiva Business" significa el Negocio desarrollado por Motiva sus subsidiarias y afiliadas periódicamente previo a la afiliación de la Compañía con Motiva sus subsidiarias y afiliadas, que involucra tecnología médica enfocada en mejorar la seguridad del paciente y los resultados estéticos, inicialmente en el mercado de estética y reconstrucción mamaria.

"Productos de Motiva" significa aquellos productos enumerados en el Anexo B adjunto a este Contrato.

"Documentos de la organización" significa los artículos o el certificado de formación o incorporación, los estatutos, el acuerdo de la compañía de responsabilidad limitada, el acuerdo de operación, el acuerdo de asociación u otros documentos de gobierno de una entidad.

"Orden" significa cualquier orden o decreto, sentencia, medida cautelar, sentencia u otra orden, ya sea temporal, preliminar o permanente, que sea promulgada, emitida, promulgada, ejecutada o ingresada por cualquier Entidad Gubernamental de jurisdicción competente.

"Gravámenes permitidos" - significa (i) gravámenes legales para impuestos actuales u otros cargos gubernamentales aún no vencidos y pagaderos; y (ii) Mecanismos legales, transportistas, trabajadores, reparadores y gravámenes legales similares que surjan o se incurran en el curso ordinario de Negocios por montos que no sean morosos.

"Firma" - Ejecución de este Contrato, es decir, intercambio de firmas necesarias para la ejecución de este Contrato.

"Tax" or "Taxes" means federal, state, county, local, foreign or other income, gross receipts, ad valorem, franchise, profits, sales or use, escheat (unclaimed property), transfer, registration, excise, utility, environmental, communications, real or personal property, capital stock, license, payroll, wage or other withholding, employment, social security, severance, stamp, occupation, alternative or add-on minimum, estimated and other taxes of any kind whatsoever (including deficiencies, penalties, additions to tax, and interest attributable thereto) whether disputed or not.

"Territory" – means Spain.

"Transactions" – means the transactions contemplated by this Agreement or any other Transaction document.

"Transfer" – means any transfer, sale, assignment, gift, pledge, hypothecation, or other disposition or encumbrance.

**Schedule 2**

**Purchased Contracts**

None.

**Schedule 3**

**Motiva Products**

All off the Motiva branded products purchased from Establishment Labs or any of its subsidiaries.

"Impuestos" o "Impuestos" significa aquellos ingresos federales, estatales, del condado, locales, extranjeros o de otro tipo, ingresos brutos, ad valorem, de franquicia, ganancias, ventas o uso, escheat (propiedad no reclamada), transferencia, registro, impuestos especiales, utilidad, ambientales, comunicaciones, propiedad real o personal, capital social, licencia, nómina, salario u otra retención, empleo, seguridad social, indemnización, timbre, ocupación, alternativa o complemento mínimo, estimados y otros impuestos de cualquier tipo (incluyendo deficiencias, penalidades, adiciones al impuesto e intereses atribuibles a los mismos) ya sea disputados o no.

"Territorio" - significa España.

"Transacciones" - significa las transacciones contempladas en este Contrato o cualquier otro documento de transacción.

"Transferencia" - significa cualquier transferencia, venta, cesión, regalo, prenda, hipoteca u otra disposición o gravamen.

**Anexo 2**

**Contratos Adquiridos**

Ninguno.

**Anexo 3**

**Productos de Motiva**

Todos los products marca Motiva comprados a Establishment Labs o cualquiera de sus subsidiarias.

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (along with the exhibits and schedules hereto, this “**Agreement**”) is dated October 3<sup>rd</sup> 2018 (“The Closing Date”) shall produce final effects on November 3<sup>rd</sup> 2018 (the “**Effective Date**”), and is entered into by and between **EUROPEAN DISTRIBUTION CENTER MOTIVA BVBA**, a corporation organized under the laws of Belgium, having its registered office Sint-Jansveld 11 A 2160 Wommelgem Handelsregisetr te Antwerpen, with company ID number 881512541 (“**Motiva**”), and **Menke Med GmbH**, a corporation organized under the laws of Germany, having its registered office at Tucherpark 22, 85622 Feldkirchen, Germany, with company ID number 161694, VAT number DE247564346 (“**Menke**”). Motiva and Menke are each referred to herein as a “**Party**”, and collectively as the “**Parties**”. All capitalized terms used throughout this Agreement and otherwise not defined herein shall have the meaning provided in Schedule 1 attached hereto.

## RECITALS

WHEREAS, Menke is engaged in the business of selling, marketing and distributing breast implants in the Territory (the “**Business**”), and owns or has the right to use all of the Transferred Assets; and

WHEREAS, on the terms and subject to the conditions set forth herein, among other things, Menke desires to sell, transfer and assign to Motiva, and Motiva desires to purchase from Menke, the Transferred Assets.

NOW THEREFORE, in consideration of the mutual promises, covenants, agreements and understandings contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Purchase of Transferred Assets.

1.1 Purchase of Transferred Assets. Subject to the terms and conditions of this Agreement, as of the Closing Date, Menke agrees to sell (verkaufen), convey, assign and transfer (abtreten) to Motiva, and Motiva will purchase and acquire from Menke free and clear of any Liens, all of Menke’s right, title and interest in and to the following (collectively, the “**Transferred Assets**”):

(a) All of Menke’s existing Valid Motiva Inventory including all accessories related to such Motiva Inventory, all of which shall have been maintained in saleable condition;

(b) All of Menke’s rights under those contracts, purchase orders and other agreements related to the sales of Motiva Products by Menke (the “**Purchased Contracts**”); with it being understood that all such agreements will be assigned to Motiva in connection with the execution of this Agreement;

(c) All lists and records pertaining to customer accounts, suppliers, distributors, personnel and agents included as part of the Purchased Contracts or the Transferred Assets and all books, records, ledgers, files, customer lists, documents, correspondence, lists, studies and reports and other written materials to the extent related exclusively to the Transferred Assets; provided, that in the event such materials do not relate exclusively, but do relate to the Transferred Assets, a redacted copy of such materials;

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(d) All authorizations, permits and approvals (and applications for the foregoing) related to the import, distribution and/or sale of Motiva Products, including, without limitation, all registrations and regulatory approvals granted by governmental authorities; and

(e) All trademarks, domain names, and promotional materials that contain the Trademark (as defined in the Distribution Agreement) or any other mark or identifier that may be confusingly similar to the Trademark, and all copyrights and intellectual property rights within the foregoing.

1.2 Menke accepts such sales ad transfer.

## 2. Purchase Price.

The aggregate purchase price for the Transferred Assets (the “**Purchase Price**”) shall be: (a) a cash payment (in Euros) equal to the value of the Motiva Inventory Amount, with such amount to be paid by Motiva on the Effective Date, and (b) a cash payment of up to a maximum of one million nine hundred twenty thousand euros (€1,920,000), with such amount to be paid by Motiva over a three year period in four installments based on the achievement of certain milestones and according to the following schedule:

2.1 The first installment of four hundred and eighty thousand euros (€480,000) (the “**First Installment**”) shall be paid by Motiva on the Effective Date upon the satisfaction of the conditions set forth herein but not limited to the full transfer of Purchased Contracts.

2.2 The next three installments of four hundred and eighty thousand euros (€480,000) (the “**Milestone Payments**”) shall be paid following the conclusion of each of Calendar Year 2, Calendar Year 3 and Calendar Year 4 as listed in Exhibit B attached hereto solely in the event that: (i) Menke achieves the all Minimums (as defined in the Agency Agreement) for Net Sales of the Motiva Products for such Calendar Year as set forth in, and as may be adjusted from time to time in accordance with, the Agency Agreement has been achieved (the “**Sales Target Milestone**”), and (ii) during such Calendar Year, the Average Selling Price (as defined in the Agency Agreement) for each Motiva Product is greater than or equal to the Average Selling Price Minimum (as defined in the Agency Agreement) for such Motiva Product, as set forth in, and as may be adjusted from time to time in accordance with, the Agency Agreement (“**Required ASP Milestone**”), provided that;

(a) If both of (i) the Sales Target Milestone and (ii) the Required ASP Milestone are achieved for the applicable Calendar Year, then a Milestone Payment of four hundred and eighty thousand euros (€480,000) will become due for that Calendar Year.

(b) If only one, but not both, of (i) the Sales Target Milestone or (ii) the Required ASP Milestone are achieved for the applicable Calendar Year, then the Milestone Payment paid by Motiva to Menke shall be reduced to four hundred and twenty thousand euros (€420,000) for that Calendar Year.

(c) If Menke fails to achieve either of (i) the Sales Target Milestone or (ii) the Required ASP Milestone for the applicable Calendar Year, then the Milestone Payment to be paid by Motiva to Menke shall be reduced to three hundred and sixty thousand euros (€360,000) for that Calendar Year so long as they have a minimum achievement at least equal to the sales of prior Calendar Year.

2.3 All amounts stated above shall be net and exclusive of any value added tax. If and to the extent that any payments are subject to value added tax or similar taxes, those taxes shall be added to the respective payment.

3. Closing Date and Effective Date .The closing shall take place on the Closing Date. Payments will be done at the Effective Date as the Transfer of Purchased Assets. The Agreement will enter in full effect for all the rest of the obligations by the Effective Date, if not differently and explicitly established in the body of the Agreement.

4. Motiva Inventory. A physical inspection and accounting of inventory of the Motiva Products acquired and held by Menke (such product, the “**Motiva Inventory**”) shall be taken on or immediately after the Closing Date, and such Motiva Inventory that is reasonably determined by Motiva or its representatives to be of saleable quality, fit for the purpose for which they are intended, saleable and useable in the ordinary course of business, free of defects and damage and having a remaining minimum shelf-life of not less than fifty percent (50%) (such Motiva Inventory, “**Valid Motiva Inventory**”) shall be valued at the amount paid by Menke to Motiva or its Affiliates for such Motiva Inventory (the aggregate value of the Valid Motiva Inventory, the “**Motiva Inventory Amount**”). Such physical inspection and accounting of the Motiva Products shall be conducted by Motiva or its representatives jointly with Menke or its representatives, and each Party shall be responsible for any costs incurred by them in connection with their involvement in conducting the physical inventory. Motiva shall, within five (5) business Days after the completion of such inspection, pay to Menke a cash amount (in Euros) equal to the Motiva Inventory Amount. Such payment shall be made by wire transfer of immediately available funds to an account that Menke shall have designated at least forty-eight (48) hours prior to the time for payment specified hereunder.

5. Representations and Warranties Regarding Menke. In order to induce Motiva to enter into this Agreement and consummate the Transactions, Menke hereby represents and warrants to Motiva that the statements contained in this Section 5 are true, complete and correct as of the date hereof.

5.1 Authority for Agreement. The execution, delivery and performance by Menke of this Agreement and all other instruments and agreements to be executed by Menke pursuant hereto, have been duly authorized by all necessary action. This Agreement has been duly executed and delivered by Menke and constitutes the legal, valid and binding obligations of Menke, enforceable against Menke in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization or other Laws of general application relating to or affecting the enforcement of creditors’ rights generally, and the effect of rules of law governing the availability of equitable remedies.

5.2 Consents and Approvals. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any Governmental Entity or other party is required on the part of Menke in connection with the consummation of the Transactions or to perform the related covenants and agreements contemplated hereby. Menke has received all consents, approvals or authorizations which, if not received, would result in the termination of any Purchased Contract or would permit a counterparty to terminate any such contract or agreement.

5.3 No Conflict. Neither the execution and delivery of the this Agreement nor the performance of the provisions hereof or the transactions contemplated hereby will (a) violate or conflict with the Menke’s Organizational Documents; (b) violate or conflict with any Law, rule, regulation, writ, judgment, injunction, decree, determination, award or other order of any Governmental Entity, domestic or foreign, that is applicable to Menke; or (c) result in a breach of any of the terms or conditions of, or constitute a default under, any mortgage, note, bond, indenture, agreement, license or other instrument or obligation to which Menke is a party or by which any of its properties or assets may be bound or affected.

#### 5.4 Assets and Properties.

(a) Menke has good and marketable title to all Transferred Assets free and clear of any Lien or restrictions on transfer, and has the legal right to use all Transferred Assets. Upon completion of the Transactions, Motiva will acquire good title to all of the Transferred Assets, free and clear of any Liens. With the exception of the Inventory in transit or located with customers, no Transferred Asset is located at a location other than a location owned or leased by Menke.

(b) Each Transferred Asset is suitable and in adequate operating condition as of the Closing Date for the purposes for which it is presently used by Menke.

5.5 Intellectual Property. The conduct of the Business has not infringed or otherwise violated, and does not and will not infringe or otherwise violate any Intellectual Property rights of any Person, and there is, and has been, no pending or, to Menke's knowledge, threatened claim alleging any such infringement or violation. To Menke's Knowledge, Menke is not violating, and has not violated, any confidentiality or non-disclosure agreement with any third party, including any customer or supplier of Menke, and there is, and has been, no pending or, to Menke's Knowledge, threatened claim alleging any such violation.

5.6 Purchased Contracts. Menke has delivered to Motiva a copy of each of the Purchased Contracts. The conveyance of Purchased Contracts shall include Purchased Contracts that have been reduced to writing and a written summary of each oral Purchased Contract. Each of the Purchased Contracts is valid, binding and in full force and effect, without any material violation, breach or default of Menke thereunder. To Menke's Knowledge of any breach or anticipated breach by the other party or parties to any of the Purchased Contracts. Menke has not received notice nor does it have reasonable grounds to believe that any party to any such Purchased Contract intends to cancel or terminate any such Purchased Contract or to exercise or not exercise any options thereunder or to seek a renegotiation or adjustment of any material provisions thereof. In light of section 2.1, Menke shall ensure the full transfer of the Purchased Contracts by the Effective Date. Parties agree to cooperate in good faith to ensure the completion of the transfer.

5.7 Litigation. With respect to both Menke and the Transferred Assets, there are no actions, suits, proceedings (including any arbitration proceedings), orders, investigations or claims pending or threatened against Menke by any third party at law or in equity, or before or by any Governmental Entity.

5.8 Inventory. The Inventory is (a) of good and merchantable quality, fit for the purpose for which they are intended, and saleable and useable in the ordinary course of business; (b) free of defects and damage; and (c) to Menke's Knowledge, in quantities adequate and not excessive in relation to the circumstances of the Business and in accordance with Menke's past inventory stocking practice.

5.9 Non-Competition. As of the Closing Date, and for a period of five (5) years five after the end of this or the Agency Agreement, Menke shall not, whether individually or in partnership or jointly or in conjunction with any other person, as principal, agent, consultant, contractor, employer, employee or in any other manner, directly or indirectly, perform services for, or establish, control, own a beneficial interest in, manufacture, distribute, sell or offer for sale, directly or indirectly, or use any other means with a view to marketing or be otherwise commercially involved in any endeavor, activity or business in Germany that is a Competing Business, in respect of the Motiva Business. For the avoidance of doubt, this provision is not intended to prohibit Menke from providing services to a Competing Business if the services Menke provides to such Competing Business are unrelated to the Motiva Business and would not involve the use of confidential information of Motiva or its subsidiaries and affiliates. Menke warrants that its shareholders

or other owners or equity holders are bound by this provision and expressly acknowledges and agrees that Menke will also be liable for violations of this provision by its shareholders or other owners or equity holders. As of the Closing Date Menke has entered into agreements obligating Menke and its affiliates to (i) not compete directly with Motiva its subsidiaries and affiliates for a period of five (5) years following the execution of this Agreement and (ii) for Menke's representatives, officers, directors, and agents not to compete directly with Motiva its subsidiaries and affiliates for a period of five (5) years following the execution of this Agreement. Furthermore, Menke acknowledges and represents that consideration for the covenants in this Section 5.9 has been paid in full by Motiva as part of the Purchase Price in this Agreement.

5.10 Non-Solicitation. Menke will not for a period of five (5) years after the Closing Date, for any reason, directly or indirectly, solicit, entice, or in any other manner persuade or attempt to persuade, any customer, client, employee, supplier, distributor, or contractor of Motiva its subsidiaries and affiliates (in any case with whom Menke had business contact in the last five (5) years of Menke's association with Motiva) to discontinue or alter to the detriment of Motiva his, her or its employment, relationship or business with Motiva. Furthermore, Menke acknowledges and represents that consideration for the covenants in this Section 5.10 has been paid in full by Motiva as part of the Purchase Price in this Agreement.

5.11 Non-Disparagement. Menke, or any of its employee's representatives, officers, directors, and agents, shall not make disparaging remarks about Motiva or its operations, products or services, whether orally or in writing, whether online or otherwise, and whether during or after the termination of Menke's affiliation with Motiva.

5.12 Disclosure. No representation or warranty by Menke contained in this Agreement, and no statement contained in any other instrument delivered to or to be delivered by or on behalf of Menke pursuant to this Agreement, contains any untrue statement of a material fact or omits to state any material fact necessary, in light of the circumstances under which it was made, in order to make the statements herein or therein not misleading.

6. Representations and Warranties of Motiva. In order to induce Menke to enter into this Agreement and consummate the Transactions, Motiva hereby represents and warrants to Menke that the statements contained in this Section 6 are true, complete and correct:

6.1 Organization and Authority. Motiva is an entity duly formed and validly existing under the Laws of the jurisdiction of its incorporation. Motiva has the requisite power and authority to enter into and to perform this Agreement.

6.2 Authority for Agreement. The execution, delivery and performance by Motiva of this Agreement and all other instruments and agreements to be executed by Motiva pursuant hereto, have been duly authorized by all necessary action. This Agreement has been duly executed and delivered by Motiva and constitutes the legal, valid and binding obligations of Motiva, enforceable against Motiva in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization or other Laws of general application relating to or affecting the enforcement of creditors' rights generally, and the effect of rules of law governing the availability of equitable remedies.

7. Deliveries.

7.1 Deliveries of Menke. At the Effective Date, Menke will deliver or cause to be delivered to Motiva:

(a) Conveyance Documents. This Agreement and the Agency Agreement executed by Menke, and such other deeds, bills of sale and other instruments of assignment as Motiva reasonably deems necessary in order to effect the sale of the Transferred Assets including the assignment of the Purchased Contracts to Motiva.

(b) Consents and Waivers. Copies of all consents, approvals, releases from and filings with Governmental Entities and other third parties, including parties to the Purchased Contracts that are required in order to effect the Transactions (the “**Required Consents**”).

#### 8. Covenants and Additional Agreements.

8.1 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration and other similar Taxes and fees (including any penalties and interest) incurred in connection with the purchase and sale of the Transferred Assets pursuant to this Agreement shall be borne and paid by Menke, and Menke shall file all necessary Tax Returns and other documentation with respect to all such Taxes and fees. Menke and Motiva shall cooperate in good faith to minimize, to the fullest extent possible under such Laws, the amount of any such transfer Tax payable in connection therewith.

8.2 Confidential Information. The Parties hereby covenant and agree that, from and after the Closing Date, each party shall, except with the prior written consent of the other party or on behalf of the other Party and/or its Affiliates, keep confidential and not disclose to any other Person any confidential information that is proprietary in nature regarding the Business and existing as of the Closing Date, provided that (a) each Party may disclose on a confidential basis certain summary financial information relating to the Transactions to any professional advisor, and (b) each Party may disclose information otherwise necessary in order to enforce the terms of this Agreement or defend against any claim made under this Agreement. The obligation of the Parties under this Section 8.2 shall not apply to information which: (i) is or becomes publicly known without breach of the commitment provided for in this Section 8.2; (ii) is available from a third-party not under an obligation to keep such information confidential; or (iii) is required to be disclosed by Law, provided, however, that in any such case under this clause (iii), the Party which has to disclose the confidential information, shall notify the other Party as early as reasonably practicable prior to disclosure to allow the other Party to take appropriate measures to preserve the confidentiality of such information. Notwithstanding the foregoing, for purposes of this Agreement, as of the Closing Date, all information included in, regarding or arising from the Transferred Assets shall be deemed the confidential information solely of Motiva.

8.3 Consents. Nothing in this Agreement shall be construed as an attempt to assign any contract, agreement, or license included in the Transferred Assets which is by its terms or by Law nonassignable without the consent of the other party or parties thereto, unless such consent shall have been given, or as to which all the remedies for the enforcement thereof enjoyed by Menke would, as a matter of law, pass to Motiva as an incident of the assignments provided for by this Agreement. In order, however, to provide Motiva the full realization and value of every contract, of the character described in the immediately preceding sentence, Menke agrees that prior to Closing, it will, at the request and under the direction of Motiva, in the name of Menke or otherwise as Motiva shall specify, take commercially reasonable actions (a) to assure that the rights of Menke under such contracts shall be preserved for the benefit of Motiva and (b) to facilitate receipt of the consideration to be received by Menke in and under every such contract, which consideration shall be held for the benefit of, and shall be delivered to Motiva.

8.4 Further Assurances. At any time and from time to time after the Closing Date, the parties hereto shall (a) furnish upon reasonable request to each other such information, documents, instruments

of transfer or assignment, files and books and records, (b) promptly execute, acknowledge, and deliver any such documents, instruments of transfer or assignment, files and books and records, and (c) do all such further acts and things, as such other party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents referred to herein.

9. Survival of Representations and Warranties: Indemnification.

9.1 Survival of Representations and Warranties. Except as otherwise set forth in this Section 9.1, all of the representations and warranties of Menke, and Motiva contained in this Agreement or any other agreement, schedule or certificate delivered by Menke, or Motiva pursuant to this Agreement shall survive for five (5) years after the Closing Date. If a party hereto determines that there has been a breach by any other party hereto of any such representation or warranty and notifies the breaching party in writing prior to the expiration of the survival period applicable to such representation and warranty (which notice shall identify the nature of such claim with reasonable specificity and such party's reasonable estimate of the value of such claim), such representation or warranty and liability therefor shall survive, but only with respect to the specified breach which is specified in such notice, until such breach has been resolved, but no party shall have any liability after such five (5) year period for any alleged breaches of representations and warranties not specifically specified in a writing delivered within such five (5) year period. Notwithstanding any term in this Section 9.1, (a) claims related to any intentional misrepresentation or fraud by Menke or Motiva in connection with this Agreement and the Transactions, and the representations and warranties contained in Sections 5.1 of this Agreement shall survive indefinitely.

9.2 Indemnification.

(a) Indemnification by Menke. Subject to the limitations set forth in this Section 9, from and at all times after the Closing Date, Menke shall indemnify Motiva, its Affiliates, and their directors, officers, managers, shareholders, members, partners, employees, agents, representatives, successors and permitted assigns (the "**Motiva Indemnified Parties**") and save and hold each of them harmless from and against and pay on behalf of or reimburse Motiva Indemnified Parties as and when incurred for any and all liabilities, obligations, demands, claims, actions, suits, proceedings, investigations, causes of action, assessments, judgments, losses, costs, damages, deficiencies, Taxes, fines or expenses (whether or not arising out of third party claims), including, without limitation, interest, penalties, reasonable attorneys' fees and all reasonable amounts paid in investigation, defense or settlement of any of the foregoing (collectively, "**Damages**"), which any Motiva Indemnified Party may suffer or incur to the extent resulting from or arising out of:

(i) any misrepresentation or breach or inaccuracy of any representation or warranty of Menke under this Agreement or in any agreement, schedule or certificate delivered or to be delivered by or on behalf of Menke to Motiva pursuant to this Agreement;

(ii) any liability or obligation of Menke or related to the Business (including any indebtedness of Menke);

(iii) any Taxes with respect to operation of the Business by the Menke;

(iv) any nonfulfillment, breach or violation of any covenant or agreement on the part of Menke under this Agreement;

(v) any unpaid transaction expenses of Menke; and

(vi) the Purchased Contracts.

(b) Indemnification by Motiva with respect to Menke. Subject to the limitations set forth in this Section 9, from, and at all times after, the date of this Agreement, Motiva shall indemnify Menke and their agents, representatives, successors and permitted assigns (the “**Menke Indemnified Parties**”) and save and hold each of them harmless from and against and pay on behalf of or reimburse as and when incurred for any and all Damages which Menke may suffer or incur to the extent resulting from or arising out of:

(i) any misrepresentation, breach or inaccuracy of any representation or warranty of Motiva under this Agreement or in any agreement, schedule or certificate delivered or to be delivered by or on behalf of Motiva to Menke pursuant to this Agreement; and

(ii) any nonfulfillment, breach or violation of any covenant or agreement on the part of Motiva under this Agreement.

(c) Due Diligence and Right to Indemnification. No information or knowledge obtained in any investigation or otherwise shall affect or be deemed to modify any representation or warranty contained herein or the conditions to the obligations of the parties to consummate the Transactions or the rights of the parties to indemnification pursuant to Section 9. The waiver of any condition based on the accuracy of any warranty or representation, or on the performance of or compliance with any covenant or agreements, will not affect the right to indemnification or any other remedy based on such warranties, representations, covenants and agreements.

9.3 Tax Consequences. Any indemnity payment made under Section 9 with respect to a breach by either Party shall be deemed to be an adjustment in the Purchase Price, unless a contrary treatment is required under applicable Law.

9.4 Sole and Exclusive Remedy. The parties hereto agree and acknowledge that, except in the case of intentional misrepresentation, fraud or intentional or willful breach of this Agreement, the rights to indemnification provided for in this Section 9 shall be the sole and exclusive remedy (regardless of the theory or cause of action pled) for monetary damages of Menke Indemnified Parties on the one hand, or Motiva Indemnified Parties, on the other hand, as the case may be, after the Closing for and with respect to any misrepresentation, breach or inaccuracy of any representation or warranty of a party hereto and for any nonfulfillment, breach or violation of any covenant or agreement contained in this Agreement by a party hereto, and each party to this Agreement hereby waives to the fullest extent permitted by law, any other rights or remedies that may arise under any applicable Law in connection therewith; provided, however, that nothing herein will limit in any way any party’s rights hereunder or otherwise, to specific performance, injunctive relief or other non-monetary equitable relief

9.5 Release of Claims. The Parties are in agreement that the Distribution Agreement shall be terminated effective as of the Closing Date and the Motiva shall be released from all claims arising from or in connection with the Distribution Agreement. As a matter of precaution, Menke hereby waives any and all claims arising from or in connection with the Distribution Agreement. Motiva accepts such waiver.

## 10. Miscellaneous.

10.1 Entire Agreement. This Agreement and the other documents, agreements and instruments delivered pursuant hereto and thereto (together with the recitals, the schedules and exhibits

hereto) embody the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter.

10.2 Fees and Expenses. Except as otherwise expressly provided in this Agreement, Motiva, on the one hand, and Menke, on the other hand, each will pay all of their own fees, costs and expenses (including fees, costs and expenses of legal counsel, investment bankers, accountants, brokers or other representatives and consultants and appraisal fees, costs and expenses) in connection with the preparation and negotiation of this Agreement.

10.3 Amendments and Waivers. Except as otherwise set forth herein or therein, no term, condition or covenant of this Agreement may be amended or waived (either generally or in a particular instance and either retroactively or prospectively), without the prior written consent of both Motiva and Menke.

10.4 Successors and Assigns. Menke may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Motiva. The provisions of this Agreement shall be binding upon, and inure to the benefit of, the respective successors and permitted assigns of the parties hereto. Motiva shall have the right assign this agreement upon written notice to Menke.

10.5 Notices. All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be delivered by electronic mail, or courier, certified or registered mail, return receipt requested, postage prepaid:

If to Menke, to:

Menke Med GmbH  
Tucher Park 22, 85622 Feldkirchen  
Germany  
Email: f.menke@menke-med.de  
Attention: Frank Menke  
HypoVereinbank München  
IBAN: DE13700202700659266130  
BIC: HYVEDEMMXXX

If to Motiva, to:

Establishment Labs S.A.  
B15 Coyol Free Zone  
Alajuela 20113  
Costa Rica  
Email: jlivianu@establishmentlabs.com  
Attention: General Counsel

Except as otherwise provided in this Agreement, all notices and communications hereunder shall be deemed to have been duly given (a) when transmitted by electronic mail, or, (b) in the case of a courier, one (1) days after the date of delivery, in each case given or addressed as aforesaid.

10.6 Counterparts. This Agreement may be executed in two or more counterparts, and by different parties hereto on separate counterparts, each of which shall be deemed an original, but all of

which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by electronic mail in PDF or similar format shall be effective as delivery of a mutually executed counterpart to this Agreement.

10.7 Headings; Gender. The headings of the sections, subsections and paragraphs of this Agreement have been added for convenience only and shall not be deemed to be a part of this Agreement. Wherever reference is made herein to the male, female or neuter genders, such reference shall be deemed to include any of the other genders, as the context may require.

10.8 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, and the parties hereto shall amend or otherwise modify this Agreement to replace any prohibited or invalid provision with an effective and valid provision that gives effect to the intent of the Parties to the maximum extent permitted by applicable Law.

10.9 Specific Performance. The parties hereto acknowledge and agree that any party hereto would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any breach of this Agreement by any party could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which any party may be entitled, at law or in equity, such party shall also be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary, and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

10.10 Third Party Beneficiaries. Except as otherwise expressly provided herein, nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement, any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement.

10.11 Governing Law. All issues, questions and disputes concerning the validity, interpretation, enforcement, performance or termination of this Agreement, and all matters of extra-contractual and/or tort liability, if any, arising out of or in relation with this Agreement, shall be governed by and construed in accordance with Belgian law, without giving effect to any other choice-of-law or conflict-of-laws rules or provisions (Belgian, foreign or international) that would cause the laws of any jurisdiction other than Belgium to be applicable, and excluding the UN Convention on Contracts for the International Sale of Goods (1980) (“**Vienna Convention**”) (if applicable), provided however that for the transfer in rem (*dingliche Übertragung*) of the Transferred Assets, the laws of Germany shall apply.

10.12 Dispute Resolution. Menke and Motiva agree, on behalf of themselves, that any legal Action based on or arising out of this Agreement or for recognition and enforcement of any judgment in respect thereof brought by a party hereto, or their respective successors or assigns will be resolved in accordance with the following procedure:

- (1) the Parties shall attempt to resolve the dispute through the conciliation mechanism in accordance with the Mediation Rules of the Belgian Centre for Arbitration and Mediation CEPANI;
- (2) If, within fifteen (15) business days from the request for mediation, the following shall apply:

any disputes arising out of or in relation with this Agreement shall be finally settled under the CEPANI Rules of Arbitration by one or more arbitrators appointed in accordance with those Rules. The arbitral tribunal shall be composed of three arbitrators. The seat of the arbitration shall be Brussels (Belgium). The arbitration shall be conducted in English. The applicable rules of law are Belgian laws.

In the event of a Dispute, the prevailing party in any Action in connection therewith shall be entitled to recover from such other party its costs and expenses incurred in connection with such Action, including, without limitation, reasonable legal fees and associated costs.

10.13 Publicity. Except as required by applicable Law, no publicity, release, disclosure or announcement of or concerning this Agreement or the Transactions shall be issued by Menke without the advance written consent of Motiva; provided, however, that Menke shall be permitted to make disclosures concerning this Agreement to its accountants, attorneys and financial advisors.

10.14 References. When a reference is made in this Agreement to a Section, subsection, Exhibit or Schedule, such reference shall be to a Section, subsection, exhibit or schedule of this Agreement unless otherwise indicated. The headings contained in this Agreement, in any schedules and in the table of contents to this Agreement, are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made part of this Agreement as if set forth in full herein. Any capitalized term used in any Exhibit or Schedule, including the Disclosure Schedules, and not otherwise defined shall have the meaning given to such term in this Agreement. Unless the context clearly requires otherwise, whenever the words “include”, “includes”, “including”, “such as” or terms of similar meaning are used in this agreement, they shall be deemed to be followed by the words “without limitation.” The words “hereof”, “herein”, “hereby” and “hereunder” and terms of similar meaning when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The term “or” is not exclusive. The word “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends, and such phrase shall not mean simply “if”. The definitions contained in this Agreement are applicable to the singular as well as to the plural forms of such terms. Any agreement or instrument defined or referred to herein means such agreement or instrument as from time to time amended, modified or supplemented. References to a Person are also to its permitted successors and assigns. Pronouns of one gender shall include all genders. The headings in this Agreement are for reference only, and shall not affect the interpretation of this Agreement. All references to “Euros” or “€” shall be the official currency of the European Union unless otherwise specified.

10.15 Construction. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any Person. The information contained in this Agreement and in the Disclosure Schedules and Exhibits hereto is disclosed solely for purposes of this Agreement, and no information contained herein or therein shall be deemed to be an admission by any party hereto to any third party of any matter whatsoever (including, without limitation, any violation of Law or breach of contract).

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the undersigned have hereunto set their hands under seal as of the day and year first above written.

**MOTIVA:**

**EUROPEAN DISTRIBUTION CENTER MOTIVA BVBA**

Date: October 3, 2018

Name: **Juan José Chacón Quirós**

Title: Chief Executive Officer

Signature: /s/ Juan José Chacón Quirós

**MENKE:**

**MENKE MED GmbH**

Date: October 3, 2018

Name: **Frank Menke**

Title: Chief Executive Officer

Signature: /s/ Frank Menke

**[Signature Page to Asset Purchase Agreement]**

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## Schedule I

### Terms and Definitions

Terms Defined. As used herein, the following terms have the respective meanings set forth below or set forth in the referenced Section of this Agreement:

“Action” – means suit, claim, action, arbitration, proceeding or investigation.

“Affiliate” – means and includes, at any time with respect to any Person (the “applicable Person”), each Person:

(a) that directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, the applicable Person;

(b) that beneficially owns or holds five percent (5%) or more of any class of the Voting Equity of the applicable Person;

(c) five percent (5%) or more of the Voting Equity (or in the case of a Person that is not a corporation, five percent (5%) or more of the equity interest) of which is beneficially owned or held by the applicable Person; or

(d) that is an officer, director or manager (or a member of the immediate family of an officer, director or manager) of the applicable Person;

at such time; provided, however, that for purposes of this Agreement no Person holding any one or more of the shares of Equity of Menke shall be deemed to be an Affiliate solely by virtue of the ownership of such Securities.

“Agency Agreement” – means the Agency Agreement entered into by and between Motiva and Menke on or around the date of this Agreement.

“Business Day” – means a day other than a Saturday, a Sunday or a day on which the national banks located in Brussels, Belgium are required by Law to be closed.

“Competing Business” means a person or organization which is engaged in or about to be engaged in a business that competes with the Business.

“Distribution Agreement” means that certain Distribution Agreement, dated as of October 20, 2013, between the Parties.

“Equity” – means, with respect to any Person, any class of preferred, common or other capital share, share capital or similar equity interest of such Person.

“Governmental Entity” means individually, and “Government Entities” means collectively, any federal, state or local or foreign government, any political subdivision thereof or any court, administrative or regulatory agency, department, instrumentality, body or commission or other governmental authority or agency, domestic or foreign.

“Intellectual Property” – means all proprietary information (whether or not protectable by patent, copyright, trademark or trade secret rights) and intellectual property rights throughout the world, including,

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without limitation, all trade names, trademarks (including common-law trademarks), service marks, domain names, web addresses, websites, social media accounts, art work, packaging, plates, emblems, brands, logos, insignia, works of authorship, and copyrights, and their registrations, applications and renewals, and all goodwill associated therewith, and all of their content and data, all domestic and foreign patents and patent applications, all moral, common law and economic rights of authors and inventors, all technology, know-how, show-how, inventions, discoveries, trade secrets, processes, formulae, drawings, designs, schematics, specifications, algorithms, systems, forms, technical and business information, data, databases, computer programs and software, object and source code, product information and development work-in-progress and all documentary evidence of any of the foregoing, all licenses, sublicenses or like agreements for any of the foregoing, and all other intellectual property or proprietary rights.

“Inventory” – means and includes goods owned and held by Menke for sale, lease or resale or furnished or to be furnished under contracts for services, and raw materials, goods in process, materials, component parts and supplies used or consumed, or held for use or consumption, in the Business (including all components, merchandise, raw materials, work in progress and finished goods), which are held at, or are in transit from or to the locations at which the Business is conducted, or located at suppliers’ premises on consignment, in each case, which are used or held for use by Menke in the conduct of the Business, including any of the foregoing purchased subject to any conditional sales or title retention agreement in favor of any other Person, together with all rights of Menke against suppliers of such inventories.

“Knowledge” – means, with respect to the Seller, the actual knowledge of any executive officer, and any successor to the positions or duties of such persons, in each case after due care and after reasonable inquiry. Such individuals will be deemed to have knowledge of a particular fact, circumstance, event or other matter if (a) such individual has knowledge of such fact, circumstance, event or other matter, (b) such fact, circumstance, event or other matter is reflected in one or more documents (whether written or electronic) contained in books and records of such individual that would reasonably be expected to be reviewed by such individual in the customary performance of his or her duties or (c) such fact, circumstance, event or other matter would be known to such individual had he or she made reasonable inquiry of appropriate employees and personnel.

“Laws” means all statutes, laws, codes, ordinances, regulations, rules, orders, judgments, writs, injunctions, acts or decrees of any Governmental Entity.

“Lien” – means any mortgage, lien, option, encumbrance, assignment, restriction, pledge, claim, security interest, hypothecation, adverse claim, easement, encroachment, right of way, burden, title defect, title retention agreement, voting trust agreement, right of first refusal, preemptive right, put, call, restriction on transfer, charge or other encumbrance, restriction or limitation.

“Motiva Business” means the business carried on by Motiva its subsidiaries and affiliates from time to time prior to the end of Menke’s affiliation with Motiva its subsidiaries and affiliates, which involves medical technology focused on improving patient safety and aesthetic outcomes, initially in the breast aesthetics and reconstruction market.

“Motiva Products” means those products listed on Exhibit A attached to this Agreement.

“Organizational Documents” – means the articles or certificate of formation or incorporation, bylaws, limited liability company agreement, operating agreement, partnership agreement or other governing documents of an entity.

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“Order” – means any order or decree, judgment, injunction, ruling or other order, whether temporary, preliminary or permanent, that is enacted, issued, promulgated, enforced or entered by any Governmental Entity of competent jurisdiction.

“Permitted Liens” – means (i) statutory Liens for current Taxes or other governmental charges not yet due and payable; and (ii) statutory mechanics’, carriers’, workers’, repairers’ and similar statutory Liens arising or incurred in the ordinary course of business for amounts which are not delinquent.

“Signing” – Execution of this Agreement, i.e. exchange of signatures necessary for the execution of this agreement.

“Tax” or “Taxes” means federal, state, county, local, foreign or other income, gross receipts, ad valorem, franchise, profits, sales or use, escheat (unclaimed property), transfer, registration, excise, utility, environmental, communications, real or personal property, capital stock, license, payroll, wage or other withholding, employment, social security, severance, stamp, occupation, alternative or add-on minimum, estimated and other taxes of any kind whatsoever (including deficiencies, penalties, additions to tax, and interest attributable thereto) whether disputed or not.

“Territory” – means the Federal Republic of Germany.

“Transactions” – means the transactions contemplated by this Agreement or any other Transaction Document.

“Transfer” – means any transfer, sale, assignment, gift, pledge, hypothecation, or other disposition or encumbrance.

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## **Exhibit A**

### **Motiva Products**

- MOTIVA Implants Ergonomix Round with Qid
  - MOTIVA Implants Ergonomix Round without Qid
  - MOTIVA Implants Round with Qid
  - MOTIVA Implants Round without Qid
  - MOTIVA Implants Ergonomix Oval with Qid
  - MOTIVA Implants AnatomicalTrueFixation
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**Exhibit B**

**Calendar Years**

Calendar Year	Calendar Year Duration
Calendar Year 2	01/01/2019 — 12/31/2019
Calendar Year 3	01/01/2020 — 12/31/2020
Calendar Year 4	01/01/2021 — 12/31/2021

## COMMERCIAL AGENCY AGREEMENT

THIS COMMERCIAL AGENCY AGREEMENT (this "Agreement") is dated October 3<sup>rd</sup>, 2018 (the "Closing Date") and will determine final effects on November 3<sup>rd</sup> 2018 ("The Effective Date")

## BY AND BETWEEN

- **EUROPEAN DISTRIBUTION CENTER MOTIVA BVBA** a corporation organized under the laws of Belgium, having its registered office Nijverheidsstraat 96, 2160 Wommelgem, Belgium, with company ID number 881512541 ("MOTIVA"); and
- **MENKE MED GmbH** a corporation organized under the laws of Germany, having its registered office at Tucherpark 22, 85622 Feldkirchen, Germany, registered at the commercial register of the District court Munich under number HRB 161694, VAT number DE247564346 ("Agent").

Hereinafter individually or collectively referred to as the "Parties".

## RECITALS

- A. MOTIVA promotes, sells and distributes the Products, as defined below.
- B. The Agent is qualified, has the necessary infrastructure and has the organization and skills to market and promote the Products in the Territory, as defined below.
- C. MOTIVA wishes to appoint the Agent, and the Agent accepts, as its exclusive commercial agent for the marketing and promotion of the Products to Qualified Clients in the Territory (each as defined below), all under the terms and conditions set forth herein.
- D. However, MOTIVA wants the Agent to assist in the execution of orders from customers in the Territory, which are not included as Qualified Clients in the sense of this agreement. For this service, the Agent will receive a handling fee, all under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and undertakings, the parties hereby mutually agree as follows:

## 1. SCOPE OF APPOINTMENT

- 1.1 Appointment. MOTIVA hereby appoints Agent, and Agent agrees to act, as MOTIVA's exclusive commercial agent in the Territory to promote and market the Products to, and to visit and to prospect and to solicit (and to transmit to MOTIVA) orders for Products from, solely Qualified Clients as defined below, in the Territory, for use of such Products in the Territory, all subject to the terms and conditions of this Agreement. For avoidance of doubt, Agent shall not promote or market the Products to, or visit, prospect or solicit orders from, persons or entities that are not Qualified Clients or for use of Products outside the Territory, unless otherwise agreed in writing. Capitalized terms not otherwise defined herein shall have the respective meanings given in Schedule 1.
- 1.2 Products. MOTIVA has the right, at all times, to change, reduce or expand the list, range or portfolio or branding of Products and/or to replace previous versions of a Product by a newer version of that Product, upon communication of the same to the Agent, without this creating any right on behalf of the Agent or any liability on behalf of MOTIVA. Whereas the Agent will

automatically become the agent, under the same terms and conditions, for new versions of a Product replacing a previous version of a Product, it will not become the agent of a new product that MOTIVA adds to the range of Products, e.g. as a result of an internal development by MOTIVA or an acquisition by MOTIVA, or of a product differently branded, unless explicitly so communicated to the Agent. MOTIVA shall determine in its reasonable discretion whether a new product replaces a previous version of a Product or adds to the range of Products for purposes of this Section 1.2.

- 1.3 **Sales.** During the term of this Agreement, all sales of Products to Qualified Clients in the Territory solicited by the Agent and accepted by MOTIVA will be invoiced by MOTIVA or any of its Affiliates to such Qualified Clients. During the term of this Agreement, the Agent shall not be entitled to make any sales of Products on its own behalf or for its own account. MOTIVA shall be entitled, whether or not requested by the Agent, at its sole discretion, to assist the Agent in promoting the sales of the Products in the Territory, including to Qualified Clients.
- 1.4 **Retained Rights.** MOTIVA retains the right to enter into such business transactions as it sees fit involving direct sales of Products in the Territory to customers and purchasers other than Qualified Clients.
- 1.5 **Non-exclusivity.** The Agent acknowledges that it has no exclusivity rights, neither with respect to the Territory, nor with respect to the Products, nor any other customers or purchasers, except for the Qualified Clients. MOTIVA has and retains the right to appoint, at any time, other agents, sub-agents, distributors, sales representatives or any other intermediary person for the promotion, marketing, distribution or sale of the Products to any and all customers and purchasers, other than Qualified Clients, in the Territory.
- 1.1 **Qualified Clients.** It is expressly understood and agreed that the persons and entities set forth represent all Qualified Clients as of the date hereof. From time to time, MOTIVA and Agent shall review and may mutually agree in writing to add or remove Qualified Clients. Notwithstanding the foregoing, MOTIVA shall have the right to remove any person or entity as a Qualified Client at any time, such that such person or entity shall immediately cease to be a Qualified Client hereunder upon written notice of such election, based upon MOTIVA's determination that Agent has not satisfactorily performed its obligations under Article 3 with respect to such person or entity.

## 2. **TERM**

This Agreement shall commence on the Effective Date and shall, subject to the provisions of Article 11, continue in effect for five years until October 1, 2023; provided that the term of this Agreement may be extended beyond such date by the written mutual agreement of the Parties.

## 3. **AGENT'S OBLIGATIONS**

- 3.1 **In General.** The Agent is free to determine the organization of its time and the performance of its activities under this Agreement. The Agent will, however, apply its best efforts and devote such time, manpower and resources as are required to promote, solicit and maintain for MOTIVA, and, where required, cooperate in the conclusion and completion of, sales of the Products to Qualified Clients in the Territory for use in the Territory, all in accordance with the terms of this Agreement. To that end, the Agent shall:
  - (a) **Solicitation.** Regularly visit both Qualified Clients and potential Qualified Clients in the Territory (as may be directed by MOTIVA in the case of prospective Qualified Clients),

conduct such visits in a professional manner, actively solicit the business of such Qualified Clients and potential Qualified Clients and follow up on all “leads” provided to the Agent by MOTIVA.

- (a) Support. During normal business hours, provide support to Qualified Clients in the use and return of Products in accordance with professional and industry standards and, as directed by MOTIVA, to other customers and purchasers of the Products in the Territory. Agent shall receive compensation for certain services in accordance with Sections 3.9 and 3.11.
- (b) Reports; Cooperation. Communicate to MOTIVA (in such form as reasonably requested by MOTIVA) all information regarding the market, market conditions, existing and potential customers, pricing, competitive activities, reactions and/or complaints from customers of which it will have gained knowledge, formally or informally, and which is useful for MOTIVA and for the performance by the Agent of its activities under this Agreement and shall, if reasonably requested, actively assist MOTIVA in its conduct of such market research.
- (c) Qualified Personnel. Maintain and provide at its own expense, a sufficient number of trained and suitably qualified personnel, administrative support, insurance policies, and other infrastructure and resources as necessary for the efficient and effective performance of its obligations under this Agreement.
- (d) Training. Participate in such training programs regarding the use and/or sale of the Products as may be offered from time to time by MOTIVA in the Territory, or the same continental region in which the Territory is located, at the Agent’s expense with respect to transportation and lodging.
- (e) Business Practices. Conduct its business in accordance with professional and industry standards, in good faith and not commit any act which would adversely reflect upon MOTIVA or its Products, business, integrity or reputation.
- (f) Intermediaries. Not appoint intermediary or sub-agents for the Products, without the prior written consent of MOTIVA.
- (g) Compliance with Applicable Law. Comply with all laws and regulations to which it is subject, including tax and social security obligations and laws and regulations relating to the promotion and marketing of the Products within the Territory, and, in general, represent the Products fairly and avoid misleading or unethical business practices.
- (h) Records. Keep full and proper books of accounts and records showing clearly all enquiries, quotations, transactions and proceedings relating to the Products, and, during the term of this Agreement and for a period of two years thereafter, allow MOTIVA, and its employees, representatives and designees, upon reasonable notice, to access such accounts and records for the purpose of such an inspection
- (i) Changes of Business. Promptly inform MOTIVA in writing of any change in its organization, shareholding, management or method of doing business, which may adversely affect MOTIVA.
- (j) Restriction on Sales. Only offer Product for sale to Qualified Clients within the Territory for use within the Territory.

(k) Outside the Territory. Refer promptly to MOTIVA all enquiries for the purchase of Products received from addresses inside or outside the Territory but for sale outside the Territory.

- 3.2** Minimums. The Agent agrees to achieve in each Calendar Year the quarterly and yearly minimum Net Sales targets set forth in Schedule 3 (each a “**Minimum**”, and collectively, the “**Minimums**”) for Products in the Territory. In the event of Agent’s failure to achieve the Minimum for any Calendar Year, or the Minimums for two or more consecutive quarters (each a “**Failure**”), MOTIVA may notify the Agent in writing of such Failure (the “**Failure Notice**”). Agent will be provided the opportunity to cure such Failure by, during the calendar quarter immediately following delivery of the Failure Notice (the “**Cure Quarter**”), achieving both (m) the applicable Minimum for the Cure Quarter and (n) additional Net Sales in an amount equal to the aggregate amount of Net Sales by which Agent failed to achieve the applicable Minimum(s) covered by such Failure. In the event Agent does not cure such Failure in accordance with the foregoing, MOTIVA may terminate this Agreement in its entirety or with respect to those certain Product(s) for which Agent did not satisfy the applicable Minimum(s), in its own right and without prior intervention by a court or arbitral tribunal being required, and without any compensation or indemnity being due to the Agent, by giving written notice of termination, such termination to become effective thirty (30) days after the date of the notice of termination. For the avoidance of doubt: (y) Minimums shall be calculated on the basis of Net Sales and (z) Agent shall not be deemed to fail to achieve a Minimum solely to the extent that such failure was directly caused by MOTIVA’s failure to supply Products for Accepted Orders during the applicable period in accordance with the terms of this Agreement.
- 3.3** Price List. The Agent shall solicit the Products for sale to Qualified Clients in accordance with the price list set forth on Schedule 6 (“**Price List**”), the general terms and conditions of sale of MOTIVA set forth on Schedule 7 and the terms of this Agreement. From time to time, MOTIVA, in its sole discretion, may amend, change, or otherwise modify the Price List and/or MOTIVA’s general terms and conditions of sale, such modifications to be effective upon notice thereof to Agent, unless a later effective date is otherwise specified by MOTIVA in such notice. The Agent acknowledges that to solicit orders for Products at prices lower than those set forth on the then-current Price List, including for special promotions and volume customers, MOTIVA’s prior written approval must be obtained. In the event MOTIVA adjusts the price(s) of any Product(s) set forth on the Price List: (a) MOTIVA shall consider in good faith a corresponding upward or downward adjustment to the Minimum(s) for future Calendar Years and/or calendar quarters, and (b) the Average Selling Price Minimum(s) of such Product(s) shall be adjusted upward or downward in proportion to such price adjustment for such Product(s).
- 3.4** Warranties. The Agent shall have no authority to make any representation or offer any warranties or guarantees concerning the Products or their delivery other than those expressly offered by MOTIVA in its then current sales materials or otherwise authorized by MOTIVA in writing. Derogations therefrom (such as additional or different warranties) are to be approved in advance in writing by MOTIVA.
- 3.5** Quotes. The Agent shall reply to all requests of customers for quotes and shall pass on all orders and contract requests for Products promptly upon receipt to MOTIVA and has no authority to commit MOTIVA in any manner whatsoever. Quotes which are given and orders which are acknowledged by Agent will reflect that they remain subject to the agreement of and order confirmation by MOTIVA. MOTIVA shall promptly inform Agent if and when MOTIVA accepts

orders or quotes submitted in accordance with the terms of this Agreement. Following such acceptance (if any), such order or quote shall be considered an “**Accepted Order**” hereunder.

- 3.6** Credit Information. The Agent shall not be authorized to collect or accept payments on behalf of MOTIVA, but shall, when so requested by MOTIVA, provide relevant credit worthiness information and solvency review assistance on existing or potential Qualified Clients (including follow-up of outstanding invoices and, where so requested, support in the collection of debts). Agent shall carefully review the credit ratings of Qualified Clients on a regular basis, particularly the rating of any Qualified Clients from which the Agent anticipates an order for the sale of Products.
- 3.7** Consignment Stock. The Agent shall ensure that it maintains at all times a consignment stock in its warehouse(s) indicated in Schedule 2 attached hereto (each, a “**Warehouse**”) sufficient to accommodate the expected demand for Products from Qualified Clients in accordance with Section 6.1 (“**Consignment Stock**”). MOTIVA shall use commercially reasonable efforts to supply Agent’s Consignment Stock in accordance with the foregoing. Agent shall keep MOTIVA informed of Agent’s estimated demand for Products from Qualified Clients. The Warehouse(s) must at all times comply with the storage conditions for the Products as set forth in MOTIVA’s standard form of quality agreement, which the Parties shall enter into within thirty days of the Effective Date (the “**Quality Agreement**”), and other written instructions provided by MOTIVA from time to time.
- 3.8** Fulfillment. The Agent shall fulfill all Accepted Orders from the Consignment Stock and shall be solely responsible for proper performance of such Accepted Orders, including, without limitation, to coordinate transport and delivery to the relevant Qualified Client in accordance with the delivery conditions agreed to with such Qualified Client and post-sale support on such Accepted Orders as requested by such Qualified Client and instructed by MOTIVA. The Agent shall not be responsible for non-performance of such Accepted Orders caused by incorrect instructions by MOTIVA or the defaults of the freight carrier transporting the Products for such Accepted Orders from MOTIVA to Agent. For avoidance of doubt, MOTIVA shall appoint on its own account the freight carrier that transports the Products from MOTIVA to Agent.
- 3.9** Handling fee. For the handling of each and any Order, whether it’s a Qualified Client or not, the Agent receives the following handling fee:
- (a) EUR 5.00 for each shipped implant and cost of the packing material.
  - (b) EUR 2.50 for each returned implant.

- 3.10** Returns: Agent shall process all returns as requested by Qualified Clients, in strict compliance with MOTIVA's Return Policy at the time, and shall support and instruct Qualified Clients in the return process.
- 3.11** Support. Agent shall cooperate with MOTIVA to provide MOTIVA with support services for sales of products by MOTIVA or its designee(s) to persons and entities whom are not Qualified Clients hereunder, including, without limitation, by delivering such products to the relevant person or entity in accordance with the delivery conditions provided to Agent by MOTIVA, visiting such person or entity to provide pre- and post-sales support, such as for example technical surgeries support, handling of guarantees, handling of customer complaints and handling of returns. The Parties agree that any actual costs spent by Agent in this respect will be reimbursed by MOTIVA and that Agent will be paid for the actual time spent (time records to be provided) at an hourly rate of EUR 70,00 net.
- 3.12** Use of Name. The Agent shall not use MOTIVA's name in any other way than specifically authorized in this Agreement and shall in all correspondence, letterheads, business cards, telephone directories, advertising materials and the like, describe itself as an agent for MOTIVA.
- 3.13** Policy. During the third quarter of each Calendar Year and from time to time as may be requested by MOTIVA upon reasonable notice, MOTIVA and the Agent will meet in order to define jointly the commercial, marketing and merchandising policy to be applied in the Territory in the next Calendar Year. Such policy shall take into consideration MOTIVA's international strategy for the Products including MOTIVA's international merchandising introduction strategy. Such policy must be approved by MOTIVA in writing.

Based on such commercial, marketing and merchandising policy, the Agent shall set up a marketing plan, including the Budget as defined in Schedule 1 for the relevant Calendar Year. Its expressly understood and agreed that the Agent shall be entitled to offer to the Qualified Clients special marketing offers as approved in the marketing plan and budget by MOTIVA. Said plan and the Budget shall be submitted to MOTIVA no later than 30 September of each calendar year for execution in the next Calendar Year and must be approved by MOTIVA prior to its execution. The Parties shall meet in order to discuss the modifications to the foregoing requested by MOTIVA in good faith. The Agent shall perform its obligations under this Agreement in accordance with such plan and Budget, whereby it is expressly agreed that the marketing plan including Budget may be updated from time to time as agreed by the Parties in writing.

- 3.14** Promotion. In accordance with the approved budget MOTIVA shall provide the Agent with all documents and information, advertising and promotional material, literature and other selling aids in German, samples and specimen. This also applies for medical promotion, sales promotion, merchandising, advertising, demonstration and public relations in the Territory (e.g., congresses, symposia, and relationships with physicians). Any sales promotional materials in relation to the Products shall be used and displayed in accordance with MOTIVA's instructions.
- 3.15** MOTIVA Participation. The Agent agrees that:
- (a) Upon reasonable notice, one or more MOTIVA delegates can join each of the Agent's sales representatives or advisors when visiting Qualified Clients, and will have the right to attend surgical procedures performed by Qualified Clients involving the Products to the extent Agent's sales representatives are granted access to the operating room;

- (b) MOTIVA can be present and assist at all sales meetings, organized by the Agent, in order to keep Agent's personnel informed of the development of advertising and promotional campaigns, display area evolutions and the planning of future actions and commercial objectives; and
- (c) any sales promotional materials in relation to the Products shall be used and displayed in accordance with MOTIVA's instructions.

- 3.16 Reports.** During the term of this Agreement and thereafter until return or utilization of all Consignment Stock, the Agent shall update and submit at requested intervals to MOTIVA written reports showing details of the quantity and value of the Products held in Consignment Stock and sold by the Agent on behalf and for the account of MOTIVA, outstanding orders not yet accepted or rejected by MOTIVA and Accepted Orders still outstanding, information about Qualified Clients and promotional activities and information about all complaints received and any other information relating to the performance of its obligations under this Agreement which MOTIVA may request from time to time. In addition, the Agent agrees to provide MOTIVA annually with a qualitative and quantitative analysis of the market evolution and the competition in the Territory for the Products.
- 3.17 Territory Limitations.** The Agent shall not solicit any order which would lead to, or otherwise facilitate the export or re-export of Products, either directly or indirectly, in contravention of this Agreement, or any applicable law, statute or regulation.
- 3.18 Indemnification.** The Agent shall be responsible for, and shall indemnify and hold harmless MOTIVA from and against, any damage, losses, costs or expenses (including attorney's fees) relating to third party claims or suits arising from or in connection with the handling, storage, distribution, promotion or sale of the Products by Agent or its personnel; (b) the gross negligence or willful misconduct of Agent or its personnel; or (c) Agent's breach of this Agreement, in each case except to the extent such damage, loss, cost or expense is attributable MOTIVA's gross negligence or willful misconduct.
- 3.19 Insurance.** Agent shall, during the term of this Agreement and for a period five (5) years thereafter, carry insurance in customary and appropriate coverage amounts sufficient to cover its indemnification obligations hereunder, and shall, at MOTIVA's request, furnish to Company proof of such insurance, including certificates thereof. Additionally, Agent shall maintain insurance in accordance with section 6.7

#### **4. COMMISSIONS**

- 4.1 Right to Commissions.** Agent's sole right to compensation in exchange for performance of this Agreement shall be Commissions in accordance with the Commission Schedule set forth on Schedule 5 attached hereto ("**Commissions**"), payable on Net Sales resulting from Accepted Orders for Products sold to Qualified Clients in the Territory for use in the Territory. Notwithstanding the foregoing, Agent's right to Commissions applies solely with respect to Net Sales attributable to Accepted Orders that are (a) from Qualified Clients in the Territory, (b) referred to MOTIVA by the Agent prior to the effective date of termination or expiration of this Agreement, (c) a direct result of Agent's performance of this Agreement, and (d) otherwise generated and performed by Agent in accordance with the terms of this Agreement. MOTIVA agrees not to unreasonably reject orders placed by Qualified Clients. The Agent shall have no claim for reimbursement of expenses and costs incurred in connection with Agent's performance of this Agreement unless such expenses and costs are pre-approved by MOTIVA in writing.

4.2 Limitations. No right to Commission arises, or if arisen, such right to Commission shall be cancelled and forfeited by Agent:

- (a) if the order placed by the Qualified Client is not accepted by MOTIVA for reasonable reasons;
- (b) if the order is placed by a customer that is not a Qualified Client or if the order is for Products for use outside the Territory;
- (c) if, and to the extent, it is determined that the Qualified Client fails to pay MOTIVA for the order of Products;
- (d) if actual performance of the order has become impossible to carry out;
- (e) if actual performance of the order cannot be reasonably performed by MOTIVA; or
- (f) if it concerns an order where the payment of a commission would be illegal.

If and to the extent a Qualified Client fails to pay the invoices issued by MOTIVA for an Accepted Order within a reasonable period of time as determined in accordance with MOTIVA's generally applied accounting standards, then the Agent's right to Commission for such Accepted Order is terminated and of no further force or effect. In such cases, any advance payments of Commission to the Agent (if any) are to be refunded to MOTIVA. Agent's claim for Commission on Accepted Orders shall also lapse if and to the extent that MOTIVA accepts the return of Products from a Qualified Client and pays a refund in respect thereof. Commissions that may already have been paid on sales for which no right to Commission arises or such right has been canceled can be set-off or can be claimed back, at MOTIVA's choice. Prior to MOTIVA canceling Agent's right to a Commission based on a Qualified Client's failure to pay an order, MOTIVA will notify the Agent of the Qualified Client's failure to pay and will provide a copy of the payment reminder sent to client. Furthermore, Agent will be granted thirty (30) calendar days to help cure Qualified Client's failure to pay, or else MOTIVA's right to not pay a Commission will take effect.

4.3 Payment. Notwithstanding the above provisions, payment of the Commission on an Accepted Order shall not be due unless, until and to the extent MOTIVA has received payment in full from the Qualified Client of all amounts due to MOTIVA with respect to the Accepted Order, subject to compliance with Section 4.2. MOTIVA shall issue monthly Commission statements to the Agent (at the last business day of the calendar month) with a breakdown of the Commissions that have become due in the previous month, a summary of the relevant data based on which these Commissions have been calculated and any debits against the Agent's Commission account during the period. The Commission shall be paid no later than 30 days following the issuance of the relevant Commission Statement pursuant to this Section 4.3.

4.4 Reduction. In the event that the Agent's faults, breaches, negligent actions or omissions in connection with a sale of the Products result in, or contribute to, directly or indirectly, a reduction of MOTIVA's profit or revenue from the Accepted Order, then MOTIVA reserves the right to charge to the Agent any part or all of such reduction of profit or revenue by reducing or eliminating the Commission on such Accepted Order. MOTIVA shall duly and timely inform the Agent hereof.

## **5. MOTIVA'S OBLIGATIONS**

5.1 MOTIVA shall act in a loyal manner and in good faith in its relations with the Agent, subject to the terms and conditions of this Agreement, including without limitation, MOTIVA's retained rights hereunder.

5.2 MOTIVA shall react promptly to the Agent's request in general and is obliged to confirm its agreement with the proposed marketing plan including Budget, forecast, exhibition and training planning without any undue delay but in no case later than four (4) weeks.

5.3 MOTIVA shall provide the Agent with all documents and information necessary for the Agent with respect to the calculation of the commission and/or other fees if requested by the Agent.

5.4 All invoices in connection with orders for Products solicited by the Agent shall be rendered by MOTIVA directly to the customers and all payments in respect of such invoices shall be made direct to and/or collected by MOTIVA.

## 6. CONSIGNMENT STOCK

- 6.1 Forecast. Upon request by the Agent, MOTIVA will deliver from time to time to the Agent, Products at the Warehouse for the Consignment Stock. Any dates for delivery indicated by MOTIVA for such deliveries will be estimates only and will not be binding upon MOTIVA. Promptly following the Closing Date, the Agent shall provide MOTIVA with a written forecast containing those monthly quantities of Products that it will presumably require to be delivered for its Consignment Stock and covering a period of twelve (12) months starting from the date of launch of the Products in the Territory. Every three (3) months thereafter, the Agent shall provide MOTIVA with a written revised forecast of its monthly requirements of Products for the period covering the next twelve (12) months. Each request for delivery into the Consignment Stock will be within the range of twenty per cent (20%) of Agent's last forecast for the same time period. Notwithstanding the foregoing, should the Agent require delivery of Products in consignment in excess of twenty percent (20%) above those quantities stated in its last forecast for the same time period, MOTIVA agrees to use reasonable efforts to supply such additional quantities.
- 6.2 Location. The Consignment Stock will be kept in secure condition by the Agent, at its own risk and expense and free of charge to MOTIVA. The location of the storage of the Products in the Warehouse shall be decided by the Agent, provided that such location is clean and dry and complies with the provisions of this Agreement, the Quality Agreement, industry standards, applicable law and regulations in the Territory and with any reasonable instructions issued by MOTIVA, including without limitation any and all storage, shelf-life and quality preservation requirements for the Products set forth in the foregoing sources. The Agent will inform MOTIVA of the exact location within the Warehouse where the Products are stored and of any change of location. The Agent undertakes to handle and store the Products in accordance with Good Distribution Practices (GDP) and as directed by MOTIVA, and to distribute the Products in conformity with the FEFO principle (first expired - first out).
- 6.3 Storage. All the Products in the Consignment Stock shall be stored in a secure location in accordance with the Quality Agreement. In case any third party tries to take possession of the Products in the Consignment Stock or claims property rights or any other rights over the Products in the Consignment Stock, the Agent will immediately inform such third party about the fact that the Products are not the property of the Agent but the property of MOTIVA and the Agent will immediately inform MOTIVA of such claims by third parties. MOTIVA and the Agent agree that the Agent will not have the right to retain the Products in the Consignment Stock or the right to keep the Products in the Consignment Stock as guarantee. The Agent will refrain from pledging or creating any kind of lien or other encumbrance over the Consignment Stock. If the Agent mortgages or otherwise encumbers the Warehouse in which the Consignment Stock is stored, it shall expressly exclude the Consignment Stock from the scope of the mortgage or encumbrance.
- 6.4 Risk of Loss. Risk of loss or damage to the Products in consignment shall pass to the Agent at the time when the Products are handed over to the Agent. Following such time, Agent shall be liable to MOTIVA for the total or partial loss of the Products, as well as for any damage thereto or any deterioration thereof, except such loss, damage or deterioration is a result of force majeure. Any such loss, damage or deterioration will be reported immediately to MOTIVA in writing.
- 6.5 Inspection. The Agent will inspect the Products immediately upon arrival of the Products in its Warehouse for compliance with the specifications and any shortfalls in quantity or visible defects.

In case where the inspection performed by the Agent indicates that the Products are damaged, defective or short in quantity, the Agent shall, notify MOTIVA of the non-conformity within 5 to 6 days upon arrival of the Products. The Agent shall provide MOTIVA, where relevant, with a sample of the nonconforming Products.

Should MOTIVA agree with such results, MOTIVA shall replace such nonconforming Products or make up for shortfalls in the quantity of Products, to the exclusion of any other liability towards the Agent.

Should MOTIVA not agree with the Agent that a Product is non-conforming, the issue shall be submitted to an independent third party designated by mutual agreement between the Parties whose decision shall be final. The costs arising from the intervention of the independent third party shall be borne by the Party in the wrong.

- 6.6 Insurance. The Agent will be responsible, at its own cost, for insuring the Products against damage, theft, fire and other risks of loss, damage or deterioration of the Products held by it from time to time. Upon request by MOTIVA, the Agent shall furnish MOTIVA with a certificate of insurance issued by an insurance company reasonably acceptable to MOTIVA demonstrating such insurance coverage in amounts satisfactorily for MOTIVA (and in any case not less than the full invoice value of the Products in consignment from time to time). If Agent makes a claim to its insurers in respect of the Products, then it shall immediately provide MOTIVA with the full details of such claim as well as with any information reasonably requested by MOTIVA in respect of such claim. Any monies received by Agent from any insurer in satisfaction of any claim in relation to the Products shall be received by Agent in trust for, and shall be immediately remitted to, MOTIVA on receipt by Agent.
- 6.7 Audit. Upon reasonable notice to the Agent, MOTIVA shall be entitled to, visit and enter the Warehouse of the Agent in order to conduct a physical inventory audit of the Consignment Stock. Agent will grant MOTIVA access to its Warehouse and provide reasonable assistance to enable MOTIVA to carry out such audit, including granting access to the records concerning the Products in the Consignment Stock and any relevant records that allow MOTIVA to check compliance by the Agent with the provisions of the Agreement.
- 6.8 Title. MOTIVA will continue to own and have all legal and beneficial right, title to and interest in any Product in the Consignment Stock. MOTIVA may at any time enter the Warehouse where the Consignment Stock is located and remove Products all or any part of the Consignment Stock during regular business hours.

## **7. MATERIOVIGILANCE AND PRODUCT RECALLS**

- 7.1 Adverse Events. The Agent shall immediately inform MOTIVA of all reports of adverse events or reactions of which they become aware with regard to the Products, regardless of their origin. The term reports also includes publications.

Reports on such adverse events or reactions, which according to the informing Party's professional evaluation may negatively affect the benefit-risk ratio of the applicable Product or may have consequences regarding the Product information (e.g., labeling, data sheets, or package inserts) or may require immediate safety measures (such as special information or warnings to health professionals, patients, authorities or product withdrawal) shall be forwarded to the other Party without delay after becoming known.

Exchange of materiovigilance information shall be sent to:

(a) For MOTIVA:

(A) Quality, Regulatory and Materiovigilance Department

Establishment Labs S.A.  
Bldg. 15, 4th St. Zona Franca Coyol  
Alajuela, Costa Rica

complaints@establishmentlabs.com

(b) For the Agent:

Menke Med GmbH  
Attention: Frank Menkle  
Tucherpark 22, 85622 Feldkirchen  
Germany  
Email: info@menke-med.de

Or to such other address as notified from time to time by either Party.

7.2 Recalls. If either Party determines that an event, incident or circumstance has occurred which may result in the need for a recall or market withdrawal (collectively referred to as "**Recall**") of any Product sold by MOTIVA in the Territory, such Party shall advise and consult with the other Party regarding such event as set forth below:

(a) Recall due to a breach by the Agent:

To the extent that the Recall of the Product is due to the Agent's breach of its obligations under this Agreement, the Agent shall bear all costs and expenses of such Recall, according to the statutory provisions, including costs incurred by third parties, the costs of notifying customers and the costs related to the shipment of such recalled Products and the costs and expenses of the necessary replacement and destruction of such Product which is removed from the market (the "Recall Expenses").

(b) Recall due to a breach by MOTIVA:

To the extent that the Recall is due to a breach by MOTIVA of its obligations under this Agreement, MOTIVA shall be responsible for the Recall Expenses.

(c) Recall ordered by the health authorities of the Territory:

In the event of a compulsory recall at the behest of a health authority of the Territory, there shall be no requirement for the Parties to agree on the need of such Recall. The Parties shall, however, cooperate fully with each other in relation to such a Recall and the Recall Expenses shall be borne by the Parties in accordance with sub-articles (a) and (b) above of this Article 7.2.

## 8. NON-COMPETE, NON-SOLICITATION, NON-DISPARAGEMENT, DISCLOSURE

In return for due considerations between the parties in accordance with the Asset Purchase Agreement, dated as of October 3rd , 2018, between the Parties (the "**Asset Purchase Agreement**") in conjunction with this Agreement, the Parties agree that during the term of this Agreement, including any extensions to the term of this Agreement agreed to by the Parties in accordance with Article 2 of this Agreement, Sections [5.9, 5.10, 5.11 and 5.12] of the Asset

Purchase Agreement shall apply equally to Agent's acts and obligations under this Agreement, *mutatis mutandis*.

## 9. TRADEMARKS AND INTELLECTUAL PROPERTY RIGHTS

- 9.1 In General. Agent acknowledges that it does not and will not acquire any rights, title, goodwill or interest in the trade name, Trademarks or other Intellectual Property Rights of MOTIVA. Agent shall not at any time do or permit any act to be done which may in any way impair the rights of MOTIVA in the Trademarks or Intellectual Property Rights. Agent shall not at any time register or attempt to register the MOTIVA Intellectual Property Rights, the Trademarks or marks similar thereto with any authorities (including trademark authorities).
- 9.2 MOTIVA Rights. Agent acknowledges that, as between the Parties, MOTIVA owns the copyright and goodwill in all advertising, marketing and promotional materials provided to Agent by MOTIVA.
- 9.3 Trademark License. MOTIVA grants to Agent the non-exclusive right to use the Trademarks in advertising and commercial communications related to promotion of sales of the Products in accordance with the terms of this Agreement. Agent may only use the trademarks and trade names and logos of MOTIVA in accordance with the guidelines and instructions communicated by MOTIVA to Agent from time to time.
- 9.4 Trademark Restrictions. Agent must not alter, obscure, remove or otherwise interfere with any of the Trademarks or any other permanent markings placed on any Products or other materials bearing any Trademarks. Agent may not include or use the Trademarks in any domain name or in any other company designation used in the trade. Any domains using MOTIVA's Trademarks shall be transferred to MOTIVA.
- 9.5 Notification and Assistance. Agent undertakes to promptly notify MOTIVA of any act of unfair competition, illegal trade practices or piracy, or infringement of intellectual property rights relating to the Products that the Agent may discover. The Agent shall not take any action with regard to such acts without the prior written consent of MOTIVA, but shall reasonably assist MOTIVA in any actions if and when requested by MOTIVA.

## 10. WARRANTIES

Each Party represents and warrants to the other Party that as of the Closing Date:

- (a) it has the capacity and authority to enter into this Agreement;
- (b) the persons entering into this Agreement on its behalf have been duly authorized to do so;
- (c) this Agreement and the obligations created hereunder are binding upon it and enforceable against it in accordance with their terms and do not and will not violate the terms of any other agreement, or any judgment or court order, to which it is bound; and
- (d) there is no proceeding pending or threatened, or any other event, matter, occurrence or circumstance which to the party's knowledge, challenges or may have a material adverse impact on this Agreement or the ability of the Party to perform its obligations pursuant to this Agreement.

## 11. TERMINATION

11.1 Termination for Breach. Notwithstanding any provisions to the contrary in this Agreement, either Party has the right to terminate this Agreement, effective immediately, in its own right and without prior intervention of the court, at any time and without prior notice or compensation in lieu thereof nor any goodwill indemnity, by sending an electronic mail, or registered letter to either Party, in case of a material breach by the other Party of its obligations under this Agreement.

11.2 Material Breach. The Parties agree that such a material breach can be, without being limited thereto:

- (a) an act committed by the breaching Party including dishonesty, disloyalty or fraud with respect to the non-breaching Party, its business or the Products, or gross negligence or willful misconduct or breach by the Agent in the performance of its obligations under this Agreement; willful misconduct or breach shall be deemed to exist when the non-breaching Party has given the breaching Party prior written notice of the misconduct or the breach and of its intention to terminate on this basis and the breaching Party has not changed that conduct or cured such breach to the non-breaching Party full satisfaction within thirty (30) calendar days following such notice; notwithstanding the above paragraph, the breach by the Agent of its representations, warranties and obligations in Articles 8, 13, AND 14 shall be irrefutably deemed to be a material breach not capable of remedy and the non-breaching Party shall have the right upon becoming aware of any such breach to terminate this Agreement with immediate effect;
- (b) the fact that one Party has become insolvent or been declared bankrupt, has been dissolved or entered into liquidation, or has filed a voluntary petition for proceedings in temporary relief of creditors (or composition of creditors); or
- (c) a material change in the Agent's management, business, assets or ownership that results in a change of control of the Agent (whereby change of control shall mean a change of (i) the (sole or joint and legal or beneficial) ownership of the majority of the voting securities of the Agent, (ii) the ability to control the majority of the voting rights in respect of the Agent, or (iii) the ability to appoint or dismiss the majority of the members of the management board of the Agent).

## 12. CONSEQUENCES OF TERMINATION

Upon the termination or expiry of this Agreement, for any reason whatsoever, in accordance with the provisions of this Agreement, at the moment of effective termination or expiration:

- (a) The Agent shall promptly cease to act as an agent for the Products and in general cease all conduct which might cause anyone to believe that the Agent is an agent of MOTIVA.
- (b) Every obligation and liability of either Party to the other Party incurred up to the moment of effective expiration or termination shall continue and remain in existence until paid or settled.
- (c) The Agent shall promptly return to MOTIVA all materials and Confidential Information, and either return to MOTIVA or pay MOTIVA for, at Agent's reasonable discretion and cost, all Products and Consignment Stock.
- (d) Notwithstanding anything to the contrary in Section 12(c), MOTIVA shall be entitled to enter the Agent's Warehouse to check the quantity of the Consignment Stock and to remove all or part of the same and shall receive right of access for this purpose and shall

receive all reasonable assistance from Agent or any liquidator or receiver or administrative receiver in doing so.

- (e) All claims under this Agreement are subject to a limitation period of one year. The limitation period commences at the end of the month within which the claim accrues.
- (f) The following provisions of this Agreement shall survive any expiration or termination of this Agreement and remain in effect: Sections 3.1(i), 3.12, 3.14, 3.15, 3.16, 3.18, 3.19, 4.2, 4.4, 6.6, 6.7, 6.8, 13.1, 13.4 and Articles 8 - 10, 12, and 14 - 18.

### 13. COMPLIANCE

- 13.1 Registrations. Upon request by MOTIVA, Agent shall assist and cooperate with MOTIVA to ensure that all required registrations, certifications, authorizations, consents, notifications, applications and approvals necessary for marketing, offering for sale, and selling Products in the Territory and for any promotional materials used in the Territory, including any import and export licenses and permits (collectively "**Registrations**") are obtained and maintained in good standing, at MOTIVA's expense. Agent undertakes, to the extent the applicable laws, rules and regulations in force in the Territory allow this, to ensure that the aforementioned Registrations are issued and/or granted in the name and for the benefit of MOTIVA or such Affiliate or such other party nominated by MOTIVA as MOTIVA may direct. MOTIVA will supply the Agent with the technical and administrative information necessary for obtaining the aforementioned Registrations. Agent shall not file any application or request for a Registration before having first provided a copy thereof to MOTIVA and having received MOTIVA's written approval to proceed with such filing. Agent will immediately upon receipt thereof provide a copy of any and all Registrations to MOTIVA. Thereafter, upon request by MOTIVA, the Agent will be responsible for renewal of the Registrations if they are issued for a limited period of time, at MOTIVA's expense. Upon expiry or termination of this Agreement for any reason whatsoever, Agent shall immediately provide all original Registrations to MOTIVA. In the event any Registrations for the Products have been issued or granted in the name of Agent, Agent shall, upon expiry or termination of this Agreement for any reason whatsoever, provide all reasonably required assistance and take all additional actions (including the execution and delivery of appropriate instruments of transfer) as necessary to promptly transfer such Registrations to the name and to the benefit of MOTIVA or such Affiliate or such other party nominated by MOTIVA as MOTIVA may direct, and Agent shall, and hereby does, irrevocably appoint MOTIVA as Agent's attorney for the purposes of transferring, renewing and managing the Registrations. UNDER REVIEW
- 13.2 Quality Assurance. Agent agrees to comply, in its own name and at its own expense and costs, with the provisions of the Quality Agreement. Agent acknowledges and agrees that MOTIVA may from time to time impose additional requirements with respect to quality matters upon notice to the Agent to continue to be in compliance with any applicable regulatory requirements or best-in-class industry standards.
- 13.3 Legal Compliance. Agent agrees to comply, in its own name and at its own expense and costs, with all laws, rules and regulations and formalities of or applying or having force and/or effect in the Territory including but not limited to in relation to the import of Products and the promotion, marketing, advertising and selling of the Products in the Territory.
- 13.4 Cooperation. Agent shall reasonably cooperate with MOTIVA with regard to any matter, dispute or controversy related to this Agreement in which MOTIVA may become involved and of which

Agent may have knowledge. Such obligation shall continue after the expiration or termination of this Agreement.

- 13.5 Legal Matters. If this Agreement or the performance hereof is determined to be contrary to the laws, rules or regulations of the Territory MOTIVA may, at its sole option, terminate this Agreement with immediate effect and without further liability or obligation on the part of MOTIVA or its Affiliates and no future compensation payments or accruals shall be made by MOTIVA for Agent's accounts.
- 13.6 Anti-corruption Laws. The Parties are aware and acknowledge that many countries, including the United States of America and the member states of the European Union, have adopted and enforce laws that prohibit corruption, including the payment of bribes for the purpose of facilitating, obtaining or retaining business opportunities, and accordingly undertake to ensure that financial transactions and any other activities undertaken pursuant to this Agreement do not violate anti-bribery and corruption laws. A breach of the provisions of this Article 13.6 by a Party shall entitle the other Party to terminate this Agreement with immediate effect, without prior intervention by a court or arbitral tribunal, and without prior notice or compensation in lieu thereof nor any other indemnity by sending a notice to the other Party.

#### **14. CONFIDENTIALITY**

- 14.1 Non-disclosure and Non-use. Each Party covenants to the other Party that, except with the consent in writing of the other Party:
- (a) it will not at any time hereafter disclose or divulge to any person any Confidential Information of the other Party (other than to their and/or their Affiliates' officers or employees on a reasonable need-to-know basis under obligations of non-disclosure and non-use consistent with this Agreement) nor use such Confidential Information other than for purposes of exercising rights or performing obligations under this Agreement; and
  - (b) if, in connection with the business or affairs of the other Party, it shall have obtained Confidential Information belonging to any third party under an agreement purporting to bind that Party which contained restrictions on disclosure, it will not without the prior written consent of that Party at any time infringe such restrictions.
- 14.2 Exceptions. Each Party's obligations under Article 14.1 above shall not apply to any of the following, and the Confidential Information shall not include, information:
- (a) which is public knowledge at the date of disclosure by either Party to each other or subsequently becomes public knowledge through no act or omission on the part of the relevant Party; or
  - (b) which is lawfully known to either Party (other than as a result of Confidential Information previously having been provided to that Party) at the date of disclosure by the relevant Party and is not subject to any restriction on disclosure imposed by a third party; or
  - (c) which is disclosed to either Party by a third party after the date of disclosure and is not the subject of any restriction on disclosure imposed by or on that third party; or
  - (d) which is required to be disclosed by:

- (i) any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body; or
- (ii) any law or regulation of any country with jurisdiction over the relevant Party's affairs,

provided that the relevant Party will, to the extent reasonably practicable and permitted by such law, rule, regulation or judicial, governmental, supervisory or regulatory body, promptly notify the other Party in writing and co-operate with it regarding the timing and content of such disclosure or any action which the notified Party may reasonably elect to take to challenge the validity of such requirement; or

- (e) which is disclosed in the context of exercising a remedy in relation to this Agreement, or in the context of a trial, a legal action or arbitral proceeding relating to this Agreement.

14.3 **Return and Destruction.** If required to return or destroy Confidential Information, the relevant Party shall (and shall ensure that its representatives shall) within 10 calendar days of receiving the request:

- (a) destroy, or return to the requesting Party, all copies of any document that contains any Confidential Information;
- (b) destroy all copies of any documents derived from Confidential Information;
- (c) take reasonable steps to erase the Confidential Information from any computer or other digital device on which it is held; and
- (d) appoint one of its employees to supervise the steps contemplated in this Article 14.3, and to confirm in writing to the disclosing Party that they have been carried out.

For the purposes of this Article 14.3, document includes any material prepared by or on behalf of the relevant Party or any of its representatives using or containing Confidential Information.

## 15. REMEDIES

The Parties acknowledges and agrees that each Party would be damaged irreparably if Article 8 or Article 14 of this Agreement would not be duly observed by the other Party, that it may be very difficult in such event to prove the actual amount of damages suffered by the affected Party, and that any such breach may not be adequately compensated by monetary damages alone. Accordingly, in addition to any other right or remedy to which the affected Party may be entitled, this Party is entitled to enforce Article 8 and Article 14 of this Agreement in kind (*uitvoering in natura*) or via a summary procedure (*procedure in kortgeding*) in order to prevent any actual or threatened breach of these provisions, without MOTIVA being obliged to prove the amount of the (possible) resulting losses resulting therefrom.

## 16. MISCELLANEOUS

16.1 **Independent Contractors.** The Agent is solely liable for its operating costs and bears alone the risks inherent in its business. The Agent's relationship with MOTIVA is that of an independent contractor and none of the provisions of this Agreement can be interpreted to mean that the Parties have agreed to form a company, an association or a joint venture or so as to render the Agent an employee of MOTIVA. The Agent shall be solely responsible for the employment, control and direction of its employees. The Agent shall have no power or authority to conclude

any contract or make any representation, promise, statement or guarantee on behalf of MOTIVA or to bind MOTIVA in any other way unless otherwise agreed.

- 16.2 Entire Agreement. This Agreement, together with the Asset Purchase Agreement, contains the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes and replaces all prior agreements and understandings, whether written or oral, with respect to the same subject matter.
- 16.3 Amendment. Any amendment to this Agreement, as well as any additions or omissions, can only be agreed in writing with the mutual consent of the Parties.
- 16.4 Assignment and Subcontracting. Agent cannot delegate, assign, subcontract or transfer any of its rights or obligations under this Agreement, either in whole or in part, to any third party or any Affiliate(s) without the prior written consent of MOTIVA. MOTIVA can delegate, assign, subcontract or transfer any of its rights or obligations under this Agreement, either in whole or in part, to any third party or any Affiliate(s) without Agent's consent upon notice to Agent. In case of assignment by MOTIVA in accordance with the foregoing, such assignment shall release MOTIVA from all its obligations under this Agreement as from the date of notice of assignment to Agent.
- 16.5 Severability. Whenever possible, the provisions of this Agreement shall be interpreted so as to be valid and enforceable under the applicable law. However, if one or more provisions of this Agreement is found to be invalid, illegal or unenforceable (in whole or in part), the remainder of the provision and of this Agreement shall not be affected and shall continue in full force and effect as if the invalid, illegal or unenforceable provision(s) had never existed. Moreover, in this case, the Parties shall amend the invalid, illegal or unenforceable provision(s) or any part thereof and/or agree on a new provision which embodies as closely as possible the purpose of the invalid, illegal or unenforceable provision(s).
- 16.6 Force Majeure. Neither Party shall be liable for any failure to perform this Agreement (except for the payment of any sums due hereunder) if such failure is due to causes beyond its reasonable control, such as, but not limited to, fire, flood, strike, labor dispute or other industrial disturbance, declared or undeclared war, embargo, blockade, legal restriction, riot, insurrection, governmental regulation and the unavailability of means of transportation.
- 16.7 No Waiver. Any failure or delay by a Party in exercising any right under this Agreement, the exercise or partial exercise of any right under this Agreement, or any reaction or absence of reaction by a Party in the event of breach by the other Party of one or more provisions of this Agreement shall not operate or be construed as a waiver (either express or implied, in whole or in part) of its rights under this Agreement or under said provision(s) or preclude the further exercise of any such rights. Any waiver of a right must be express and in writing. If there has been an express written waiver by one Party following a specific failure by the other Party, this waiver cannot be invoked by the other Party in favor of either a new failure, similar to the prior one or a failure of another nature.
- 16.8 Notices. All notices and other forms of communication required under this Agreement shall be in writing and must be delivered or sent to the recipient (i) in person through a reputable courier service, (ii) by registered mail (with an acknowledgement of receipt), (iii) by regular e-mail (provided that, if the recipient of the e-mail has not acknowledged receipt within 48 hours from dispatch of the e-mail, the e-mail notice must be confirmed by a delivery in person through a

reputable courier service or by registered mail (with an acknowledgement of receipt) within five (5) business days from dispatch of the e-mail), to the address indicated hereunder:

(a) To MOTIVA:

Establishment Labs S.A.  
Bldg. B25 Zona Franca Coyol  
Alajuela, Costa Rica 20113  
Attention: General Counsel  
e-mail: jlivianu@establishmentlabs.com

(b) To Agent: Menke Med GmbH  
Tucherpark 22, 85622 Feldkirchen  
Germany  
e-mail: f.menke@menke-med.de

Without prejudice to each Party's right to evidence the date of actual delivery by all legal means, any notice shall be deemed to have been delivered to the recipient's address (i) on the date of delivery if delivered by hand, (ii) three (3) working days following the mailing date if sent by registered mail, and (iii) on the date of dispatch of the e-mail if sent by e-mail in accordance with the first paragraph of this Article 16.8.

Any Party may change the address to which notices are to be delivered or transmitted by giving the other Party written notice in the manner set forth herein.

16.9 Costs. Each Party shall bear its own costs (including legal fees and other expenses) incurred in the preparation and negotiation of this Agreement.

16.10 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original and all of which taken together constitute one and the same Agreement. Counterpart signature pages delivered via facsimile or e-mail in PDF or similar electronic format shall have the same binding effect as originals.

## 17. APPLICABLE LAW AND ARBITRATION

All issues, questions and disputes concerning the validity, interpretation, enforcement, performance or termination of this Agreement, and all matters of extra-contractual and/or tort liability, if any, arising out of or in relation with this Agreement, shall be governed by and construed in accordance with Belgian law, without giving effect to any other choice-of-law or conflict-of-laws rules or provisions (Belgian, foreign or international) that would cause the laws of any jurisdiction other than Belgium to be applicable, and excluding the UN Convention on Contracts for the International Sale of Goods (1980) ("Vienna Convention") (if applicable).

Any dispute arising between the Parties arising out of or in connection with this Agreement and/or any contractual or non-contractual (including pre-contractual) matters in connection with its conclusion, validity, interpretation, enforcement, performance and termination will be resolved in accordance with the following procedure:

- a. the Parties shall attempt to resolve the dispute through the conciliation mechanism in accordance with the Mediation Rules of the Belgian Centre for Arbitration and Mediation CEPANI;
- b. If, within fifteen (15) business days from the request for mediation, the following shall apply:

any disputes arising out of or in relation with this Agreement shall be finally settled under the CEPANI Rules of Arbitration by one or more arbitrators appointed in accordance with those Rules. The arbitral tribunal shall be composed of three arbitrators. The seat of the arbitration shall be Brussels (Belgium). The arbitration shall be conducted in English. The applicable rules of law are Belgian laws.

In the event of a Dispute, the prevailing party in any Action in connection therewith shall be entitled to recover from such other party its costs and expenses incurred in connection with such Action, including, without limitation, reasonable legal fees and associated costs.

## 18. CONSTRUCTION

18.1 Headings. Headings and the table of contents used in this Agreement are for convenience purposes only and shall not affect the construction or interpretation of this Agreement.

18.2 Interpretation. Unless the context does not so permit, or save where specifically indicated otherwise:

- (a) references to Schedules – or parts thereof – are to the schedules – or parts thereof – to this Agreement; references to Recitals are to the recitals to this Agreement;
- (b) references to Articles are to articles in this Agreement and references to sub-Articles are to sub-articles or paragraphs of the Article in which such references appear;
- (c) references to this Agreement include the Recitals and Schedules which form part of this Agreement for all purposes;
- (d) when using the words "shall cause" or "shall procure that" (or any similar expression or any derivation thereof), the Parties intend to refer to the Belgian law concept of *sterkmaking / porte-fort*, supplemented with a guarantee by the relevant Party for the due and timely execution of the relevant actions, unless expressly indicated otherwise;
- (e) references to the word "include" or "including" (or any similar term) are not to be construed as implying any limitation, and general words introduced by the word "other" (or any similar term) shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things;
- (f) any reference to "writing" or "written" includes any method of reproducing words or text in a legible and non-transitory form but, for the avoidance of doubt, shall not include email;
- (g) whenever the expression(s) "use best efforts", "use reasonable efforts", "use all commercially reasonable best efforts", "use all reasonable efforts" or any other similar expression is used in this Agreement, the Parties refer to the Belgium legal concept of *middelenverbintenis / obligation de moyen*;
- (h) a reference to any person shall include his respective executors and personal representatives whomsoever, as well as his permitted successors or assignees;
- (i) words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing corporations and vice versa, words importing

the singular shall be treated as importing the plural and vice versa, and words importing the whole shall be treated as including a reference to any part thereof;

- (j) references to any statute or statutory provision shall be deemed to include reference to any statute, regulation or statutory instrument which amends, extends, consolidates or replaces the same (or shall have done so) and to any other regulation, statutory instrument or other subordinate legislation made thereunder or pursuant thereto, provided that no such reference shall include any amendment, extension or replacement of the same with retrospective effect;
- (k) references to "euro" or "EUR" are to the lawful currency as at the Effective Date of this Agreement of the member states of the European Union who have adopted and retain the euro as their lawful currency in accordance with the legislation of the European Union relating to Economic and Monetary Union and for the avoidance of doubt this definition shall not extend to any new currency of any member state which ceases to use the euro as its only lawful currency; and
- (l) unless expressly indicated otherwise, or except when applicable law provides otherwise in a mandatory manner, any period of time or term referred to herein shall be calculated or determined as follows:
- (m) any reference to a day shall be a reference to a calendar day, running from midnight to midnight.

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

18.4 Language. The original version of this Agreement has been made in English. Should this Agreement be translated in whole or in part into another language (if at all), the original English version shall prevail between the Parties hereto to the fullest extent possible and permitted by Belgian law. Notwithstanding the foregoing, Belgian legal concepts which are expressed in English language terms are to be interpreted in accordance with the Belgian legal terms to which they refer, and the use herein of Dutch and/or French words in this Agreement as translation for certain words or concepts shall be conclusive in the determination of the relevant legal concept under Belgian law of the words or concepts that are so translated herein.

*(The remainder of this page is intentionally left blank. The signature page follows.)*

This Agreement has been executed as of the Closing Date by authorized representatives of the Parties.

FOR AND ON BEHALF OF MOTIVA

**Juan José Chacón Quirós**

Chief Executive Officer [name]

October 3, 2018 [title]

/s/ Juan José Chacón Quirós [signature]

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FOR AND ON BEHALF OF AGENT

**Frank Menke**

Chief Executive Officer [name]

October 3, 2018 [title]

/s/ Frank Menke [signature]

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**Schedules**

Schedule 1 – Definitions

Schedule 2 – Territory and Warehouses

Schedule 3 – Minimums

Schedule 4 – Products and Commissions

Schedule 5 – Price List

Schedule 6 – MOTIVA’s Terms and Conditions

**SCHEDULE 1**  
**DEFINITIONS**

In this Agreement, unless the context otherwise requires, the following words and phrases have the following meanings:

"**Affiliate**" means with respect to any person, another person directly or indirectly Controlling, Controlled by, or under common Control with the first person as of the date on which, or at any time during the period for which, the determination of affiliation is being made, whereby "**Control**" means the power of a person (or persons acting in concert) to secure that the affairs of another are conducted directly or indirectly in accordance with the wishes of that person (or persons acting in concert) whether by means of:

- (a) in the case of a legal person, being the beneficial owner of more than 50% (fifty per cent) of the issued share capital (or equivalent) of or of the voting rights in that legal person, or having the right to appoint or remove a majority of the directors (or equivalent) or otherwise control the majority of the votes at board meetings of that legal person by virtue of any powers conferred by the articles of association, any agreement or any other document regulating the affairs of that legal person; or
- (b) in the case of a partnership, being the beneficial owner of more than 50% (fifty percent) of the capital (or equivalent) of that partnership, or having the right to control the composition of or the votes of the majority of the management (or equivalent) of that partnership by virtue of any powers conferred by the partnership agreement or any other agreement or document regulating the affairs of that partnership,

and "**Controlling**" and "**Controlled**" shall be construed accordingly.

"**Accepted Order**" has the meaning given in Section 3.5;

"**Average Selling Price**" means on a Product-by-Product and month-by-month basis, the average selling price for Accepted Orders of such Product to Qualified Customers during such month.

"**Average Selling Price Minimum**" means on a Product-by-Product basis the amount set forth for such Product in Schedule 5, as may be adjusted from time to time in accordance with Section 3.3.

"**Agreement**" means this Commercial Agency Agreement and any Schedules thereto, all as may be amended from time to time;

"**Budget**" means the aggregate of all expenses in relation to information and sales promotional material, merchandising material, specimen and samples, media advertising, demonstrations and public relations relating to the Products (including sales force salaries) in each Commercial Year committed to by the Agent and agreed by MOTIVA in accordance with Article 3.13;

"**Business Day**" means any calendar day, except a Saturday, Sunday or a public holiday in Belgium;

"**Qualified Clients**" means the persons and entities set forth on Schedule 4 attached to the Agreement, as may be modified from time to time in accordance with Section 1.8 of the Agreement.;

"**Commercial Year**" means each twelve (12) month period starting on the Effective Date;

"**Commissions**" has the meaning given in Section 4.1;

**"Confidential Information"** means all information in whatever form supplied to either Party or its advisers by the other Party (as applicable) or by any person on its behalf, in writing, orally or otherwise, together with any reports, analyses, compilations, studies or other material or documents prepared by either Party or on its behalf which contain or otherwise reflect such information, relating to (a) this Agreement, including its existence and content, (b) the NDA the business or activities of the other Party, and/or (c) the transactions contemplated under this Agreement and any information belonging to a third party disclosed in connection therewith under an agreement containing restrictions on disclosure; however, the disclosing Party's information in tangible or electronic form that does not contain a confidential designation, and discussions relating to Confidential Information, shall nevertheless be protected hereunder as Confidential Information, if the receiving Party knew, or should have reasonably known under the circumstances, that the information was confidential and had been communicated to it in confidence.

**"Consignment Stock"** has the meaning given in Section 3.7 and Section 6;

**"Effective Date"** has the meaning set forth in the introduction to the Agreement;

**"Closing Date"** has the meaning set forth in the introduction to the Agreement.

**"Intellectual Property Rights"** means all rights in patents, utility models, trademarks, service marks, logos, trade names, internet domain names, copyrights (including rights in computer software), design rights, moral rights, database rights, topography rights, confidential information and knowledge (including know how, inventions, secret formulae and processes, market information, and lists of customers and suppliers), and rights protecting goodwill and reputation, in all cases whether registered or unregistered, all other forms of protection having a similar nature or effect anywhere in the world to any of the foregoing and all applications for or registrations, renewals or extensions of any of the foregoing rights for their full term;

**"Minimums"** has the meaning given in Section 3.2;

**"Net Sales"** means the cash amounts actually received by MOTIVA or its Affiliates from Qualified Clients with respect to Accepted Orders for Products in the Territory, less the following deductions to the extent applicable to such received amounts: (a) all trade, cash and quantity credits, discounts, refunds or rebates; (b) amounts for claims, allowances or credits for returns, retroactive price reductions and chargebacks; and (c) packaging, handling fees and prepaid freight, sales taxes, duties and other governmental charges (including value-added tax); each as determined in accordance with the accounting standards generally employed MOTIVA with respect to sales of Products in the Territory.

**"Price List"** has the meaning given in Section 3.3.

**"Products"** means the MOTIVA IMPLANTS® range of breast implants and related products, conceived, developed and marketed by MOTIVA listed in Schedule 5;

**"Quality Agreement"** has the meaning given in Section 3.7;

**"Schedule"** means a schedule to this Agreement;

**"Territory"** means the geographic territory set forth in Schedule 2 to the Agreement;

**"Trademarks"** means the trademarks, trade names and logos generally used for the promotion of the Products as communicated from time to time to the Agent by MOTIVA;

**"Warehouse"** has the meaning given in Section 3.7.

## SCHEDULE 2

**TERRITORY:** Germany.

**Warehouse:** [\_\_\_\_\_]

### SCHEDULE 3

#### MINIMUMS:

	<b>Calendar Year Duration</b>	<b>Q1 Minimum</b>	<b>Q2 Minimum</b>	<b>Q3 Minimum</b>	<b>Q4 Minimum</b>	<b>Calendar Year Minimum</b>
Calendar Year 1	10/01/2018 - 12/31/2018	N/A	N/A	N/A	€ 660,000.00	€ 660,000.00
Calendar Year 2	01/01/2019 - 12/31/2019	€ 660,000.00	€ 726,000.00	€ 658,000.00	€ 726,000.00	€ 2,770,000.00
Calendar Year 3	01/01/2020 - 12/31/2020	€ 726,000.00	€ 798,600.00	€ 723,800.00	€ 798,600.00	€ 3,047,000.00
Calendar Year 4	01/01/2021 - 12/31/2021	€ 798,600.00	€ 878,460.00	€ 796,180.00	€ 878,460.00	€ 3,351,700.00
Calendar Year 5	01/01/2022 - 12/31/2022	€ 878,460.00	€ 966,306.00	€ 875,798.00	€ 966,306.00	€ 3,686,870.00
Calendar Year 6	01/01/2023 - 09/30/2023	€ 966,306.00	€ 1,062,936.60	€ 963,377.80		€ 2,992,620,40

**SCHEDULE 4**  
**COMMISSIONS**

**COMMISSIONS:**

- For SilkSurface Plus and SilkSurface PlusQ Products: 20% of the Net Sales for such Product when the Average Selling Price for such Product is equal to or greater than the then-current Average Selling Price Minimum for such Product, and (b) 15% of the Net Sales for such Products when the Average Selling Price for such Product is less than the then-current Average Selling Price Minimum for such Product. As of the Closing Date, the Average Selling Price Minimum for SilkSurface Plus and SilkSurface PlusQ Products is equal to €270.00 per unit.
- For Ergonomix, ErgonomixQ, Ergonomix Oval and Anatomical TrueFixation Products: 25% of the Net Sales for such Product when the Average Selling Price for such Product is equal to or greater than the then-current Average Selling Price Minimum for such Product, and (b) 20% of the Net Sales for such Products when the Average Selling Price for such Product is less than the then-current Average Selling Price Minimum for such Product. As of the Closing Date, the Average Selling Price Minimum: (a) for Ergonomix and ErgonomixQ Products is equal to €380.00 per unit, and (b) for Ergonomix Oval and Anatomical TrueFixation is equal to €475.00 per unit.
- For all other Products: 20% of the Net Sales for such Products.  
Agent may not solicit offers for any SilkSurface PLUS, SilkSurface PLUS Q, Ergonomix, ErgonomixQ, Ergonomix Oval, or Anatomical TrueFixation Product below the then-current Average Selling Price Minimum for such Product without the prior written consent of MOTIVA.

**EXPENDITURES:**

**Marketing:** All marketing and advertising costs related to MOTIVA products incurred by Agent will be borne solely by Agent and not by MOTIVA unless agreed to in writing by MOTIVA prior to the incurrence of any of such costs; however MOTIVA shall be free to market its products to any customer other than Qualified Clients without any restraints or requirements for prior approval by Agent.

## SCHEDULE 5

### Price List

Prices are per unit.

MOTIVA Implants Ergonomix Round with Qid: EUR 590  
MOTIVA Implants Ergonomix Round without Qid: EUR 590  
MOTIVA Implants Round with Qid: EUR 450  
MOTIVA Implants Round without Qid: EUR 350  
MOTIVA Implants Ergonomix Oval with Qid: EUR 650  
MOTIVA Implants AnatomicalTrueFixation: EUR 650

## SCHEDULE 6

### MOTIVA's Terms and Conditions

#### CONSIGNMENT AGREEMENT

This **CONSIGNMENT AGREEMENT** (this "**Agreement**") is dated \_\_\_\_\_ (the "**Effective Date**")

#### BETWEEN

**EUROPEAN DISTRIBUTION CENTER MOTIVA BVBA**, a corporation organized under the laws of Belgium, having its head office located in Nijverheidsstraat 96, 2160 Wommelgem, VAT BE 0881.512.541 RPR/RPM Antwerpen, ("**MOTIVA**"); and \_\_\_\_\_, a corporation organized under the laws of Denmark, having its registered office at \_\_\_\_\_, VAT number \_\_\_\_\_ ("**CONSIGNEE**") (individually, a "**Party**", collectively as the "**Parties**").

**NOW, THEREFORE**, both Parties agree to the following terms:

#### 19. SCOPE OF Agreement.

19.1 Consignment. MOTIVA hereby grants to the CONSIGNEE the right to display and sell the products listed on Exhibit A hereto ("**The Products**"), according to this Agreement together with the Terms and Conditions set forth on Exhibit B hereto ("**Terms and Conditions**"). MOTIVA may amend these Terms and Conditions from time to time upon written notice to the CONSIGNEE. In the event of a conflict between this Agreement and the Terms and Conditions, this Agreement shall control.

19.2 Products. The Products are defined in the Exhibit A. MOTIVA and the CONSIGNEE may agree in writing to add or remove one or more Products from Exhibit A. Furthermore, MOTIVA shall have the right to remove any Products from Exhibit A at its sole discretion to wholly or partially discontinue the sale of such Products either in CONSIGNEE's territory or by method of consignment.

#### 20. Consignment stock; DELIVERY.

20.1 Consignment Stock. CONSIGNEE shall use commercially reasonable efforts to ensure that it always maintains sufficient consignment stock in accordance with section 3.2. to accommodate the expected demand for Products, but, at a maximum, two (2) months of the total yearly expected purchases of the Products (the "**Consignment Stock**").

20.2 Delivery. The requested delivery date for the Products shall be set forth by CONSIGNEE in the applicable Consignment Order. MOTIVA will provide an estimated delivery date at the time of the acceptance of the Consignment Order. MOTIVA will use reasonable efforts to meet the delivery dates as quoted but will not be liable for any failure to meet such dates. Partial shipments may be made notify the CONSIGNEE in advance of any partial shipment.

20.3 Risk of Loss. The Products shall be deemed accepted by the CONSIGNEE upon shipment by MOTIVA. All shipments shall be delivered CONSIGNEE'S facilities at which time risk of loss and damage shall pass to CONSIGNEE and such Products shall be deemed delivered hereunder. Following such time, CONSIGNEE shall be liable to MOTIVA for the total or partial loss of the Products, as well as for any damage thereto or any deterioration thereof, even when such loss, damage or deterioration is a result of fortuitous cause or force majeure. CONSIGNEE will immediately notify MOTIVA in writing of any such loss, damage or deterioration. The value of the inventory is at landed cost at the customer facilities.

20.4 Inspection on Arrival. CONSIGNEE will inspect the Products upon arrival in its Facilities for compliance with the specifications and any shortfalls in quantity or visible defects. Unless CONSIGNEE informs MOTIVA within ten (10) calendar days from the date of receipt of the Products of non-conformities. shortfalls in

quantity or visible defects, such Products will be deemed accepted by CONSIGNEE, however, that in the event of latent defects of the Products not capable of reasonably being detected in a visual inspection, CONSIGNEE shall notify MOTIVA promptly in writing upon detection thereof.

For all found defective product during the inspection, CONSIGNEE shall notify MOTIVA and provide evidence with a sample of the allegedly nonconforming Product.

## 21. STORAGE; HANDLING.

21.1 Storage. The Consignment Stock shall only be kept and stored at in a secure location by CONSIGNEE, at its own risk and expense and free of charge to MOTIVA. CONSIGNEE shall determine such location; provided that such location is clean and dry, and complies with the provisions of this Agreement, the Terms and Conditions, industry standards, applicable law and regulations and with any reasonable instructions issued by MOTIVA. Further, such location shall be a closed-off area that can and will be security-locked (and on which a prominent sign will indicate that this is MOTIVA's consignment area), so that the Consignment Stock can be properly checked and identified. CONSIGNEE will inform MOTIVA of the exact location within the facilities where the Products are stored and of any change of location.

21.2 Location. CONSIGNEE shall notify in writing any and all necessary third parties that the Products in the Consignment Stock are the sole property of MOTIVA and shall take all such other steps as may be necessary to protect MOTIVA's title thereto, including, without limitation, by

affixing a durable and irremovable label or notice indicating that the Products in the Consignment Stock are the sole property of MOTIVA. CONSIGNEE shall take all steps as may be necessary to fully protect MOTIVA's title to the Products in the Consignment Stock and prevent that anyone acquires any interest, privilege, or lien on such Products. In case any third party tries to take possession of the Products or claims property rights or any other rights over the Products, CONSIGNEE will immediately inform such third party that the Products are not the property of CONSIGNEE but the property of MOTIVA, and CONSIGNEE will immediately inform MOTIVA of such actions or claims by third parties. CONSIGNEE acknowledges and agrees that CONSIGNEE will not have the right to use the Products, the right to retain the Products or the right to keep the Products as guarantee unless and until CONSIGNEE has purchased the Products pursuant to Article 4 of this Agreement. CONSIGNEE will refrain from pledging or creating any kind of lien or other encumbrance over the Consignment Stock. If CONSIGNEE mortgages or otherwise encumbers the Facilities, it shall expressly exclude the Consignment Stock from the scope of such mortgage or encumbrance.

21.3 Insurance. During all the term of this agreement, the CONSIGNEE shall maintain insurance coverage sufficient, at its own cost, to compensate MOTIVA for the fair market value of the Consignment Stock against damage, theft, fire and other risks of loss, damage or deterioration of the Products therein held by it from time to time. Upon request by MOTIVA, CONSIGNEE shall furnish MOTIVA with a certificate of insurance demonstrating such insurance coverage in amounts satisfactory to MOTIVA (and in any case not less than the full invoice value of the Products in consignment from time to time). If CONSIGNEE makes a claim to its insurers in respect of the Products, then it shall immediately provide MOTIVA with the full details of such claim as well as with any information reasonably requested by MOTIVA in respect of such claim. Any monies received by CONSIGNEE from any insurer in satisfaction of any claim in relation to the Products shall be received by CONSIGNEE in trust for, and shall be immediately remitted to, MOTIVA on receipt by CONSIGNEE.

21.4 Title. MOTIVA will continue to own and have all legal and beneficial right, title to and interest in any Product in the Consignment Stock until CONSIGNEE has purchased the Products pursuant to Article 4 of this Agreement. Products that have not yet been withdrawn from the Consignment Stock (slow moving products) could be returned to MOTIVA upon MOTIVA's request. Further, MOTIVA may at any time enter the Facilities where the Consignment Stock is located and remove all or any part of the Consignment Stock during the CONSIGNEE regular business hours.

21.5 Use of Products. All Products in the Consignment Stock shall be withdrawn exclusively by CONSIGNEE for use exclusively at CONSIGNEE' facilities and not by or on behalf of any other person, nor for use in any other location. CONSIGNEE shall withdraw Products from the Consignment Stock in conformity with the FEFO principle (first expired - first out).

22. PURCHASING; Invoices; AUDITS.

22.1 Purchase. At the moment of CONSIGNEE's withdrawal of one or more Products from the Consignment Stock, such Product(s) will be deemed to have been purchased by CONSIGNEE from MOTIVA. The prices of the products are listed in Exhibit A. For purposes of this Article 4, the terms "**withdrawal**" and "**withdrawn**" from the Consignment Stock shall include the physical removal of the Products from the Consignment Stock location established in accordance with Section 3.2, as well as all Products lost, damaged or deteriorated at any time.

22.2 Invoicing and Payment. MOTIVA will invoice CONSIGNEE for the quantity of Products withdrawn from the Consignment Stock, such invoices shall be paid by CONSIGNEE in accordance in accordance with Section 3.2 of the Terms and Conditions. Without prejudice to the relevant provisions of the Terms and Conditions, it is expressly understood and agreed that CONSIGNEE shall be solely responsible for all taxes, sales, personal property and inventory taxes or other taxes and all import duties with respect to any Products delivered to CONSIGNEE.

22.3 Reporting and Audits. During the term of this Agreement and thereafter until the withdrawal of all Consignment Stock, once per calendar quarter, the

CONSIGNEE shall inform MOTIVA, in the reporting format as prescribed by MOTIVA, of:

the quantities of Products in the Consignment Stock withdrawn from the Consignment Stock within the meaning of Article 4 of this Agreement since the date of the previous report;

the quantities of Products received since the date of the previous report; and

the quantities of Products in the Consignment Stock on hand at the time of the report.

CONSIGNEE will grant MOTIVA access to its facilities and provide reasonable assistance to carry out an audit of the Consignment Stock periodically and at least quarterly, including granting access to the records concerning the Products in the Consignment Stock and any relevant records that allow MOTIVA to check compliance by CONSIGNEE with the provisions of this Agreement. In the event such audit reveals any shortfall in payments due to MOTIVA, MOTIVA will be entitled to invoice these payments immediately (but dated retroactively to the applicable withdrawal date(s)).

## 23. TERM; TERMINATION.

23.1 Term. This Agreement is effective as of the Effective Date and shall continue until terminated in accordance with this Agreement.

23.2 Termination by Either Party. Either Party may terminate this Agreement at any time by giving sixty (60) days' prior written notice to the other Party. In addition, a Party may terminate this Agreement, effective immediately, and without prior intervention of the court, at any time, in the event that:

- i. the other party becomes unable to pay its debts in the ordinary course of business or enters into liquidation or becomes bankrupt or is adjudged insolvent or is placed in the control of a receiver or trustee, whether compulsorily or voluntarily.

- ii. the other Party breaches any of its obligations under this Agreement (including the Terms and Conditions), and in relation to which, such Party fails to take effective remedial action within thirty (30) calendar days (reduced to ten (10) calendar days in case of failure to pay amounts to MOTIVA when due) as from receipt of notice specifying the breach and requiring its remedy.

### 23.3 Consequences of Termination.

- i. MOTIVA shall be entitled to issue an invoice for the full quantity of Products not found in the Consignment inventory within the then-current Consignment Stock. Notwithstanding the foregoing, in the event of termination of this Agreement MOTIVA shall be entitled to enter the Facilities to check the quantity of the Consignment Stock and to remove all or part of the same and shall be granted access for this purpose and receive all reasonable assistance from CONSIGNEE or any liquidator or receiver or administrative receiver in doing so.
- ii. Expiration or termination of this Agreement for any reason shall not release either Party hereto from any liability that at the time of such termination or expiration has already accrued to the other Party. Further, the following provisions of this Agreement shall survive any expiration or termination of this Agreement and remain in effect: Sections 3.6, 4.3, and 5.3 and Articles 6 (solely for eight (8) years) and 7.
  - (i)

### 24. CONFIDENTIALITY.

CONSIGNEE shall keep all information, pricing, terms and conditions related to this Agreement, including any attached Purchase Orders; all data, trade secrets, financial data, pricing, business plans or any other information received from MOTIVA (collectively, "Confidential Information") in strict confidence and shall not disclose to any third party or entity. Notwithstanding the above, CONSIGNEE may disclose Confidential Information: (i) to the personnel within its organization and its legal and accounting advisors that require the Confidential Information in connection with the party's rights and obligations under this Agreement, provided that the disclosing party requires any such recipient to use the information solely for these purposes and to keep it strictly confidential; (ii) as required by law, provided that the disclosing party provides reasonable prior notice to the other party to enable such other party to attempt to prevent or limit the disclosure and the disclosing party assists the other party upon request in seeking relief from or limiting the disclosure; and (iii) with the prior written consent of MOTIVA.

### 25. MISCELLANEOUS.

7.1 Notices. Any notice or other communication shall be in writing and must be delivered or sent to the recipient (a) in person through a reputable courier service, within five (5) calendar days from dispatch, to the address indicated at the end of this agreement.

Any Party may change the address to which notices are to be delivered by giving the other Party written notice in the manner set forth herein.

7.2 Independent Contractors. CONSIGNEE is solely liable for its operating costs and bears alone the risks inherent in its business. CONSIGNEE's relationship with MOTIVA is that of an independent contractor and none of the provisions of this Agreement can be interpreted to mean that the Parties have agreed to form a company, an association or a joint venture or so as to render CONSIGNEE an employee of MOTIVA. CONSIGNEE is solely responsible for all its own expenses and employees. CONSIGNEE shall have no power or authority to conclude any contract or make any representation, promise, statement or guarantee on behalf of MOTIVA or to bind MOTIVA in any other way.

7.3 Entire Agreement. This Agreement, together with the Exhibits and the Terms and Conditions referenced herein, represents the complete and final understanding of the Parties hereto and replaces and supersedes all previously existing agreements and arrangements between the Parties.

7.4 Amendments. Except as otherwise expressly provided herein, this Agreement may not be changed orally or by mere correspondence. All modifications to this Agreement shall be made in a writing signed by both Parties.

7.5 Severability. If any provision of this Agreement is declared void, null or unenforceable by a court or tribunal of competent jurisdiction, the other provisions hereof not so declared shall remain in full force and effect.

7.6 Waivers. No waiver by any party will be effective unless given in writing. No waiver of a right will be construed as a waiver of any other right whether or not of a similar nature.

7.7 Assignment and Subcontracting. CONSIGNEE cannot delegate assign

7.7 Assignment and Subcontracting. MOTIVA cannot delegate, assign, subcontract or transfer any of its rights or obligations under this Agreement, either in whole or in part, to any third party or any affiliate(s) without the prior written consent of MOTIVA. MOTIVA can delegate, assign, subcontract or transfer any of its rights or obligations under this Agreement, either in whole or in part, to any third party or any affiliate(s) without CONSIGNEE's consent upon notice to CONSIGNEE. In case of assignment by MOTIVA in accordance with the foregoing, such assignment shall release MOTIVA from all its obligations under this Agreement as from the date of notice of assignment to CONSIGNEE.

7.8 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original and all of which taken together constitute one and the same Agreement. Counterpart signature pages delivered via facsimile or e-mail in PDF or similar electronic format shall have the same binding effect as originals.

7.9 Governing Law and Arbitration. All issues, questions and disputes concerning the validity, interpretation, enforcement, performance or termination of this Agreement, and all matters of extra-contractual and/or tort liability, if any, arising out of or in relation with this Agreement, shall be governed by the laws of Belgium, excluding the UN Convention on Contracts for the International Sale of Goods (1980) and without giving effect to any other choice-of-law or conflict-of-laws rules or provisions (Belgian, foreign or international) that would cause the laws of any jurisdiction other than Belgium to be applicable.

This Agreement has been executed as of the Effective Date by authorized representatives of the Parties.

*The remainder of this page is intentionally left blank. The signature page follows.*

**FOR AND ON BEHALF OF MOTIVA**

[date]  
[signature]

Notices:

ESTABLISHMENT LABS  
Coyol Free Zone, B15  
Alajuela, Costa Rica  
E-MAIL [legal@establishmentlabs.com](mailto:legal@establishmentlabs.com)

**FOR AND ON BEHALF OF THE CONSIGNEE**

[name]  
[title]  
[date]  
[signature]

Notices:

[name]  
[address]  
[email] \_\_\_\_\_

**EXHIBIT A**  
**THE PRODUCTS**

Product Name	Price

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EXHIBIT B

**European Distribution Center Motiva BVBA  
TERMS AND CONDITIONS**

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## 1. GENERAL

1.1 Applicability of this Terms and Conditions. The offer and sale of the Products described in the applicable quote or similar document provided by Motiva (the “Quote”), is conditioned upon the acceptance by the Purchaser of the terms and conditions set forth in this Agreement.

1.2 Purchase Orders; Acceptance. Purchaser agrees to purchase the quantity of the Products specified in purchase orders issued by Purchaser in connection with a Quote and that are accepted by Seller as set forth below (each, a “Purchase Order”). Purchase Orders may be submitted via Motiva’s Webstore application or via email to Seller. Seller may accept or reject purchase orders in its sole discretion. A purchase order will only be deemed accepted by Seller (and thereby become a Purchase Order) if Seller delivers a signed purchase order or other written confirmation to Purchaser within fifteen (15) calendar days after receipt of such Purchase Order. All terms on any Purchase Order other than the description and quantity of Products ordered will not apply to the transactions under this Agreement and are hereby rejected.

1.3 Authorized Use. Purchaser shall not modify or reverse engineer or permit or encourage others to modify or reverse engineer, the Products. Purchaser shall not use the Products for the benefit of third parties that are not affiliated with or patients of Purchaser.

## 2. DELIVERY, RISK OF LOSS, PURCHASER ACCEPTANCE

2.1 Delivery Date. The requested delivery date for the Products shall be set forth by Purchaser in the applicable Purchase Order. Seller will provide an estimated delivery date to Purchaser at the time of Seller’s acceptance of the Purchase Order. Seller will use reasonable efforts to meet the delivery dates as quoted but will not be liable for any failure to meet such dates. Partial shipments may be made and invoiced and Seller will use reasonable efforts to notify Purchaser in advance of any partial shipment.

2.2 Acceptance; Risk of Loss; Title. Shipment shall occur, and title to the Products and all risk of loss, damage to or destruction of the Products shall pass to Purchaser, at the delivery point. The Products shall be deemed accepted by the Purchaser upon shipment by Seller.

## 3. PRICING, TERMS OF PAYMENT, TAXES

3.1 Pricing. The prices payable for the Products are listed in the quote. Except as otherwise specified herein, (i) fees are quoted by Seller and payable by Purchaser in Euros; (ii) accepted Purchase Orders and payment obligations are non-cancelable and fees paid are non-refundable; and (iii) Seller reserves the right to revise prices quoted as specified in the quote.

3.2 Invoicing and Payment. Unless otherwise agreed to in writing by Seller and Purchaser, invoices will be generated by Seller and mailed electronically to Purchaser upon Seller’s acceptance of each Purchase Order in accordance with Section 1.2. Unless otherwise stated in an accepted Purchase Order, invoiced charges are payable thirty (30) days after the invoice date. Purchaser is responsible for timely payment of all invoiced charges and for maintaining complete and accurate billing and contact information on file with Seller.

3.3 Returns. Motiva shall provide pre-paid ground shipping labels for returns of all unused implant products. Any implants not returned within 15 calendar days of the surgery date will be assumed used, and an invoice will be issued automatically. No credits will be issued for implant products returned later than 15 calendar days. Returns will only be accepted if all package seals and product integrity are intact upon return and inspection.

3.4 Disputes. Seller must receive written notice of any disputed charges from Purchaser within fifteen (15) calendar days after the invoice date or Purchaser shall be deemed to have waived its right to dispute charges. Notwithstanding any dispute, Purchaser shall pay any undisputed amount of the invoice on or before the due date. The dispute notice shall set forth in reasonable detail the information concerning the disputed charges. Seller and Purchaser shall use best efforts to promptly resolve any disputed charges. Purchaser may not set off any amounts due hereunder.

3.5 Late Payment. Any fees not paid when due may accrue interest at the rate of 18% per annum, compounded monthly, or the maximum rate permitted by law, whichever is lower. In addition, in the event that Purchaser fails to make any payment to Seller when due, then Seller will have no obligation to continue performance under this or any agreement with Purchaser.

4. **LEGAL COMPLIANCE.** Purchaser will comply with all applicable laws and regulations with respect to the Products, including all export laws.

## 5. WARRANTY

5.1 Limited Warranty. Seller provides a limited warranty with the Products solely to and for the benefit of the end-user (the “User”), as set forth and in accordance with the terms and conditions of the limited warranty to be provided in connection with the shipment of the Product (the “Limited Warranty”).

6. **LIMITATIONS OF LIABILITY.** THE TOTAL LIABILITY OF SELLER, INCLUDING ITS SUBCONTRACTORS OR SUPPLIERS, ON ANY AND ALL CLAIMS, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR PATENT INFRINGEMENT) OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE PERFORMANCE OR NONPERFORMANCE OF ANY AGREEMENT RESULTING HERE FROM OR FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT OR USE OF ANY PRODUCT RELATING THERETO SHALL NOT EXCEED THE PRICE ALLOCABLE TO THE PURCHASE ORDER WHICH DIRECTLY GIVES RISE TO THE CLAIM. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR PATENT INFRINGEMENT) OR OTHERWISE, SHALL SELLER, OR ITS SUBCONTRACTORS OR SUPPLIERS, BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUES, LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT OR SOFTWARE OR DATA, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES, SERVICES OR REPLACEMENT POWER OR DOWNTIME COSTS FOR SUCH DAMAGES, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF

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SUCH DAMAGES OR CLAIM. PURCHASER ACKNOWLEDGES THAT THESE LIMITATIONS OF LIABILITY REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT SELLER WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

**7. FORCE MAJEURE.** Seller will use reasonable efforts to complete shipment of Products in accordance with the requested delivery dates, but will not be liable for any loss or damage for delay in delivery, inability to implant or any other failure due to causes beyond its reasonable control including acts of government or compliance with any governmental rules or regulations, acts of God or the public, war, civil commotion, blockades, embargos, calamities, floods, fires, earthquakes, explosions, storms, strikes, lockouts, labor disputes, or unavailability of labor, raw materials, power or supplies.

**8. CONFIDENTIAL INFORMATION.** Purchaser shall hold the following information in strict confidence and not disclose the same to any other person or entity except as provided herein: all information, pricing and terms relating to or contained in this Agreement, including any attached Purchase Orders; all data, trade secrets, financial data, pricing, business plans or any other information received from Seller in connection with this Agreement (collectively, "**Confidential Information**"). Notwithstanding the above, Purchaser may disclose Confidential Information: (i) to the personnel within its organization and its legal and accounting advisors that require the Confidential Information in connection with the party's rights and obligations under this Agreement, provided that the disclosing party requires any such recipient to use the information solely for these purposes and to keep it strictly confidential; (ii) as required by law, provided that the disclosing party provides reasonable prior notice to the other party to enable such other party to attempt to prevent or limit the disclosure and the disclosing party assists the other party upon request in seeking relief from or limiting the disclosure; and (iii) with the prior written consent of Seller.

**9. GENERAL.** Seller retains all right, title and interest in and to all intellectual property rights in and covering the Products. Purchaser may not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any rights or obligations under this Agreement without the prior written consent of Seller. Any purported assignment, transfer or delegation by Purchaser shall be null and void. Seller shall have the right to assign this agreement and/or delegate any or all its obligations hereunder without Purchaser's consent and without prior notice to Purchaser. All matters arising out of or relating to this terms and conditions shall be governed by the laws of Belgium, without giving effect to any other choice-of-law rules of provisions.



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## **Establishment Labs Announces Transition to a Direct Sales Force in Germany and Spain During its 4th Annual World Symposium on Ergonomic Implants**

**NEW YORK, October 4, 2018 (GLOBE NEWSWIRE)** – Establishment Labs Holdings, Inc. (NASDAQ: ESTA), a medical technology company focused on improving patient safety and aesthetic outcomes, initially in the breast aesthetics and reconstruction market, announced today at the Annual World Symposium on Ergonomic Implants that it has entered into definitive asset purchase agreements with its German and Spanish exclusive distributors to acquire certain assets.

Under the terms of the agreements, Menke Med GmbH and Motiva Matrix Spain SL, respectively the exclusive distributors of Motiva in Germany and Spain, will transfer distribution arrangements to Establishment Labs. Establishment Labs will acquire all product inventory and customer relationships, effective November 26, 2018 in Germany and October 29, 2018 in Spain.

“These agreements are an important step forward for Establishment Labs as we invest in our sales strategy to meet the growing demand in Europe,” said Juan José Chacón-Quirós, Founder and Chief Executive Officer of Establishment Labs. “Our distributor partners have given us strong starts in Germany and Spain, and by acquiring these assets we will be able to capitalize on our early success to transition to a direct sales force that should allow us to continue to expand our market position.”

The company currently sells products in more than 60 countries and employs a direct sales force strategy in a number of these markets, including Brazil, United Kingdom, France, Sweden, Denmark and Norway.

Coinciding with this asset purchase announcement, Establishment Labs is hosting its fourth annual World Symposium on Ergonomic Implants. During this event, Establishment Labs gathers leading physicians, scientists and industry experts from across the globe to discuss techniques and state-of-the-art technologies that are shaping the future of breast aesthetic and reconstructive surgeries.

“We value the opportunity to bring together the world’s leading plastic surgeons and scientists to learn and share best practices on the latest innovations in breast surgery,” added Chacón-Quirós. “Ergonomics is transforming the field of breast surgery, and it is an honor to be at the forefront of this transformation and have the opportunity to drive meaningful industry collaboration.”

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## **About Establishment Labs**

Establishment Labs Holdings, Inc. (NASDAQ: ESTA) is a global medical technology company focused on improving patient safety and aesthetic outcomes, initially in the breast aesthetics and reconstruction market, by designing, developing, manufacturing and marketing an innovative portfolio of silicone gel-filled breast implants, branded as Motiva Implants®, the centerpiece of the MotivaImagine® platform. Motiva Implants® are produced at two FDA compliant state-of-the-art facilities in Costa Rica and currently sold in over 60 countries through exclusive distributors or the Company's direct salesforce. In March 2018, Establishment Labs received approval for an investigational device exemption (IDE) from the FDA and initiated the Motiva Implant® clinical trial in the United States in April 2018. In addition to Motiva Implants®, Establishment Labs' product and technologies portfolio includes the Divina® 3D Simulation System, Puregraft and MotivaImage® Centers.

## **Forward – Looking Statements**

*This press release contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). You can find many (but not all) of these statements by looking for words, such as "approximates," "believes," "expects," "anticipates," "estimates," "intends," "plans," "would," "may" or other similar expressions in this press release, and includes statements related to the expected growth in sales of Motiva Implants, product development and the PMA clinical trial currently being conducted to obtain approval of Motiva Implants in the U.S. Any statements that refer to projections of our future financial or operating performance, anticipated trends in our business, our goals, strategies, focus and plans, and other characterizations of future events or circumstances, including statements expressing general optimism about future operating results, are forward-looking statements. We claim the protection of the safe harbor contained in the Private Securities Litigation Reform Act of 1995. We caution investors that any forward-looking statements presented in this report, or that we may make orally or in writing from time to time, are expressions of our beliefs and expectations based on currently available information at the time such statements are made. Such statements are based on assumptions, and the actual outcome will be affected by known and unknown risks, trends, uncertainties and factors that are beyond our control. Although we believe that our assumptions are reasonable, they are not guarantees of future performance, and some will inevitably prove to be incorrect. As a result, our actual future results may differ from our expectations, and those differences may be material. Factors that could cause or contribute to these differences include, among others, those risks and uncertainties discussed in the Company's Form S-1, Form 10-Q and other filings made by the Company with the Securities and Exchange Commission. The risks included in those documents are not exhaustive, and additional factors could adversely affect our business and financial performance. We operate in a very competitive and rapidly changing environment. New risk factors emerge from time to time, and it is not possible for us to predict all such risk factors, nor can we assess the impact of all such risk factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. We are not undertaking any obligation to update any forward-looking statements. Accordingly, investors should use caution in relying on past forward-looking statements, which are based on known results and trends at the time they are made, to anticipate future results or trends.*

## **Investor Relations and Media Contact**

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