

on the public record for a period of 30 days for the receipt and consideration of public comments. Now, in further conformity with the procedure described in Rule 2.34, the Commission issues its Complaint, makes the following jurisdictional findings, and issues the following Decision and Order (“Order”):

1. Respondent BSC is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its executive offices and principal place of business located at 300 Boston Scientific Way, Marlborough, Massachusetts 01752.
2. The Commission has jurisdiction over the subject matter of this proceeding and over Respondent, and the proceeding is in the public interest.

ORDER

I. Definitions

IT IS ORDERED that, as used in the Orders, the following definitions shall apply:

- A. “BSC” or “Respondent” means Boston Scientific Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Boston Scientific Corporation, including Bravo Bidco Limited, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “Acquirer” means: (i) Varian or (ii) any other Person approved by the Commission to acquire the Divestiture Product Assets pursuant to this Order.
- D. “Acquisition” means the proposed acquisition by Respondent of all the voting securities of BTG plc as described in the Recommended Cash Offer for BTG plc by Bravo Bidco Limited, A New Incorporated Entity Indirectly Wholly-Owned by Boston Scientific Corporation, dated November 20, 2018.
- E. “Acquisition Date” means the date the Acquisition is consummated.
- F. “Agency(ies)” means any government regulatory authority or authorities in the world responsible for granting approvals(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution, or sale of a Divestiture Product. The term “Agency” includes the United States Food and Drug Administration (“FDA”).
- G. “Bland Beads” means embolic beads or microspheres that are used in transarterial embolization procedures.

- H. “Bland Beads Business” means the Business conducted by BSC related to Bland Beads that was acquired from CeloNova Biosciences, Inc. and its affiliates on December 30, 2015, and as conducted and maintained by BSC since being acquired, including without limitation all improvements and activities relating thereto as of the Divestiture Date.
- I. “BSC Manufacturing Equipment” means all fixtures, equipment (including technical equipment and computers), and machinery that is being used or has been used at any time by BSC to manufacture, sterilize, package, or sell Bland Beads and DEBs, and as listed in Non-Public Appendix C.
- J. “Business” means the research, Development, manufacture, commercialization, distribution, marketing, importation, exportation, advertisement, or sale of a product.
- K. “Business Information” means all information, books and records, documents, files, correspondence, manuals, computer printouts, databases, and other documents, including all hard copies and electronic records wherever stored, including without limitation, client and customer lists, referral sources, research and development reports, production reports, service and warranty records, maintenance logs, equipment logs, operating guides and manuals, documents relating to policies and procedures, documents relating to Development and quality control, documents relating to disruptions in supply and inputs, financial and accounting records and documents, creative materials, advertising materials, promotional materials, studies, reports, notices, orders, inquiries, correspondence, financial statements, financial plans and forecasts, operating plans, price lists, cost information, supplier and vendor contracts, marketing analyses, customer lists, customer contracts, employee lists and contracts, salaries and benefits information, physician lists and contracts, supplier lists and contracts, and, subject to legal requirements, copies of all personnel files. For clarity, Business Information includes Respondent’s rights and control over information and material provided to any other Person.
- L. “Confidential Business Information” means any non-public Business Information owned by, or in the possession or control of, Respondent, that is related to the Divestiture Product Assets. The Term “Confidential Business Information” excludes the following:
1. Information relating to Respondent’s general business strategies or practices that does not discuss with particularity the Divestiture Products;
 2. Information exclusively related to any Excluded Assets;
 3. Information that is protected by the attorney work product, attorney-client, joint defense, or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition laws.
- M. “Contract” means any agreement, contract, lease, license agreement, consensual obligation, promise or undertaking (whether written or oral and whether express or implied), including pricing letters, consignment, tender, and group purchasing contracts, whether or not legally binding with third parties.
- N. “DEBs” means drug-eluting beads or drug-eluting microspheres that are used in transarterial chemoembolization procedures.

- O. “DEBs Business” means the Business conducted by BSC related to DEBs that was acquired from CeloNova Biosciences, Inc. and its affiliates on December 30, 2015, and as conducted and maintained by BSC since being acquired, including without limitation all improvements and activities relating thereto as of the Divestiture Date.
- P. “Development” or “Develop” means all research and development activities, including the following: design; process development; manufacturing scale-up; development-stage manufacturing; quality assurance/quality control development; statistical analysis and report writing; mechanical properties testing; performance testing; safety testing; conducting Device Studies for the purpose of obtaining or achieving any and all approvals, licenses, registrations, or authorizations from any Agency necessary for the manufacture, use, storage, import, export, transport, promotion, marketing, and sale of a Divestiture Product (including any government price or reimbursement approvals).
- Q. “Device Study(ies)” means a controlled study of the quality, safety, efficacy, precision, or accuracy of a Divestiture Product, and includes such studies as are designed to support expanded labeling or to satisfy the requirements of an Agency in connection with any Product Approval.
- R. “Direct Cost” means cost not to exceed the cost of labor, material, travel, and other expenditures to the extent the costs are directly incurred to provide Transition Services. “Direct Cost” to the Acquirer for its use of any of Respondent’s employees’ labor shall not exceed the then-current wage rate for each employee, including benefits.
- S. “Divestiture Agreement(s)” means the following:
1. Asset Purchase Agreement by and among Boston Scientific Corporation and Varian Medical Systems, Inc., dated as of July 1, 2019; and all amendments, exhibits, attachments, ancillary agreements (including the Transition Services Agreement, Transition Manufacturing Agreement, Assignment and Assumption Agreement, Bill of Sale, and Intellectual Property Assignment Agreement), and schedules thereto, attached to the Order as Non-Public Appendix A; and
 2. Any other agreement between Respondent and the Acquirer (or between a Divestiture Trustee and the Acquirer) that has been approved by the Commission to accomplish the requirements of this Order.
- T. “Divestiture Date” means the date on which Respondent (or a Divestiture Trustee appointed pursuant to Paragraph X of this Order) closes on the divestiture of the Divestiture Product Assets as required by Paragraph II of this Order.
- U. “Divestiture Product(s)” means the Bland Beads and DEBs manufactured, Developed, marketed, sold, owned, or controlled by Respondent as part of the Bland Beads Business and DEBs Business, respectively.
- V. “Divestiture Product Assets” means all legal or equitable rights, title, and interests in and to all tangible and intangible assets, wherever located, relating to Respondent’s Bland Beads Business and DEBs Business (including assets removed and not replaced after the announcement of the Acquisition), including:

1. Business Information;
2. Product Intellectual Property;
3. Product Approvals;
4. Device Studies;
5. At the Acquirer's option and after conclusion of the Transition Manufacturing Agreement attached to the Order as Non-Public Appendix A, the BSC Manufacturing Equipment;
6. Marketing Materials;
7. The content related exclusively to a Divestiture Product that is displayed on any website that is not dedicated exclusively to the Divestiture Product;
8. At the option of the Acquirer, all Contracts; *provided, however*, that Replacement Contracts may be substituted for Shared Contracts;
9. For each Divestiture Product:
 - a. a list of all customers for each Divestiture Product and a listing of the net sales (in either units or dollars) of that Divestiture Product to such customers during the one (1) year period immediately prior to the Divestiture Date, stated on either an annual, quarterly, or monthly basis, including the name of each customer's employee(s) who is or has been responsible for the purchase of the product on behalf of the customer and that employee's business contact information;
 - b. a list for each Divestiture Product containing the following: (i) the net price (*i.e.*, the final price per unit charged by Respondent net of all customer-level discounts, rebates, or promotions) as of the Divestiture Date; (ii) the net price charged by Respondent at the end of each quarter during the one (1) year period immediately prior to the Divestiture Date; and (iii) any supply outages during the one (1) year period immediately prior to the Divestiture Date; and
 - c. a list of all backorders as of the Divestiture Date.
10. at the option of the Acquirer, all Bland Beads or DEBs inventory in existence as of the Divestiture Date;
11. the quantity and delivery terms in all unfilled customer purchase orders for each Divestiture Product as of the Divestiture Date, to be provided to the Acquirer not later than 5 days after the Divestiture Date; and
12. all of Respondent's books, records, and files directly related to the foregoing; *provided, however*, that "Divestiture Product Assets" shall not include: (i) documents relating to Respondent's general business strategies or practices relating to the conduct of Respondent's Business outside of the Divestiture

Products, where such documents do not discuss with particularity a Divestiture Product; and (ii) information that is exclusively related to the Excluded Assets;

provided further, however, that in cases in which documents or other materials included in the Divestiture Product Assets contain information: (i) that relates both to a Divestiture Product and to Excluded Assets or Businesses of Respondent and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Divestiture Product; or (ii) for which Respondent has a legal obligation to retain the original copies, Respondent shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Acquirer, Respondent shall provide the Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this provision is to ensure that Respondent provides the Acquirer with the above-described information without requiring Respondent completely to divest information that, in content, also relates to Excluded Assets.

- W. “Divestiture Product Business(es)” means the Business related to the Divestiture Product(s).
- X. “Divestiture Product Core Employees” means:
1. Respondent’s employees listed on Non-Public Appendix D; and
 2. Respondent’s employees who dedicated at least 25 percent of his/her time supporting, supervising, or working on behalf of the Divestiture Product Businesses, at any time one (1) year prior to the Divestiture Date.
- Y. “Divestiture Trustee” means the Person appointed by the Commission pursuant to Paragraph X of this Order.
- Z. “Employee Information” means, for each Divestiture Product Core Employee, a profile prepared by Respondent summarizing the employment history of each employee and including, as requested by the Acquirer and to the extent permitted by applicable law:
1. Name, job title or position, date of hire, and effective service date;
 2. Specific description of the employee’s responsibilities;
 3. The base salary or current wages;
 4. Most recent bonus paid, aggregate annual compensation for Respondent’s last fiscal year, and current target or guaranteed bonus, if any;
 5. Employment status (i.e., active or on leave or disability; full-time or part-time);
 6. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and

7. At the Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.
- AA. "Excluded Assets" means any product(s) and Businesses other than a Divestiture Product and Divestiture Product Business, including those assets identified in Non-Public Appendix B to this Order.
- BB. "Marketing Materials" means all marketing materials used specifically in the marketing or sale of each Divestiture Product as of the Divestiture Date, including all quality system documentation used for customer presentations, advertising materials, training materials, product data, mailing lists, sales materials (*e.g.*, sales reports, sales funnel or process information, and sales data), marketing information (*e.g.*, competitor information, research data, market intelligence reports, statistical programs (if any) used for marketing and sales research), customer information (including customer net purchase information to be provided on the basis of either dollars and/or units for each month, quarter or year), sales forecasting models, educational materials, and advertising and display materials, speaker lists, promotional and marketing materials to be provided to distributors and/or end-use customer (*e.g.* specification sheets, application/use instructions and technical specifications), Website content and advertising and display materials, artwork for the production of packaging components, television masters, and other similar materials related to each Divestiture Product.
- CC. "Monitor" means any monitor appointed pursuant to Paragraph IX of this Decision and Order or Paragraph V of the Order to Maintain Assets.
- DD. "Order Date" means the date on which the final Decision and Order in this matter is issued by the Commission.
- EE. "Order to Maintain Assets" means the Order to Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- FF. "Orders" means this Decision and Order and the related Order to Maintain Assets.
- GG. "Patent(s)" means all patents and patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention, and statutory invention registrations, in each case filed, or in existence, on or before the Divestiture Date (except where this Order specifies a different time), and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.
- HH. "Patent Application '303'" means U.S. Patent Application No. 16/033,303, including all provisionals, continuations, reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.

- II. “Person” means any individual, partnership, joint venture, firm, corporation, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association or organization, or other business entity, and any subsidiaries, divisions, groups, or affiliates thereof.
- JJ. “Product Approval(s)” means any approvals, registrations, permits, licenses, consents, authorizations, and other approvals, and pending applications and requests therefor, required by applicable Agencies related to the research, Development, manufacture, distribution, finishing, packaging, marketing, sale, storage, or transport of a Divestiture Product worldwide.
- KK. “Product Intellectual Property” means intellectual property of any kind, including Patents, patent applications, mask works, trademarks, service marks, copyrights, Trade Dress, commercial names, internet websites, internet domain names, inventions, discoveries, process technology, engineering technology, product technology, product rights, Trade Secrets, and proprietary information.
- LL. “Replacement Contracts” means (i) Contracts entered into by the Acquirer with a Third Party, or a portion of a Shared Contract assigned to the Acquirer by the Respondent, in advance of the Divestiture Date that replace Shared Contracts with a separate Contract for the Divestiture Product Businesses; or (ii) arrangements between Respondent and Acquirer that provide the Divestiture Product Businesses with no less favorable terms, services, and economic benefits as it would have had under the Shared Contracts.
- MM. “Shared Contracts” means Contracts that relate to both the Divestiture Product Businesses and other businesses retained by Respondents.
- NN. “Supply Cost” means the actual cost of materials and direct labor net of overhead and any intracompany transfer profits plus the actual cost of shipping and transportation where these costs are incurred by Respondent.
- OO. “Technical Support” means all capabilities to provide customer-specific technical expertise, modification of products, customizing of products, testing of products, product performance advice, equipment assessment, on-site product assistance, monitoring of inventory levels and product orders/deliveries, and general product issue-solving and trouble-shooting.
- PP. “Third Party(ies)” means any non-governmental Person other than Respondent or the Acquirer of particular assets or rights pursuant to this Order.
- QQ. “Trade Dress” means the current trade dress of a Divestiture Product, including packaging and the lettering of the product trade name or brand name.
- RR. “Trade Secret(s)” means information, including know-how, techniques, data, inventions, practices, formulations, patterns, compilations, programs, devices, methods, techniques, or process, that: derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, others who can obtain economic value from its disclosure or use (e.g., competitors); and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

- SS. “Transitional Product Supply” means Respondent’s provision of supply of Bland Beads, DEBs, and/or any component or input thereof (including supplies of raw material), to the Acquirer.
- TT. “Transition Services” means Technical Support, services, assistance, cooperation, training and access to personnel regarding the transfer and operation of the Bland Beads Business and the DEBs Business, including, but not limited to, accounting and finance, human resources (employee benefits, payroll, etc.), information technology and systems, logistics (purchasing, distribution, warehousing, supply chain management, etc.), manufacturing (technology, technology transfer, operating permits and licenses, regulatory compliance, quality control, manufacturing processes and troubleshooting, etc.), research and Development, and sales and marketing (including customer service, supply chain management, and customer transfer logistics, etc.).
- UU. “Varian” means Varian Medical Systems, Inc., with its principal executive offices located at 3100 Hansen Way, Palo Alto, CA 94304, and any subsidiaries of Varian Medical Systems, Inc., including Scion Medical Technologies.

II. Divestiture

IT IS FURTHER ORDERED that:

- A. No later than 10 days after the Acquisition Date, Respondent shall divest the Divestiture Product Assets, absolutely and in good faith, to the Acquirer pursuant to, and in accordance with, the Divestiture Agreements.

Provided, however, that Respondent may receive an exclusive (except as to Acquirer and its affiliates, suppliers, manufacturers, contractors, distributors, consultants, or representatives for the purpose of providing products and services in connection with the Acquirer’s business, or otherwise acting on behalf of and at the direction of Acquirer or its affiliates (and not for any such supplier’s, manufacturer’s, contractor’s, distributor’s, consultant’s or representative’s, as applicable, independent benefit)), royalty-free, fully paid-up license back from the Acquirer for Patent Application ‘303, divested pursuant to Paragraph II.A. of this Order, for fields of use that do not include DEBs, Bland Beads, or any drug-eluting or bland embolizing bead products, including, but not limited to, the field of use of DEBs, Bland Beads or bland embolizing bead products acquired by BSC or its affiliates pursuant to the Acquisition.

- B. If Respondent has divested the Divestiture Product Assets to the Acquirer prior to the Order Date, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that:
1. The Acquirer is not acceptable as the acquirer of the Divestiture Product Assets, then Respondent shall immediately rescind the Divestiture Agreements, and shall divest the Divestiture Product Assets no later than 180 days from the date this

Order is issued, absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or

2. The manner in which the divestiture of the Divestiture Product Assets to the Acquirer was accomplished is not acceptable, the Commission may direct Respondent, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Divestiture Product Assets as the Commission may determine are necessary to satisfy the requirements of this Order.
- C. Respondent shall deliver the Business Information and Product Intellectual Property related to the Divestiture Products to the Acquirer as soon as practicable after the Divestiture Date in a manner that ensures their completeness, accuracy, and usefulness, and meets the reasonable requirements of the Acquirer.
 - D. Prior to the Divestiture Date, Respondent shall provide the Acquirer with the opportunity to review all Contracts included in the Divestiture Product Assets for the purposes of the Acquirer's determination whether to assume such Contracts.
 - E. Prior to the Divestiture Date, Respondent shall secure all consents, assignments, and waivers from all Persons that are necessary for the divestiture of the Divestiture Product Assets; *provided, however*, that Respondent may satisfy this requirement by certifying that the Acquirer has executed appropriate agreements directly with each of the relevant Persons.
 - F. No later than 15 days after the Divestiture Date, Respondent shall send written notification to each Third Party that purchases the Divestiture Products as part of a Shared Contract, and who does not already have a Replacement Contract with the Acquirer, that Pursuant to an FTC Order, Respondents have divested the Divestiture Products to the Acquirer, and provide the following information to that Third Party:
 1. The Acquirer's contact information to discuss the on-going supply of the Divestiture Products;
 2. The Monitor's contact information;
 3. There will be no changes to the supply of the Divestiture Products and the terms of the current Contract between Respondent and the Third Party will continue until a Replacement Contract is entered into with the Acquirer; and
 4. That under the FTC Order, the Divestiture Products will continue to be manufactured by the Respondent during a transition period.

Provided, however, that any such notification to Third Parties must be reviewed and approved by the Monitor before being provided to any Third Party. *Provided, further*, that Respondent must provide a list of all Third Parties that received such notification in the Respondent's first Compliance Report.

III. Divestiture Agreements

IT IS FURTHER ORDERED that:

- A. The Divestiture Agreements shall be deemed incorporated into this Order and made a part hereof, and any failure by Respondent to comply with the terms of the Divestiture Agreements shall constitute a violation of this Order; *provided, however*, that the Divestiture Agreements shall not limit, or be construed to limit, the terms of this Order. To the extent any provision in the Divestiture Agreements varies from or conflicts with any provision in this Order such that Respondent cannot fully comply with both, Respondent shall comply with this Order.
- B. Respondent shall not modify, replace, or extend the terms of the Divestiture Agreements after the Commission issues this Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5). Notwithstanding any term of the Divestiture Agreement(s), any modification or amendment of any Divestiture Agreement made without the prior approval of the Commission, or as otherwise provided in Rule 2.41(f)(5), shall constitute a failure to comply with this Order.

IV. Transition Assistance

IT IS FURTHER ORDERED that:

- A. Until Respondent has transferred all Business Information included in the Divestiture Product Assets, Respondent shall provide the Acquirer with access to records and information (wherever located and however stored) that Respondent has not yet transferred to the Acquirer, and to employees who possess the records and information.
- B. Respondent shall provide the Acquirer with Transition Services sufficient (i) to efficiently transfer the Divestiture Product Assets to the Acquirer and (ii) to operate the Divestiture Product Assets and the Divestiture Product Businesses in a manner equivalent in all material respects to the manner in which BSC operated the Divestiture Product Assets and the Divestiture Product Businesses prior to the Acquisition. Respondent shall provide Transition Services:
 - 1. As set forth in a Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the Divestiture Date);
 - 2. Including all assistance necessary to prosecute Patent Application '303, including

such assistance necessary after Patent Application '303 is approved;

3. At the price agreed upon in a Divestiture Agreement, or if no agreed upon price is set forth or part of a Divestiture Agreement, at Direct Cost;
 4. For a period sufficient to meet the requirements of this paragraph, including and until Acquirer purchases and installs equipment that replicates the BSC Manufacturing Equipment such that it produces, sterilizes, and packages Bland Beads and DEBs in a manner that fulfills the Acquirer's worldwide demand, and until Acquirer obtains all relevant Product Approvals worldwide necessary to manufacture and sell commercial quantities of the finished Divestiture Products independently of Respondent, which shall be 30 months after the Divestiture Date. *Provided however*, that upon the Acquirer's request, Respondent must file with the Commission a written request to extend the time period; and
 5. Respondent shall designate employees of Respondent knowledgeable about the Technical Support to advise and provide such services to the Acquirer, including employees knowledgeable about Patent Application '303.
- C. Respondent shall provide Transitional Product Supply pursuant to a Divestiture Agreement that has been approved by the Commission, including the following:
1. Make representations and warranties to the Acquirer that the Divestiture Products supplied by Respondent pursuant to the Transition Manufacturing Agreement meet the relevant Product Approvals;
 2. For Divestiture Products to be marketed or sold worldwide, agree to indemnify, defend, and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses, or losses alleged to result from the failure of the Divestiture Products supplied to the Acquirer pursuant to a Divestiture Agreement by Respondent to meet the relevant Product Approvals. This obligation may be made contingent upon the Acquirer giving Respondent prompt written notice of such claim and cooperating fully in the defense of such claim;
Provided, however, that Respondent may reserve the right to control the defense of any such claim, including the right to settle the claim, so long as such settlement is consistent with Respondent's responsibilities to supply the Divestiture Products in the manner required by this Order;
Provided further, however, that this obligation shall not require Respondent to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by Respondent to the Acquirer in an agreement to supply Divestiture Products;
 3. During the term of the Transition Manufacturing Agreement, upon written request of the Acquirer, make available to the Acquirer all records that relate directly to the manufacture of the Divestiture Products that are generated or created after the Divestiture Date;

4. For each Divestiture Product for which Respondent purchases the component(s) or material(s) from a Third Party, provide the Acquirer with the actual price paid by Respondent for components and materials used to manufacture that Divestiture Product; and
5. During the term of the Transition Manufacturing Agreement, take all actions as are reasonably necessary to ensure an uninterrupted supply of the Divestiture Products; and
6. During the term of the Transition Manufacturing Agreement, upon written request and with reasonable notice, Respondent BSC shall allow employees of the Acquirer access to the:
 - a. BSC facilities and machines that manufacture, sterilize, or package Divestiture Products, and
 - b. areas where finished Divestiture Products are stored and distributed.

Provided, however, Respondent may restrict access to the machines sterilizing or packaging the Divestiture Products during such time, if any, as those machines are being used solely to sterilize or package other products.

- D. During the term of any agreement with the Acquirer to provide Transition Services or Transitional Product Supply, and pursuant to such agreements and this Order, Respondent shall:
1. take all actions as are reasonably necessary to ensure that the provision of Transition Services and Transitional Product Supply to the Acquirer are uninterrupted;
 2. not limit damages (such as indirect, special, and consequential damages) that the Acquirer would be entitled to receive in the event of Respondent's breach of such agreements;
 3. not be entitled to terminate such agreement due to the Acquirer filing a petition in bankruptcy, or entering into an agreement with its creditors, or applying for or consenting to appointment of a receiver or trustee, or making an assignment for the benefit of its creditors, or becoming subject to involuntary proceedings under any bankruptcy or insolvency law;
 4. not cease providing Transition Services or Transitional Product Supply due to breach by the Acquirer of a Divestiture Agreement;
 5. permit the Acquirer to terminate such agreements at any time upon commercially reasonable notice and without cost or penalty; and
 6. upon the Acquirer's request, file with the Commission a written request to extend the time period for any such agreement.

V. Employees

IT IS FURTHER ORDERED that:

- A. Respondent shall cooperate with and assist the Acquirer of the Divestiture Product Assets to identify, evaluate independently, offer employment to, and hire the Divestiture Product Core Employees, with such cooperation and assistance including at least the following:
1. Not later than 5 business days after a request from the Acquirer, Respondent shall, to the extent permitted by applicable law:
 - a. Provide to the Acquirer a list of all Divestiture Product Core Employees and provide Employee Information for each; and
 - b. Allow the Acquirer a reasonable opportunity to interview any Divestiture Product Core Employees.
 2. Within 10 days after a request from the Acquirer, Respondent shall provide an opportunity for the Acquirer to:
 - a. Meet personally, and outside the presence or hearing of any employee or agent of Respondent, with any of the Divestiture Product Core Employees; and
 - b. Make offers of employment to any of the Divestiture Product Employees.
 3. Respondent shall not directly or indirectly interfere with the Acquirer's offer of employment to any one or more of the Divestiture Product Core Employees, not offer any incentive to Divestiture Product Core Employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any Divestiture Product Core Employees by the Acquirer;
 4. Respondent shall remove any impediments within the control of Respondent that may deter any Divestiture Product Core Employees from accepting employment with the Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondent that may affect the ability or incentive of those individuals to be employed by the Acquirer, and shall not make any counteroffer to any Divestiture Product Core Employees who receive an offer of employment from the Acquirer; *provided, however,* that nothing in this Order shall be construed to require Respondent to terminate the employment of any employee or prevent Respondent from continuing the employment of any employee;
 5. Respondent shall provide Divestiture Product Core Employees with sufficient financial incentives to continue in their positions, and as may be necessary to facilitate the employment of such Divestiture Product Core Employees by the Acquirer. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondent, including regularly scheduled

or merit raises and bonuses, regularly scheduled vesting of pension benefits, and reasonable additional incentives as may be necessary.

- B. For a period of 2 years after the Divestiture Date, not: (i) directly or indirectly solicit or otherwise attempt to induce any employee of the Acquirer with any amount of responsibility related to a Divestiture Product (“Divestiture Product Employee”) to terminate his or her employment relationship with the Acquirer; or (ii) hire any Divestiture Product Employee;

provided, however, Respondent may hire any former Divestiture Product Employee whose employment has been terminated by the Acquirer or who independently applies for employment with Respondent, as long as that employee was not solicited in violation of the non-solicitation requirements contained herein;

provided further, however, that Respondent may do the following: (i) advertise for employees in newspapers, trade publications, or other media not targeted specifically at Divestiture Product Employees; or (ii) hire a Divestiture Product Employee who contacts Respondent on his or her own initiative without any direct or indirect solicitation or encouragement from Respondent.

VI. Asset Maintenance

IT IS FURTHER ORDERED that:

- A. From the date Respondent signs the Agreement Containing Consent Orders until such time as Respondent divests the Divestiture Product Assets to Acquirer, Respondent shall:
1. Operate the Divestiture Product Assets in the regular and ordinary course of business and in accordance with past practices and in a manner consistent with applicable laws and regulation;
 2. Prevent the destruction, removal, wasting, deterioration, or impairment of the Divestiture Product Assets;
 3. Not sell, transfer, encumber, or otherwise impair the Divestiture Product Assets (other than in a manner prescribed in this Order), nor take any action that lessens the full economic viability, marketability, or competitiveness of the Divestiture Product Businesses; and
 4. Minimize any risk of loss of competitive potential for the Divestiture Product Businesses.
- B. From the date Respondent signs the Agreement Containing Consent Orders until such time as Acquirer purchases and installs equipment that replicates the BSC Manufacturing Equipment such that it produces, sterilizes, and packages the Divestiture Products in a

manner that fulfills the Acquirer's worldwide demand, and until Acquirer obtains all relevant Product Approvals worldwide, Respondent:

1. Shall take actions as are necessary to prevent the destruction, removal, wasting, deterioration, or impairment of the BSC Manufacturing Equipment related to the Divestiture Product Businesses;
 2. Shall take actions as are necessary to operate the BSC Manufacturing Equipment in the regular and ordinary course of business and in accordance with past practices and in a manner consistent with applicable laws and regulation; and
 3. Shall not take any actions to reduce the availability of the services of the current officers, employees, and agents of Respondent BSC required to operate and maintain the BSC Manufacturing Equipment, except for terminations for cause.
- C. The purposes of this Paragraph VI is to: (1) preserve the Divestiture Product Assets as a viable, competitive, and ongoing business until the assets are transferred to Acquirer and the BSC Manufacturing Equipment is either transferred or replicated by the Acquirer; (2) prevent interim harm to competition pending the relevant divestitures and other relief; and (3) help remedy any anticompetitive effects of the Acquisition as alleged in the Commission's Complaint.

VII. Confidential Business Information

IT IS FURTHER ORDERED that:

- A. Respondent shall:
1. Transfer and deliver to the Acquirer, at Respondent's expense, all Confidential Business Information (a) in good faith; (b) in a timely manner, i.e., as soon as practicable, avoiding any delays in transmission of the respective information; and (c) in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;
 2. Pending complete delivery of all such Confidential Business Information to the Acquirer, provide the Acquirer and the Monitor with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Business of each Divestiture Product that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order;

3. Not use, directly or indirectly, any such Confidential Business Information other than as necessary to comply with the following: (a) the requirements of the Orders; (b) Respondent's obligations to the Acquirer under the terms of any Divestiture Agreements; or (c) applicable law;
4. Not disclose or convey any Confidential Business Information, directly or indirectly, to any Person except: (a) the Acquirer; (b) other Persons specifically authorized by the Acquirer or staff of the Commission to receive such information; (c) the Commission; or (d) the Monitor; and except to the extent necessary to comply with applicable law;
5. Not provide, disclose, or otherwise make available, directly or indirectly, any Confidential Business Information to the employees associated with the Business that is being retained by Respondent, other than those employees directly involved in providing Transitional Product Supply or Transition Services to the Acquirer or who are engaged in the transfer and delivery of Business Information to the Acquirer and only for the purposes of providing such products, assistance, and information to the Acquirer. *Provided further*, that all such employees with Confidential Business Information relating to the Divestiture Product Assets shall sign a non-disclosure agreement;
6. Institute procedures and requirements to ensure that the employees providing Transitional Product Supply and Transition Services or who are engaged in the transfer and delivery of Business Information:
 - a. Do not provide, disclose, or otherwise make available, directly or indirectly, any Confidential Business information in contravention of the Orders; and
 - b. Do not solicit, access, or use any Confidential Business Information that they are prohibited from receiving for any reason or purpose;
7. Upon the request of the Acquirer, destroy any copies of Confidential Business Information (other than electronic copies of Confidential Business Information created as a result of automatic back-up procedures) within 30 days of such request *except* as otherwise agreed to between Respondent and the Acquirer or to the extent necessary to comply with applicable law; and
8. Take all action necessary and appropriate to prevent access to, and the disclosure or use of, the Confidential Business Information by or to any Person(s) not authorized to access, receive, and/or use such information pursuant to the terms of the Orders, including:

- a. Establishing and maintaining appropriate firewalls, confidentiality protections, internal practices, training, communications, protocols, and system and network controls and restrictions; and
 - b. Ensuring by other reasonable and appropriate means that the Confidential Business Information is not shared with Respondent's personnel engaged in the provision of the same or substantially the same type of Business as the Divestiture Products.
- B. Not later than 30 days after the Divestiture Date, Respondent shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information related to the Divestiture Products by Respondent's personnel to all of its employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information. Respondent shall give the above-described notification by e-mail with return receipt requested or similar transmission, and keep a file of those receipts for one (1) year after the Divestiture Date. Respondent shall provide a copy of the notification to the Acquirer. Respondent shall maintain complete records of all such notifications at Respondent's registered office within the United States of America and shall provide an officer's certification to the Commission affirming the implementation of, and compliance with, the acknowledgement program. Respondent shall provide the Acquirer with copies of all certifications, notifications, and reminders sent to Respondent's personnel.

VIII. Additional Obligations

IT IS FURTHER ORDERED that:

- A. Respondent shall not join, file, prosecute, or maintain any suit, in law or equity, against the Acquirer, its licensees, or its customers under any Patent that was pending or issued on or before the Acquisition Date if such suit would directly limit or impair the Acquirer's freedom to manufacture, distribute, market, sell, or offer for sale any Divestiture Product anywhere in the world.
- B. Upon reasonable written notice and request from the Acquirer to Respondent, Respondent shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of Respondent to assist the Acquirer to defend against, respond to, or otherwise participate in any litigation brought by a Person related to the Product Intellectual Property related to any of the Divestiture Product(s), if such litigation would have the potential to interfere with the Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the world of the Divestiture Product(s) for the purposes of marketing, sale, or offer for sale of such Divestiture Product(s); or (ii) the import, export, use, supply, distribution, sale, or offer for sale of the Divestiture Product(s).

- C. For any patent infringement suit filed prior to the Divestiture Date in which Respondent is alleged to have infringed a Patent of a Third Party or any potential patent infringement suit from a Third Party that Respondent has prepared or is preparing to defend against as of the Divestiture Date, and where such a suit would have the potential directly to limit or interfere with the Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the world of the Divestiture Product(s) acquired for the purposes of marketing, sale, or offer for sale of such Divestiture Product(s); or (ii) the import, export, use, supply, distribution, sale, or offer for sale of the Divestiture Product(s), Respondent shall:
1. Cooperate with the Acquirer and provide any and all necessary technical and legal assistance, documentation, and witnesses from Respondent in connection with obtaining resolution of any pending patent litigation related to that Divestiture Product;
 2. Waive conflicts of interest, if any, to allow Respondent's outside legal counsel to represent the Acquirer in any ongoing patent litigation related to that Divestiture Product; and
 3. Permit the transfer to the Acquirer of all of the litigation files and any related attorney work product in the possession of Respondent's outside counsel related to that Divestiture Product.

IX. Monitor

IT IS FURTHER ORDERED that:

- A. Richard Shermer shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondent and attached as Appendix E ("Monitor Agreement") and Non-Public Appendix F ("Monitor Compensation"). The Monitor is appointed to assure that Respondent expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order.
- B. No later than one day after the Acquisition Date, Respondent shall transfer to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities, pursuant to the Order and consistent with the purposes of the Order.
- C. Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall (i) monitor Respondent's compliance with the obligations set forth in this Order and (ii) act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of Respondent or of the Commission;

2. Respondent shall (i) ensure that the Monitor has full and complete access to all Respondent's personnel, books, records, documents, and facilities relating to compliance with this Order or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his duties pursuant to this Order;
 3. The Monitor (i) shall serve at the expense of Respondent, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
 4. Respondent shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct; and
 5. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- D. The Monitor shall report in writing to the Commission (i) every 30 days after the Acquisition Date for a period of one year, (ii) every 90 days thereafter until Respondent has completed all obligations required by Paragraph II. of this Order (including a final report when Respondent has completed all such obligations), and (iii) at any other time as requested by the staff of the Commission, concerning Respondent's compliance with this Order.
- E. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint

a substitute Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld:

1. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within 5 days after notice by the staff of the Commission to Respondent of the identity of any substitute Monitor, then Respondent shall be deemed to have consented to the selection of the proposed substitute Monitor; and
 2. Respondent shall, no later than 5 days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities pursuant to this Order on the same terms and conditions as provided in this Paragraph IX.
- G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order

X. Divestiture Trustee

IT IS FURTHER ORDERED that:

- A. If Respondent has not fully complied with the divestiture and other obligations as required by Paragraphs II through VIII of this Order, the Commission may appoint a Divestiture Trustee to divest the Divestiture Product Assets and perform Respondent's other obligations in a manner that satisfies the requirements of this Order.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.
- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If

Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

- D. Within 10 days after appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or other action required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to take such other action as may be required to divest the Divestiture Product Assets.
 - 2. The Divestiture Trustee shall have 12 months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the 12 month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court.
 - 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph X in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to the Acquirer as required by this Order; *provided, however,* if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission; *provided further, however,* that Respondent shall select such entity within 5 days of receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a Commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph X.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph X.E.5. of this Order.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.

8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every 60 days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- F. The Commission may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
 - G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph X.
 - H. The Divestiture Trustee appointed pursuant to this Order may be the same Person appointed as the Monitor pursuant to the relevant provisions of this Order.
 - I. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or actions required by this Order.

XI. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondent shall:
 1. Notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date no later than 5 days after the Acquisition Date; and
 2. Submit the complete Divestiture Agreements to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the Divestiture Date.
- B. Respondent shall file verified written reports ("compliance reports") in accordance with the following:

1. Respondent shall submit interim compliance reports 30 days after the Order is issued, and every 90 days thereafter until Respondent has fully complied with Paragraph IV.C.
2. Respondent shall submit annual compliance reports one year after the date this Order is issued, and annually for the next 9 years on the anniversary of that date; and additional compliance reports as the Commission or its staff may request;
3. Each compliance report shall set forth in detail the manner and form in which Respondent intends to comply, is complying, and has complied with this Order. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondent is complying with the Order. Conclusory statements that Respondent has complied with its obligations under the Order are insufficient. Respondent shall include in its reports, among other information or documentation that may be necessary to demonstrate compliance:
 - a. A full description of the substance and timing of all measures Respondent has implemented or plans to implement to ensure that it has complied or will comply with each paragraph of the Order; and
 - b. A detailed description of all substantive contacts, negotiations, actions, or recommendations related to:
 - i. The transfer and delivery of all Divestiture Product Assets to the Acquirer;
 - ii. The provision of Transition Services to the Acquirer; and
 - iii. The provision of Transitional Product Supply of the Divestiture Products to the Acquirer.
4. Respondent shall retain all material written communications with each party identified in the compliance report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondent's obligations under the Order and provide copies of these documents to Commission staff upon request.
5. Respondent shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondent shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at

bccompliance@ftc.gov. In addition, Respondent shall provide a copy of each compliance report to the Monitor.

XII. Change in Respondent

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least 30 days prior to:

- A. Any proposed dissolution of Boston Scientific Corporation;
- B. Any proposed acquisition, merger or consolidation of Boston Scientific Corporation; or
- C. Any other change in Respondent, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

XIII. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days' notice to Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of Respondent related to compliance with this Order, which copying services shall be provided by Respondent at the request of the authorized representative of the Commission and at the expense of Respondent; and
- B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

XIV. Purpose

IT IS FURTHER ORDERED that the purpose of the divestiture of the Divestiture Product Assets and the related obligations imposed on Respondent by the Order is:

- A. To ensure that the Acquirer can operate the Divestiture Product Businesses in a manner equivalent in all material aspects to the manner in which Respondent BSC operated the Divestiture Product Businesses prior to the Acquisition;

- B. To create a viable and effective competitor that is independent of Respondent in the Divestiture Product Businesses; and
- C. To remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

XV. Term

IT IS FURTHER ORDERED that this Order shall terminate September 18, 2029.

By the Commission.

April J. Tabor
Acting Secretary

SEAL

ISSUED: September 18, 2019

**NON-PUBLIC APPENDIX A
DIVESTITURE AGREEMENTS**

[Redacted From the Public Record Version But Incorporated by Reference]

**NON-PUBLIC APPENDIX B
EXCLUDED ASSETS**

[Redacted From the Public Record Version But Incorporated by Reference]

**NON-PUBLIC APPENDIX C
BSC MANUFACTURING EQUIPMENT**

[Redacted From the Public Record Version But Incorporated by Reference]

**NON-PUBLIC APPENDIX D
DIVESTITURE PRODUCT CORE EMPLOYEES**

[Redacted From the Public Record Version But Incorporated by Reference]

APPENDIX E MONITOR AGREEMENT

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MONITOR AGREEMENT

This Monitor Agreement (“Monitor Agreement”) entered into on July 8, 2019 between R. Shermer and Company (the “Monitor”), and Boston Scientific Corporation (“BSC” or “Respondent”) provides as follows:

WHEREAS the United States Federal Trade Commission (the “FTC”) has accepted or will shortly accept for public comment an Agreement Containing Consent Orders, containing a proposed Decision and Order and Order to Maintain Assets (collectively, the “Orders”), which, among other things, (i) would require the divestiture of the Divestiture Product Assets relating to BSC’s Bland Beads Business and DEBs Business, as defined in the Decision and Order, to Varian Medical Systems, Inc. and (ii) contemplates the appointment of a Monitor to monitor Respondent’s compliance with its obligations under the Orders;

WHEREAS the FTC may appoint Richard Shermer, President, R. Shermer and Company as Monitor pursuant to the Orders;

WHEREAS the Orders further provide that Respondent shall execute an agreement, subject to the prior approval of the FTC, that confers all the rights and powers necessary to permit the Monitor to monitor Respondent’s compliance with the terms of the Orders; and

WHEREAS the parties to this Monitor Agreement intend to be legally bound, subject only to the FTC’s approval of this Agreement.

NOW, THEREFORE, the parties agree as follows:

All capitalized terms used in the Agreement and not specifically defined herein shall have the respective definitions given to them in the Orders.

- A. Monitor’s Responsibilities. The Monitor shall be responsible for monitoring Respondent’s compliance with its obligations as set forth in the Orders and the Remedial Agreements (“Monitor’s Responsibilities”). In so doing, the Monitor shall act in consultation with the Commission or its staff, and **shall serve as an independent third party and not as an employee or agent of the Respondent or the Commission.** The Monitor shall have all rights, duties, powers and authorities required by the Orders, and nothing in the Monitor Agreement shall change, amend, modify or otherwise limit those rights, duties, powers, and authorities.
- B. Access to Relevant Information and Facilities. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to the personnel, books and records of Respondent kept in the ordinary course of business, facilities, technical information related to Respondent’s compliance with its obligations under the Orders and any Remedial Agreements, and such other relevant information as the Monitor may reasonably request.

Respondent shall cooperate with any reasonable request of the Monitor. The Monitor shall give Respondent reasonable notice of any request for such access or such information and shall attempt to schedule any access or requests for information in such a

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manner as will not unreasonably interfere with Respondent's operations. At the request of the Monitor, Respondent shall promptly arrange meetings and discussions, including tours of relevant facilities, at reasonable times and locations between the Monitor and employees of Respondent who have knowledge relevant to the proper discharge of the Monitor's responsibilities under the Orders.

- C. Compliance Reports. Respondent shall provide the Monitor with copies of all compliance reports filed with the FTC in a timely manner, but in any event, no later than five (5) days after the date on which Respondent files such report with the FTC.
- D. Additional Personnel. Respondent agrees that, to the extent authorized by the Orders, the Monitor shall have the authority to employ, at the expense of the Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's Responsibilities.
- E. Monitor's Obligations. The Monitor shall:
 - 1. Carry out the Monitor's Responsibilities, including submission of periodic reports to the FTC or its staff concerning performance by Respondent of its obligations under the Orders, and any additional written reports as may be requested by the FTC or its staff;
 - 2. Maintain the confidentiality of all non-public information, including Confidential Business Information, provided to the Monitor by Respondent, the FTC-approved Acquirer(s), any supplier or customer of the Respondent, the FTC, or FTC staff in connection with the Monitor's Responsibilities ("Confidential Information"). Such Confidential Information shall be used only for the purpose of discharging the Monitor's obligations pursuant to this Monitor Agreement and not for any other purposes, including, without limitation, any other business, scientific, technological, or personal purpose. The Monitor may disclose Confidential Information only to:
 - a. Persons employed by or working with the Monitor under this Monitor Agreement and who have executed a confidentiality agreement consistent with the provisions of this Agreement;
 - b. Persons employed by Respondent that are entitled to have access to such Confidential Information;
 - c. FTC staff that are working on this matter; or
 - d. Persons employed by the FTC-approved Acquirer that are entitled to have access to such Confidential Information.
 - 3. Maintain a record and inform the FTC or its staff of all persons to whom Confidential Information related to this Monitor Agreement has been disclosed;
 - 4. Require any consultants, accountants, attorneys, and any other representatives and/or assistants retained by the Monitor to assist in carrying out the Monitor's Responsibilities to execute a confidentiality agreement that requires such third parties to treat Confidential Information with the same standards of care and obligations of confidentiality to which the Monitor must adhere under this Monitor

Agreement;

5. Maintain the confidentiality for a period of five (5) years after the termination of this Monitor Agreement, of all other aspects of the performance of the Monitor's Responsibilities and not disclose Confidential Information relating thereto except as required by law. In the event the Monitor is requested pursuant to subpoena or other legal process to produce any documents or to provide testimony relating to this matter in judicial or administrative proceedings to which the Monitor is not a party, Respondent shall reimburse the Monitor at standard billing rates for all professional time and expenses, including reasonable attorneys' fees, incurred in preparing for and responding to requests for documents and providing testimony;
6. Upon termination of the Monitor's duties under this Monitor Agreement, the Monitor shall consult with FTC staff regarding disposition of any written and electronic materials (including materials that Respondent provided to the Monitor) in the possession or control of the Monitor that relate to the Monitor's duties, and the Monitor shall dispose of such materials, which may include sending such materials to the FTC staff, as directed by the FTC staff. In response to a request by Respondent to return or destroy materials that Respondent provided to the Monitor, the Monitor shall inform FTC staff of such request and, if the FTC staff does not object, shall comply with the Respondent's request. Nothing herein shall abrogate the Monitor's duty of confidentiality, which includes an obligation not to disclose any non-public information obtained while acting as a Monitor.

For the purpose of this Monitor Agreement, information shall not be considered confidential or proprietary to the extent it is or becomes part of the public domain (other than as a result of any action by the Monitor or by any employee, agent, affiliate or consultant of the Monitor), or to the extent that the recipient of such information can demonstrate that such information was already known to the recipient at the time of receipt from a source other than the Monitor, the Respondent, or any director, officer, employee, agent, consultant or affiliate of the Monitor or the Respondent, when such source was not known to the recipient after the due inquiry to be restricted from making such disclosure to such recipient.

- F. Monitor Payment. Respondent shall pay Monitor in accordance with the fee schedule attached as Confidential Appendix A for all reasonable and documented time spent in the performance of the Monitor's duties under this Agreement and the Orders. In addition, Respondent shall pay: (i) all documented out-of-pocket expenses reasonably incurred by Monitor in the performance of its duties under the Orders; and (ii) all documented reasonable fees of, and disbursements reasonably incurred by, any consultants, accountants, attorneys, and other representatives and assistants appointed by Monitor pursuant to Paragraph D. Monitor shall provide Respondent with monthly invoices for time and expenses that include details by timekeeper, time, and activity, and an explanation of all matters for which Monitor submits an invoice to Respondent. At its own expense, Respondent may retain an independent auditor to verify such invoices. Respondent shall pay such invoices within thirty (30) days of receipt. Monitor and Respondent shall submit any disputes about invoices to the Commission staff for assistance in resolving such disputes. Monitor shall have full and direct responsibility for compliance with all applicable laws, regulations, and requirements pertaining to work

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permits, income and social security taxes, unemployment insurance, worker's compensation, disability insurance, and the like.

- G. Access to Workspace and Office Equipment. To the extent available, Respondent will provide Monitor with temporary workspace and access to office equipment owned or used by Respondent at sites Monitor is required to visit in order to fulfill its obligations under this Agreement. Monitor agrees to comply with all of Respondent's safety and security regulations, instructions and procedures while at Respondent's sites.
- H. Monitor's Indemnification and Limitation of Liability. Respondent shall indemnify and hold harmless R. Shermer and Company against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's Responsibilities, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from gross negligence, willful misconduct, or bad faith by the Monitor. In addition, the parties shall not be liable to each other for any consequential, incidental, special or punitive damages, nor shall the Monitor be liable for direct compensatory damages in excess of the fees actually received by the Monitor for the performance of services hereunder.
- I. Conflicts of Interest. If the Monitor becomes aware during the term of this Monitor Agreement that the Monitor has or may have a conflict of interest that may affect or could have the appearance of affecting performance by the Monitor of any of the Monitor's Responsibilities, the Monitor shall immediately inform the Respondent and FTC staff of any such conflict. The Monitor may accept other retentions during the term of this Monitor Agreement and thereafter, provided that, during the pendency of this Monitor Agreement, the Monitor agrees not to accept any other engagement which would result in the Monitor working in a position directly adverse to the FTC, the Respondent, or the FTC-approved Acquirer(s) in any substantially related matter.
- J. Standard of Care. In the performance of the Monitor's Responsibilities, the Monitor shall exercise the standard of care and diligence that would be expected of a reasonable person in the conduct of the person's own business affairs.
- K. Term. This Monitor Agreement shall terminate no later than: (i) the date set forth in the relevant provisions of the Orders; (ii) the date on which the FTC appoints a substitute monitor pursuant to the Orders; or (iii) the date Respondent notifies the Monitor that the Respondent has received a notification from FTC staff that the Monitor has ceased to act or failed to act in a manner consistent with the Monitor's responsibilities under the Orders.
- L. Termination. In the event that FTC staff notifies Respondent that the Monitor has ceased to act or failed to act in a manner consistent with the Monitor's responsibilities under the Orders, Respondent shall be entitled to immediately terminate this Monitor Agreement.
- M. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by the substantive laws of the State of Delaware, including all matters of construction, validity and performance. The Orders shall govern this Monitor Agreement and any provisions herein which conflict or are inconsistent with

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them may be declared null and void by the FTC and any provision not in conflict shall survive and remain a part of this Monitor Agreement.

- N. Disclosure of Information. Nothing in this Monitor Agreement shall require Respondent to disclose any material information that is subject to a legally recognized privilege or that Respondent is prohibited from disclosing by reason of law.
- O. Assignment. This Monitor Agreement may not be assigned or otherwise transferred by Respondent or the Monitor without the consent of the Respondent, the Monitor, and the approval of the FTC. Any such assignment or transfer may only be made in a manner consistent with the terms of the Orders.
- P. Modification. No amendment, modification, termination, or waiver of any provision of this Monitor Agreement shall be effective unless made in writing, signed by all parties, and approved by the FTC. Any such amendment, modification, termination, or waiver may only be made in manner consistent with the terms of the Orders.
- Q. Approval by the FTC. This Monitor Agreement shall have no force or effect with respect to the Orders until approved by the FTC.
- R. Entire Agreement. This Monitor Agreement, and those portions of the Orders incorporated herein by reference, constitute the entire agreement of the parties and supersede any and all prior agreement and understandings between the parties, written or oral, with respect to the subject matter hereof.

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

MONITOR

R. Shermer & Company


Richard Shermer
President

RESPONDENT

Boston Scientific Corporation


Vance Brown
Vice President
Chief Corporate Counsel

**NON-PUBLIC APPENDIX F
MONITOR COMPENSATION**

[Redacted From the Public Record Version But Incorporated by Reference]