

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of

**Otto Bock HealthCare North America,
Inc.,
a corporation,

Respondent.**

**DOCKET NO. 9378
PROVISIONALLY REDACTED
PUBLIC VERSION**

FINAL ORDER

I.

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

- A. “Otto Bock” or “Ottobock” or “Respondent” means Otto Bock Healthcare North America, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Otto Bock Healthcare North America, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “Acquirer” means the Person that acquires, with the prior approval of the Commission, the Freedom Assets and Business from Otto Bock pursuant to Paragraph II, or from the Divestiture Trustee pursuant to Paragraph VII of this Order.
- D. “Acquisition” means the acquisition of the Freedom Assets and Business by Respondent Otto Bock pursuant to the Agreement and Plan of Merger dated September 22, 2017 and subsequent amendments and schedules.

- E. “Acquisition Date” means September 22, 2017, the date on which Otto Bock acquired the Freedom Assets and Business.
- F. “Confidential Business Information” means any non-public information relating to the Freedom Assets and Business either prior to or after the Effective Date of Divestiture, including, but not limited to, all customer lists, price lists, distribution or marketing methods, or Intellectual Property relating to Freedom Assets and Business and:
1. Obtained by Otto Bock prior to the Effective Date of Divestiture; or,
 2. Obtained by Otto Bock after the Effective Date of Divestiture, in the course of performing Otto Bock’s obligations under any Divestiture Agreement.
- Provided, however,* that Confidential Business Information shall not include:
1. Information that Otto Bock can demonstrate it obtained prior to the Acquisition Date, other than information it obtained during due diligence pursuant to any confidentiality or non-disclosure agreement;
 2. Information that is in the public domain when received by Otto Bock;
 3. Information that is not in the public domain when received by Otto Bock and thereafter becomes public through no act or failure to act by Otto Bock;
 4. Information that Otto Bock develops or obtains independently, without violating any applicable law or this Order; and
 5. Information that becomes known to Otto Bock from a third party not in breach of applicable law or a confidentiality obligation with respect to the information.
- G. “Direct Cost” means the cost of direct material and direct labor used to provide the relevant assistance or service.
- H. “Divestiture Agreement” means any agreement, including all exhibits, attachments, agreements, schedules and amendments thereto, that has been approved by the Commission pursuant to which the Freedom Assets and Business are divested by Otto Bock pursuant to Paragraph II, or by the Divestiture Trustee pursuant to Paragraph VII in this Order.
- I. “Divestiture Products Group A” means all Freedom Assets and Business related to the products listed in Appendix A of this Order.
- J. “Divestiture Products Group B” means all Freedom Assets and Business related to the products listed in Appendix B of this Order.
- K. “Divestiture Trustee” means the Person appointed pursuant to Paragraph VII of this Order

to divest the Freedom Assets and Business.

- L. “Effective Date of Divestiture” means the date on which the divestiture of the Freedom Assets and Business to an Acquirer pursuant to Paragraph II or Paragraph VII of this Order is completed.

- M. “Freedom Assets” means all of Otto Bock’s right, title, and interest in and to the Freedom Business and all related assets, tangible or intangible, business, and properties, including any improvements or additions thereto made subsequent to the Acquisition, relating to the operation of the Freedom Business, including, but not limited to:
 - 1. All Real Property of the Freedom Business;
 - 2. All Tangible Personal Property;
 - 3. All Intangible Property;
 - 4. All consumable or disposable inventory;
 - 5. All rights under any contracts and agreements, including, but not limited to, all rights to leases, service agreements, supply agreements and procurement contracts;
 - 6. All rights and title in and to the use of the Freedom Business name and marks on a permanent and exclusive basis;
 - 7. All Intellectual Property;
 - 8. All governmental approvals, consents, licenses, permits, waivers, or other authorizations to the extent transferrable;
 - 9. All rights under warranties and guarantees, express or implied;
 - 10. All items of prepaid expense; and
 - 11. Books, records, files, correspondence, manuals, computer printouts, databases, and other documents relating to the operation of the Freedom Business, electronic and hard copy, located on the premises of Freedom Business Real Property or in the possession of any Otto Bock Employee (or copies thereof where Otto Bock has a legal obligation to maintain the original document), including, but not limited to:
 - a. Customer files and records, including customer lists, customer product specifications, customer purchasing histories, customer service and support materials, and customer information;

- b. Research and development data and files;
- c. Financial records;
- d. Personnel files;
- e. Maintenance records;
- f. Advertising, promotional and marketing materials, including website content;
- g. Documents relating to policies and procedures;
- h. Documents relating to quality control;
- i. Documents relating to Payors; and
- j. Documents relating to Suppliers.

Provided, however, Freedom Assets does not include any assets exclusively related to the Otto Bock business (including prosthetic products sold or marketed by Otto Bock) prior to the Acquisition Date, unless such assets were also used by the Freedom Business after the Acquisition Date.

- M. “Freedom Business” means all activities relating to the manufacture and sale of prosthetics and other related products and services.

Provided, however, the Freedom Business does not include any activities relating to Otto Bock’s manufacture and sale of prosthetics and other related products and services prior to the Acquisition Date.

- N. “Freedom Assets and Business” means the Freedom Assets and the Freedom Business.

- O. “Freedom Employee(s)” means Any Person:

- 1. Employed by the Freedom Business as of the Acquisition Date; and/or
- 2. Employed by the Freedom Business at any time from the Acquisition Date through the Effective Date of Divestiture.

- Q. “Freedom Key Employee(s)” means any Person listed in Confidential Appendix C Attached to this Order.

- R. “Hold-Separate Agreements” means the Letter Agreement and Hold Separate and Asset Maintenance Agreement signed by Otto Bock and Bureau of Competition Staff on December 20, 2017, attached as Confidential Appendix D to this Order, and the

Procedures, Terms and Conditions Agreement.

- S. “Hold-Separate Manager Agreement” means the Agreement signed by Otto Bock and the Hold Separate Manager on December 22, 2017, attached as Confidential Appendix E to this Order.
- T. “Hold-Separate Monitor Agreement” means the Agreement signed by Otto Bock and the Hold Separate Monitor on December 27, 2017, attached as Confidential Appendix F to this Order.
- U. “Intangible Property” means intangible property relating to the operation of the Freedom Business including, but not limited to, Intellectual Property, the Freedom name and marks, trademarks, logos, and the modifications or improvements to such intangible property.
- V. “Intellectual Property” means, without limitation: (i) all patents, patent applications, inventions, and discoveries that may be patentable; (ii) all know-how, trade secrets, software, technical information, data, registrations, applications for governmental approvals, inventions, processes, best practices (including clinical pathways), formulae, protocols, standards, methods, techniques, designs, quality-control practices and information, research and test procedures and information, and safety, environmental and health practices and information; (iii) all confidential or proprietary information, commercial information, management systems, business processes and practices, patient lists, patient information, patient records and files, patient communications, procurement practices and information, supplier qualification and approval practices and information, training materials, sales and marketing materials, patient support materials, advertising and promotional materials; and (iv) all rights in any jurisdiction to limit the use or disclosure of any of the foregoing, and rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation, or breach of any of the foregoing.
- W. “Licensed Intangible Property” means Intangible Property licensed to Otto Bock or to the Freedom Business from a third party relating to Freedom Assets and Business including, but not limited to, Intellectual Property, software, computer programs, patents, know-how, goodwill, technology, trade secrets, technical information, marketing information, protocols, quality-control information, trademarks, trade names, service marks, logos, and the modification or improvements to such intangible property that are licensed to Otto Bock or to the Freedom Business (“Licensed Intangible Property” does not mean modifications and improvements to intangible property that are not licensed to Otto Bock).
- X. “Monitor” means the Person appointed pursuant to Paragraph VI of the Order and with the prior approval of the Commission.
- Y. “Monitor Agreement” means the agreement Otto Bock enters into with the Monitor and with the prior approval of the Commission.

- Z. “Payor” means any Person that purchases, reimburses for, or otherwise pays for medical goods or services for themselves or for any other person, including, but not limited to: health insurance companies; preferred provider organizations; point-of-service organizations; prepaid hospital, medical, or other health-service plans; health maintenance organizations; government health-benefits programs; employers or other persons providing or administering self-insured health-benefits programs; and patients who purchase medical goods or services for themselves.
- AA. “Person” means any natural person, partnership, corporation, association, trust, joint venture, government, government agency, or other business or legal entity.
- BB. “Procedures, Terms and Conditions Agreement” means the Procedures, Terms and Conditions Regarding Access to the Held-Separate Business for FTC Litigation Purposes Pursuant to Hold Separate and Asset Maintenance Agreement dated December 20, 2017, between Bureau of Competition Staff and Otto Bock, signed on January 31, 2018, and attached as Confidential Appendix G to this Order.
- CC. “Real Property” means all real property interests (including fee simple interests and real property leasehold interests including all rights, easements and appurtenances, together with all buildings, structures, facilities) that Otto Bock acquired pursuant to the Acquisition and/or that Otto Bock acquired after the Acquisition to the extent the interests relate to the operation of the Freedom Business. Real Property includes, but is not limited to, the assets, which are identified and listed on Appendix H to this Order.
- DD. “Supplier” means any Person that has sold to the Freedom Business or Otto Bock any goods or services for use in connection with the operation of the Freedom Business; provided, however, that “Supplier” does not mean an employee of Otto Bock.
- EE. “Tangible Personal Property” means all machinery, equipment, spare parts, tools, and tooling (whether customer specific or otherwise); furniture, office equipment, computer hardware and software; supplies and materials; vehicles and rolling stock; and other items of tangible personal property of every kind whether owned or leased, together with any express or implied warranty by the manufacturers, sellers, or lessors of any item or component part thereof, and all maintenance records and other documents relating thereto.
- FF. “Technical Services Agreement” means the provision by Otto Bock at Direct Cost of all advice, consultation, and assistance reasonably necessary for any Acquirer to receive and use, in any manner related to achieving the purposes of this Order, any asset, right, or interest related to the Freedom Business.
- GG. “Transitional Services” means the Technical Services Agreement and the Transition Services Agreement.

HH. “Transition Services Agreement” means an agreement requiring Otto Bock to provide at Direct Cost all services reasonably necessary to transfer administrative support services to the Acquirer, including, but not limited to, such services related to payroll, employee benefits, accounts receivable, accounts payable, and other administrative and logistical support.

II.

IT IS FURTHER ORDERED that:

A. Otto Bock shall:

1. No later than ninety (90) days from the date this Order becomes final and effective, divest absolutely and in good faith, and at no minimum price, the Freedom Assets and Business to an Acquirer that receives the prior approval of the Commission and in a manner, including pursuant to a Divestiture Agreement, that receives the prior approval of the Commission;

Provided, however, that Otto Bock may retain any or all of the Divestiture Products Group A *unless* the Acquirer demonstrates to the Commission’s satisfaction: (i) that any such asset is necessary to achieve the purpose of this Order; and (ii) that the Acquirer needs such asset to effectively operate the Freedom Business in a manner consistent with the purpose of this Order, and the Commission approves the divestiture with the divestiture of such asset.

Provided, however, that Otto Bock must divest any or all of the Divestiture Products Group B *unless* the Acquirer demonstrates to the Commission’s satisfaction: (i) that any such asset is not necessary to achieve the purpose of this Order; and (ii) that the Acquirer does not need such asset to effectively operate the Freedom Business in a manner consistent with the purpose of this Order, and the Commission approves the divestiture without the divestiture of such asset.

2. Comply with all terms of the Divestiture Agreement approved by the Commission pursuant to this Order, which agreement shall be deemed incorporated by reference into this Order; and any failure by Otto Bock to comply with any term of the Divestiture Agreement shall constitute a failure to comply with this Order. The Divestiture Agreement shall not reduce, limit or contradict, or be construed to reduce, limit or contradict, the terms of this Order; *provided, however,* that nothing in this Order shall be construed to reduce any rights or benefits of any Acquirer or to reduce any obligations of Otto Bock under such agreement; *provided further,* that if any term of the Divestiture Agreement varies from the terms of this Order (“Order Term”), then to the extent that Otto Bock cannot fully comply with both terms, the Order Term shall determine Otto Bock's obligations under this Order. Notwithstanding any paragraph, section, or other provision of the Divestiture Agreement, any failure to meet any condition precedent to closing (whether waived or not) or any modification of the Divestiture Agreement,

without the prior approval of the Commission, shall constitute a failure to comply with this Order.

3. Prior to the Effective Date of Divestiture, Otto Bock shall not rescind the Hold-Separate Agreements, the Hold-Separate Manager Agreement, the Hold-Separate Monitor Agreement, or the Procedures, Terms, and Conditions Agreement or any term of the above Agreements necessary to comply with any Paragraph of this Order.
4. No later than thirty (30) days from the date this Order becomes final and effective, Otto Bock shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Freedom Assets and Business customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine.

Provided further that Otto Bock shall permit prospective Acquirers of the Freedom Assets and Business to have reasonable access to personnel and to make inspections of the physical facilities; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process; *provided, however,* that Otto Bock shall require all prospective Acquirers to sign a confidentiality agreement pursuant to which that prospective Acquirer shall be required to maintain all Confidential Business Information obtained as part of the due diligence process as strictly confidential, including the nondisclosure of that information to all other employees, executives, or other personnel of the potential Acquirer that were not involved in the due diligence process. Otto Bock shall require, as part of a confidentiality agreement, that the potential Acquirer limit access to Confidential Business Information to only those employees necessary to conduct sufficient due diligence.

5. Take all actions and shall effect all arrangements in connection with the divestiture of the Freedom Assets and Business necessary to ensure that the Acquirer can conduct the Freedom Assets and Business in substantially the same manner as operated prior to the Acquisition, including, but not limited to:
 - a. Complying with the Hold-Separate Agreements, the Hold-Separate Manager Agreement, the Hold-Separate Monitor Agreement, or the Procedures, Terms, and Conditions Agreement or any term of the above Agreements,
 - b. Providing Transitional Services,
 - c. Providing the opportunity to recruit and employ all Freedom Employees.
6. Convey as of the Effective Date of Divestiture to the Acquirer the right to use any Licensed Intangible Property (to the extent permitted by the third-party licensor), if such right is needed for the operation of the Freedom Business by the Acquirer

and if the Acquirer is unable, using commercially-reasonable efforts, to obtain equivalent rights from other third parties on commercially-reasonable terms and conditions.

7. Otto Bock shall:
 - a. Place no restrictions on the use by the Acquirer of the Freedom Assets and Business, including any Intangible Property;
 - b. On or before the Effective Date of Divestiture, provide to the Acquirer contact information about customers, Payors, and Suppliers for the Freedom Assets and Business;
 - c. With respect to contracts with Freedom Business Suppliers, at the Acquirer's option and as of the Effective Date of Divestiture:
 - i. If such contract can be assigned without third-party approval, assign its rights under the contract to the Acquirer; and
 - ii. If such contract can be assigned to the Acquirer only with third-party approval, assist and cooperate with the Acquirer in obtaining:
 - (a) Such third-party approval and in assigning the contract to the acquirer; or
 - (b) A new contract.
8. At the request of the Acquirer, for two (2) years from the Effective Date of Divestiture, with the option of the Acquirer to renew for two six (6) month periods with written notification to Commission staff, except as otherwise approved by the Commission, and in a manner (including pursuant to an agreement) that receives the prior approval of the Commission:
 - a. Otto Bock shall provide Transitional Services to the Acquirer sufficient to enable the Acquirer to conduct the Freedom Business in substantially the same manner that the Freedom Business was conducted prior to the Acquisition and during the Hold-Separate Period.
 - b. Otto Bock shall provide the Transitional Services required by this Paragraph II.A.8 at substantially the same level and quality as such services are provided by Otto Bock in connection with the Hold-Separate Agreements.

Provided, however, that Otto Bock shall not (i) require the Acquirer to pay compensation for Transitional Services that exceeds Direct Cost of providing such goods and services,

(ii) terminate its obligation to provide Transitional Services because of a material breach by the Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction, or (iii) include a term in any agreement to provide Transitional Services that limits the type of damages (such as indirect, special, and consequential damages) that the Acquirer would be entitled to seek in event of Otto Bock's breach of such agreement.

9. Otto Bock shall allow the Acquirer an opportunity to recruit and employ any Freedom Employee in connection with the divestiture of the Freedom Assets and Business, including as follows:
 - a. No later than five (5) days after execution of a divestiture agreement, Otto Bock shall (i) identify each Freedom Employee, (ii) allow the Acquirer an opportunity to interview any Freedom Employee, and (iii) allow the Acquirer to inspect the personnel files and other documentation relating to any Freedom Employee, to the extent permissible under applicable laws.
 - b. Otto Bock shall (i) not offer any incentive to any Freedom Employee to decline employment with the Acquirer, (ii) remove any contractual impediments that may deter any Freedom Employee from accepting employment with the Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Otto Bock that would affect the ability of the Freedom Employee to be employed by the Acquirer, and (iii) not otherwise interfere with the recruitment of any Freedom Employee by the Acquirer.
 - c. Otto Bock shall (i) vest all current and accrued pension benefits as of the date of transition of employment with the Acquirer for any Freedom Employee who accepts an offer of employment from the Acquirer no later than thirty (30) days from the Effective Date of Divestiture and (ii) if the Acquirer has made a written offer of employment to any Key Employee, as identified and listed on Confidential Appendix C to this Order, provide such Key Employee with reasonable financial incentives to accept a position with the Acquirer at the time of the Effective Date of Divestiture, including, but not limited to (and subject to Commission approval), payment of an incentive equal to up to three (3) months of such Key Employee's base salary to be paid only upon such Key Employee's completion of one (1) year of employment with the Acquirer.

Provided, however, that Otto Bock and the Acquirer will work together in good faith to determine whether any additional Freedom Employee should be identified as a Key Employee and subject to the provisions of this Paragraph II.A.9.c.

- d. For a period ending two (2) years after the Effective Date of Divestiture, Otto Bock shall not, directly or indirectly, solicit, hire, or enter into any arrangement for the services of any Freedom Employee employed by the

Acquirer, unless such Freedom Employee's employment has been terminated by the Acquirer; provided, however, this Paragraph II.A.9.d shall not prohibit Otto Bock from: (i) advertising for employees in newspapers, trade publications, or other media not targeted specifically at the Freedom Employees, (ii) hiring employees who apply for employment with Otto Bock, as long as such employees were not solicited by Otto Bock in violation of this Paragraph II.A.9.d, or (iii) offering employment to a Freedom Employee who is employed by the Acquirer in only a part-time capacity, if the employment offered by Otto Bock would not, in any way, interfere with that employee's ability to fulfill his or her employment responsibilities to the Acquirer.

10. Otto Bock shall submit to the Acquirer, at Otto Bock's expense, all Confidential Business Information, and:
 - a. Deliver such Confidential Business information as follows: (i) in good faith; (ii) as soon as practicable, avoiding any delays in transmission of the respective information; and (iii) in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;
 - b. Pending complete delivery of all such Confidential Business Information to the Acquirer, provide the Acquirer and 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 that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order.

11. Except in the course of performing its obligations under this Order, Otto Bock shall:
 - a. Not provide, disclose, or otherwise make available any Confidential Business Information, including trade secrets or any sensitive or proprietary commercial or financial information relating to the Acquirer or the Freedom Business to any Person other than the Acquirer, and shall not share such information for any reason or purpose;
 - b. Disclose any Confidential Business Information trade secrets or any sensitive or proprietary commercial or financial information related to the Acquirer or the Freedom Business to any Person other than the Acquirer (1) only in the manner and to the extent necessary to satisfy Otto Bock's obligations under this Order and (ii) only to Persons who agree in writing to maintain the confidentiality of such information; and
 - c. Enforce the terms of this Paragraph II.A.11 as to any Person and take such action as is necessary, including training, to cause each such Person to

comply with the terms of this Paragraph II.A.11, including any actions Otto Bock would take to protect its own trade secrets or sensitive or proprietary commercial or financial information.

Provided, however, that Otto Bock may provide, disclose, use, or otherwise make available any Confidential Business Information relating to any of the Divestiture Products Group A or Divestiture Products Group B retained under Paragraph II.A.1 of this Order to the extent that such Confidential Business Information is solely under the use or control of Otto Bock.

12. Otto Bock shall, no later than five (5) days after the date this Order becomes final and effective:
 - a. Require that each employee of Otto Bock, including the Hold-Separate Manager and the Hold-Separate Monitor, who has, had, or may have had access to Confidential Business Information relating to the Freedom Assets and Business, and the direct supervisor(s) of any such employee, sign a confidentiality agreement pursuant to which that employee shall be required to maintain all Confidential Business Information related to the Freedom Assets and Business as strictly confidential, including the nondisclosure of that information to all other employees, executives, or other personnel of Otto Bock (other than as necessary to comply with the requirements of this Order), or the use of such Confidential Business Information in any way.
 - b. Cause all Persons under Otto Bock's control, including all Otto Bock employees, the Hold-Separate Manager, and the Hold-Separate Monitor, having access to Confidential Business Information of or pertaining to the Freedom Assets and Business to submit a signed statement to the Commission's staff that the individual will maintain the confidentiality required by this Order.
 - c. Provide written notification of the restrictions on the use and disclosure of the Confidential Business Information related to the Freedom Assets and Business by Otto Bock'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. Otto Bock shall give the above-described notification by e-mail with return receipt requested or similar transmission, and keep a file of those receipts for two (2) years after the date this Order becomes final and effective. Otto Bock shall maintain complete records of all such notifications at Otto Bock's registered office within the United States and shall provide an officer's certification to the Commission affirming the implementation of, and compliance with, the acknowledgement program.

B. The purpose of the divestiture of the Freedom Assets and Business is to ensure the

continued operation of the Freedom Business by the Acquirer, independent of Otto Bock, and to remedy the lessening of competition resulting from the Acquisition.

III.

IT IS FURTHER ORDERED that from the date this Order becomes final and effective (without regard to the finality of the divestiture requirements herein) until the Effective Date of Divestiture, Otto Bock shall abide by the Hold-Separate Agreements and shall not:

- A. Sell or transfer any Freedom Assets;
- B. Eliminate, transfer, or consolidate any service offered in connection with the Freedom Business;
- C. Fail to maintain the employment of all Freedom Employees or otherwise fail to keep the Freedom Business staffed with sufficient employees; provided, however, that Freedom Employees may be terminated for cause as provided by the Hold-Separate Agreements (in which event Otto Bock shall replace such employees).

IV.

IT IS FURTHER ORDERED that:

- A. From the date this Order becomes final and effective (without regard to the finality of the divestiture requirements herein) until the Effective Date of Divestiture, Otto Bock shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Freedom Assets and Business, as provided in the Hold-Separate Agreements. Among other things that may be necessary, as provided for in the Hold-Separate Agreements, Otto Bock shall:
1. Maintain the operations of the Freedom Business relating to the Freedom Assets in the ordinary course of business and in accordance with the Hold-Separate Agreements;
 2. Use best efforts to maintain and increase revenues of the Freedom Business, and to maintain at budgeted levels for the year 2018 or the current year, whichever are higher, all administrative, technical, and marketing support for the Freedom Business and in accordance with the Hold-Separate Agreements;
 3. Use best efforts to maintain the current workforce and to retain the services of employees and agents in connection with the Freedom Business, including payments of bonuses as necessary, and maintain the relations and goodwill with customers.
- B. No later than thirty (30) days from the date this Order becomes final and effective (without regard to the finality of the divestiture requirements herein), Otto Bock shall file a verified written report to the Commission that identifies (i) all assets included in the Freedom Assets, (ii) all assets originally acquired or that replace assets originally acquired as a result of the Acquisition, and (iii) all services, functions, and agreements that Otto Bock discontinued after the Acquisition.

V.

IT IS FURTHER ORDERED that no later than five (5) days from the date this Order becomes final and effective (without regard to the finality of the divestiture requirements herein), Otto Bock shall provide a copy of this Order to each of Otto Bock's officers, employees, or agents having managerial responsibility for any of Otto Bock's obligations under Paragraphs II, III, and IV of this Order.

VI.

IT IS FURTHER ORDERED that:

- A. At any time after this Order becomes final and effective (without regard to the finality of

the divestiture requirements herein), the Commission may appoint a Person (“Monitor”) to monitor Otto Bock’s compliance with its obligations under this Order, consult with Commission staff, and report to the Commission regarding Otto Bock’s compliance with its obligations under this Order.

- B. If a Monitor is appointed pursuant to Paragraph VI.A of this Order, Otto Bock shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall have the power and authority to monitor Otto Bock’s compliance with the terms of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor pursuant to the terms of this Order and in a manner consistent with the purposes of this Order and in consultation with the Commission or its staff.
 2. Within ten (10) days after appointment of the Monitor, Otto Bock shall execute an agreement that, subject to the approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Otto Bock’s compliance with the terms of this Order in a manner consistent with the purposes of this Order. If requested by Otto Bock, the Monitor shall sign a confidentiality agreement prohibiting the use or disclosure to anyone other than the Commission (or any Person retained by the Monitor pursuant to Paragraph VI.B.5 of this Order), of any competitively-sensitive or proprietary information gained as a result of his or her role as Monitor, for any purpose other than performance of the Monitor’s duties under this Order.
 3. The Monitor’s power and duties under this Paragraph VI shall terminate three (3) business days after the Monitor has completed his or her final report pursuant to Paragraph VI.B.8 of this Order or at such other time as directed by the Commission.
 4. Otto Bock shall cooperate with any Monitor appointed by the Commission in the performance of his or her duties, and shall provide the Monitor with full and complete access to Otto Bock’s books, records, documents, personnel, facilities, and technical information relating to compliance with this Order, or to any other relevant information, as the Monitor may reasonably request. Otto Bock shall cooperate with any reasonable request of the Monitor. Otto Bock shall take no action to interfere with or impede the Monitor’s ability to monitor Otto Bock’s compliance with this Order.
 5. The Monitor shall serve, without bond or other security, at the expense of Otto Bock, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Otto Bock, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor’s duties and responsibilities. The Monitor shall account for all expenses incurred, including

fees for his or her services, subject to the approval of the Commission.

6. Otto Bock shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor'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 the Monitor's gross negligence or willful misconduct. For purposes of this Paragraph VI.B.6, the term "Monitor" shall include all Persons retained by the Monitor pursuant to Paragraph VI.B.5 of this Order.
 7. 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 to serve as Monitor in the same manner as provided by this Order.
 8. The Monitor shall report in writing to the Commission (i) every sixty (60) days from the date this Order becomes final and effective (without regard to the finality of the divestiture requirements herein), (ii) no later than thirty (30) days from the date Otto Bock completes its obligations under this Order, and (iii) at any other time as requested by the staff of the Commission, concerning Otto Bock's compliance with this Order.
- C. Otto Bock shall submit the following reports to the Monitor: (i) no later than twenty (20) days after the date the Monitor is appointed by the Commission pursuant to Paragraph VI.A of this Order, a copy of the Accounting required by Paragraph IV.B of this Order; and (ii) copies of all compliance reports filed with the Commission.
 - D. Otto Bock shall provide the Monitor with: (i) prompt notification of significant meetings, including date, time and venue, scheduled after the execution of the Monitor Agreement, relating to the regulatory approvals, marketing, sale and divestiture of the Freedom Assets and Business, and such meetings may be attended by the Monitor or his representative, at the Monitor's option or at the request of the Commission or staff of the Commission; and (ii) the minutes, if any, of the above-referenced meetings as soon as practicable and, in any event, not later than those minutes are available to any employee of Otto Bock.
 - E. 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.
 - F. The Monitor appointed pursuant to this Order may be the same Person appointed as Divestiture Trustee pursuant to Paragraph VII of this Order.

VII.

IT IS FURTHER ORDERED that:

- A. If Otto Bock has not divested, absolutely and in good faith, the Freedom Assets and Business pursuant to the requirements of Paragraph II of this Order, within the time and manner required by Paragraph II of this Order, the Commission may at any time appoint one or more Persons as Divestiture Trustee to divest the Freedom Assets and Business, at no minimum price, and pursuant to the requirements of Paragraph II of this Order, in a manner that satisfies the requirements of this Order.
- B. In the event that the Commission or the Attorney General of the United States 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, Otto Bock shall consent to the appointment of a Divestiture Trustee in such action. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph VII shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including appointment of 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 Otto Bock to comply with this Order.
- C. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph VII, Otto Bock 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 effect the divestiture pursuant to the requirements of Paragraph II of this Order and in a manner consistent with the purposes of this Order.
 - 2. Within ten (10) days after appointment of the Divestiture Trustee, Otto Bock shall execute an agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed Divestiture Trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture and perform the requirements of Paragraph II of this Order for which he or she has been appointed.
 - 3. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the agreement described in Paragraph VII.C.2 of this Order to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period the Divestiture Trustee has submitted a plan of divestiture or believes that 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.
 - 4. Otto Bock shall provide the Divestiture Trustee with full and complete access to

the personnel, books, records, and facilities related to the assets to be divested, or to any other relevant information, as the Divestiture Trustee may request. Otto Bock shall develop such financial or other information as the Divestiture Trustee may reasonably request and shall cooperate with the Divestiture Trustee. Otto Bock shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Otto Bock shall extend the time for divestiture under this Paragraph VII in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

5. The Divestiture Trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, but shall divest expeditiously at no minimum price. The divestiture shall be made only to an Acquirer that receives the prior approval of the Commission, and the divestiture shall be accomplished only in a manner that receives the prior approval of the Commission; 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 or entities selected by Otto Bock from among those approved by the Commission; provided, further, that Otto Bock shall select such entity within ten (10) business days of receiving written notification of the Commission's approval.
6. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Otto Bock, 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 Otto Bock, 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 of the account of the Divestiture Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Otto Bock, and the Divestiture Trustee's power shall be terminated. The Divestiture Trustee's compensation may be based in part on a commission arrangement contingent on the Divestiture Trustee's divesting the assets.
7. Otto Bock 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 liabilities, losses, damages, claims, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph VII.C.7, the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to

Paragraph VII.C.6 of this Order.

8. If the Divestiture Trustee ceases to act or fails to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph VII for appointment of the initial Divestiture Trustee.
 9. The Divestiture Trustee shall have no obligation or authority to operate or maintain the assets to be divested.
 10. The Divestiture Trustee shall report in writing to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
- D. 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 divestiture required by this Order.
- E. The Divestiture Trustee appointed pursuant to this Paragraph VII may be the same Person appointed as the Monitor pursuant to Paragraph VI of this Order.

VIII.

IT IS FURTHER ORDERED that:

- A. Otto Bock shall submit the complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the Divestiture Date.
- B. Otto Bock shall submit verified written reports ("compliance reports") in accordance with the following:
1. Otto Bock shall submit:
 - a. Interim compliance reports (i) no later than thirty (30) days after the Order becomes final and effective (without regard to the finality of the divestiture requirements herein), and every thirty (30) days thereafter until the divestiture of the Freedom Assets and Business is accomplished, and (ii) thereafter, every sixty (60) days (measured from the Effective Date of Divestiture) until the date Otto Bock completes its obligations under this Order; and
 - b. Additional compliance reports as the Commission or its staff may request.
 2. Otto Bock shall include in its compliance reports, among other things required by the Commission, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, the identity of all parties contacted, copies of

all written communications to and from such parties, internal documents and communications, and all reports and recommendations concerning the divestiture, the date of divestiture, and a statement that the divestiture has been accomplished in the manner approved by the Commission. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Otto Bock is in compliance with each Paragraph of the Order. Conclusory statements that Otto Bock has complied with its obligations under the Order are insufficient.

- C. Each compliance report shall be verified 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. Otto Bock 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, Otto Bock shall provide a copy of each compliance report to the Monitor.

IX.

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

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

X.

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 Otto Bock, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, Otto Bock shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Otto Bock and in the presence of counsel for Otto Bock, 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 Otto Bock related to compliance with this Order, which copying services shall be provided by Otto Bock at the request of the authorized representative of the Commission and at the expense of Otto Bock; and

- B. To interview officers, directors, or employees of Otto Bock, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Order shall terminate on November 1, 2029.

By the Commission.

April J. Tabor
Acting Secretary

SEAL:
ISSUED: November 1, 2019

APPENDICES TO ORDER:

Redacted in Their Entirety