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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **August 25, 2022**

XTANT MEDICAL HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-34951
(Commission
File Number)

20-5313323
(IRS Employer
Identification No.)

664 Cruiser Lane
Belgrade, Montana
(Address of principal executive offices)

59714
(Zip Code)

(406) 388-0480
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report.)

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, par value \$0.000001 per share	XTNT	NYSE American LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

Item 3.02 Unregistered Sales of Equity Securities.

On August 25, 2022, Xtant Medical Holdings, Inc. (the “Company”) closed the first tranche of its previously announced private placement (the “First Closing”) with several accredited investors (the “Private Placement”). At the First Closing, the Company sold approximately 14.1 million shares of common stock of the Company (collectively, the “Shares”) and warrants to purchase approximately 3.5 million shares of common stock (collectively, the “Warrants”) for an aggregate purchase price of approximately \$6.75 million.

The closing of the second tranche of the Private Placement (the “Second Closing”) is expected to occur in early October 2022 after the filing and mailing of a definitive information statement to the Company’s stockholders informing them of the receipt of stockholder approval in favor of the second tranche of the Private Placement under the continued listing requirements of the NYSE American and satisfaction of other customary closing conditions. A preliminary information statement was filed by the Company with the Securities and Exchange Commission (the “SEC”) on August 30, 2022. The investors agreed to purchase approximately 6.2 million shares of common stock and warrants to purchase approximately 1.6 million shares of common stock at the Second Closing for an aggregate purchase price of approximately \$3.0 million.

The offering and sale of the Shares, the Warrants and the shares of common stock to be issued upon any exercise of the Warrants (collectively, the “Securities”) were and will be exempt from registration under Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”) and Rule 506 of Regulation D as promulgated by SEC. The sale of the Securities did not involve a public offering and was made without general solicitation or general advertising. Each investor in the Private Placement represented that it is an accredited investor, as such term is defined in Rule 501(a) of Regulation D under the Securities Act, and that it was acquiring the Securities for investment purposes only and not with a view to any resale, distribution or other disposition of the Securities in violation of the United States federal securities laws. Neither this Current Report on Form 8-K nor any exhibit attached hereto is an offer to sell or the solicitation of an offer to buy shares of common stock of the Company or other securities of the Company.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Also as previously announced, in connection with the Private Placement, the Board of Directors (the “Board”) of the Company increased the size of the Board from six directors to seven directors and elected Stavros Vizirgianakis to the Board to fill the vacancy created by such increase, in each case effective upon completion of the First Closing. Additionally, the Board elected Mr. Vizirgianakis as Chairman of the Board, effective upon completion of the First Closing, to replace Jeffrey Peters, who previously served as Chairman of the Board and intends not to stand for re-election at the Company’s next annual meeting of stockholders, which as described in more detail under Item 8.01 below, is scheduled to be held on October 26, 2022.

Also as previously disclosed, in connection with the Private Placement, the Company and Mr. Vizirgianakis entered into a letter agreement pursuant to which the Company agreed to provide Mr. Vizirgianakis certain director nomination rights (the “Lead Investor Agreement”). Pursuant to the terms of the Lead Investor Agreement, the Company agreed to expand the size of the Board by one position and elect Mr. Vizirgianakis as a director to fill the vacancy created as a result of the increase, effective upon completion of the First Closing. In addition, the Company agreed to elect Mr. Vizirgianakis as Chairman of the Board, effective upon completion of the First Closing. The director nomination rights set forth in the Lead Investor Agreement will terminate on the earlier of (i) the date on which the Lead Investor ceases to hold at least 75% of the Shares to be purchased by him in the Private Placement; (ii) the second anniversary of the date of the Second Closing; or (iii) upon written notice of the Lead Investor to the Company.

Also as previously disclosed, in connection with the Private Placement, the Company and the Investors, including Mr. Vizirgianakis, entered into a Securities Purchase Agreement and at the First Closing entered into a Registration Rights Agreement, each as previously described in the Current Report on Form 8-K filed by the Company with the SEC on August 24, 2022. The Securities Purchase Agreement, form of Warrant, Lead Investor Agreement and Registration Rights Agreement are filed as Exhibits 10.1, 4.1, 10.2 and 10.3, respectively, to this Current Report on Form 8-K and incorporated herein by reference. There are no other arrangements or understandings between Mr. Vizirgianakis and any other person pursuant to which he was selected as a director, and there have been no other transactions since the beginning of the Company's last fiscal year, or transactions currently proposed, regarding Mr. Vizirgianakis that are required to be disclosed by Item 404(a) of SEC Regulation S-K.

As a member of the Board, Mr. Vizirgianakis will receive customary non-employee director compensation and participate in plans and policies on the same basis as the other non-employee directors of the Company. The Company and Mr. Vizirgianakis entered into a customary Indemnification Agreement, in substantially the same form that the Company has entered into with its other non-employee directors, pursuant to which the Company will agree to provide indemnification and advancement of expenses to the fullest extent permitted by Delaware law and the Company's Second Amended and Restated Bylaws and coverage under directors' and officers' liability insurance policy or policies maintained by the Company to maximum extent available for any other director in accordance with its or their terms. The Company's standard Form of Indemnification Agreement for Directors and Officers is filed as Exhibit 10.4 to this Current Report on Form 8-K.

Item 7.01 Regulation FD Disclosure.

On August 31, 2022, the Company issued a press release announcing the First Closing, which is attached as Exhibit 99.1 to this Current Report on Form 8-K and incorporated herein by reference.

The information in Item 7.01 of this report (including Exhibit 99.1) shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as expressly provided by specific reference in such a filing.

Item 8.01 Other Events.

On August 31, 2022, the Company also announced that the Board established October 26, 2022 as the date of the Company's 2022 Annual Meeting of Stockholders (the "2022 Annual Meeting"). The exact time and location of the 2022 Annual Meeting will be specified in the Company's proxy statement for the 2022 Annual Meeting, which it anticipates will be printed on or about September 16, 2022 and sent or made available to stockholders commencing on or about September 20, 2022.

Since the date of the Company's 2022 Annual Meeting has changed by more than 30 days from the date of last year's Annual Meeting of Stockholders, stockholders who, in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, wish to present proposals for inclusion in the proxy materials relating to the 2022 Annual Meeting must submit their proposals so that they are received by the Company at its principal executive offices no later than the close of business on September 12, 2022, which the Company believes is a reasonable time before it prints and mails its proxy materials. The proposals must satisfy the requirements of the proxy rules promulgated by the SEC and as the rules of the SEC make clear, simply submitting a proposal does not guarantee that it will be included.

The Company's Second Amended and Restated Bylaws also establish an advance notice procedure with regard to nominations of persons for election to the Board and stockholder proposals to be brought before an annual meeting. Pursuant to the terms of the Company's Second Amended and Restated Bylaws, any other stockholder proposals, including director nominations, to be presented at the 2022 Annual Meeting (other than a matter brought pursuant to SEC Rule 14a-8) are required to be given in writing to the Company's Corporate Secretary and delivered to or mailed and received by the Company no later than the close of business on September 10, 2022, the 10th day following the date of this Current Report on Form 8-K announcing the date of the 2022 Annual Meeting, and must contain information specified in the Company's Second Amended and Restated Bylaws.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
4.1	Form of Warrant (filed as Exhibit 4.1 to the Company's Current Report on Form 8-K as filed with the SEC on August 24, 2022 (SEC File No. 0001-34951) and incorporated by reference herein)
10.1	Securities Purchase Agreement, dated as of August 23, 2022, by and among Xtant Medical Holdings, Inc. and the investors party thereto (filed as Exhibit 10.1 to the Company's Current Report on Form 8-K as filed with the SEC on August 24, 2022 (SEC File No. 0001-34951) and incorporated by reference herein)
10.2	Registration Rights Agreement by and among Xtant Medical Holdings, Inc. and the investors party thereto (filed herewith)
10.3	Letter Agreement by and between Xtant Medical Holdings, Inc. and Stavros Vizirgianakis (filed herewith)
10.4	Form of Indemnification Agreement for Directors and Officers (filed as Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2017 (SEC File No. 001-34951) and incorporated by reference herein)
99.1	Press Release of Xtant Medical Holdings, Inc., dated August 31, 2022, entitled "Xtant Medical Announces Closing of First Tranche of \$9.75 Million Private Investment (filed herewith)
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURE

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

XTANT MEDICAL HOLDINGS, INC.

By: */s/ Sean E. Browne*

Sean E. Browne

President and Chief Executive Officer

Date: August 31, 2022

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this "Agreement") is made and entered into as of August 25, 2022, by and among Xtant Medical Holdings, Inc., a Delaware corporation (the "Company"), and each of the several purchasers signatory hereto (each such purchaser, a "Purchaser" and, collectively, the "Purchasers").

This Agreement is made pursuant to the Securities Purchase Agreement, dated as of the date hereof, between the Company and each Purchaser (the "Purchase Agreement").

The Company and each Purchaser hereby agree as follows:

1. Definitions.

Capitalized terms used and not otherwise defined herein that are defined in the Purchase Agreement shall have the meanings given such terms in the Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

"Advice" shall have the meaning set forth in Section 6(d).

"Effectiveness Date" means, (i) with respect to the Initial Registration Statement required to be filed hereunder, the seventy-fifth (75th) calendar day following the First Closing Date (or, in the event of a "full review" by the Commission, the ninetieth (90th) calendar day following the First Closing Date), (ii) in the event the Second Closing has not occurred within sixty (60) days following the First Closing and the Company elects to register the Registrable Securities issued at the Second Closing on a Second Closing Registration Statement pursuant to Section 2(a), then with respect to the Second Closing Registration Statement, the fifteenth (15th) calendar day following the Second Closing Date (or, in the event of a "full review" by the Commission, the thirtieth (30th) calendar day following the Second Closing Date); and further with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the thirtieth (30th) calendar day following the date on which an additional Registration Statement is required to be filed hereunder (or, in the event of a "full review" by the Commission, the sixtieth (60th) calendar day following the date such additional Registration Statement is required to be filed hereunder); provided, however, that in the event the Company is notified by the Commission that one or more of the above Registration Statements will not be reviewed or is no longer subject to further review and comments, the Effectiveness Date as to such Registration Statement shall be the fifth (5th) Trading Day following the date on which the Company is so notified if such date precedes the dates otherwise required above, provided, further, if such Effectiveness Date falls on a day that is not a Trading Day, then the Effectiveness Date shall be the next succeeding Trading Day.

"Effectiveness Period" shall have the meaning set forth in Section 2(a).

"Event" shall have the meaning set forth in Section 2(d).

“Event Date” shall have the meaning set forth in Section 2(d).

“Filing Date” means, (i) with respect to the Initial Registration Statement required hereunder, the sixtieth (60th) calendar day following the First Closing Date (or, if such deadline falls on a weekend or federal holiday, then the next business day thereafter) and (ii) in the event the Second Closing has not occurred within sixty (60) calendar days following the First Closing and the Company elects to register the Registrable Securities issued at the Second Closing on a Second Closing Registration Statement pursuant to Section 2(a), then with respect to the Second Closing Registration Statement, the fifth (5th) Business Day following the Second Closing Date; and, with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the earliest practical date on which the Company is permitted by SEC Guidance to file such additional Registration Statement related to the Registrable Securities.

“Holder” or “Holders” means the holder or holders, as the case may be, from time to time of Registrable Securities.

“Indemnified Party” shall have the meaning set forth in Section 5(c).

“Indemnifying Party” shall have the meaning set forth in Section 5(c).

“Initial Registration Statement” means an initial Registration Statement filed pursuant to this Agreement.

“Losses” shall have the meaning set forth in Section 5(a).

“Plan of Distribution” shall have the meaning set forth in Section 2(a).

“Prospectus” means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated by the Commission pursuant to the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

“Registrable Securities” means, as of any date of determination, (a) all Shares, (b) all Warrant Shares then issued and issuable upon exercise of the Warrants (assuming on such date the Warrants are exercised in full without regard to any exercise limitations therein), and (c) any securities issued or then issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing; provided, however, that any such Registrable Securities shall cease to be Registrable Securities (and the Company shall not be required to maintain the effectiveness of any, or file another, Registration Statement hereunder with respect thereto) for so long as (a) a Registration Statement with respect to the sale of such Registrable Securities is declared effective by the Commission under the Securities Act and such Registrable Securities have been disposed of by the Holder in accordance with such effective Registration Statement, (b) such Registrable Securities have been previously sold in accordance with Rule 144, or (c) such securities become eligible for resale without volume or manner-of-sale restrictions and without current public information pursuant to Rule 144 as set forth in a written opinion letter to such effect, addressed, delivered and acceptable to the Transfer Agent and the affected Holders (assuming that such securities and any securities issuable upon exercise, conversion or exchange of which, or as a dividend upon which, such securities were issued or are issuable, were at no time held by any Affiliate of the Company, and all Warrants are exercised by “cashless exercise” as provided in Section 2(c) of each of the Warrants), as reasonably determined by the Company, upon the advice of counsel to the Company.

“Registration Statement” means any registration statement required to be filed hereunder pursuant to Section 2(a) and any additional registration statements contemplated by Section 2(c) or Section 3(c), including (in each case) the Prospectus, amendments and supplements to any such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in any such registration statement.

“Rule 415” means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“Rule 424” means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“Selling Stockholder Questionnaire” shall have the meaning set forth in Section 3(a).

“SEC Guidance” means (i) any publicly-available written or oral guidance of the Commission staff, or any comments, requirements or requests of the Commission staff and (ii) the Securities Act.

2. Shelf Registration.

(a) On or prior to each Filing Date, the Company shall prepare and file with the Commission one or more Registration Statements covering the resale of all of the Registrable Securities that are not then registered on an effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415. Each Registration Statement filed hereunder shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form in accordance herewith, subject to the provisions of Section 2(e)) and shall contain (unless otherwise directed by at least 85% in interest of the Holders) substantially the “Plan of Distribution” attached hereto as Annex A and substantially the “Selling Stockholder” section attached hereto as Annex B; provided, however, that no Holder shall be required to be named as an “underwriter” without such Holder’s express prior written consent. Subject to the terms of this Agreement, the Company shall use its commercially reasonable best efforts to cause a Registration Statement filed under this Agreement (including, without limitation, under Section 3(c)) to be declared effective under the Securities Act as promptly as possible after the filing thereof, but in any event no later than the applicable Effectiveness Date, and shall use its commercially reasonable best efforts to keep such Registration Statement continuously effective under the Securities Act until the date that all Registrable Securities covered by such Registration Statement (i) have been sold, thereunder or pursuant to Rule 144, or (ii) may be sold without volume or manner-of-sale restrictions pursuant to Rule 144 and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected Holders (the “Effectiveness Period”). The Company shall telephonically request effectiveness of a Registration Statement as of 5:00 p.m. (New York City time) on a Trading Day. The Company shall immediately notify the Holders via facsimile or by e-mail of the effectiveness of a Registration Statement on the same Trading Day that the Company telephonically confirms effectiveness with the Commission, which shall be the date requested for effectiveness of such Registration Statement. The Company shall, by 9:30 a.m. (New York City time) on the Trading Day after the effective date of such Registration Statement, file a final Prospectus with the Commission as and if required by Rule 424. Notwithstanding the foregoing, if the Second Closing has not occurred within sixty (60) days following the First Closing, the Company may elect to register the Registrable Securities issued at the Second Closing on a second Registration Statement (the “Second Closing Registration Statement”) to register the resale of the Registrable Securities issued at the Second Closing, in which case then the Company will file the Second Closing Registration Statement within five (5) Business Days after the Second Closing Date and use its commercially reasonable best efforts to cause the Second Closing Registration Statement to be declared effective under the Securities Act as promptly as possible after the filing thereof, but in any event no later than the applicable Effectiveness Date, and shall use its commercially reasonable best efforts to keep the Second Closing Registration Statement continuously effective under the Securities Act until the end of the Effectiveness Period. For the avoidance of doubt, the Company’s election to register the Registrable Securities issued at the Second Closing on the Second Closing Registration Statement shall have no impact on the Company’s obligations to file the Initial Registration Statement (with respect to all Registrable Securities other than the Registrable Securities issued at the Second Closing) by the applicable Filing Date and to cause the Initial Registration Statement to be declared effective under the Securities Act by the applicable Effectiveness Date.

(b) Notwithstanding the registration obligations set forth in Section 2(a), if the Commission informs the Company that all of the Registrable Securities cannot, as a result of the application of Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company agrees to promptly inform each of the Holders thereof and use its commercially reasonable efforts to file amendments to the Initial Registration Statement as required by the Commission, covering the maximum number of Registrable Securities permitted to be registered by the Commission, on Form S-3 or such other form available to register for resale the Registrable Securities as a secondary offering; with respect to filing on Form S-3 or other appropriate form, and subject to the provisions of Section 2(d) with respect to the payment of liquidated damages; provided, however, that prior to filing such amendment, the Company shall be obligated to use diligent efforts to advocate with the Commission for the registration of all of the Registrable Securities in accordance with the SEC Guidance, including without limitation, Compliance and Disclosure Interpretation 612.09.

(c) Notwithstanding any other provision of this Agreement and subject to the payment of liquidated damages pursuant to Section 2(d), if the Commission or any SEC Guidance sets forth a limitation on the number of Registrable Securities permitted to be registered on a particular Registration Statement as a secondary offering (and notwithstanding that the Company used diligent efforts to advocate with the Commission for the registration of all or a greater portion of Registrable Securities), unless otherwise directed in writing by a Holder as to its Registrable Securities, the number of Registrable Securities to be registered on such Registration Statement will be reduced as follows:

- a. First, the Company shall reduce or eliminate any securities to be included other than Registrable Securities;
- b. Second, the Company shall reduce Registrable Securities represented by Warrant Shares (applied, in the case that some Warrant Shares may be registered, to the Holders on a pro rata basis based on the total number of unregistered Warrant Shares held by such Holders); and
- c. Third, the Company shall reduce Registrable Securities represented by Shares (applied, in the case that some Shares may be registered, to the Holders on a pro rata basis based on the total number of unregistered Shares held by such Holders).

In the event of a cutback hereunder, the Company shall give the Holder at least two (2) Trading Days prior written notice along with the calculations as to such Holder's allotment. In the event the Company amends the Initial Registration Statement in accordance with the foregoing, the Company will use its commercially reasonable efforts to file with the Commission, as promptly as allowed by Commission or SEC Guidance provided to the Company or to registrants of securities in general, one or more registration statements on Form S-3 or such other form available to register for resale those Registrable Securities that were not registered for resale on the Initial Registration Statement, as amended.

(d) If: (i) the Initial Registration Statement is not filed on or prior to its Filing Date (if the Company files the Initial Registration Statement without affording the Holders the opportunity to review and comment on the same as required by Section 3(a) herein, the Company shall be deemed to have not satisfied this clause (i)), or (ii) if the Company elects to file a second Registration Statement in accordance with Section 2(a) herein, the Second Closing Registration Statement is not filed on or prior to its Filing Date (if the Company files the Second Closing Registration Statement without affording the Holders the opportunity to review and comment on the same as required by Section 3(a) herein, the Company shall be deemed to have not satisfied this clause (ii)), or (iii) the Company fails to file with the Commission a request for acceleration of a Registration Statement in accordance with Rule 461 promulgated by the Commission pursuant to the Securities Act, within five (5) Trading Days of the date that the Company is notified (orally or in writing, whichever is earlier) by the Commission that such Registration Statement will not be “reviewed” or will not be subject to further review, or (iv) prior to the effective date of a Registration Statement, the Company fails to file a pre-effective amendment and otherwise respond in writing to comments made by the Commission in respect of such Registration Statement within ten (10) calendar days after the receipt of comments by or notice from the Commission that such amendment is required in order for such Registration Statement to be declared effective, or (v) a Registration Statement registering for resale all of the Registrable Securities is not declared effective by the Commission by the Effectiveness Date of the Initial Registration Statement, or (vi) after the effective date of a Registration Statement, such Registration Statement ceases for any reason to remain continuously effective as to all Registrable Securities included in such Registration Statement, or the Holders are otherwise not permitted to utilize the Prospectus therein to resell such Registrable Securities, for more than ten (10) consecutive calendar days or more than an aggregate of fifteen (15) calendar days (which need not be consecutive calendar days) during any 12-month period (any such failure or breach being referred to as an “Event”, and for purposes of clauses (i) and (v), the date on which such Event occurs, and for purpose of clause (ii) the date on which such five (5) Trading Day period is exceeded, and for purpose of clause (iv) the date which such ten (10) calendar day period is exceeded, and for purpose of clause (vi) the date on which such ten (10) or fifteen (15) calendar day period, as applicable, is exceeded being referred to as “Event Date”), then, in addition to any other rights the Holders may have hereunder or under applicable law, on each such Event Date and on each monthly anniversary of each such Event Date (if the applicable Event shall not have been cured by such date) until the applicable Event is cured, the Company shall pay to each Holder an amount in cash, as partial liquidated damages and not as a penalty, equal to the product of 2.0% multiplied by the aggregate Subscription Amount paid by such Holder pursuant to the Purchase Agreement. If the Company fails to pay any partial liquidated damages pursuant to this Section in full within seven days after the date payable, the Company will pay interest thereon at a rate of 12% per annum (or such lesser maximum amount that is permitted to be paid by applicable law) to the Holder, accruing daily from the date such partial liquidated damages are due until such amounts, plus all such interest thereon, are paid in full. The partial liquidated damages pursuant to the terms hereof shall apply on a daily pro rata basis for any portion of a month prior to the cure of an Event. Notwithstanding anything to the contrary herein, in no event shall the aggregate amount of liquidated damages (excluding interest) payable to the Holder pursuant to this Section exceed, in the aggregate, 10.0% of the aggregate purchase price paid by the Purchasers for the Securities issued at Closing.

(e) If Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on another appropriate form and (ii) undertake to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the Commission.

(f) Notwithstanding anything to the contrary contained herein, in no event shall the Company be permitted to name any Holder or affiliate of a Holder as any underwriter without the prior written consent of such Holder.

3. Registration Procedures.

In connection with the Company's registration obligations hereunder, the Company shall:

(a) Not less than three (3) Trading Days prior to the filing of each Registration Statement and not less than one (1) Trading Day prior to the filing of any related Prospectus or any amendment or supplement thereto (including any document that would be incorporated or deemed to be incorporated therein by reference), the Company shall (i) furnish to each Holder copies of all such documents proposed to be filed, which documents (other than those incorporated or deemed to be incorporated by reference) will be subject to the review of such Holders, and (ii) cause its officers and directors, counsel and independent registered public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of respective counsel to each Holder, to conduct a reasonable investigation within the meaning of the Securities Act. The Company shall not file a Registration Statement or any such Prospectus or any amendments or supplements thereto to which the Holders of a majority of the Registrable Securities shall reasonably object in good faith, provided that, the Company is notified of such objection in writing no later than five (5) Trading Days after the Holders have been so furnished copies of a Registration Statement or one (1) Trading Day after the Holders have been so furnished copies of any related Prospectus or amendments or supplements thereto. Each Holder agrees to furnish to the Company a completed questionnaire in the form attached to this Agreement as Annex C (a "Selling Stockholder Questionnaire") on a date that is not less than two (2) Trading Days prior to the Filing Date or by the end of the fourth (4th) Trading Day following the date on which such Holder receives draft materials in accordance with this Section.

(b) (i) Prepare and file with the Commission such amendments, including post-effective amendments, to a Registration Statement and the Prospectus used in connection therewith as may be necessary to keep a Registration Statement continuously effective as to the applicable Registrable Securities for the Effectiveness Period and prepare and file with the Commission such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities, (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement (subject to the terms of this Agreement), and, as so supplemented or amended, to be filed pursuant to Rule 424, (iii) respond as promptly as reasonably possible to any comments received from the Commission with respect to a Registration Statement or any amendment thereto and provide as promptly as reasonably possible to the Holders true and complete copies of all correspondence from and to the Commission relating to a Registration Statement (provided that, the Company shall excise any information contained therein which would constitute material non-public information regarding the Company or any of its Subsidiaries), and (iv) comply in all material respects with the applicable provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by a Registration Statement during the applicable period in accordance (subject to the terms of this Agreement) with the intended methods of disposition by the Holders thereof set forth in such Registration Statement as so amended or in such Prospectus as so supplemented.

(c) If during the Effectiveness Period, the number of Registrable Securities at any time exceeds 100% of the number of shares of Common Stock then registered in a Registration Statement, then the Company shall file as soon as reasonably practicable, but in any case prior to the applicable Filing Date, an additional Registration Statement covering the resale by the Holders of not less than the number of such Registrable Securities.

(d) Notify the Holders of Registrable Securities to be sold (which notice shall, pursuant to clauses (iii) through (vi) hereof, be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made) as promptly as reasonably possible (and, in the case of (i)(A) below, not less than one (1) Trading Day prior to such filing) and (if requested by any such Person) confirm such notice in writing no later than one (1) Trading Day following the day (i)(A) when a Prospectus or any Prospectus supplement or post-effective amendment to a Registration Statement is proposed to be filed, (B) when the Commission notifies the Company whether there will be a “review” of such Registration Statement and whenever the Commission comments in writing on such Registration Statement, and (C) with respect to a Registration Statement or any post-effective amendment, when the same has become effective, (ii) of any request by the Commission or any other federal or state governmental authority for amendments or supplements to a Registration Statement or Prospectus or for additional information, (iii) of the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of a Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose, (v) of the occurrence of any event or passage of time that makes the financial statements included in a Registration Statement ineligible for inclusion therein or any statement made in a Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to a Registration Statement, Prospectus or other documents so that, in the case of a Registration Statement or the Prospectus, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (vi) of the occurrence or existence of any pending corporate development with respect to the Company that the Company believes may be material and that, in the determination of the Company, makes it not in the best interest of the Company to allow continued availability of a Registration Statement or Prospectus; provided, however, that in no event shall any such notice contain any information which would constitute material, non-public information regarding the Company or any of its Subsidiaries.

(e) Use its commercially reasonable efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order stopping or suspending the effectiveness of a Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest practicable moment.

(f) If requested by a Holder, furnish to each Holder, without charge, at least one conformed copy of each such Registration Statement and each amendment thereto, including financial statements and schedules, all documents incorporated or deemed to be incorporated therein by reference to the extent requested by such Person, and all exhibits to the extent requested by such Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission, provided that any such item which is available on the EDGAR system (or successor thereto) need not be furnished in physical form.

(g) Subject to the terms of this Agreement, the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto, except after the giving of any notice pursuant to Section 3(d).

(h) Prior to any resale of Registrable Securities by a Holder, use its commercially reasonable efforts to register or qualify or cooperate with the selling Holders in connection with the registration or qualification (or exemption from the registration or qualification) of such Registrable Securities for the resale by the Holder under the securities or Blue Sky laws of such jurisdictions within the United States as any Holder reasonably requests in writing, to keep each registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things reasonably necessary to enable the disposition in such jurisdictions of the Registrable Securities covered by each Registration Statement, provided that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified, subject the Company to any material tax in any such jurisdiction where it is not then so subject or file a general consent to service of process in any such jurisdiction.

(i) If requested by a Holder, cooperate with such Holder to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to a Registration Statement, which certificates shall be free, to the extent permitted by the Purchase Agreement, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holder may request.

(j) Upon the occurrence of any event contemplated by Section 3(d), as promptly as reasonably possible under the circumstances taking into account the Company's good faith assessment of any adverse consequences to the Company and its stockholders of the premature disclosure of such event, prepare a supplement or amendment, including a post-effective amendment, to a Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither a Registration Statement nor such Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holders in accordance with clauses (iii) through (vi) of Section 3(d) above to suspend the use of any Prospectus until the requisite changes to such Prospectus have been made, then the Holders shall suspend use of such Prospectus. The Company will use its commercially reasonable efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company shall be entitled to exercise its right under this Section 3(j) to suspend the availability of a Registration Statement and Prospectus, subject to the payment of partial liquidated damages otherwise required pursuant to Section 2(d), for a period not to exceed 60 calendar days (which need not be consecutive days) in any 12-month period.

(k) Otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the Commission under the Securities Act and the Exchange Act, including, without limitation, Rule 172 under the Securities Act, file any final Prospectus, including any supplement or amendment thereof, with the Commission pursuant to Rule 424 under the Securities Act, promptly inform the Holders in writing if, at any time during the Effectiveness Period, the Company does not satisfy the conditions specified in Rule 172 and, as a result thereof, the Holders are required to deliver a Prospectus in connection with any disposition of Registrable Securities and take such other actions as may be reasonably necessary to facilitate the registration of the Registrable Securities hereunder.

(l) The Company shall use its commercially reasonable efforts to maintain eligibility for use of Form S-3 (or any successor form thereto) for the registration of the resale of Registrable Securities.

(m) The Company may require each selling Holder to furnish to the Company a certified statement as to the number of shares of Common Stock beneficially owned by such Holder and, if required by the Commission, the natural persons thereof that have voting and dispositive control over the shares. During any periods that the Company is unable to meet its obligations hereunder with respect to the registration of the Registrable Securities solely because any Holder fails to furnish such information within three Trading Days of the Company's request, any liquidated damages that are accruing at such time as to such Holder only shall be tolled and any Event that may otherwise occur solely because of such delay shall be suspended as to such Holder only, until such information is delivered to the Company.

4. Registration Expenses. All fees and expenses incident to the performance of or compliance with, this Agreement by the Company shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses of the Company's counsel and independent registered public accountants) (A) with respect to filings made with the Commission, (B) with respect to filings required to be made with any Trading Market on which the Common Stock is then listed for trading, and (C) in compliance with applicable state securities or Blue Sky laws reasonably agreed to by the Company in writing (including, without limitation, fees and disbursements of counsel for the Company in connection with Blue Sky qualifications or exemptions of the Registrable Securities), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities), (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company, (v) Securities Act liability insurance, if the Company so desires such insurance, and (vi) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder. In no event shall the Company be responsible for any broker or similar commissions of any Holder or, except to the extent provided for in the Transaction Documents, any legal fees or other costs of the Holders.

5. Indemnification.

(a) Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless each Holder, the officers, directors, members, partners, agents, brokers (including brokers who offer and sell Registrable Securities as principal as a result of a pledge or any failure to perform under a margin call of Common Stock), investment advisors and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each of them, each Person who controls any such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, members, stockholders, partners, agents and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "Losses"), as incurred, arising out of or relating to (1) any untrue or alleged untrue statement of a material fact contained in a Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading or (2) any violation or alleged violation by the Company of the Securities Act, the Exchange Act or any state securities law, or any rule or regulation thereunder, in connection with the performance of its obligations under this Agreement, except to the extent, but only to the extent, that (i) such untrue statements or omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement, such Prospectus or in any amendment or supplement thereto (it being understood that the Holder has approved Annex A hereto for this purpose) or (ii) in the case of an occurrence of an event of the type specified in Section 3(d)(iii)-(vi), the use by such Holder of an outdated, defective or otherwise unavailable Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated, defective or otherwise unavailable for use by such Holder and prior to the receipt by such Holder of the Advice contemplated in Section 6(d). The Company shall notify the Holders promptly of the institution, threat or assertion of any Proceeding arising from or in connection with the transactions contemplated by this Agreement of which the Company is aware. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified person and shall survive the transfer of any Registrable Securities by any of the Holders in accordance with Section 6(g).

(b) Indemnification by Holders. Each Holder shall, severally and not jointly, indemnify and hold harmless the Company, its directors, officers, agents and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, to the extent arising out of or based solely upon: any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus, or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading (i) to the extent, but only to the extent, that such untrue statement or omission is contained in any information so furnished in writing by such Holder to the Company expressly for inclusion in such Registration Statement or such Prospectus or (ii) to the extent, but only to the extent, that such information relates to such Holder's information provided in the Selling Stockholder Questionnaire or the proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement (it being understood that the Holder has approved Annex A hereto for this purpose), such Prospectus or in any amendment or supplement thereto. In no event shall the liability of a selling Holder be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such Holder in connection with any claim relating to this Section 5 and the amount of any damages such Holder has otherwise been required to pay by reason of such untrue statement or omission) received by such Holder upon the sale of the Registrable Securities included in the Registration Statement giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "Indemnified Party"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "Indemnifying Party") in writing, and the Indemnifying Party shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with defense thereof, provided that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have materially and adversely prejudiced the Indemnifying Party.

An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses, (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding, or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and counsel to the Indemnified Party shall reasonably believe that a material conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and the reasonable fees and expenses of no more than one separate counsel shall be at the expense of the Indemnifying Party). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld or delayed. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

Subject to the terms of this Agreement, all reasonable fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within ten Trading Days of written notice thereof to the Indemnifying Party, provided that the Indemnified Party shall promptly reimburse the Indemnifying Party for that portion of such fees and expenses applicable to such actions for which such Indemnified Party is finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) not to be entitled to indemnification hereunder.

(d) Contribution. If the indemnification under Section 5(a) or 5(b) is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless for any Losses, then each Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in this Agreement, any reasonable attorneys' or other fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section was available to such party in accordance with its terms.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. In no event shall the contribution obligation of a Holder of Registrable Securities be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such Holder in connection with any claim relating to this Section 5 and the amount of any damages such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission) received by it upon the sale of the Registrable Securities giving rise to such contribution obligation.

The indemnity and contribution agreements contained in this Section are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

6. Miscellaneous.

(a) Remedies. In the event of a breach by the Company or by a Holder of any of their respective obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. Each of the Company and each Holder agrees that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall not assert or shall waive the defense that a remedy at law would be adequate.

(b) No Piggyback on Registrations; Prohibition on Filing Other Registration Statements. Neither the Company nor any of its security holders (other than the Holders in such capacity pursuant hereto) may include securities of the Company in any Registration Statements other than the Registrable Securities. The Company shall not file any other registration statements until all Registrable Securities are registered pursuant to a Registration Statement that is declared effective by the Commission.

(c) [RESERVED].

(d) Discontinued Disposition. By its acquisition of Registrable Securities, each Holder agrees that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in Section 3(d)(iii) through (vi), such Holder will forthwith discontinue disposition of such Registrable Securities under a Registration Statement until it is advised in writing (the "Advice") by the Company that the use of the applicable Prospectus (as it may have been supplemented or amended) may be resumed. The Company will use its commercially reasonable efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company agrees and acknowledges that any periods during which the Holder is required to discontinue the disposition of the Registrable Securities hereunder shall be subject to the provisions of Section 2(d).

(e) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the same shall be in writing and signed by the Company and the Holders of 50.1% or more of the then outstanding Registrable Securities (for purposes of clarification, this includes any Registrable Securities issuable upon exercise or conversion of any Security), provided that, if any amendment, modification or waiver disproportionately and adversely impacts a Holder (or group of Holders), the consent of such disproportionately impacted Holder (or group of Holders) shall be required. If a Registration Statement does not register all of the Registrable Securities pursuant to a waiver or amendment done in compliance with the previous sentence, then the number of Registrable Securities to be registered for each Holder shall be reduced pro rata among all Holders and each Holder shall have the right to designate which of its Registrable Securities shall be omitted from such Registration Statement. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of a Holder or some Holders and that does not directly or indirectly affect the rights of other Holders may be given only by such Holder or Holders of all of the Registrable Securities to which such waiver or consent relates; provided, however, that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the first sentence of this Section 6(e). No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration also is offered to all of the parties to this Agreement.

(f) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be delivered as set forth in the Purchase Agreement.

(g) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties and shall inure to the benefit of each Holder. The Company may not assign (except by merger) its rights or obligations hereunder without the prior written consent of all of the Holders of the then outstanding Registrable Securities. Each Holder may assign their respective rights hereunder in the manner and to the Persons as permitted under Section 5.7 of the Purchase Agreement.

(h) No Inconsistent Agreements. Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. Except as set forth in the SEC Reports, neither the Company nor any of its Subsidiaries has previously entered into any agreement granting any registration rights with respect to any of its securities to any Person that have not been satisfied in full.

(i) Execution and Counterparts. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

(j) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be determined in accordance with the provisions of the Purchase Agreement.

(k) Cumulative Remedies. The remedies provided herein are cumulative and not exclusive of any other remedies provided by law.

(l) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(m) Headings. The headings in this Agreement are for convenience only, do not constitute a part of the Agreement and shall not be deemed to limit or affect any of the provisions hereof.

(n) Independent Nature of Holders' Obligations and Rights. The obligations of each Holder hereunder are several and not joint with the obligations of any other Holder hereunder, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder hereunder. Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any Holder pursuant hereto or thereto, shall be deemed to constitute the Holders as a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Holders are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by this Agreement or any other matters, and the Company acknowledges that the Holders are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or transactions. Each Holder shall be entitled to protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Holder to be joined as an additional party in any proceeding for such purpose. The use of a single agreement with respect to the obligations of the Company contained was solely in the control of the Company, not the action or decision of any Holder, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Holder. It is expressly understood and agreed that each provision contained in this Agreement is between the Company and a Holder, solely, and not between the Company and the Holders collectively and not between and among Holders.

(Signature Pages Follow)

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

XTANT MEDICAL HOLDINGS, INC.

By: /s/ Sean E. Browne

Name: Sean E. Browne

Title: President and Chief Executive Officer

[SIGNATURE PAGE OF HOLDERS FOLLOWS]

[SIGNATURE PAGE OF HOLDERS TO XTANT RRA]

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

Name of Holder: _____

Signature of Authorized Signatory of Holder: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

[SIGNATURE PAGES CONTINUE]

Annex A

PLAN OF DISTRIBUTION

The selling stockholder, and its pledgees, donees, transferees or other successors in interest, may from time to time offer and sell, separately or together, some or all of the Securities covered by this prospectus. Registration of the Securities covered by this prospectus does not mean, however, that those Securities necessarily will be offered or sold.

The Securities covered by this prospectus may be sold from time to time, at market prices prevailing at the time of sale, at prices related to market prices, at a fixed price or prices subject to change or at negotiated prices, by a variety of methods including the following:

- in the NYSE American;
- in privately negotiated transactions;
- through broker-dealers, who may act as agents or principals;
- through one or more underwriters on a firm commitment or best-efforts basis;
- in a block trade in which a broker-dealer will attempt to sell a block of securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- directly to one or more purchasers;
- through agents; or
- in any combination of the above.

In effecting sales, brokers or dealers engaged by the selling stockholder may arrange for other brokers or dealers to participate. Broker-dealer transactions may include:

- purchases of the Securities by a broker-dealer as principal and resales of the Securities by the broker-dealer for its account pursuant to this prospectus;
- ordinary brokerage transactions; or
- transactions in which the broker-dealer solicits purchasers on a best efforts basis.

To our knowledge, the selling stockholder has not entered into any agreements, understandings or arrangements with any underwriters or broker-dealers regarding the sale of the Securities covered by this prospectus. At any time a particular offer of the securities covered by this prospectus is made, a revised prospectus or prospectus supplement, if required, will be distributed which will set forth the aggregate amount of Securities covered by this prospectus being offered and the terms of the offering, including the name or names of any underwriters, dealers, brokers or agents. In addition, to the extent required, any discounts, commissions, concessions and other items constituting underwriters' or agents' compensation, as well as any discounts, commissions or concessions allowed or reallocated or paid to dealers, will be set forth in such revised prospectus supplement. Any such required prospectus supplement, and, if necessary, a post-effective amendment to the registration statement of which this prospectus is a part, will be filed with the SEC to reflect the disclosure of additional information with respect to the distribution of the securities covered by this prospectus.

Annex B

SELLING STOCKHOLDERS

We have prepared this prospectus to allow the selling stockholders to sell or otherwise dispose of, from time to time, up to 20,305,429 Shares of Common Stock and 5,076,358 Warrant Shares.

On August 23, 2022, we entered into a Securities Purchase Agreement with the selling stockholders, pursuant to which we issued and sold to the selling stockholders an aggregate of 20,305,429 newly issued shares of our Common Stock and Common Stock Purchase Warrants to purchase an aggregate of 5,076,358 shares of Common Stock at an exercise price per share of \$0.48, for gross proceeds of approximately \$9.75 million. In connection with certain registration rights we granted to the selling stockholders in the Securities Purchase Agreement, we filed with the SEC a registration statement on Form S-3, of which this prospectus forms a part, with respect to the resale or other disposition of the Securities offered from time to time by the selling stockholders under this prospectus.

Beneficial ownership is determined in accordance with the rules of the SEC and includes voting or investment power with respect to shares of our Common Stock. Unless otherwise indicated below, to our knowledge, the selling stockholders named in the table have sole voting and investment power with respect to the shares of Common Stock beneficially owned by them. The number of shares of Common Stock beneficially owned prior to the offering for each selling stockholder includes (i) all shares of our Common Stock held by such selling stockholder prior to the Private Placement plus (ii) all shares of our Common Stock purchased by such selling stockholder pursuant to the Private Placement and being offered pursuant to the prospectus, as well as (iii) all options or other derivative securities held by such selling stockholder, which are immediately exercisable. The percentages of shares owned after the offering are based on [] shares of our Common Stock outstanding as of [], 2022, which includes the outstanding Securities offered by this prospectus. The inclusion of any shares in this table does not constitute an admission of beneficial ownership by the person named below.

The selling stockholders may have sold or transferred, in transactions exempt from the registration requirements of the Securities Act, some or all of their shares of Common Stock since the date on which the information in the table below is presented. Information about the selling stockholders may change over time.

Name of Selling Stockholder	Beneficial Ownership Prior to this Offering		Securities Being Offered	Beneficial Ownership After this Offering	
	Number	Percent		Number	Percent
[]	[]	[]		—	—

Certain Relationships and Related Party Transactions

On August 23, 2022, we entered into the Securities Purchase Agreement, with the selling stockholders, pursuant to which we issued and sold to the selling stockholders an aggregate of 20,305,429 newly issued shares of our Common Stock and Common Stock Purchase Warrants to purchase an aggregate of 5,076,358 shares of Common Stock at an exercise price per share of \$0.48, for gross proceeds of approximately \$9.75 million. The Private Placement closed on August 25, 2022 (First Closing) and [_____], 2022 (Second Closing).

Pursuant to a Registration Rights Agreement entered into with the selling stockholders in connection with the Securities Purchase Agreement, we agreed to use commercially reasonable efforts to file the Resale Registration Statement on Form S-3 (or other appropriate form) providing for the resale by the selling stockholders of the Shares and Warrant Shares issued and issuable upon exercise of the Common Stock Purchase Warrants within 60 calendar days of the First Closing Date (the “Registration Rights Agreement”). Pursuant to the terms of the Registration Rights Agreement, we agreed to use commercially reasonable best efforts to cause the registration statement of which this prospectus forms a part to become effective (a) as soon as practicable, in the event of no review by the Commission; or (b) otherwise, within 75 calendar days (or, in the event of a “full review” by the Commission, 90 calendar days) following the First Closing Date, and to keep such registration statement effective pursuant to the terms of the Registration Rights Agreement. If the Second Closing has not occurred within 60 days following the First Closing we may elect to register the Registrable Securities issued at the Second Closing on a second registration statement to register the resale of the Registrable Securities issued at the Second Closing, in which case then we agreed to file that registration statement within 5 Business Days after the Second Closing Date and use our commercially reasonable best efforts to cause that registration statement to be declared effective within 15 calendar days (or, in the event of a “full review” by the Commission, 30 calendar days) following the Second Closing Date. We agreed to use commercially reasonable best efforts to keep the registration statement effective until the date on which all of the Securities sold in the Private Placement are sold by the selling stockholders. We are registering the shares to be sold by the selling stockholders under the registration statement of which this prospectus is a part to satisfy our obligation under the Securities Purchase Agreement.

Annex C

SELLING SECURITY HOLDER NOTICE AND QUESTIONNAIRE

The undersigned beneficial holder of Registrable Securities of Xtant Medical Holdings, Inc. (the “Company”) understands that the Company has filed, or intends to file, with the Securities and Exchange Commission (the “Commission”) a registration statement (the “Shelf Registration Statement”) for the registration and resale, under Rule 415 under the Securities Act of 1933, as amended (the “Securities Act”), of the Registrable Securities, in accordance with the terms of the Registration Rights Agreement (the “Registration Rights Agreement”), dated as of August 25, 2022, among the Company and each of the several purchasers signatory thereto. A copy of the Registration Rights Agreement is available from the Company upon request at the address set forth below. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Registration Rights Agreement.

Each beneficial owner of Registrable Securities is entitled to the benefits of the Registration Rights Agreement. In order to sell or otherwise dispose of any Registrable Securities pursuant to the Shelf Registration Statement, a beneficial owner of Registrable Securities generally must be named as a selling security holder in the related prospectus or prospectus supplement(s), deliver a prospectus and any applicable prospectus supplement(s) to the purchasers of the Registrable Securities and be bound by those provisions of the Registration Rights Agreement applicable to such beneficial owner (including certain indemnification provisions, as described below). Beneficial owners that do not complete this Notice and Questionnaire and deliver it to the Company as provided below will not be named as selling security holders in the prospectus and will not be permitted to sell any Registrable Securities pursuant to the Shelf Registration Statement. Beneficial owners are encouraged to complete, execute and deliver this Notice and Questionnaire as soon as possible before the effectiveness of the Shelf Registration Statement so that they may be named as selling security holders in the prospectus forming part of the Shelf Registration Statement at the time it initially becomes effective. A beneficial owner of Registrable Securities wishing to include its Registrable Securities in the Shelf Registration Statement must deliver to the Company a properly completed and signed Notice and Questionnaire.

The Company has agreed to pay additional interest pursuant to the Registration Rights Agreement under certain circumstances as set forth therein.

Certain legal consequences arise from being named as a selling security holder in the Shelf Registration Statement and the related prospectus or prospectus supplement(s). Accordingly, holders and beneficial owners of Registrable Securities should consult their legal counsel regarding the consequences of being named or not being named as a selling security holder in the Shelf Registration Statement and the related prospectus or prospectus supplement(s).

NOTICE

The undersigned beneficial owner (the “Selling Security Holder”) of Registrable Securities hereby gives notice to the Company of its intention to sell or otherwise dispose of Registrable Securities beneficially owned by it and listed below in Item 3 (unless otherwise specified under such Item 3) pursuant to the Shelf Registration Statement. The undersigned, by signing and returning this Notice and Questionnaire, understands that it will be bound by the terms and conditions of this Notice and Questionnaire and the Registration Rights Agreement.

Pursuant to the Registration Rights Agreement, the undersigned has agreed to indemnify and hold harmless the Company, its directors, officers, agents, and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and the directors, officers, agents or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, to the extent arising out of or based solely upon certain claims and losses arising in connection with statements or omissions concerning the undersigned made in the Shelf Registration Statement or the related prospectus or prospectus supplement(s) in reliance upon the information provided by the undersigned.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate and complete:

QUESTIONNAIRE

1. Selling Security Holder information:

(a) Full legal name of Selling Security Holder:

(b) Full legal name of registered holder (if not the same as (a) above) through which the Registrable Securities listed in Item 3 below are held:

(c) Full legal name of Depository Trust Company participant (if applicable and if not the same as (b) above) through which the Registrable Securities listed in Item 3 below are held:

(d) Taxpayer identification or social security number of Selling Security Holder:

2. Mailing address for notices to Selling Security Holder:

Telephone: _____

Fax: _____

E-mail address: _____

Contact person: _____

3. Beneficial ownership of Registrable Securities:

State the number of shares of Registrable Securities beneficially owned by you.

Number of shares: _____

4. Beneficial ownership of other securities of the Company owned by the Selling Security Holder:

Except as set forth below in this Item 4, the undersigned is not the beneficial owner of any securities of the Company other than the Registrable Securities listed in Item 3 above.

- (a) Type and amount of other securities beneficially owned by the Selling Security Holder:

- (b) CUSIP No(s). of the other securities listed in (a) beneficially owned:

5. Relationships with the Company:

- (a) Have you or any of your affiliates, officers, directors or principal equity holders (owners of 5% or more of the equity securities of the undersigned) held any position or office or had any other material relationship with the Company (or its predecessors or affiliates) during the past three years?

Yes.

No.

- (b) If your response to (a) above is “Yes,” please state the nature and duration of your relationship with the Company:

6. Plan of distribution:

Except as set forth below, the undersigned (including its donees, pledges, transferees and other successors in interest) intends to distribute the Registrable Securities listed in Item 3 above pursuant to the Shelf Registration Statement only as follows (if at all):

Such Registrable Securities may be sold from time to time at market prices prevailing at the time of sale, at prices related to market prices, at a fixed price or prices subject to change or at negotiated prices, by a variety of methods including: (i) on the NYSE American Stock Exchange; (ii) in privately negotiated transactions; (iii) through broker-dealers, who may act as agents or principals; (iv) through one or more underwriters on a firm commitment or best-efforts basis; (v) in a block trade in which a broker-dealer will attempt to sell a block of securities as agent but may position and resell a portion of the block as principal to facilitate the transaction; (vi) directly to one or more purchasers; (vii) through agents; or (viii) in any combination of the preceding. In effecting sales, brokers or dealers engaged by the Selling Security Holder may arrange for other brokers or dealers to participate. Broker-dealer transactions may include: (i) purchases of the Registrable Securities by a broker-dealer as principal and resales of the Registrable Securities by the broker-dealer for its account pursuant to a prospectus; (ii) ordinary brokerage transactions; or (iii) transactions in which the broker-dealer solicits purchasers on a best efforts basis.

State any exceptions here:

Note: In no event will such method(s) of distribution take the form of an underwritten offering of the Registrable Securities without the prior agreement of the Company.

The Company hereby advises each Selling Security Holder of the following Compliance and Disclosure Interpretation of the Division of Corporation Finance of the Commission:

An issuer filed a Form S-3 registration statement for a secondary offering of common stock which is not yet effective. One of the selling shareholders wanted to do a short sale of common stock “against the box” and cover the short sale with registered shares after the effective date. The issuer was advised that the short sale could not be made before the registration statement becomes effective, because the shares underlying the short sale are deemed to be sold at the time such sale is made. There would, therefore, be a violation of Section 5 if the shares were effectively sold prior to the effective date.

By returning this Notice and Questionnaire, the Selling Security Holder will be deemed to be aware of the foregoing interpretation.

7. Broker-dealers and their affiliates:

The Company may have to identify the Selling Security Holder as an underwriter in the Shelf Registration Statement or related prospectus or prospectus supplement(s) if:

- *the Selling Security Holder is a broker-dealer and did not receive the Registrable Securities as compensation for underwriting activities; or*
- *the Selling Security Holder is an affiliate of a broker-dealer and either (1) did not acquire the Registrable Securities in the ordinary course of business; or (2) at the time of its purchase of the Registrable Securities, had an agreement or understanding, directly or indirectly, with any person to distribute the Registrable Securities.*

Persons identified as underwriters in the Shelf Registration Statement or related prospectus or prospectus supplement(s) may be subject to additional potential liabilities under the Securities Act and should consult their legal counsel before submitting this Notice and Questionnaire.

(a) Are you a broker-dealer registered pursuant to Section 15 of the Exchange Act?

Yes.

No.

(b) If your response to (a) above is “Yes,” did you receive the securities listed in Item 3 above as compensation for underwriting activities?

Yes.

No.

If your response to (b) above is “Yes,” please describe the circumstances:

(c) Are you an “affiliate” of a broker-dealer that is registered pursuant to Section 15 of the Exchange Act?

Yes.

No.

For the purposes of this Item 7(b), an “affiliate” of a registered broker-dealer includes any company that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such broker-dealer.

(d) If your response to (c) above is “Yes,” please answer the following three questions:

(i) Please describe the nature of your affiliation with a registered broker-dealer:

(ii) Did you acquire the securities listed in Item 3 above in the ordinary course of business?

Yes.

No.

(iii) At the time of your purchase of the securities listed in Item 3 above, did you have any agreements or understandings, directly or indirectly, with any person to distribute the securities?

Yes.

No.

If your response to (iii) above is “Yes,” please describe such agreements or understandings:

8. Nature of beneficial ownership:

The purpose of this section is to identify the ultimate natural persons or publicly held entities that exercises sole or shared voting or dispositive power over the Registrable Securities.

(a) Is the Selling Security Holder a natural person?

Yes.

No.

(b) Is the Selling Security Holder required to file, or is it a wholly owned subsidiary of an entity that is required to file, periodic and other reports (for example, Forms 10-K, 10-Q and 8-K) with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act?

Yes.

No.

(c) Is the Selling Security Holder an investment company, or a subsidiary of an investment company, registered under the Investment Company Act of 1940, as amended?

Yes.

No.

(d) If the Selling Security Holder is a subsidiary of such an investment company, please identify the investment company:

- (e) If you answered “No” to questions (a), (b) and (c) above, please identify the controlling person(s) of the Selling Security Holder (the “Controlling Entity”). If the Controlling Entity is not a natural person or a publicly held entity, please identify each controlling person(s) of such Controlling Entity. This process should be repeated until you reach natural persons or a publicly held entity that exercise sole or shared voting or dispositive power over the Registrable Securities:

*****PLEASE NOTE THAT THE COMMISSION REQUIRES THAT THESE
NATURAL PERSONS AND ENTITIES BE NAMED IN THE
PROSPECTUS*****

9. Securities received from named selling security holder:

- (a) Did you receive your Registrable Securities listed above in Item 3 as a transferee from one or more selling security holders previously identified in the Shelf Registration Statement?

Yes.

No.

- (b) If your response to (a) above is “Yes,” please answer the following two questions:

- (i) Did you receive such Registrable Securities listed above in Item 3 from the named selling security holder(s) prior to the effectiveness of the Shelf Registration Statement?

Yes.

No.

- (ii) Identify below the names of the selling security holder(s) from whom you received the Registrable Securities listed above in Item 3 and the date on which such securities were received.

If you need more space for your responses, please attach additional sheets of paper. Please be sure to indicate your name and the number of the item being responded to on each such additional sheet of paper, and to sign each such additional sheet of paper before attaching it to this Notice and Questionnaire. Please note that you may be asked to answer additional questions depending on your responses to the above questions.

ACKNOWLEDGEMENTS

The undersigned acknowledges its obligation to comply with the provisions of the Exchange Act and the rules thereunder relating to stock manipulation, particularly Regulation M thereunder (or any successor rules or regulations), in connection with any offer or sale of Registrable Securities pursuant to the Shelf Registration Statement. The undersigned agrees that neither it nor any person acting on its behalf will engage in any transaction in violation of such provisions.

The Selling Security Holder hereby acknowledges its obligations under the Registration Rights Agreement to indemnify and hold harmless certain persons as set forth therein. Pursuant to the Registration Rights Agreement, the Company has agreed under certain circumstances to indemnify the Selling Security Holder against certain liabilities.

In accordance with the undersigned's obligation under the Registration Rights Agreement to provide such information as may be required by law for inclusion in the Shelf Registration Statement, the undersigned agrees to provide any additional information the Company may reasonably request and to promptly notify the Company of any inaccuracies or changes in the information provided that may occur at any time while the Shelf Registration Statement remains effective. All notices hereunder to the Company pursuant to the Registration Rights Agreement will be made in writing by hand-delivery, first-class mail or air courier guaranteeing overnight delivery to the address specified below.

If the Selling Security Holder transfers all or any portion of the Registrable Securities listed in Item 3 above after the date on which such information is provided to the Company, the Selling Security Holder will notify the transferee(s) at the time of transfer of its or their rights and obligations under the Registration Rights Agreement.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to questions above and the inclusion of such information in the Shelf Registration Statement and the related prospectus or prospectus supplement(s) and in any related state securities or Blue Sky applications. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Shelf Registration Statement and the related prospectus and prospectus supplement(s) and of any such application.

Once this Notice and Questionnaire is executed by the Selling Security Holder and received by the Company, the terms of this Notice and Questionnaire and the representations and warranties contained herein will be binding on, will inure to the benefit of, and will be enforceable by the respective successors, heirs, personal representatives and assigns of the Company and the Selling Security Holder with respect to the Registrable Securities beneficially owned by the Selling Security Holder and listed in Item 3 above. This Notice and Questionnaire will be governed by and construed in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Dated: _____

Beneficial
owner: _____
By: _____
Name: _____
Title: _____

**PLEASE RETURN THE COMPLETED AND
EXECUTED NOTICE AND QUESTIONNAIRE TO:**

Emily Humbert
Fox Rothschild LLP
222 South Ninth Street, Suite 2000
Minneapolis, MN 55402
ehumbert@foxrothschild.com

XTANT MEDICAL HOLDINGS, INC.
664 Cruiser Lane
Belgrade, Montana 59714

August 25, 2022

Via Email

Mr. Stavros G. Vizirgianakis
273 Hillcrest Ln
Oyster Bay, New York 11771

Dear Stavros:

In connection with that certain Securities Purchase Agreement dated as of August 23, 2022 among Xtant Medical Holdings, Inc. (the “**Company**”) and the purchasers party thereto (the “**Purchase Agreement**”), including you (the “**Nominee**”), the Board of Directors (the “**Board**”) of the Company is considering expanding the size of the Board by one (1) position, nominating you to fill the newly-created position on the Board, and electing you to the position of Chairman of the Board, in each case effective upon completion of the First Closing, as defined under and pursuant to the Purchase Agreement (the “**First Closing**”). Subject to the Nominee’s agreement with the terms and conditions set forth in this letter agreement (the “**Letter Agreement**”), the Board has instructed me to inform you that it will vote to expand the size of the Board by one (1) position, appoint the Nominee to fill the newly-created position and elect the Nominee to the position of Chairman of the Board.

Terms used but not defined in this Letter Agreement have the meanings set forth in Exhibit A to this Letter Agreement.

1. Directorship.

- (a) In connection with the First Closing, the Board shall create a vacancy by expanding the size of the Board by one (1) position and elect the Nominee as a member of the Board in order to fill such vacancy effective upon completion of the First Closing. Subsequently, the Board shall nominate the Nominee for election to the Board at any annual or special meeting of stockholders of the Company at which directors are to be elected, subject to Section 11 of this Letter Agreement.
 - (b) The Board shall elect the Nominee to the position of Chairman of the Board effective upon completion of the First Closing and at each annual or special meeting of stockholders of the Company at which directors are elected thereafter, subject to Section 11 of this Letter Agreement.
 - (c) The Nominee, upon election to the Board, will serve on the same basis as all other non-employee directors of the Company.
 - (d) The Nominee shall comply in all material respects with the Company’s corporate governance guidelines, code of business conduct and ethics, confidentiality and trading policies and guidelines and any other policies applicable to all other non-employee directors of the Company, as in effect from time to time; provided that nothing therein shall contradict Section 2 hereof.
 - (e) The Nominee shall be entitled to receive similar compensation, benefits, reimbursement (including of travel expenses), indemnification and insurance coverage for his service as a director as the other non-employee directors of the Company. For so long as the Company maintains directors’ and officers’ liability insurance, the Company shall include the Nominee as an “insured” for all purposes under such insurance policy for so long as the Nominee is a director of the Company and for the same period as for other former directors of the Company when the Nominee ceases to be a director of the Company.
-

- (f) So long as the Nominee has the right to serve as a member of the Board pursuant to this Letter Agreement, the Board shall take such action as is reasonably necessary to cause the exemption of any acquisition or disposition of Common Stock by the Investor from the liability provisions of Section 16(b) of the Securities Exchange Act of 1934, as amended, pursuant to Rule 16b-3 so long as such exemption is not prohibited by applicable law. For the avoidance of doubt, the Company shall pass one or more exemptive resolutions by the Board each time there is any purported acquisition or disposition of Common Stock by the Nominee with requisite specificity to exempt from the liability provisions of Section 16(b) of the Securities Exchange Act of 1934, as amended, pursuant to Rule 16b-3.
2. **Corporate Opportunities.** It is understood and accepted by the parties that the Nominee, and his Affiliates, may have interests in other business ventures which may be in conflict with the activities of the Company and its Subsidiaries and that nothing in this Letter Agreement shall limit the respective current or future business activities of the Nominee, or any of his Affiliates, whether or not such activities are competitive with those of the Company and its Subsidiaries. Each of the parties acknowledges that corporate and investment opportunities may from time to time come to the attention of the Nominee, or his Affiliates, and their respective officers, directors, managers, stockholders, members, partners or employees. The Company, on its own behalf and on behalf of each of its Subsidiaries, renounces such corporate and investment opportunities, other than such opportunities regarding orthobiologics products that are directly competitive with the business of the Company and known to the Nominee, provided that such opportunities came to the attention of the Nominee other than as a result of his position as a director of the Company.
3. **Condition Precedent to the Obligations of the Company.** The obligation of the Company to nominate the Nominee to the Board pursuant to this Letter Agreement is subject to the satisfaction or waiver by the Company of the following condition:
- (a) The First Closing shall have occurred; and
- (b) The Nominee shall have executed and delivered to the Company a Director's and Officer's Questionnaire in the form of Exhibit B hereto (the "Questionnaire").
4. **Entire Agreement.** This Letter Agreement, together with the Purchase Agreement and Questionnaire, contains the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.
5. **Notices.** Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via facsimile or email at the facsimile number or email address specified for the relevant receiving party on the signature pages to this Letter Agreement prior to 5:30 p.m. (in the time zone of the receiving party) on a Business Day, (b) the next Business Day after the date of transmission, if such notice or communication is delivered via facsimile or email at the facsimile number or email address specified for the relevant receiving party on the signature pages to this Letter Agreement on a day that is not a Business Day or later than 5:30 p.m. (in the time zone of the receiving party) on any Business Day, (c) the third Business Day following the date of deposit with an internationally recognized overnight courier service for delivery on the following Business Day, or (d) upon actual receipt by the party to whom such notice is required to be given. The addresses, facsimile numbers and email addresses for such notices and communications are those set forth on the signature pages hereof, or such other address or facsimile number as may be designated in writing hereafter, in the same manner, by any such Person.
6. **Applicable Law; Jurisdiction; Etc.**
- (a) This Letter Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of law thereof.

- (b) Each of the parties hereto irrevocably consents to the exclusive jurisdiction and venue in any state court within the State of Delaware (or, if a state court located within the State of Delaware declines to accept jurisdiction over a particular matter, any court of the United States located in the State of Delaware) in connection with any matter based upon or arising out of this Letter Agreement or the transactions contemplated hereby and agrees that process may be served upon such party in any manner authorized by the laws of the State of New York or in such other manner as may be lawful, and that service in such manner shall constitute valid and sufficient service of process. Each party hereto waives and covenants not to assert or plead any objection that such party might otherwise have to such jurisdiction, venue and process. Each party hereto hereby agrees not to commence any legal proceedings relating to or arising out of this Letter Agreement or the transactions contemplated hereby in any jurisdiction or courts other than as provided herein.
- (c) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS LETTER AGREEMENT OR THE ACTIONS OF A PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

7. **Survival.** The agreements and covenants contained herein shall survive the execution of this Letter Agreement.
8. **Execution.** This Letter Agreement may be executed in separate counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts will together constitute the same agreement. Any such counterpart, to the extent delivered by means of a fax machine or by .pdf, .tif, .gif, .jpeg or similar attachment to electronic mail (any such delivery, an “**Electronic Delivery**”) shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto shall raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery as a defense to the formation of a contract, and each such party forever waives any such defense, except to the extent that such defense relates to lack of authenticity.
9. **Binding Effect.** This Letter Agreement shall be binding upon and shall inure to the benefit of, and be enforceable by, the parties and their permitted successors and assigns. Notwithstanding the foregoing, the Nominee may not assign his rights or obligations under this Letter Agreement.
10. **Amendments; Waiver; Consents.** No amendment or waiver of any provision of this Letter Agreement nor consent to any departure therefrom shall in any event be effective unless the same shall be in writing and signed by the Nominee and the Company, and then such amendment or waiver shall be effective only in the specific instance and for the specific purpose for which given, and shall not operate as a waiver of, or estoppel with respect to, any subsequent or other breach of such provision or be deemed to be or constitute a waiver of any other provision hereof. The failure by a party to insist upon strict adherence to any provision of this Letter Agreement on one or more occasions shall not be considered a waiver or deprive it of the right thereafter to insist upon strict adherence to that provision or any other provision of this Letter Agreement. Whenever this Letter Agreement requires a permit or consent by or on behalf of either party hereto, such consent shall be effective only if given in writing in a manner consistent with the requirements for a waiver of compliance as set forth above.
11. **Term; Termination.** The obligations set forth in Section 1 hereof shall terminate on the earlier of (i) the date on which the Nominee or his Affiliates ceases to hold a number of shares of Common Stock equal to at least 75% of the number of Issued Common Shares, (ii) the second anniversary of the Second Closing Date; or (iii) upon written notice of the Nominee to the Company of his termination of this Letter Agreement or resignation from the Board.
12. **Headings.** The Section headings contained in this Letter Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Letter Agreement.
13. **Construction.** This Letter Agreement shall not be construed for or against any party to this Letter Agreement because that party or its legal representative drafted all or any part of this Letter Agreement.

Kindly evidence your agreement with the foregoing by signing this Letter Agreement where indicated below and returning it with the completed Questionnaire to the undersigned.

[Signature Page Follows]

Sincerely,

XTANT MEDICAL HOLDINGS, INC.

By: /s/ Sean E. Browne

Name Sean E. Browne

Title President and Chief Executive Officer

Address: 664 Cruiser Lane
Belgrade, Montana 59714

Email: sbrowne@xtantmedical.com

ACCEPTED AND AGREED TO AS OF
THE DATE FIRST SET FORTH ABOVE:

/s/ Stavros G. Vizirgianakis

Stavros G. Vizirgianakis

Address: 273 Hillcrest Ln
Oyster Bay, New York 11771

Email: appliedbiosurgery@gmail.com

Exhibit A
Definitions

“**Affiliate**” means any Person that, directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with a Person, as such terms are used in and construed under Rule 144 of the Securities Act of 1933, as amended.

“**Business Day**” means any day other than Saturday, Sunday or any other day on which commercial banks in the City of New York are authorized or required by Law to remain closed.

“**Common Stock**” means the common stock of the Company, par value \$0.000001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

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

“**First Closing**” shall have the meaning ascribed thereto in the Purchase Agreement.

“**Issued Common Shares**” means the shares of Common Stock actually purchased by the Nominee at the First Closing and Second Closing pursuant to the Purchase Agreement, subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions relating to the Common Stock (but, for the avoidance of doubt shall not include the shares of Common Stock issuable upon exercise of warrants issued under the Purchase Agreement).

“**Person**” means an individual, any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any limited liability company or joint stock company), branch office, firm or other enterprise, association, organization or entity (including a “person” as defined in Section 23(d)(3) of the Securities Exchange Act of 1934, as amended) or governmental entity or body.

“**Second Closing**” shall have the meaning ascribed thereto in the Purchase Agreement.

“**Second Closing Date**” shall have the meaning ascribed thereto in the Purchase Agreement.

Exhibit B
Questionnaire



Xtant Medical Announces Closing of First Tranche of \$9.75 Million Private Investment

BELGRADE, MT, August 31, 2022 – Xtant Medical Holdings, Inc. (NYSE American: XTNT), a global medical technology company focused on surgical solutions for the treatment of spinal disorders, today announced the closing of the first tranche of its previously announced private placement with a select group of accredited investors led by Stavros Vizirgianakis. The Company sold approximately 14.1 million shares of common stock and warrants to purchase approximately 3.5 million shares of common stock for an aggregate purchase price of approximately \$6.75 million.

“With the completion of this financing, we are well positioned to accelerate our growth strategy,” said Sean Browne, President and CEO of Xtant Medical. “This investment represents a strong vote of confidence in both our Company and our technology, and we look forward to working together with Stavros, who has a demonstrated track record of success in transforming growth potential into value for investors. Along with the growth capital that this transaction provides, we welcome the strategic assistance Stavros can provide in the biologics and orthopedic spaces as well as his deep relationships with institutional investors and analysts.”

“The combination of Xtant’s outstanding platform for growth and experienced management team positions the Company to realize its significant potential in creating value for investors and patients,” said Mr. Vizirgianakis. “I am very excited to partner with OrbiMed and existing stockholders, as well as with new investors such as Incept, LLC who will help open up new frontiers for Xtant. I expect that the funding provided through this transaction will enable Xtant to rapidly accelerate its growth, and I look forward to working with Sean and his team as they execute their strategic plans.”

The Company intends to use the net proceeds from the transaction to support working capital and other general corporate purposes.

The second closing tranche is expected to occur in early October 2022 after the filing and mailing of a definitive information statement to Xtant’s stockholders informing them of the receipt of stockholder approval in favor of the second tranche of the private placement under the continued listing requirements of the NYSE American and satisfaction of other customary closing conditions. At the second closing, the investors will purchase approximately 6.2 million shares of common stock and warrants to purchase approximately 1.6 million shares of common stock for an aggregate purchase price of approximately \$3.0 million. The warrants will be immediately exercisable and expire on the five-year anniversary of the first closing. The gross proceeds to the Company from both tranches of the transaction are expected to be approximately \$9.75 million, before deducting estimated offering expenses payable by the Company.

Xtant Medical received legal advice in the transaction from Fox Rothschild LLP. Holland & Knight LLP provided legal advice to Mr. Vizirgianakis in connection with the transaction.

The private placement was made pursuant to the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended, and Rule 506 of Regulation D as promulgated by the United States Securities and Exchange Commission (SEC), and the securities sold in the private placement may not be offered or sold in the United States absent registration with the SEC or an applicable exemption from such registration requirements. The Company has agreed to file a registration statement with the SEC covering the resale of the common shares as well as the common shares issuable upon exercise of the warrants issued in the private placement.

This release does not constitute an offer to sell or the solicitation of an offer to buy any security. The shares offered have not been registered under the Securities Act of 1933, as amended, or applicable state securities laws and may not be offered or sold in the United States or any state thereof absent registration under the securities act and applicable state securities laws or an applicable exemption from registration requirements.

About Xtant Medical Holdings, Inc.

Xtant Medical Holdings, Inc. (www.xtantmedical.com) is a global medical technology company focused on the design, development, and commercialization of a comprehensive portfolio of orthobiologics and spinal implant systems to facilitate spinal fusion in complex spine, deformity and degenerative procedures. Xtant people are dedicated and talented, operating with the highest integrity to serve our customers.

The symbols ™ and ® denote trademarks and registered trademarks of Xtant Medical Holdings, Inc. or its affiliates, registered as indicated in the United States, and in other countries. All other trademarks and trade names referred to in this release are the property of their respective owners.

Cautionary Statement Regarding Forward-Looking Statements

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements include statements that are predictive in nature, that depend upon or refer to future events or conditions, or that include words such as “intends,” “expects,” “anticipates,” “plans,” “believes,” “estimates,” “continue,” “future,” “will,” “potential,” similar expressions or the negative thereof, and the use of future dates. Forward-looking statements in this release include the Company’s expectations regarding the private placement, timing for the second closing, anticipated gross proceeds and use of net proceeds, its strategic plans to invest in product development and accelerate growth, and its significant potential in creating value for investors and patients. The Company cautions that its forward-looking statements by their nature involve risks and uncertainties, and actual results may differ materially depending on a variety of important factors, including, among others: risks and uncertainties surrounding the private placement; the Company’s future operating results and financial performance; its ability to increase or maintain revenue; possible future impairment charges to long-lived assets and goodwill and write-downs of excess inventory if revenues continue to decrease; its ability to remain competitive; its ability to innovate, develop and introduce new products and achieve other aspects of its strategic plans; its ability to engage and retain new and existing independent distributors and agents and qualified personnel and its dependence on key independent agents for a significant portion of its revenue; the effect of the COVID-19 pandemic and hospital staffing shortages on the Company’s business, operating results and financial condition, especially when they affect key markets; its ability to implement successfully its future growth initiatives and risks associated therewith; the effect of product sales mix changes on its financial results; government and third-party coverage and reimbursement for its products; its ability to obtain and maintain regulatory approvals and comply with government regulations; the effect of product liability claims and other litigation to which the Company may be subject; the effect of product recalls and defects; the ability to obtain and protect its intellectual property and proprietary rights and operate without infringing the rights of others; its ability to service its debt, comply with its debt covenants and access additional indebtedness; the ability to obtain additional financing on favorable terms or at all; and other factors. Additional risk factors are contained in the Company’s Annual Report on Form 10-K for the year ended December 31, 2021 filed with the Securities and Exchange Commission (SEC) on March 8, 2022 and subsequent SEC filings by the Company, including without limitation its most recent Quarterly Report on Form 10-Q for the quarter ended June 30, 2022 filed with the SEC on August 4, 2022. Investors are encouraged to read the Company’s filings with the SEC, available at www.sec.gov, for a discussion of these and other risks and uncertainties. The Company undertakes no obligation to release publicly any revisions to any forward-looking statements to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events, except as required by law. All forward-looking statements attributable to the Company or persons acting on its behalf are expressly qualified in their entirety by this cautionary statement.

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