



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SYMBIONT.IO, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
IPREO HOLDINGS, LLC, IPREO LTS)	C.A. No. 2019-0407-JTL
LLC, IHS MARKIT LTD., and MARKIT)	
NORTH AMERICA, INC.,)	
)	
Defendants.)	
)	
IPREO HOLDINGS, LLC, IPREO LTS)	
LLC, IHS MARKIT LTD., and MARKIT)	
NORTH AMERICA, INC.,)	
)	
Counterclaim Plaintiffs,)	
)	
v.)	
)	
SYMBIONT.IO, INC.,)	
)	
Counterclaim Defendant,)	
and)	
)	
SYNAPS LOANS LLC,)	
)	
Nominal Counterclaim)	
Defendant)	

**AMENDED VERIFIED COUNTERCLAIMS
OF IPREO HOLDINGS, LLC, IPREO LTS LLC, IHS MARKIT LTD.,
AND MARKIT NORTH AMERICA, INC.**

Counterclaim Plaintiffs Ipreo Holdings, LLC (“Ipreo Parent”), Ipreo LTS LLC (“Ipreo Sub” and, together with Ipreo Parent, “Ipreo”), IHS Markit Ltd. (“IHS Markit”), and Markit North America, Inc. (“Markit North America” and, together with IHS Markit, “Markit”) (collectively, “Counterclaim Plaintiffs”), by and through their undersigned counsel, as and for their counterclaims, hereby allege as follows:

INTRODUCTION

1. Markit’s 2018 acquisition of Ipreo for approximately \$1.855 billion was predicated on the synergies the companies could generate through their many complementary lines of business and the potential growth opportunities in the alternatives segment. Ipreo—a leading financial and data services provider—was seen as having a strong brand in financial markets, and its core verticals—Global Markets, Corporate, and Private Capital Markets—were a logical and complementary extension of Markit’s own financial services business and customer base, extending Markit’s product set into areas in which it did not have a position at the time.

2. What did *not* factor into Markit’s decision to acquire Ipreo, however, was Ipreo’s project with Symbiont in Synaps Loans LLC (“Synaps” or the “Company”). In fact, the 100-page management presentation provided to Markit in April 2018 did not make a single reference to Synaps and only a passing

reference to Symbiont as a partner for an “industry blockchain initiative.” Likewise, the investor presentation that Markit prepared in connection with the acquisition, which highlighted Ipreo’s high growth and complementary business lines, did not so much as mention Synaps or Symbiont; and, of the 3,500 global Ipreo clients and 100,000 plus individual users of Ipreo products, not a single one was attributable to Symbiont or Synaps. Indeed, no portion of the \$1.855 billion purchase price for Ipreo ascribed *any* value to Synaps or Ipreo’s interest therein. Nor was Markit’s decision to acquire Ipreo motivated in any way by a desire to “thwart Synaps’s [allegedly] competing business.”

3. At the time that Markit decided to acquire Ipreo, it understood that Synaps had no viable product, no customers, and generated no revenue. In fact, of the \$289.7 million of core Ipreo revenue for the fiscal year 2017, \$0 was attributable to Synaps. Today, it remains Markit’s understanding that Synaps has no viable product, no customers, and generates no revenue.

4. The reality is that Synaps struggled from the outset, in no small part due to Symbiont’s failure to deliver the technology that it promised. Early on, concerns were raised internally that Symbiont had exaggerated the state of its contributed technology, the true state of which hindered Synaps’s product development and fundraising efforts, and that Symbiont was not devoting adequate resources to develop the necessary technology. Synaps’s then-CEO, Joseph

Salerno (who was also an Ipreo managing director), thus moved into Symbiont's offices so that he could directly monitor Symbiont's efforts and commitment to development. Although Synaps endeavored in late 2016 and in 2017 to create a minimally viable product and raise capital, it was unable to do either.

5. Far from working to develop Synaps as it was obligated to do, Symbiont seemingly abandoned any such efforts altogether once Markit announced in May 2018 that it would be acquiring Ipreo. Indeed, following that announcement, Symbiont, led by its CEO, Mark Smith, has tried to use the acquisition as part of an exit strategy for its failed investment in Synaps. Among other things, Symbiont has urged "the most hostile [litigation] position imaginable," asserting, for example, that Markit should run its market-leading syndicated loan business through Synaps's nonexistent platform. Shortly after the acquisition was announced, Symbiont, again led by Mr. Smith, solicited Mr. Salerno and other Ipreo employees seconded to Synaps to form a competing "NewCo," which would appropriate Synaps's IP and its potential investors. Symbiont and Mr. Smith also have actively frustrated Synaps's purpose and continued operations by, among other things, locking Mr. Salerno and other Ipreo employees seconded to Synaps out of their offices, denying Synaps access to Symbiont resources upon which Synaps relies to operate, and telling potential customers that Mr. Salerno was no longer with Synaps at a time when that was not the case.

6. Symbiont and Mr. Smith further have made repeated, false assertions about the Markit-Ipreo transaction. Among other things, Symbiont and Mr. Smith claim that Markit’s acquisition of Ipreo’s indirect parent company, Infinity Intermediate Holdings, LLC (“Infinity”), caused Ipreo to violate a non-compete clause contained in the JV Agreement by operating a competing loan settlement business through an “Affiliate.”¹ Symbiont and Mr. Smith also assert that the acquisition violated the LLC Agreement’s restrictions on the transfer of “Units” and “Membership Interests” to a “Competitor” without Symbiont’s consent.

7. In addition, Symbiont and Mr. Smith assert that Ipreo violated the JV Agreement’s non-solicitation clause by “solicit[ing] and attempt[ing] to influence [Mr. Salerno] to leave Synaps, by offering him a new position at Markit-Ipreo”—notwithstanding Symbiont’s agreement to waive the non-solicitation clause as to Mr. Salerno in connection with Symbiont’s *own* efforts to hire him, and its subsequent attempt to constructively terminate him when those efforts failed.

8. As alleged in more detail below, none of the positions asserted by Symbiont or Mr. Smith is legally supportable. Because Markit is not an “Affiliate” of Ipreo, as that term is defined in the JV Agreement, the Markit-Ipreo transaction did not cause Ipreo to violate that Agreement’s non-compete provision. Similarly,

¹ As used herein, “JV Agreement” and “LLC Agreement” have the same meaning as in the Symbiont Complaint.

Ipreo did not transfer its Units or Membership Interest in Synaps to *anyone*; thus, it did not violate and could not have violated the LLC Agreement's transfer restrictions. And because Symbiont agreed to waive the non-solicitation clause as to Mr. Salerno (who was an Ipreo employee at all relevant times in any event), Markit's and Ipreo's discussions with Mr. Salerno about potentially hiring him did not violate the JV Agreement any more than Symbiont's efforts to do the same.

9. Notwithstanding Synaps's longstanding and ongoing challenges, Ipreo has met, and continues to meet, its obligations under the Synaps JV and LLC Agreements. In fact, although Ipreo has no obligation to fund the joint venture beyond its initial capital contribution of \$640,000, it has funded Synaps's cash operating needs since inception and continues to do so today, even *after* it was acquired by Markit and even *after* Symbiont filed its errant lawsuit. Far from "stall[ing], frustrat[ing], and prejudic[ing]" Synaps and Symbiont, Ipreo has been the *only* joint venture partner actually contributing to Synaps and keeping it going.

10. At this stage, however, and as Symbiont concedes, "Synaps's business decisions are in gridlock." Its two members, Ipreo Sub and Symbiont, are at odds about Synaps's future and cannot agree on a path forward. It has never had employees and currently has no CEO. And even when it last had a CEO and personnel performing work for it (all of whom were Ipreo employees seconded to Synaps), Symbiont barred them from entering their own office and cut off their

access to Symbiont's resources. Synaps's Board no longer functions at all, let alone effectively, holding its last Board meeting nearly eight months ago in December 2019. Synaps lacks outside funding, a viable product, customers, and revenue, and Symbiont has now brought suit against both Markit and Ipreo. It is therefore no longer reasonably practicable to continue the business of Synaps in accordance with the LLC Agreement.

11. As a result of the foregoing, and in light of the allegations in the Symbiont Complaint, Defendants and Counterclaim Plaintiffs seek (i) a declaration that (a) Markit North America and IHS Markit are not "Affiliates" of Ipreo under the JV Agreement, (b) Ipreo and Symbiont waived Section 4.4(a)(i)(z) of the JV Agreement in and around March 2019 with respect to Mr. Salerno, and (c) Ipreo Sub did not Transfer its Units or Membership Interest in Synaps through the Infinity Acquisition; (ii) an order that Symbiont breached Sections 2.2, 4.1(c), 4.4(a)(i)(y), 4.4(a)(i)(z), and 4.5(a) of the JV Agreement; (iii) in the alternative, an order that Symbiont breached the implied covenant of good faith and fair dealing in the JV Agreement; (iv) an order that Symbiont breached the implied covenant of good faith and fair dealing in the LLC Agreement; (v) an order of dissolution pursuant to 6 *Del. C.* § 18-802; (vi) an order excusing Ipreo from its obligations under the Agreements, including any ongoing obligations under Section 4.4(a)(i) of the JV Agreement, because Symbiont has materially breached those

Agreements; (vii) damages in an amount to be determined at trial, but of at least the amount of Ipreo's capital contributions to Synaps and of any other amount owed to Ipreo by Synaps; and (viii) such other and further relief as this Court may deem just and proper.

THE PARTIES

12. Plaintiff and Counterclaim Defendant Symbiont is a corporation organized and existing under the laws of the State of Delaware, with its principal offices located at 632 Broadway, 5th Floor, New York, NY 10012. Symbiont is a purported provider of smart contracts platforms for institutional applications of blockchain technology; it purportedly develops smart contracts products and distributed ledgers for use in capital markets. Symbiont is a party to the JV Agreement and LLC Agreement and is a Member (as defined in the LLC Agreement) of Synaps.

13. Defendant and Counterclaim Plaintiff Ipreo Parent is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 450 West 33rd St., 5th Floor, New York, NY 10018. Ipreo Parent is a global leader in providing market intelligence, data, and technology solutions to participants in the global capital markets. Ipreo Parent is a party to certain provisions of the JV Agreement.

14. Defendant and Counterclaim Plaintiff Ipreo Sub is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 450 West 33rd St., 5th Floor, New York, NY 10018. Ipreo Sub is an indirect subsidiary of Ipreo Parent and is the provider of Ipreo's loan trade settlement platform. Ipreo Sub is a party to the JV Agreement and the LLC Agreement and is a Member of Synaps.

15. Defendant and Counterclaim Plaintiff IHS Markit is a corporation organized under the laws of Bermuda with its principal place of business in London, United Kingdom. IHS Markit is a leader in critical information, analytics, and solutions for the major industries and markets that drive economies worldwide.

16. Defendant and Counterclaim Plaintiff Markit North America is a corporation existing under the laws of Delaware, with its principal place of business located in New York, NY. Markit North America is an indirect subsidiary of IHS Markit.

17. Nominal Counterclaim Defendant Synaps is a limited liability company organized and existing under the laws of the State of Delaware; its sole Members are Ipreo Sub and Symbiont. Synaps is the subject of the JV Agreement and LLC Agreement, as well as of the instant dispute between the parties.

FACTUAL BACKGROUND

A. Formation of Synaps

18. In March 2016, Ipreo and Symbiont announced their plan to form a joint venture to provide technological solutions to participants in the syndicated loan market, primarily with respect to loan settlement and loan servicing.

19. Synaps was officially formed in the fall of 2016. On November 11, 2016, Ipreo and Symbiont executed various integrated agreements defining their rights and obligations with respect to Synaps, including the JV Agreement and the LLC Agreement.²

20. To form the joint venture, Ipreo agreed to contribute its LTS Process Solution and LTS Software (together, “LTS”)—Ipreo’s loan settlement system that brings securities lending to the loan market by facilitating borrowings when sellers do not have a loan asset available for scheduled settlement. Symbiont, in turn, agreed to contribute its purported blockchain expertise and developing technology called SmartLoans, a smart contracts platform that, according to Symbiont, eliminates the need for third-party intervention in syndicated loan

² A true and correct copy of the JV Agreement (excluding exhibits) is attached hereto as Exhibit A. A true and correct copy of the LLC Agreement is attached hereto as Exhibit B.

trades and settlement. By combining these technologies, Ipreo and Symbiont hoped to create a new approach to settling and servicing syndicated loans.

21. Ipreo also agreed to make an initial capital contribution of \$640,000 to Synaps and to assign the Company its rights to LTS. Ex. B, LLC Agreement § 3.01(a); Ex. A, JV Agreement § 4.2(b)(i). In exchange, Ipreo received 1,000,000 “Units” in the Company. Ex. B, LLC Agreement at Schedule A.

22. Symbiont was also required to make an initial cash contribution of \$360,000, which could be waived if Symbiont delivered a “Minimum Viable Product”—a version of Symbiont’s SmartLoans Platform that complied with certain agreed upon requirements—within six months of entering into the LLC Agreement, a period that could be extended for an additional three months at the discretion of Synaps’s CEO. *Id.* §§ 1.01, 3.01(b).

23. Symbiont received 562,500 Units in the Company and 437,500 unvested, restricted Units (referred to in the LLC Agreement as “Symbiont Restricted Units”). *Id.* at Schedule A. The LLC Agreement contemplates that 87,500 of the Symbiont Restricted Units would vest every time Synaps secured a sizable customer agreement, up to a total of five agreements. *Id.* § 3A.02(b). The LLC Agreement also provides that these restricted Units would be automatically and forever forfeited in November 2018 if no qualifying customer agreements were signed. *Id.* § 3A.02.

24. Other than their respective initial contributions, Ipreo and Symbiont are not required to make any additional capital contributions to Synaps. Ex. B, LLC Agreement § 3.02. Instead, if Synaps requires additional funds, either Member may make a loan to the Company, but is not required to do so. *Id.* § 3.07. Ipreo nevertheless alone has funded the cash operating needs of the joint venture since its inception until today, with the exception of a \$250,000 loan made by Symbiont to Synaps in December 2017, which mirrored an identical loan made by Ipreo.

B. The JV Agreement

25. The JV Agreement contains provisions regarding the joint venture's purpose and Ipreo's and Symbiont's obligations to develop and operate Synaps to further that purpose. In particular, Section 2.2 provides that "[t]he Parties hereby agree jointly to develop and operate the Company in accordance with the Transaction Agreements. The purpose of the Company is to engage in the Joint Venture Business." Ex. A, JV Agreement, § 2.2.³

³ "Joint Venture Business" is defined as "the sale of products and services necessary or appropriate for the Servicing and Settlement of Commercial Loans, any and all activities necessary or incidental thereto and such other activities as the Ipreo Member and the Symbiont Member shall approve in accordance with Section 7.06(b)." Ex. B, LLC Agreement § 2.05(a); *see also* Ex. A, JV Agreement § 1.22 ("Joint Venture Business' shall have the meaning ascribed to such term in the Operating Agreement.").

26. Section 4.1(c) similarly provides that “[Ipreo Sub], Symbiont and the Company Board shall cause the executives and employees of the Company and this Joint Venture to conduct the operations thereof in accordance with the Operating Plan, this Agreement and the other Transaction Agreements then in effect.” *Id.* § 4.1(c). The “Transaction Agreements” are defined in the JV Agreement to include, among others, the Technology Development and Use Agreement between Symbiont and Synaps, dated November 11, 2016 (the “Technology Agreement”).⁴ *Id.* §§ 1.44, 1.49.

27. The JV Agreement also contains an “Exclusivity” Section, which includes non-compete, non-solicitation, and non-interference provisions. The purpose of these provisions is to protect Ipreo’s and Symbiont’s “proprietary, confidential and other nonpublic information (including trade secrets, know-how, customer lists and employee identities) relating to aspects of each Party’s business that will not be conducted through the Company” because that information “cannot be separated from the information relevant to the Joint Venture Business.” Ex. A, JV Agreement § 4.4. The non-compete, non-solicitation, and non-interference provisions survive any dissolution of Synaps. *Id.* § 5.2.

⁴ A true and correct copy of the Technology and Development Use Agreement (excluding certain attachments) is attached hereto as Exhibit C.

28. These provisions limit certain conduct by Ipreo, Symbiont, and their “Affiliates.” *Id.* § 4.4(a)(i). For example, the non-compete provision prohibits Ipreo, Symbiont, and their Affiliates from “own[ing], manag[ing], operat[ing], jointly control[ing], financ[ing] or participat[ing] in the ownership, management, operation, control or financing of, or be[ing] connected as a partner, principal, manager, agent, representative, consultant, advisor, promoter, or otherwise assist[ing] (financially or otherwise) with or participat[ing] in, or us[ing] or permit[ing] its name or the name of any of its Affiliates to be used in connection with, any business or enterprise that is engaged in the Joint Venture Business anywhere in the world (the ‘Territory’), except through the Company and the Joint Venture.” *Id.* § 4.4(a)(i)(x).

29. Section 4.4(a)(i)(z), in turn, contains both non-solicitation and non-interference provisions. In particular, it prohibits Ipreo, Symbiont, and their Affiliates from “induc[ing], solicit[ing] or attempt[ing] to influence any employee or consultant of the Company . . . to terminate his or her employment . . . or in any other manner interfer[ing] with or attempt[ing] to interfere with, in any way, the relationships of the Company . . . with any employees, officers, managers . . . Customers, or otherwise.” *Id.* § 4.4(a)(i)(z).

30. In addition, Section 4.4(a)(i)(y) of the JV Agreement prohibits Members from “solicit[ing] or attempt[ing] to solicit the sale or license of, or

sell[ing] or licens[ing] any product or service in competition with the products or services of the Company and the Joint Venture contemplated by the definition of ‘Joint Venture Business’ . . . to any Person, including without limitation any Customer of the Company or the Joint Venture.” *Id.* § 4.4(a)(i)(y).

31. Section 4.5(a) of the JV Agreement requires that, “[i]f any Party becomes aware of any Business Opportunity relating to the products or services that are directly related to the Joint Venture Business . . . such entity . . . before pursuing any Business Opportunity, shall present such Business Opportunity [to the Non-Presenting Entity] in writing The Non-Presenting Entity shall have the right but not the obligation to agree or consent that the Company . . . can pursue such Business Opportunity.” *Id.* § 4.5(a).

32. As defined in the JV Agreement, “Business Opportunities” are “corporate or business opportunities which the Company . . . is financially able to undertake, which are, from their nature, in the line of the Joint Venture Business, and are ones in which the Company has an interest or a reasonable expectancy and which, by embracing the opportunities, the self-interest of a Party or any of its Affiliates will be brought into conflict with that of the Company.” *Id.* § 4.5(c).

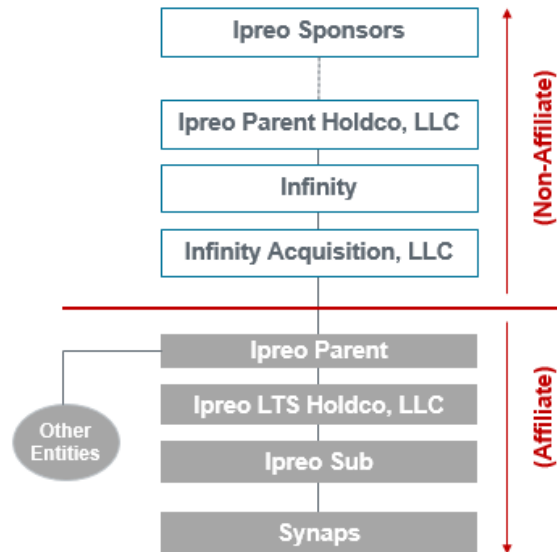
33. The JV Agreement defines “Affiliate” as “any other Person who, directly or indirectly, controls, is controlled by, or is under common control with, such Person,” except, “with respect to Ipreo, [Ipreo Sub], [Ipreo Parent] or any

Ipreo Member, ‘Affiliate’ shall not include the Ipreo Sponsors and any direct or indirect owner thereof, or any Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Ipreo Sponsors (other than Persons directly or indirectly controlled by [Ipreo Parent]).”⁵ *Id.* § 1.1.

34. None of the JV Agreement’s provisions, including the definition of “Affiliate,” contains any discussion of entities that are the successors to current Affiliates (“Affiliate successors”) or that subsequently become affiliated with Ipreo or Symbiont after the date of the JV Agreement (“future Affiliates”).

35. Further, by virtue of the JV Agreement’s “Affiliate” definition, the parties to the JV Agreement effectively drew a cutoff line for Affiliates at the Ipreo Parent level:

⁵ “Ipreo Sponsors” is defined as “The Blackstone Group L.P., The Goldman Sachs Group, Inc. and their respective Affiliates (other than Persons directly or indirectly controlled by [Ipreo Parent]).” Ex. A, JV Agreement § 1.20.



36. To the extent that provisions of the JV Agreement—such as the non-compete and non-solicitation provisions—purport to govern the conduct of Ipreo’s Affiliates, they apply only to entities owned by Ipreo Parent and not to entities that directly or indirectly own Ipreo Parent.

37. By defining “Affiliate” in this way, the parties ensured that the private equity funds that sponsored Ipreo at the time of the JV Agreement would be able to exit their investments through a sale to any potential buyer, regardless of that buyer’s status as an actual or potential competitor with Synaps.

38. Indeed, the non-compete provision was never intended by the parties to act as a barrier to Markit (or any other entity) acquiring Ipreo. To the contrary, Symbiont sought such protection during Ipreo’s and Symbiont’s negotiations concerning Synaps, and Ipreo rejected Symbiont’s proposal. As Ipreo relayed to

Symbiont at the time, it would not agree to a provision that would limit or impact the ability of its private equity sponsors to exit their Ipreo investment, especially to a natural buyer of Ipreo, such as Markit.

C. The LLC Agreement

39. The LLC Agreement includes a “Restriction on Transfer” Section, which prohibits either Ipreo Sub or Symbiont from “Transfer[ring] all or any portion of its Units or Membership Interest in [Synaps]” without the other’s written consent. Ex. B, LLC Agreement § 9.01(a). This Section also prohibits either Ipreo Sub or Symbiont from “Transfer[r]ing” its Units or Membership Interest to a “Competitor.” *Id.* § 9.01(b)(viii).⁶

40. The LLC Agreement further sets forth certain actions that require the approval of both Ipreo and Symbiont. Ex. B, LLC Agreement § 7.06. Among other such actions, neither Ipreo nor Symbiont can unilaterally hire or terminate “any Company employee having a total expected annual cash compensation of \$150,000 or more.” *Id.* § 7.06(h).

41. The LLC Agreement also provides that “[n]o real or personal property of the Company shall be deemed to be owned by any Member

⁶ Unless otherwise defined, the capitalized terms quoted here have the meanings ascribed to them in the LLC Agreement.

individually, but shall be owned by, and title shall be vested solely in, the Company.” *Id.* § 4.04.

42. The LLC Agreement also specifies a limited set of circumstances under which Synaps may be dissolved, which include, among others, the determination of the Members to dissolve the Company and the entry of a decree of judicial dissolution under 6 *Del. C.* § 18-802. *Id.* § 11.01(a), (e).

43. If Synaps is dissolved pursuant to 6 *Del. C.* § 18-802, the CEO serves as the liquidator to wind up the Company (the “Liquidator”). *Id.* § 11.03(a). If there is no CEO in place, then the Liquidator must be jointly appointed by Ipreo and Symbiont. *Id.*

44. Pursuant to the LLC Agreement, the Liquidator has the authority to sell Synaps’s assets. *Id.* § 11.03(a). In the event of a partial or complete liquidation, the Liquidator must distribute the proceeds in a specified order of priority. *Id.* § 11.03(c).

D. The Technology Agreement

45. The Technology Agreement generally sets forth the terms by which Symbiont agreed to provide its SmartLoans Platform to Synaps. It provides that “in connection with entering into the JV Agreement . . . , Symbiont has agreed to develop and provide to the Company certain of its technology . . . for the purpose of developing and engaging in the Joint Venture Business.” Ex. C, Tech.

Agreement at 1. Section 2.1 of the Technology Agreement further provides that, “[d]uring the Agreement Term, Symbiont *will provide* the Platform Services for the Company in accordance with this Agreement.” *Id.* § 2.1 (emphasis added).⁷

46. The Technology Agreement also defines certain “Professional Services” to be provided by Symbiont to Synaps, which include “the development, configuration and deployment of the Platform Services in accordance with one or more statements of work.” *Id.* § 3.1.⁸ Pursuant to Section 3.1 of the Technology Agreement, Symbiont “agree[d] to use all commercially reasonable efforts to provide Professional Services on an ongoing basis as reasonably requested by Company to change and/or enhance the SmartLoans Platform to support the Joint Venture Business.” *Id.* ¶ 3.1.

⁷ “Platform Services” is defined as “the access to and use of the SmartLoans Platform delivered by Symbiont to Company pursuant to the terms of [the Technology Agreement].” *Id.* § 1.25. “SmartLoans Platform” is defined as “the software-based platform to be developed by Symbiont pursuant to [the Technology Agreement], comprised of the SmartSecurities System and Deliverables which will receive, store and distribute information and execute business logic for the assignment and servicing of Commercial Loans across a distributed system of multiple servers as further specified in SOW#1 . . . and/or any other SOWs entered into by the Parties.” Ex. C., Tech. Agreement § 1.32.

⁸ The Statement of Work specifies certain “Deliverables,” which are “the software, materials, products and work product to be provided hereunder to Company by Symbiont in connection with the development, maintenance and operation of the SmartLoans Platform.” Ex. C, Tech. Agreement §§ 1.12, 3.1.

E. Synaps's Launch

47. Despite Ipreo's high hopes for Synaps, it got off to an inauspicious start. During the early stages of the joint venture, it became clear that Symbiont's SmartLoans Platform—the technology that Symbiont had promised to deliver to the joint venture—was far less developed than represented. It further became clear that Symbiont was not devoting sufficient resources to adequately develop its technology or the joint venture, contrary to its obligations under the JV and Technology Agreements, and Mr. Salerno moved into Symbiont's offices so that he could directly monitor Symbiont's development efforts and progress.

48. Because Symbiont's SmartLoans Platform technology was central to the Synaps initiative (as well as to Ipreo's selection of Symbiont as a joint venture partner), Symbiont's failure to deliver the product it had promised hindered Synaps's ability to develop a commercially viable product that was acceptable to the marketplace.

49. Symbiont's failure to deliver on its obligations to the JV was well documented. For example, a February 2017 internal Synaps update stated that Synaps had missed an interim milestone, which was “dependent on Symbiont's resolution of some system stability issues.” Materials for an April 2017 Synaps Board of Directors meeting similarly stated that the Symbiont platform's “maturity,” “stability,” and “performance” were “risks” for Synaps's operations. A

May 2017 update stated that Symbiont’s platform “has scalability and replayability issues.” Likewise, a July 2017 update stated that the “performance [of Symbiont’s platform] needs to improve dramatically to meet the estimated demand of the entire syndicated loan market in North America, which is the SOW requirement.” And a January 2018 update stated that Synaps was “making progress [with the product development] but still . . . working through delays with the latest generation of the Symbiont platform.”

50. Symbiont’s failure to deliver its technology also hindered Synaps’s efforts to raise the third-party capital critical to fund the joint venture. In its Initial Operating Plan, dated October 28, 2016, Synaps stated that its “primary strategic goal . . . is to close a deal with large financial institutions that provides cash of no less than \$2M” and specified that “[a] deal must close during the second quarter of 2017 to meet the company’s working capital needs.” The Initial Operating Plan further explained that it was “designed to enable Synaps to run its first deals by the end of the second quarter 2017 and to become profitable on a run-rate basis by the end of the year.”

51. Yet, by the end of 2017, over a year after the LLC Agreement was signed, Synaps had not closed a deal with a large (or any) financial institution and still did not have a viable product—much less a profitable business—largely due to Symbiont’s failure to adequately and timely develop its technology. Synaps even

went so far as to hire legal counsel with strong fundraising connections to aid in third-party fundraising efforts, but this also failed to yield results. Although Synaps signed a non-binding term sheet with a few banks towards the end of 2017, no progress was made thereafter; as reflected in a Synaps “Update for Symbiont and Ipreo,” dated February 8, 2018, Synaps had at that time identified “several possible investors” and a core group of “lead banks,” but “d[id] not have a definite timetable to term sheet signing with any of them.”

52. In December 2017, the Synaps Board nevertheless agreed to modify or waive certain of Symbiont’s obligations under the Agreements. First, Mr. Salerno suggested that it could be beneficial for Synaps if Ipreo and Symbiont were equal owners of the business as a means of further incentivizing Symbiont to fulfill its obligations. As a result, and even though Synaps had not met and was not close to meeting the requirements for vesting any of the Symbiont Restricted Units, the Synaps Board and both Members resolved on December 14, 2017, to vest an additional 437,499 Symbiont Restricted Units. Ipreo now owns 1,000,000 Units while Symbiont holds 999,999 Units and 1 Symbiont Restricted Unit. The remaining Restricted Unit vests upon a successful third-party financing. Second, even though Symbiont had still not delivered the Minimum Viable Product by December 2017—months after Symbiont’s *extended* deadline to do so—the

Synaps Board also agreed, in the same December 14, 2017, resolution, to waive Symbiont's initial capital contribution obligation of \$360,000.

53. None of these remediation efforts was able to overcome the deficiencies in Symbiont's technology contribution.

F. Markit's Acquisition of Infinity

54. On May 21, 2018, Markit announced that it had reached a deal to acquire Ipreo in a \$1.855 billion transaction.

55. To acquire Ipreo, Markit formed a company called Iredell Holdings LLC ("Iredell"), which then merged into and with Infinity, an indirect parent company of Ipreo (the "Infinity Acquisition").

56. Following the merger, Markit indirectly owns Ipreo Parent through Infinity and Infinity's subsidiary.

57. Markit, however, did not acquire any Units or Membership Interest in Synaps through the Infinity Acquisition. Just as at all times prior to the merger, following the merger, Ipreo Sub continued to own 1,000,000 Units in Synaps and continues to do so today.

58. Indeed, Ipreo Sub has not transferred its Units or Membership Interest in Synaps to anyone—neither as part of the Infinity Acquisition nor otherwise. In fact, Ipreo Sub, which is the only Ipreo-related entity that is even a

party to the LLC Agreement, was not a party to any merger agreements and did not take any action as part of the Infinity Acquisition.

59. The merger transaction closed on August 2, 2018.

G. Symbiont Tries to Use the Ipreo Acquisition As an Exit Strategy

60. Since the formation of the joint venture, Ipreo has acted in good faith to support and develop Synaps in accordance with its obligations under the JV and LLC Agreements, even after the Markit-Ipreo transaction closed. Ipreo alone has funded Synaps's cash operating needs since its inception, even though it has no obligation to do so. To date, Ipreo has provided approximately \$1.55 million in funding to pay Synaps's employees and fund its overall operations.

61. By contrast, Symbiont has contributed little of value. It has not contributed any cash or capital other than the \$250,000 loan that each of Symbiont and Ipreo agreed to provide. Its primary contribution was intended to be its technology platform. But that platform has not measured up to what it was represented to be, and Symbiont has failed to devote the resources necessary to render it a viable product.

62. Faced with the prospects of a failed investment, Symbiont and its CEO, Mark Smith, seized on the announcement of the Markit-Ipreo acquisition as an opportunity to exit Synaps and try to extract money from Markit. First, Symbiont and Mr. Smith immediately threatened litigation, urging "the most

hostile position imaginable.” Indeed, just days after the acquisition was announced, Mr. Smith sent Ipreo an email claiming that Symbiont had already “had 4 different legal teams review our [joint venture] agreements” and that, in their view, the Markit-Ipreo acquisition caused Ipreo Sub to violate the JV Agreement’s non-compete provision. Symbiont and Mr. Smith then demanded that Ipreo remedy what they perceived to be a breach of the JV Agreement by somehow compelling Markit to run its substantial and pre-existing syndicated loans business through Synaps’s nonexistent platform, even though Mr. Smith recognized that it was “[h]ard to believe that this is an achievable outcome.”

63. Over the course of the following year, Symbiont and Mr. Smith continued to threaten litigation, while also demanding some form of payment or a buyout of its interest in Synaps as a form of redress for the alleged wrongs. After months of threatening litigation, Symbiont brought this action on May 31, 2019.

64. Second, at the same time Symbiont and Mr. Smith were looking for a payout from Ipreo and Markit, and unbeknownst to Defendants, they sought to form a “NewCo” that would replace Synaps by appropriating Synaps’s CEO, IP, and potential investors. For example, in June 2018, shortly after the Markit-Ipreo deal was announced (and months before it closed), Mr. Smith reached out to Synaps’s potential investors to discuss an “alternative path forward that does not include IPREO or IHS Markit.” Symbiont and Mr. Smith then solicited Synaps’s

CEO, Mr. Salerno, and other Ipreo employees seconded to Synaps to join the NewCo.

65. Symbiont and Mr. Smith also purportedly engaged outside counsel, Goodwin Proctor LLP (“Goodwin”), to draft a term sheet for the NewCo (although they later refused to pay Goodwin on the grounds that there was “no work product”).⁹ Although Goodwin proposed various strategic options that Symbiont could pursue following Markit’s acquisition of Ipreo, Mr. Smith’s preferred route was to replace Synaps with a NewCo that would “appropriate” Synaps’s IP—including IP that was contributed and developed by Ipreo—its CEO, its other seconded Ipreo employees, and its potential investors, all without Defendants’ knowledge or consent.

66. Although Goodwin warned Symbiont and Mr. Smith of the legal risks their plan faced under the JV Agreement, they forged ahead. Symbiont and Mr. Smith apparently believed that Markit’s acquisition of Ipreo gave them free rein to willfully breach the JV Agreement’s non-compete, non-solicitation, and non-interference provisions. Seemingly dissatisfied with Goodwin, Symbiont and Mr. Smith engaged Cravath, Swaine & Moore LLP (“Cravath”) to prepare a term sheet

⁹ Symbiont and Mr. Smith never signed Goodwin’s engagement letter or agreed on even the “basic parts” of their relationship. When Goodwin submitted an invoice for its legal fees, Symbiont and Mr. Smith refused to pay it, chalking up Goodwin’s work to “failed prospecting.”

for the NewCo and explore litigation options. Like Goodwin, Cravath also cautioned against Symbiont's and Mr. Smith's NewCo strategy. Symbiont and Mr. Smith nevertheless continued to pitch the NewCo to potential investors, including to companies that previously had expressed interest in potentially investing in Synaps. However, Mr. Smith took steps to hide his efforts from Defendants, attempting to "position[] [the term sheet] as a proposition from the banks" because "it will give us plausible deniability if Markit makes claims that we interfere[d]" under the JV Agreement. Indeed, Mr. Smith's concerns were well-founded, given that the term sheet defined NewCo's business as the processing of "syndicated loan transactions using blockchain/distributed ledger and smart contract technology"—the exact same business as Synaps.

67. Although, to Defendants' knowledge, Symbiont and Mr. Smith never fully executed their NewCo strategy, their efforts—all of which were in willful violation of the JV Agreement's non-solicitation and non-interference provisions and in attempted violation of the non-compete provision—continued through the end of 2018 and, upon information and belief, until Symbiont filed suit in May 2019. At no point did Mr. Smith or Symbiont inform Ipreo of the NewCo efforts. As a result, Defendants continued to work in good faith to find a potential resolution with Symbiont. Indeed, Ipreo, unlike Symbiont, continued to fund Synaps throughout the period, including by seconding its employees to Synaps

and paying for their work on Synaps's behalf—even while Symbiont and Mr. Smith were soliciting these very individuals for the NewCo.

H. Synaps Finds Itself in a State of Unresolvable “Gridlock”

68. Given Symbiont's failure to deliver a viable technology, its approach to litigation based on the “most hostile position imaginable,” and its efforts to appropriate Synaps' IP, CEO, the Ipreo employees seconded to Synaps, and Synaps's investors for a NewCo, Synaps's prospects quickly deteriorated in late 2018 and early 2019. However, Symbiont's and Mr. Smith's efforts to frustrate the joint venture did not end there.

69. For example, on or around April 12, 2019, Mr. Smith forcibly removed and locked Mr. Salerno out of Synaps's own offices and precluded the Ipreo employees seconded to Synaps from accessing or utilizing Symbiont resources. In and around this same time, Mr. Smith sought Mr. Salerno's resignation and told third parties, including potential Synaps clients, that Mr. Salerno no longer worked for Synaps when that was not the case. Mr. Salerno thereafter informed Symbiont and Ipreo that “[t]he ongoing dispute between Symbiont and Ipreo has now completely paralyzed Synaps” such that he could “no longer . . . direct [the Company's] remaining staff to productive activity.”

70. Not surprisingly, Synaps's financial condition suffered. Indeed, as of June 2018, shortly after the Markit-Ipreo acquisition was announced, Synaps had

only \$40,072 in cash, with nearly \$1 million in liabilities, and a monthly burn rate of over \$100,000. And as of its latest accounting, in December 2019, Synaps had only \$32,419 in cash, with more than \$2.1 million in liabilities.

71. The state of Synaps worsened to such a point that, in or around late March 2019, in connection with discussions about Synaps's future (or lack thereof)—in the context of discussions to try to resolve the parties' differences concerning Symbiont's allegations of breach of the non-compete—Mr. Smith, on behalf of Symbiont, and Ipreo President Kevin Marcus, on behalf of Ipreo, agreed that both Symbiont and Ipreo could pursue Mr. Salerno for employment with their respective organizations. Pursuant to their agreement, Symbiont discussed potential employment opportunities with Mr. Salerno. Markit/Ipreo also discussed with Mr. Salerno—who was, prior to and throughout the joint venture, an Ipreo employee—the possibility that he would remain an Ipreo employee and stay on for future employment. Mr. Salerno indicated to Markit in mid-April 2019 that he desired to remain an Ipreo employee and work for Ipreo going forward.

72. Synaps has also seen the ranks of personnel working on its product dwindle. Whereas Synaps at one point had the use of numerous full-time Ipreo employees who were seconded to the joint venture, it now has none, following the resignation of Mr. Salerno as Synaps's CEO and Board member in November 2019. At the time, Mr. Salerno explained that he was resigning because, among

other things, “Synaps has not conducted any business operations for about a year now.”

73. Synaps is now completely paralyzed and has been for quite some time. As of today, Synaps still has no viable product, no customers, and no revenue; it has never had any employees of its own, and now it has no developers or CEO. Nor is there any prospect that Synaps will be able to function in conformity with the LLC Agreement at any point in the foreseeable future. The LLC Agreement specifically requires the consent of both Members to take a number of important and necessary corporate actions—such as to hire a new CEO or to enter into any transaction involving the purchase, lease, exchange, or other acquisition of Synaps or its assets, Ex. B, LLC Agreement § 7.06—none of which can happen under the present circumstances.

74. The discord between the Members has further disabled an already struggling Synaps Board. With only two directors (appointed by Members who are on opposite sides of this litigation), there is complete deadlock. For example, during the most recent Board meeting (nearly eight months ago) on December 3, 2019, the Board could not agree on a process for selecting a new CEO. Moreover, Symbiont and Mr. Smith made clear that they will not provide any additional money for Synaps, even to cover its ongoing administrative expenses (which continue, of necessity, to be funded by Ipreo).

75. Without third-party financing or a viable product, with essentially no communication among the Members or the Board, and now with litigation between the Members, there realistically is nothing that the Board can do at this stage. Indeed, the Board cannot even authorize liquidation of Synaps because that requires the consent of both Members as well. *Id.* § 7.06(i).

COUNT I
(Declaratory Judgment that Markit North America and
IHS Markit Are Not “Affiliates” Under the JV Agreement)

76. Defendants and Counterclaim Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

77. Defendants and Counterclaim Plaintiffs are entitled to a declaration that Markit North America and IHS Markit are not “Affiliates” of Ipreo under the JV Agreement.

78. The definition of Affiliates does not apply to Affiliate successors or future Affiliates, or to entities—such as Infinity—that sit above Ipreo Parent in the ownership structure, which are carved out of the definition of Affiliate. Therefore, by acquiring non-Affiliate Infinity, non-Affiliates Markit North America, Inc. and IHS Markit Ltd. could not, and did not, become Affiliates of Ipreo.

79. An actual and justiciable controversy presently exists between Defendants/Counterclaim Plaintiffs and Symbiont as to whether Markit North America and IHS Markit are Affiliates under the JV Agreement. Ipreo and

Symbiont are both parties to the JV Agreement, and Symbiont has commenced litigation against Defendants/Counterclaim Plaintiffs for alleged breaches of the JV Agreement that turn, at least in part, on whether Markit North America and IHS Markit are “Affiliates” of Ipreo under the JV Agreement. Accordingly, this controversy, which concerns the rights and obligations that Ipreo and Symbiont owe to each other under the JV Agreement regarding Synaps, is ripe for judicial determination.

COUNT II
(Declaratory Judgment that Ipreo and Symbiont Waived
the JV Agreement’s Non-Solicitation Provision as to Joseph Salerno)

80. Defendants and Counterclaim Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

81. Defendants and Counterclaim Plaintiffs are entitled to a declaration that Ipreo and Symbiont waived the JV Agreement’s non-solicitation provision, Section 4.4(a)(i)(z).

82. The agreement between Mr. Smith of Symbiont and Mr. Marcus of Ipreo that both companies could pursue Mr. Salerno for employment at their respective companies constituted a waiver of the JV Agreement’s non-solicitation provision, as demonstrated by, among other things, Symbiont’s own solicitation of Mr. Salerno, in reliance thereon.

83. The waiver is valid under Delaware law, which recognizes that parties can orally or by course of conduct modify a written agreement, including one with a provision requiring written modifications.

84. An actual and justiciable controversy presently exists between Defendants/Counterclaim Plaintiffs and Symbiont as to whether the JV Agreement's non-solicitation provision was waived. Ipreo and Symbiont are both parties to the JV Agreement, and Symbiont has commenced litigation against Defendants and Counterclaim Plaintiffs for alleged breaches of the JV Agreement, which turn, in part, on whether the JV Agreement's non-solicitation provision was waived. Accordingly, this controversy, which concerns the rights and obligations that Ipreo and Symbiont owe to each other under the JV Agreement regarding Synaps, is ripe for judicial determination.

COUNT III
(Declaratory Judgment that Ipreo Sub Did Not Transfer
Its Units or Membership Interest in Synaps)

85. Defendants and Counterclaim Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

86. Defendants and Counterclaim Plaintiffs are entitled to a declaration that Ipreo Sub did not Transfer its Units or Membership Interest in Synaps through the Infinity Acquisition.

87. Both before and after the Infinity Acquisition closed, Ipreo Sub owned 1,000,000 Units in Synaps. Moreover, Ipreo Sub, which is the only Ipreo-related entity that is a party to the LLC Agreement, was not a party to any merger-related documents and took no action in connection with the Infinity Acquisition. The Infinity Acquisition thus could not and did not constitute a Transfer of its Units or any Membership Interest in Synaps.

88. An actual and justiciable controversy presently exists between Defendants and Counterclaim Plaintiffs and Symbiont as to whether Ipreo Sub Transferred Units and/or Membership Interest through the Infinity Acquisition. Ipreo Sub and Symbiont are both parties to the LLC Agreement, and Symbiont has commenced litigation against Defendants and Counterclaim Plaintiffs for alleged breaches of the LLC Agreement, which turn, in part, on whether Ipreo Sub Transferred its Units and/or Membership Interest. Accordingly, this controversy, which concerns the rights and obligations that Ipreo Sub and Symbiont owe to each other under the LLC Agreement regarding Synaps, is ripe for judicial determination.

COUNT IV
(Breach of the JV Agreement)

89. Defendants and Counterclaim Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

90. The JV Agreement is a valid and enforceable contract between Ipreo Parent, Ipreo Sub, and Symbiont.

91. Ipreo Parent and Ipreo Sub have fully performed all of their obligations under the JV Agreement.

92. As described herein, Symbiont has breached Sections 2.2, 4.1(c), 4.4(a)(i)(y), 4.4(a)(i)(z), and 4.5(a) of the JV Agreement.

93. *First*, pursuant to Section 2.2 of the JV Agreement, Ipreo and Symbiont “agree[d] jointly to develop and operate the Company in accordance with the Transaction Agreements,” which include the LLC Agreement and the Technology Agreement.

94. Pursuant to Section 4.1(c) of the JV Agreement, Symbiont agreed to “cause the executives and employees of the Company and this Joint Venture to conduct the operations thereof, in accordance with the Operating Plan, this Agreement and the other Transaction Agreements then in effect.”

95. The Technology Agreement provides that, “in connection with entering into the JV Agreement . . . , Symbiont has agreed to develop and provide to the Company certain of its technology . . . for the purpose of developing and engaging in the Joint Venture Business.” In addition, Symbiont agreed to “provide the Platform Services for the Company in accordance with th[e Technology] Agreement” and “to use all commercially reasonable efforts to provide

Professional Services on an ongoing basis as reasonably requested by Company to change and/or enhance the SmartLoans Platform to support the Joint Venture Business.”

96. Symbiont has breached Sections 2.2 and 4.1(c) of the JV Agreement by failing to develop the Company in accordance with the Technology Agreement, including by failing to provide the Platform Services thereunder, to use commercially reasonable efforts” to provide “Professional Services” thereunder, and to devote adequate resources to develop the SmartLoans Platform.

97. Since the announcement of the Markit-Ipreo deal, Symbiont has further breached Sections 2.2 and 4.1(c) of the JV Agreement by actively taking steps to frustrate the joint venture, including by locking Synaps’s employees, including Synaps’s CEO, out of their office, informing third parties, including potential Synaps customers, that Mr. Salerno no longer worked for Synaps when that was not the case, and attempting to form a NewCo that would appropriate Synaps’s intellectual property, its CEO and the Ipreo employees seconded to Synaps, and its potential investors.

98. Symbiont’s breaches of Sections 2.2 and 4.1(c) of the JV Agreement are material.

99. *Second*, as alleged above, Symbiont’s and Mr. Smith’s attempts to solicit Mr. Salerno and the Ipreo employees seconded to Synaps in 2018 in

connection with their efforts to set up a NewCo constituted a material breach of Section 4.4(a)(i)(z) of the JV Agreement.

100. Moreover, Symbiont's and Mr. Smith's efforts to form a NewCo that would appropriate Synaps's intellectual property (including the intellectual property contributed and developed by Ipreo), its CEO and the Ipreo employees seconded to Synaps, and its potential investors materially interfered with Synaps's and Ipreo's relationships, thereby materially breaching Section 4.4(a)(i)(z) of the JV Agreement.

101. Further, Symbiont's solicitation of Mr. Salerno in early 2019 (separate from its solicitation of Mr. Salerno for the NewCo in 2018) constituted a material breach of Section 4.4(a)(i)(z) of the JV Agreement in the event Section 4.4(a)(i)(z) is not found to have been waived as to Mr. Salerno as alleged in Paragraphs 71 and 82 above.

102. *Third*, as alleged above, Symbiont and Mr. Smith attempted to replace Synaps with a NewCo that would sell products and/or services to facilitate the processing of "syndicated loan transactions using blockchain/distributed ledger and smart contract technology." In doing so, Symbiont and Mr. Smith materially breached Section 4.4(a)(i)(y) of the JV Agreement by soliciting or attempting to solicit the sale or license of products and/or services that were in direct competition

with those products and/or services that were to be provided by Synaps, as contemplated by the definition of “Joint Venture Business” in the LLC Agreement.

103. *Fourth*, Symbiont and Mr. Smith undertook efforts to form a NewCo to engage in the Joint Venture Business. The formation of the NewCo was a “Business Opportunity” under the meaning of Section 4.5(c) of the JV Agreement. As further alleged above, Symbiont and Mr. Smith did not notify Ipreo, in writing or otherwise, of their intent to form the NewCo. This conduct constitutes a material breach of Section 4.5(a) of the JV Agreement.

104. Ipreo has been damaged by Symbiont’s breaches of the JV Agreement in an amount to be determined at trial.

COUNT V
(Breach of the JV Agreement’s Implied Covenant of
Good Faith and Fair Dealing)

105. Defendants and Counterclaim Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

106. The JV Agreement is a valid and enforceable contract between Ipreo Parent, Ipreo Sub, and Symbiont.

107. Ipreo Parent and Ipreo Sub have fully performed all of their obligations under the JV Agreement.

108. As alleged herein, Symbiont has breached various provisions of the JV Agreement. In the alternative, Defendants allege that Symbiont has breached

the implied covenant of good faith and fair dealing inherent in Sections 2.2, 4.1(c), 4.4(a)(i)(y), 4.4(a)(i)(z), and 4.5(a) of the JV Agreement.

109. *First*, pursuant to Section 2.2 of the JV Agreement, Symbiont was required to “develop and operate the Company in accordance with the Transaction Agreements.” Pursuant to Section 4.1(c) of the JV Agreement, Symbiont must “cause the executives and employees of the Company and this Joint Venture to conduct the operations thereof, in accordance with the . . . Transaction Agreements.” To the extent those provisions do not expressly incorporate the Technology Agreement’s requirement that Symbiont use “commercially reasonable efforts” to develop the SmartLoans Platform, the parties would have intended Sections 2.2 and 4.1(c) of the JV Agreement (i) to require Symbiont to accurately represent the state of the SmartLoans Platform at the joint venture’s inception; and (ii) to take the steps necessary to develop the SmartLoans Platform, including by devoting adequate resources to such development, which it has failed to do in breach of the implied covenant of good faith and fair dealing.

110. Further, to the extent Sections 2.2 and 4.1(c) of the JV Agreement do not expressly prohibit Symbiont from taking affirmative steps to frustrate the operation of the Company, the parties would have intended Sections 2.2 and 4.1(c) of the JV Agreement to prevent Symbiont from (i) locking Synaps personnel, including its CEO, out of its offices, preventing them from accessing resources

necessary to develop and operate the Company; (ii) falsely telling third parties, including potential Synaps clients, that Mr. Salerno no longer worked for Synaps at a time when that was not the case; and (iii) attempting to form a NewCo that would appropriate Synaps's intellectual property, its CEO, the other Ipreo employees seconded to Synaps, and its potential investors.

111. This conduct violates Symbiont's implicit obligations under Sections 2.2 and 4.1(c) of the JV Agreement, and has had the effect of preventing Ipreo from receiving the fruits of its bargain thereunder.

112. *Second*, pursuant to Section 4.4(a)(i)(z) of the JV Agreement, Symbiont was required not to compete with Synaps, solicit its CEO or the other Ipreo employees seconded to Synaps, or interfere with various Synaps or Ipreo relationships. To the extent that provision does not expressly prohibit Symbiont from soliciting Synaps's CEO and employees to form a new entity that would appropriate Synaps's IP and potential investors and interfere with Synaps's and Ipreo's relationships, the parties would have intended Section 4.4(a)(i)(z) of the JV Agreement to prohibit such conduct. As a result, Symbiont's conduct violates its implicit obligations under Section 4.4(a)(i)(z) of the JV Agreement in breach of the implied covenant of good faith and fair dealing, and has had the effect of preventing Ipreo from receiving the fruits of its bargain.

113. *Third*, pursuant to Section 4.4(a)(i)(y) of the JV Agreement, Symbiont was prohibited from soliciting or attempting to solicit the sale or license of any product or service in competition with Synaps's products and services. To the extent that provision does not expressly prohibit Symbiont from setting up a NewCo to solicit or to attempt to solicit the sale or license of products or services in direct competition with Synaps's products or services, as contemplated in the definition of "Joint Venture Business" in the JV Agreement, the parties would have intended Section 4.4(a)(i)(y) of the JV Agreement to prohibit such conduct. As a result, Symbiont's conduct violates its implicit obligations under Section 4.4(a)(i)(y) of the JV Agreement in breach of the implied covenant of good faith and fair dealing, and has had the effect of preventing Ipreo from receiving the fruits of its bargain.

114. *Fourth*, pursuant to Section 4.5(a) of the JV Agreement, Symbiont was required to notify Ipreo of any Business Opportunity before pursuing it. To the extent that provision does not expressly require Symbiont to notify Ipreo prior to pursuing a NewCo to engage in the Joint Venture Business, the parties would have intended Section 4.5(a) of the JV Agreement to require such notice. As a result, Symbiont's conduct violates Symbiont's implicit obligations under Section 4.5(a) of the JV Agreement in breach of the implied covenant of good faith and fair

dealing, and has had the effect of preventing Ipreo from receiving the fruits of its bargain.

115. Ipreo has been damaged by Symbiont's breaches of the JV Agreement's implied covenant of good faith and fair dealing in an amount to be determined at trial.

COUNT VI
(Breach of the LLC Agreement's Implied Covenant of
Good Faith and Fair Dealing)

116. Defendants and Counterclaim Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

117. The LLC Agreement is a valid and enforceable contract between Ipreo Sub, Synaps, and Symbiont.

118. Ipreo Sub has fully performed all of its obligations under the LLC Agreement.

119. Section 7.06(h) of the LLC Agreement prohibits the Company from "terminat[ing] any Company employee having a total expected annual cash compensation of \$150,000 or more" without the consent of both Members. To the extent Section 7.06(h) does not expressly prohibit one Member of the Company from constructively terminating the Company's CEO by locking the CEO out of his or her office and erroneously informing third parties that the CEO no longer worked for Synaps, the parties would have agreed to prohibit such conduct.

120. Symbiont has therefore breached the implied covenant of good faith and fair dealing in the LLC Agreement by locking Mr. Salerno out of his office and by telling third parties, including potential Synaps clients, that Mr. Salerno no longer worked for Synaps in and around mid-April 2019. Ipreo Sub did not consent to Mr. Salerno's constructive termination. Symbiont's breach of the LLC Agreement's implied covenant is material and has had the effect of preventing Ipreo from receiving the fruits of its bargain.

121. Ipreo has been damaged by Symbiont's breach in an amount to be determined at trial.

COUNT VII **(Dissolution of Synaps)**

122. Ipreo Sub repeats and realleges each and every allegation contained above as if fully set forth herein.

123. Synaps has been paralyzed by its Members' dispute. As of today, Synaps still has no viable product, no customers, no revenue, no employees, no CEO, and its Members are embroiled in litigation. Its Board cannot agree on the future of the business, how to replace the CEO, or even basic housekeeping items, let alone communicate with each other directly. There has not been a Board meeting since December 3, 2019.

124. In addition, Synaps's financial condition continues to suffer, and there is no prospect that Synaps will be able to function in conformity with the

LLC Agreement at any point in the foreseeable future. The Agreement specifically requires the consent of both Members to take a number of important and necessary corporate actions—such as hire or terminate the CEO or enter into any transaction involving the purchase, lease, exchange, or other acquisition of the Company or its assets, Ex. B, LLC Agreement § 7.06—none of which can happen under the present circumstances.

125. The discord between the Members has further disabled an already struggling Synaps Board. Without third-party financing or a viable product, with essentially no communication among the Members or the Board, and now with litigation between the Members, there realistically is nothing that the Board can do at this stage. Indeed, the Board cannot even authorize liquidation of Synaps because that requires the consent of both Members as well. *Id.* § 7.06(i).

126. Ipreo Sub has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Defendants and Counterclaim Plaintiffs pray for relief and judgment as follows:

- (a) A declaration that Markit North America and IHS Markit are not “Affiliates” of Ipreo under the JV Agreement;

- (b) A declaration that Ipreo and Symbiont waived the JV Agreement's non-solicitation provision, Section 4.4(a)(i)(z), with respect to Mr. Salerno in and around March 2019;
- (c) A declaration that Ipreo Sub did not Transfer its Units or Membership Interest in Synaps through the Infinity Acquisition;
- (d) An order that Symbiont breached Sections 2.2, 4.1(c), 4.4(a)(i)(y), 4.4(a)(i)(z), and 4.5 of the JV Agreement; or, in the alternative, an order that Symbiont breached the implied covenant of good faith and fair dealing inherent in Sections 2.2, 4.1(c), 4.4(a)(i)(y), 4.4(a)(i)(z), and 4.5 of the JV Agreement;
- (e) An order that Symbiont breached the implied covenant of good faith and fair dealing in the LLC Agreement;
- (f) An order excusing Ipreo from its obligations under the Agreements, including any ongoing obligations under Section 4.4(a)(i) of the JV Agreement, because Symbiont has materially breached those Agreements;
- (g) Damages in an amount to be determined at trial, but of at least the amount of Ipreo's capital contributions to Synaps and of any other amount owed to Ipreo by Synaps;

- (h) An order decreeing that Synaps is dissolved pursuant to 6 *Del. C.* § 18-802;
- (i) An order appointing a Liquidator to wind up and liquidate the affairs of Synaps in accordance with Section 11.03 of the LLC Agreement;
- (j) Pre- and post-judgment interest;
- (k) Attorneys' fees and costs incurred in connection with this action to the extent permitted by law; and
- (l) Such other and further relief as the Court deems just and proper.

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Dated: August 7, 2020

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