

~~Peripheral Intervention~~

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-Q**

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2022

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____.

Commission File Number **0-18592**



MERIT MEDICAL SYSTEMS, INC.
(Exact name of registrant as specified in its charter)

Utah **87-0447695**
(State or other jurisdiction of incorporation or organization) (IRS Employer Identification No.)

1600 West Merit Parkway, South Jordan, Utah 84095
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: **(801) 253-1600**

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

Title of each class	Trading Symbol	Name of exchange on which registered
Common Stock, no par	MMSI	NASDAQ Global Select Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer Accelerated Filer Non-Accelerated Filer Smaller Reporting Company 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.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

Indicate the number of shares outstanding of each of the Registrant's classes of common stock, as of the latest practicable date.

Title or class	Shares outstanding as of October 26, 2022
Common Stock, no par	56,919,405

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PART I - FINANCIAL INFORMATION**ITEM 1. FINANCIAL STATEMENTS****MERIT MEDICAL SYSTEMS, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(In thousands)**

ASSETS	September 30,	December 31,
	2022	2021
	(unaudited)	
Current assets:		
Cash and cash equivalents	\$ 51,481	\$ 67,750
Trade receivables — net of allowance for credit losses — 2022 — \$8,018 and 2021 — \$6,767	155,828	152,301
Other receivables	10,827	17,763
Inventories	246,660	221,922
Prepaid expenses and other current assets	27,388	16,149
Prepaid income taxes	3,515	3,550
Income tax refund receivables	4,164	2,777
Total current assets	<u>499,863</u>	<u>482,212</u>
Property and equipment:		
Land and land improvements	25,699	25,287
Buildings	186,976	190,044
Manufacturing equipment	290,306	277,976
Furniture and fixtures	63,380	61,446
Leasehold improvements	49,962	46,341
Construction-in-progress	59,783	51,182
Total property and equipment	<u>676,106</u>	<u>652,276</u>
Less accumulated depreciation	<u>(299,950)</u>	<u>(280,618)</u>
Property and equipment — net	376,156	371,658
Other assets:		
Intangible assets:		
Developed technology — net of accumulated amortization — 2022 — \$263,990 and 2021 — \$234,016	245,282	276,833
Other — net of accumulated amortization — 2022 — \$68,308 and 2021 — \$65,053	38,825	42,436
Goodwill	358,056	361,741
Deferred income tax assets	5,467	6,080
Right-of-use operating lease assets	64,700	65,913
Other assets	44,388	41,421
Total other assets	<u>756,718</u>	<u>794,424</u>
Total assets	<u>\$ 1,632,737</u>	<u>\$ 1,648,294</u>

See condensed notes to consolidated financial statements.

(continued)

MERIT MEDICAL SYSTEMS, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(In thousands)

LIABILITIES AND STOCKHOLDERS' EQUITY	September 30,	December 31,
	2022	2021
	(unaudited)	
Current liabilities:		
Trade payables	\$ 63,206	\$ 55,624
Accrued expenses	124,504	159,014
Current portion of long-term debt	11,250	8,438
Short-term operating lease liabilities	10,310	10,668
Income taxes payable	3,765	2,536
Total current liabilities	<u>213,035</u>	<u>236,280</u>
Long-term debt	205,412	234,397
Deferred income tax liabilities	31,168	31,503
Long-term income taxes payable	347	347
Liabilities related to unrecognized tax benefits	932	932
Deferred compensation payable	14,786	18,111
Deferred credits	1,735	1,815
Long-term operating lease liabilities	59,989	61,526
Other long-term obligations	16,492	23,584
Total liabilities	<u>543,896</u>	<u>608,495</u>
Commitments and contingencies		
Stockholders' equity:		
Preferred stock — 5,000 shares authorized as of September 30, 2022 and December 31, 2021; no shares issued	—	—
Common stock, no par value; 100,000 shares authorized; issued and outstanding as of September 30, 2022 - 56,918 and December 31, 2021 - 56,570	658,198	641,533
Retained earnings	447,372	406,257
Accumulated other comprehensive loss	(16,729)	(7,991)
Total stockholders' equity	<u>1,088,841</u>	<u>1,039,799</u>
Total liabilities and stockholders' equity	<u>\$ 1,632,737</u>	<u>\$ 1,648,294</u>

See condensed notes to consolidated financial statements.

(concluded)

MERIT MEDICAL SYSTEMS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF INCOME
(In thousands, except per share amounts - unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Net sales	\$ 287,175	\$ 267,021	\$ 857,566	\$ 796,259
Cost of sales	158,602	146,527	473,019	439,732
Gross profit	<u>128,573</u>	<u>120,494</u>	<u>384,547</u>	<u>356,527</u>
Operating expenses:				
Selling, general and administrative	89,780	86,474	259,282	259,061
Research and development	19,221	16,974	55,074	50,841
Impairment charges	—	—	1,672	4,283
Contingent consideration expense	915	1,115	4,702	3,322
Acquired in-process research and development	—	—	6,671	—
Total operating expenses	<u>109,916</u>	<u>104,563</u>	<u>327,401</u>	<u>317,507</u>
Income from operations	<u>18,657</u>	<u>15,931</u>	<u>57,146</u>	<u>39,020</u>
Other income (expense):				
Interest income	116	104	316	668
Interest expense	(1,831)	(1,233)	(4,180)	(4,156)
Other income (expense) — net	660	(625)	(808)	(1,796)
Total other expense — net	<u>(1,055)</u>	<u>(1,754)</u>	<u>(4,672)</u>	<u>(5,284)</u>
Income before income taxes	17,602	14,177	52,474	33,736
Income tax expense	<u>2,330</u>	<u>2,210</u>	<u>11,359</u>	<u>5,895</u>
Net income	<u>\$ 15,272</u>	<u>\$ 11,967</u>	<u>\$ 41,115</u>	<u>\$ 27,841</u>
Earnings per common share				
Basic	\$ 0.27	\$ 0.21	\$ 0.73	\$ 0.50
Diluted	\$ 0.27	\$ 0.21	\$ 0.71	\$ 0.49
Weighted average shares outstanding				
Basic	56,835	56,302	56,707	56,033
Diluted	57,586	57,549	57,573	57,274

See condensed notes to consolidated financial statements.

MERIT MEDICAL SYSTEMS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In thousands - unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Net income	\$ 15,272	\$ 11,967	\$ 41,115	\$ 27,841
Other comprehensive income (loss):				
Cash flow hedges	3,850	1,522	13,182	5,442
Income tax benefit (expense)	(942)	(377)	(3,226)	(1,349)
Foreign currency translation adjustment	(9,003)	(2,873)	(18,775)	(5,535)
Income tax benefit (expense)	85	346	81	678
Total other comprehensive income (loss)	<u>(6,010)</u>	<u>(1,382)</u>	<u>(8,738)</u>	<u>(764)</u>
Total comprehensive income	<u>\$ 9,262</u>	<u>\$ 10,585</u>	<u>\$ 32,377</u>	<u>\$ 27,077</u>

See condensed notes to consolidated financial statements.

MERIT MEDICAL SYSTEMS, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands - unaudited)

	Common Stock		Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total
	Shares	Amount			
Balance — January 1, 2022	56,570	\$ 641,533	\$ 406,257	\$ (7,991)	\$ 1,039,799
Net income			10,545		10,545
Other comprehensive income				1,338	1,338
Stock-based compensation expense		4,212			4,212
Options exercised	52	1,320			1,320
Issuance of common stock under Employee Stock Purchase Plan	5	320			320
Shares issued from time-vested restricted stock units	44	—			—
Shares surrendered in exchange for payment of payroll tax liabilities	(16)	(1,015)			(1,015)
Balance — March 31, 2022	56,655	646,370	416,802	(6,653)	1,056,519
Net income			15,298		15,298
Other comprehensive loss				(4,066)	(4,066)
Stock-based compensation expense		3,952			3,952
Options exercised	58	1,303			1,303
Issuance of common stock under Employee Stock Purchase Plan	6	301			301
Shares issued from time-vested restricted stock units	26	—			—
Balance — June 30, 2022	56,745	651,926	432,100	(10,719)	1,073,307
Net income			15,272		15,272
Other comprehensive loss				(6,010)	(6,010)
Stock-based compensation expense		3,893			3,893
Options exercised	201	4,141			4,141
Issuance of common stock under Employee Stock Purchase Plan	5	246			246
Shares surrendered in exchange for payment of payroll tax liabilities	(18)	(1,110)			(1,110)
Shares surrendered in exchange for exercise of stock options	(15)	(898)			(898)
Balance — September 30, 2022	<u>56,918</u>	<u>\$ 658,198</u>	<u>\$ 447,372</u>	<u>\$ (16,729)</u>	<u>\$ 1,088,841</u>

See condensed notes to consolidated financial statements.

(continued)

MERIT MEDICAL SYSTEMS, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands - unaudited)

	Common Stock		Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total
	Shares	Amount			
Balance — January 1, 2021	55,623	\$ 606,224	\$ 357,803	\$ (5,452)	\$ 958,575
Net income			10,958		10,958
Other comprehensive loss				(1,730)	(1,730)
Stock-based compensation expense		3,310			3,310
Options exercised	291	5,897			5,897
Issuance of common stock under Employee Stock Purchase Plan	5	263			263
Shares issued from time-vested restricted stock units	25	—			—
Shares surrendered in exchange for payment of payroll tax liabilities	(9)	(488)			(488)
Shares surrendered in exchange for exercise of stock options	(2)	(93)			(93)
Balance — March 31, 2021	55,933	615,113	368,761	(7,182)	976,692
Net income			4,916		4,916
Other comprehensive income				2,348	2,348
Stock-based compensation expense		2,765			2,765
Options exercised	253	5,455			5,455
Issuance of common stock under Employee Stock Purchase Plan	4	258			258
Shares issued from time-vested restricted stock units	34	—			—
Balance — June 30, 2021	56,224	623,591	373,677	(4,834)	992,434
Net income			11,967		11,967
Other comprehensive loss				(1,382)	(1,382)
Stock-based compensation expense		4,411			4,411
Options exercised	225	5,806			5,806
Issuance of common stock under Employee Stock Purchase Plan	5	314			314
Shares surrendered in exchange for payment of payroll tax liabilities	(1)	(88)			(88)
Shares surrendered in exchange for exercise of stock options	(1)	(86)			(86)
Balance — September 30, 2021	<u>56,452</u>	<u>\$ 633,948</u>	<u>\$ 385,644</u>	<u>\$ (6,216)</u>	<u>\$ 1,013,376</u>

See condensed notes to consolidated financial statements.

(concluded)

MERIT MEDICAL SYSTEMS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands - unaudited)

	Nine Months Ended September 30,	
	2022	2021
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income	\$ 41,115	\$ 27,841
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	61,312	63,173
Loss on disposition of business	1,389	—
Loss on sale or abandonment of property and equipment	196	630
Write-off of certain intangible assets and other long-term assets	1,733	4,412
Acquired in-process research and development	6,671	—
Amortization of right-of-use operating lease assets	7,819	8,941
Adjustments and payments related to contingent consideration liability	2,888	3,322
Amortization of deferred credits	(81)	(81)
Amortization of long-term debt issuance costs	453	453
Stock-based compensation expense	13,691	11,589
Changes in operating assets and liabilities, net of acquisitions and divestitures:		
Trade receivables	(9,063)	(6,180)
Other receivables	5,669	(3,173)
Inventories	(30,735)	(11,180)
Prepaid expenses and other current assets	(4,186)	(6,251)
Income tax refund receivables	(1,713)	960
Other assets	1,848	(3,638)
Trade payables	9,752	1,181
Accrued expenses	(8,861)	19,575
Income taxes payable	(1,374)	(1,600)
Deferred compensation payable	(3,325)	606
Operating lease liabilities	(8,406)	(9,365)
Other long-term obligations	(509)	201
Total adjustments	45,168	73,575
Net cash, cash equivalents, and restricted cash provided by operating activities	86,283	101,416
CASH FLOWS FROM INVESTING ACTIVITIES:		
Capital expenditures for:		
Property and equipment	(32,539)	(19,612)
Intangible assets	(1,909)	(2,121)
Proceeds from the sale of property and equipment	63	1,037
Payments from disposition of business	(971)	—
Cash paid in acquisitions, net of cash acquired	(4,712)	(1,858)
Net cash, cash equivalents, and restricted cash used in investing activities	\$ (40,068)	\$ (22,554)

See condensed notes to consolidated financial statements.

(continued)

MERIT MEDICAL SYSTEMS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands - unaudited)

	Nine Months Ended September 30,	
	2022	2021
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from issuance of common stock	\$ 6,733	\$ 17,814
Proceeds from issuance of long-term debt	172,336	73,251
Payments on long-term debt	(198,593)	(145,876)
Contingent payments related to acquisitions	(32,862)	(10,579)
Payment of taxes related to an exchange of common stock	(2,125)	(576)
Net cash, cash equivalents, and restricted cash used in financing activities	<u>(54,511)</u>	<u>(65,966)</u>
Effect of exchange rates on cash, cash equivalents, and restricted cash	(5,862)	(908)
Net increase (decrease) in cash, cash equivalents and restricted cash	<u>(14,158)</u>	<u>11,988</u>
CASH, CASH EQUIVALENTS AND RESTRICTED CASH:		
Beginning of period	67,750	56,916
End of period	<u>\$ 53,592</u>	<u>\$ 68,904</u>
RECONCILIATION OF CASH, CASH EQUIVALENTS AND RESTRICTED CASH TO THE CONSOLIDATED BALANCE SHEETS:		
Cash and cash equivalents	51,481	68,904
Restricted cash reported in prepaid expenses and other current assets	2,111	—
Total cash, cash equivalents and restricted cash	<u>\$ 53,592</u>	<u>\$ 68,904</u>
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION		
Cash paid during the period for:		
Interest (net of capitalized interest of \$565 and \$345, respectively)	\$ 4,087	\$ 4,155
Income taxes	14,013	6,166
SUPPLEMENTAL DISCLOSURES OF NON-CASH INVESTING AND FINANCING ACTIVITIES		
Property and equipment purchases in accounts payable	\$ 1,899	\$ 2,842
Acquisition purchases in accrued expenses and other long-term obligations	(4,526)	—
Merit common stock surrendered (15 and 3 shares, respectively) in exchange for exercise of stock options	898	179
Right-of-use operating lease assets obtained in exchange for operating lease liabilities	8,948	827

See condensed notes to consolidated financial statements.

(concluded)

MERIT MEDICAL SYSTEMS, INC. AND SUBSIDIARIES
CONDENSED NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Basis of Presentation and Other Items. The interim consolidated financial statements of Merit Medical Systems, Inc. ("Merit," "we" or "us") for the three and nine-month periods ended September 30, 2022 and 2021 are not audited. Our consolidated financial statements are prepared in accordance with the requirements for unaudited interim periods and, consequently, do not include all disclosures required to be made in conformity with accounting principles generally accepted in the United States of America ("U.S. GAAP"). In the opinion of our management, the accompanying consolidated financial statements contain all adjustments, consisting of normal recurring accruals, necessary for a fair presentation of our financial position as of September 30, 2022 and December 31, 2021, and our results of operations and cash flows for the three and nine-month periods ended September 30, 2022 and 2021. The results of operations for the three and nine-month periods ended September 30, 2022 and 2021 are not necessarily indicative of the results for a full-year period. Amounts presented in this report are rounded, while percentages and earnings per share amounts presented are calculated from the underlying amounts. These interim consolidated financial statements should be read in conjunction with the financial statements and risk factors included in our Annual Report on Form 10-K for the year ended December 31, 2021 (the "2021 Annual Report on Form 10-K").

2. Recently Issued Financial Accounting Standards. In March 2020, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*, which provides temporary optional expedients and exceptions in accounting for modifications of contracts that reference the London interbank offered rate ("LIBOR") or another reference rate expected to be discontinued as a result of reference rate reform. In January 2021, the FASB issued ASU 2021-01, *Reference Rate Reform (Topic 848): Scope*, which amended the scope of ASU 2020-04. ASU 2020-04 and ASU 2021-01 became effective as of March 12, 2020, and the provisions of these updates may be applied prospectively to transactions through December 31, 2022, when reference rate reform activity is expected to be completed. As of September 30, 2022, we had not modified any contracts as a result of reference rate reform. We are currently assessing the anticipated impact of these standards on our consolidated financial statements.

We currently believe that all other issued and not yet effective accounting standards are not materially relevant to our financial statements.

3. Revenue from Contracts with Customers. We recognize revenue when a customer obtains control of promised goods. The amount of revenue recognized reflects the consideration we expect to receive in exchange for these goods. Our revenue recognition policies have not changed from those disclosed in Note 1 to our consolidated financial statements in Item 8 of the 2021 Annual Report on Form 10-K.

Disaggregation of Revenue

Our revenue is disaggregated based on reporting segment, product category and geographical region. We design, develop, manufacture and market medical products for interventional and diagnostic procedures. For financial reporting purposes, we report our operations in two operating segments: cardiovascular and endoscopy. Our cardiovascular segment consists of four product categories: peripheral intervention, cardiac intervention, custom procedural solutions, and original equipment manufacturer ("OEM"). Within these product categories, we sell a variety of products, including cardiology and radiology devices (which assist in diagnosing and treating coronary arterial disease, peripheral vascular disease and other non-vascular diseases), as well as embolotherapeutic, cardiac rhythm management, electrophysiology, critical care, breast cancer localization and guidance, biopsy, and interventional oncology and spine devices. Our endoscopy segment consists of gastroenterology and pulmonology devices which assist in the palliative treatment of expanding esophageal, tracheobronchial and biliary strictures caused by malignant tumors.

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The following tables present revenue from contracts with customers by reporting segment, product category and geographical region for the three and nine-month periods ended September 30, 2022 and 2021 (in thousands):

	Three Months Ended September 30, 2022			Three Months Ended September 30, 2021		
	United States	International	Total	United States	International	Total
Cardiovascular						
Peripheral Intervention	\$ 67,200	\$ 43,498	\$ 110,698	\$ 61,282	\$ 39,777	\$ 101,059
Cardiac Intervention	33,194	53,654	86,848	30,562	49,251	79,813
Custom Procedural Solutions	27,078	18,614	45,692	27,895	21,540	49,435
OEM	29,425	6,286	35,711	25,025	4,372	29,397
Total	156,897	122,052	278,949	144,764	114,940	259,704
Endoscopy						
Endoscopy Devices	7,674	552	8,226	6,741	576	7,317
Total	\$ 164,571	\$ 122,604	\$ 287,175	\$ 151,505	\$ 115,516	\$ 267,021

	Nine Months Ended September 30, 2022			Nine Months Ended September 30, 2021		
	United States	International	Total	United States	International	Total
Cardiovascular						
Peripheral Intervention	\$ 195,095	\$ 132,331	\$ 327,426	\$ 181,383	\$ 118,190	\$ 299,573
Cardiac Intervention	95,652	162,257	257,909	93,030	147,173	240,203
Custom Procedural Solutions	80,951	60,096	141,047	80,179	63,313	143,492
OEM	87,269	18,904	106,173	75,335	14,399	89,734
Total	458,967	373,588	832,555	429,927	343,075	773,002
Endoscopy						
Endoscopy Devices	23,270	1,741	25,011	21,721	1,536	23,257
Total	\$ 482,237	\$ 375,329	\$ 857,566	\$ 451,648	\$ 344,611	\$ 796,259

4. Acquisitions. On April 30, 2022, we acquired the Restore Endosystems Bifurcated Stent System pursuant to the terms of a unit purchase agreement we executed with the members of Restore Endosystems, LLC (“Restore Endosystems”). Pursuant to the terms and conditions of the unit purchase agreement, we paid \$3 million in cash at closing. We also accrued \$3.5 million of other long-term obligations, which represents the fair value of two separate \$2 million payments which are payable no later than two and four years following the closing of the acquisition, respectively, or earlier upon the achievement of specified milestones. We impute interest on these liabilities with the passage of time. We have accounted for this transaction as an asset purchase and recorded \$6.5 million of acquired in-process research and development expense, because the technological feasibility of the underlying research and development project has not yet been reached and such technology had no identified future alternative use as of the date of acquisition.

During April 2022, we paid \$1.4 million to acquire shares of series A preferred stock of Fluidx Medical Technology, Inc. (“Fluidx”), owner of certain technology proposed to be used in the development of embolic and adhesive agents for use in arterial, venous, vascular graft and cardiovascular applications inside and outside the heart and related appendages. We had previously purchased, and continue to hold, \$4.7 million of participating preferred shares of Fluidx. Our investments have been recorded as equity investments accounted for at cost and reflected within other assets in the accompanying consolidated balance sheets because we are not able to exercise significant influence over the operations of Fluidx. Our total current investment in Fluidx represents an ownership of approximately 17% of its outstanding capital stock.

During the three-month period ended September 30, 2022, we met the criteria requiring the final payment pursuant to our asset purchase agreement with QX Medical, LLC executed on December 15, 2011, for the acquisition of the intellectual property rights to certain support guide catheter technology. As of September 30, 2022, we recorded a liability of \$1.0 million within accrued expenses based upon our obligation to pay the sales milestone payment in accordance with the terms of the asset purchase agreement and capitalized a developed technology intangible asset.

5. Inventories. Inventories at September 30, 2022 and December 31, 2021, consisted of the following (in thousands):

	<u>September 30, 2022</u>	<u>December 31, 2021</u>
Finished goods	\$ 134,686	\$ 132,403
Work-in-process	32,470	22,160
Raw materials	79,504	67,359
Total inventories	<u>\$ 246,660</u>	<u>\$ 221,922</u>

6. Goodwill and Intangible Assets. The change in the carrying amount of goodwill for the nine-month period ended September 30, 2022 is detailed as follows (in thousands):

	<u>2022</u>
Goodwill balance at January 1	\$ 361,741
Effect of foreign exchange	(3,685)
Goodwill balance at September 30	<u>\$ 358,056</u>

Total accumulated goodwill impairment losses aggregated \$8.3 million as of September 30, 2022 and December 31, 2021. We did not have any goodwill impairments for the nine-month periods ended September 30, 2022 and 2021. The total goodwill balances as of September 30, 2022 and December 31, 2021 were related to our cardiovascular segment.

Other intangible assets at September 30, 2022 and December 31, 2021 consisted of the following (in thousands):

	September 30, 2022		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Patents	\$ 28,179	\$ (9,724)	\$ 18,455
Distribution agreements	3,250	(2,664)	586
License agreements	11,029	(6,967)	4,062
Trademarks	30,194	(17,189)	13,005
Customer lists	34,481	(31,764)	2,717
Total	<u>\$ 107,133</u>	<u>\$ (68,308)</u>	<u>\$ 38,825</u>

	December 31, 2021		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Patents	\$ 26,349	\$ (8,315)	\$ 18,034
Distribution agreements	3,250	(2,519)	731
License agreements	12,663	(7,768)	4,895
Trademarks	30,242	(15,256)	14,986
Customer lists	34,985	(31,195)	3,790
Total	<u>\$ 107,489</u>	<u>\$ (65,053)</u>	<u>\$ 42,436</u>

Aggregate amortization expense for the three and nine-month periods ended September 30, 2022 was \$12.1 million and \$36.3 million, respectively. Aggregate amortization expense for the three and nine-month periods ended September 30, 2021 was \$12.4 million and \$37.3 million, respectively.

We evaluate long-lived assets, including amortizing intangible assets, for impairment whenever events or changes in circumstances indicate that their carrying amounts may not be recoverable. We perform the impairment analysis at the asset group for which the lowest level of identifiable cash flows is largely independent of the cash flows of other assets and liabilities. We determine the fair value of our amortizing assets based on estimated future cash flows discounted back to their present value using a discount rate that reflects the risk profiles of the underlying activities. During the nine-month period ended September 30, 2022, we identified indicators of impairment associated with certain acquired intangible assets based on our qualitative assessment, which led us to complete an interim quantitative impairment assessment. The primary indicator of impairment was our divestiture on April 30, 2022 of the STD Pharmaceutical Products Limited (“STD Pharmaceutical”) business acquired in our August 2019 acquisition of FibroVein Holdings Limited. We recorded an impairment charge for the carrying value of \$1.7 million of intangible assets during the nine months ended September 30, 2022, all of which pertained to our cardiovascular segment.

During the nine-month period ended September 30, 2021, we identified indicators of impairment associated with certain acquired intangible assets based on our qualitative assessment, which led us to complete an interim quantitative impairment assessment. During the nine-month period ended September 30, 2021, the primary indicator of impairment was our planned discontinuance of the Advocate™ Peripheral Angioplasty Balloon product line, sold under our license agreements with ArraVasc Limited (“ArraVasc”). We recorded an impairment charge for the remaining carrying value of ArraVasc intangible assets of approximately \$1.6 million during the nine-month period ended September 30, 2021, all of which pertained to our cardiovascular segment.

Estimated amortization expense for developed technology and other intangible assets for the next five years consisted of the following as of September 30, 2022 (in thousands):

<u>Year Ending December 31,</u>	<u>Estimated Amortization Expense</u>
Remaining 2022	\$ 12,121
2023	47,414
2024	44,330
2025	42,434
2026	31,860

7. Income Taxes. Our provision for income taxes for the three-month periods ended September 30, 2022 and 2021 was a tax expense of \$2.3 million and \$2.2 million, respectively, which resulted in an effective tax rate of 13.2% and 15.6%, respectively. Our provision for income taxes for the nine-month periods ended September 30, 2022 and 2021 was a tax expense of \$11.4 million and \$5.9 million, respectively, which resulted in an effective tax rate of 21.6% and 17.5%, respectively. The increase in the income tax expense and the corresponding change in the effective income tax rate for the three and nine-month periods ended September 30, 2022, when compared to the prior-year periods, was primarily due to decreased benefit from discrete items such as share-based compensation and deferred compensation. Our effective tax rate differs from the U.S. statutory rate primarily due to the impact of global intangible low-taxed income (“GILTI”) inclusions, state income taxes, foreign taxes, other non-deductible permanent items and discrete items (such as share-based compensation).

On August 16, 2022, the Inflation Reduction Act of 2022 was signed into law. We currently do not anticipate the recently enacted law, including the corporate alternative minimum tax, one percent excise tax on stock repurchases, or tax incentives to promote clean energy, to have a material impact on our consolidated financial statements.

8. Revolving Credit Facility and Long-Term Debt. Principal balances outstanding under our long-term debt obligations as of September 30, 2022 and December 31, 2021, consisted of the following (in thousands):

	<u>September 30, 2022</u>	<u>December 31, 2021</u>
Term loans	\$ 127,500	\$ 133,125
Revolving credit loans	89,368	110,000
Less unamortized debt issuance costs	(206)	(290)
Total long-term debt	216,662	242,835
Less current portion	11,250	8,438
Long-term portion	<u>\$ 205,412</u>	<u>\$ 234,397</u>

Third Amended and Restated Credit Agreement

On July 31, 2019, we entered into a Third Amended and Restated Credit Agreement (the "Third Amended Credit Agreement"). The Third Amended Credit Agreement is a syndicated loan agreement with Wells Fargo Bank, National Association and other parties. The Third Amended Credit Agreement amended and restated in its entirety our previously outstanding Second Amended and Restated Credit Agreement and all amendments thereto. The Third Amended Credit Agreement provides for a term loan of \$150 million and a revolving credit commitment of up to an aggregate amount of \$600 million, inclusive of sub-facilities for multicurrency borrowings, standby letters of credit and swingline loans. On July 31, 2024, all principal, interest and other amounts outstanding under the Third Amended Credit Agreement are payable in full. At any time prior to the maturity date, we may repay any amounts owing under all term loans and revolving credit loans in whole or in part, without premium or penalty, other than breakage fees (as defined in the Third Amended Credit Agreement).

Revolving credit loans denominated in dollars and term loans made under the Third Amended Credit Agreement bear interest, at our election, at either the Base Rate or the Eurocurrency Rate (as such terms are defined in the Third Amended Credit Agreement) plus the Applicable Margin (as defined in the Third Amended Credit Agreement). Revolving credit

loans denominated in an Alternative Currency (as defined in the Third Amended Credit Agreement) bear interest at the Eurocurrency Rate plus the Applicable Margin. Swingline loans bear interest at the Base Rate plus the Applicable Margin (as defined in the Third Amended Credit Agreement). Interest on each Base Rate loan is due and payable on the last business day of each calendar quarter; interest on each Eurocurrency Rate loan is due and payable on the last day of each interest period applicable thereto, and if such interest period extends over three months, at the end of each three-month interval during such interest period.

The Third Amended Credit Agreement is collateralized by substantially all our assets. The Third Amended Credit Agreement contains affirmative and negative covenants, representations and warranties, events of default and other terms customary for loans of this nature. In particular, the Third Amended Credit Agreement requires that we maintain certain financial covenants, as follows:

	<u>Covenant Requirement</u>
Consolidated Total Leverage Ratio ⁽¹⁾	4.0 to 1.0
Consolidated Interest Coverage Ratio ⁽²⁾	3.0 to 1.0
Facility Capital Expenditures ⁽³⁾	\$50 million

- (1) Maximum Consolidated Total Net Leverage Ratio (as defined in the Third Amended Credit Agreement) as of any fiscal quarter end.
- (2) Minimum ratio of Consolidated EBITDA (as defined in the Third Amended Credit Agreement and adjusted for certain expenditures) to Consolidated Interest Expense (as defined in the Third Amended Credit Agreement) for any period of four consecutive fiscal quarters.
- (3) Maximum level of the aggregate amount of all Facility Capital Expenditures (as defined in the Third Amended Credit Agreement) in any fiscal year.

We believe we were in compliance with all covenants set forth in the Third Amended Credit Agreement as of September 30, 2022.

As of September 30, 2022, we had outstanding borrowings of \$216.9 million and issued letter of credit guarantees of \$1.9 million under the Third Amended Credit Agreement, with additional available borrowings of approximately \$509 million, based on the maximum net leverage ratio and the aggregate revolving credit commitment pursuant to the Third Amended Credit Agreement. Our interest rate as of September 30, 2022 was a fixed rate of 2.71% with respect to \$75 million of the principal amount, as a result of an interest rate swap (see Note 9), and a variable floating rate of 4.12% with respect to \$141.9 million of the principal amount. Our interest rate as of December 31, 2021 was a fixed rate of 2.71% on \$75 million as a result of an interest rate swap and a variable floating rate of 1.10% on \$168.1 million. The foregoing fixed rates do not reflect potential future changes in the applicable margin.

Future minimum principal payments on our long-term debt, as of September 30, 2022, were as follows (in thousands):

<u>Years Ending December 31,</u>	<u>Future Minimum Principal Payments</u>
Remaining 2022	\$ 2,812
2023	11,250
2024	202,806
Total future minimum principal payments	<u>\$ 216,868</u>

9. Derivatives.

General. Our earnings and cash flows are subject to fluctuations due to changes in interest rates and foreign currency exchange rates, and we seek to mitigate a portion of the risks attributable to those fluctuations by entering into derivative contracts. The derivative instruments we use are interest rate swaps and foreign currency forward contracts. We recognize derivative instruments as either assets or liabilities at fair value in the accompanying consolidated balance sheets, regardless of whether or not hedge accounting is applied. We report cash flows arising from our hedging instruments consistent with the classification of cash flows from the underlying hedged items. Accordingly, cash flows associated with our derivative contracts are classified as operating activities in the accompanying consolidated statements of cash flows.

We formally document, designate and assess the effectiveness of transactions that receive hedge accounting treatment initially and on an ongoing basis. For qualifying hedges, the change in fair value is deferred in accumulated other comprehensive income, a component of stockholders' equity in the accompanying consolidated balance sheets, and recognized in earnings at the same time the hedged item affects earnings. Changes in the fair value of derivative instruments not designated as hedging instruments are recorded in earnings throughout the term of the derivative.

Interest Rate Risk. Our debt bears interest at variable interest rates. Therefore, we are subject to variability in the cash payable for interest expense. In order to mitigate a portion of the risk attributable to such variability, we use a hedging strategy to reduce the variability of cash flows in the interest payments associated with a portion of the variable-rate debt outstanding under our Third Amended Credit Agreement that varies in accordance with changes in the benchmark interest rate.

Derivative Instruments Designated as Cash Flow Hedges

On December 23, 2019, we entered into a pay-fixed, receive-variable interest rate swap with a notional amount of \$75 million with Wells Fargo to fix the one-month LIBOR rate on that portion of our borrowings under the Third Amended Credit Agreement at 1.71% for the period from July 6, 2021 to July 31, 2024. The variable portion of the interest rate swap is tied to the one-month LIBOR rate (the benchmark interest rate). On a monthly basis, the interest rates under both the interest rate swap and the underlying debt reset, the swap is settled with the counterparty, and interest is paid.

On September 30, 2022 and December 31, 2021, our interest rate swap qualified as a cash flow hedge. The fair value of our interest rate swap on September 30, 2022 was an asset of \$3.4 million, which was partially offset by (\$0.8) million in deferred taxes. The fair value of our interest rate swap on December 31, 2021 was a liability of (\$1.4) million, partially offset by \$0.4 million in deferred taxes.

Foreign Currency Risk. We operate on a global basis and are exposed to the risk that our financial condition, results of operations, and cash flows could be adversely affected by changes in foreign currency exchange rates. To reduce the potential effects of foreign currency exchange rate movements on net earnings, we enter into derivative financial instruments in the form of foreign currency exchange forward contracts with major financial institutions. Our policy is to enter into foreign currency derivative contracts with maturities of up to two years. We are exposed to foreign currency exchange rate risk with respect to transactions and balances denominated in various currencies, with our most significant exposure related to transactions and balances denominated in Chinese Renminbi and Euros, among others. We do not use derivative financial instruments for trading or speculative purposes. We do not believe we are subject to any credit risk contingent features related to our derivative contracts, and we seek to manage counterparty risk by allocating derivative contracts among several major financial institutions.

Derivative Instruments Designated as Cash Flow Hedges

For derivative instruments that are designated and qualify as cash flow hedges, the gain or loss on the derivative instrument is temporarily reported as a component of other comprehensive income and then reclassified into earnings in the same line item associated with the forecasted transaction and in the same period or periods during which the hedged transaction affects earnings. We entered into forward contracts on various foreign currencies to manage the risk associated with forecasted exchange rates which impact revenues, cost of sales, and operating expenses in various international markets. The objective of the hedges is to reduce the variability of cash flows associated with the forecasted purchase or sale of the associated foreign currencies.

We enter into approximately 100 cash flow foreign currency hedges every month. As of September 30, 2022 and December 31, 2021, we had entered into foreign currency forward contracts, which qualified as cash flow hedges, with aggregate notional amounts of \$72.8 million and \$123.0 million, respectively.

Derivative Instruments Not Designated as Cash Flow Hedges

We forecast our net exposure in various receivables and payables to fluctuations in the value of various currencies, and we enter into foreign currency forward contracts to mitigate that exposure. We enter into approximately 50 foreign currency

fair value hedges every month. As of September 30, 2022 and December 31, 2021, we had entered into foreign currency forward contracts related to those balance sheet accounts with aggregate notional amounts of \$79.3 million and \$86.0 million, respectively.

Balance Sheet Presentation of Derivative Instruments. As of September 30, 2022 and December 31, 2021, all derivative instruments, both those designated as hedging instruments and those that were not designated as hedging instruments, were recorded at fair value on a gross basis on our consolidated balance sheets. We are not subject to any master netting agreements.

The fair value of derivative instruments on a gross basis was as follows on the dates indicated (in thousands):

Fair Value of Derivative Instruments Designated

as Hedging Instruments

	<u>Balance Sheet Location</u>	<u>September 30, 2022</u>	<u>December 31, 2021</u>
<i>Assets</i>			
Interest rate swaps	Other assets (long-term)	\$ 3,439	\$ —
Foreign currency forward contracts	Prepaid expenses and other assets	5,969	1,326
Foreign currency forward contracts	Other assets (long-term)	695	179
<i>(Liabilities)</i>			
Interest rate swaps	Other long-term obligations	—	(1,447)
Foreign currency forward contracts	Accrued expenses	(1,324)	(2,288)
Foreign currency forward contracts	Other long-term obligations	(35)	(502)

Fair Value of Derivative Instruments Not

Designated as Hedging Instruments

	<u>Balance Sheet Location</u>	<u>September 30, 2022</u>	<u>December 31, 2021</u>
<i>Assets</i>			
Foreign currency forward contracts	Prepaid expenses and other assets	\$ 3,206	\$ 736
<i>(Liabilities)</i>			
Foreign currency forward contracts	Accrued expenses	(1,474)	(856)

Income Statement Presentation of Derivative Instruments.

Derivative Instruments Designated as Cash Flow Hedges

Derivative instruments designated as cash flow hedges had the following effects, before income taxes, on other comprehensive income (“OCI”), accumulated other comprehensive income (“AOCI”), and net earnings in our consolidated statements of income, consolidated statements of comprehensive income and consolidated balance sheets (in thousands):

<u>Derivative instrument</u>	<u>Amount of Gain/(Loss) Recognized in OCI</u>		<u>Location in statements of income</u>	<u>Consolidated Statements of Income</u>		<u>Amount of Gain/(Loss) Reclassified from AOCI</u>	
	<u>Three Months Ended September 30,</u>	<u>Three Months Ended September 30,</u>		<u>Three Months Ended September 30,</u>	<u>Three Months Ended September 30,</u>	<u>Three Months Ended September 30,</u>	<u>Three Months Ended September 30,</u>
	<u>2022</u>	<u>2021</u>		<u>2022</u>	<u>2021</u>	<u>2022</u>	<u>2021</u>
<i>Interest rate swaps</i>	\$ 1,504	\$ (18)	<i>Interest expense</i>	\$ (1,831)	\$ (1,233)	\$ 94	\$ (319)
<i>Foreign currency forward contracts</i>	3,491	33	<i>Revenue</i>	287,175	267,021	1,491	(1,500)
			<i>Cost of sales</i>	(158,602)	(146,527)	(440)	312

	Amount of Gain/(Loss) Recognized in OCI		Location in statements of income	Consolidated Statements of Income		Amount of Gain/(Loss) Reclassified from AOCI	
	Nine Months Ended September 30,			Nine Months Ended September 30,		Nine Months Ended September 30,	
Derivative instrument	2022	2021		2022	2021	2022	2021
Interest rate swaps	\$ 4,507	\$ 619	Interest expense	\$ (4,180)	\$ (4,156)	\$ (379)	\$ (1,198)
Foreign currency forward contracts	8,713	(83)	Revenue	857,566	796,259	1,303	(4,674)
			Cost of sales	(473,019)	(439,732)	(886)	966

As of September 30, 2022, \$5.5 million, or \$4.2 million after taxes, was expected to be reclassified from AOCI to earnings in revenue and cost of sales over the succeeding twelve months. As of September 30, 2021, \$1.9 million, or \$1.5 million after taxes, was expected to be reclassified from AOCI to earnings in interest expense over the succeeding twelve months.

Derivative Instruments Not Designated as Hedging Instruments

The following gains/(losses) from these derivative instruments were recognized in our consolidated statements of income for the periods presented (in thousands):

Derivative Instrument	Location in statements of income	Three Months Ended September 30,		Nine Months Ended September 30,	
		2022	2021	2022	2021
Foreign currency forward contracts	Other income (expense) — net	\$ 1,034	\$ 39	\$ 1,212	\$ (709)

10. Commitments and Contingencies.

Litigation. In the ordinary course of business, we are involved in various proceedings, legal actions and claims. These proceedings, actions and claims may involve product liability, intellectual property, contract disputes, employment, governmental inquiries, audits or proceedings, or other matters, including those more fully described below. The outcomes of these matters will generally not be known for prolonged periods of time. In certain proceedings, the claimants may seek damages as well as other compensatory and equitable relief that could result in the payment of significant amounts and settlements and/or the imposition of injunctions or other equitable relief. For legal matters for which our management had sufficient information to reasonably estimate our future obligations, a liability representing management’s best estimate of the probable loss, or the minimum of the range of probable losses when a best estimate within the range is not known, is recorded. The estimates are based on consultation with legal counsel, previous settlement experience, settlement strategies and the potential availability of insurance coverage. If actual outcomes are less favorable than those estimated by management, additional expense may be incurred, which could unfavorably affect our financial position, results of operations and cash flows. The ultimate cost to us with respect to such proceedings, actions and claims could be materially different than the amount of the current estimates and accruals and could have a material adverse effect on our financial position, results of operations and cash flows.

Shareholder Derivative Action

On June 3, 2021, Steffen Maute filed a complaint, derivatively on behalf of Merit, against Merit (as a nominal defendant), our Chief Executive Officer, our Chief Financial Officer, our former President of Europe, Middle East and Africa (“EMEA,”) and certain of our directors in the United States District Court for the District of Utah (Case No. 2:21-cv-00346-DBP). The derivative complaint alleges that the individual defendants violated their fiduciary duties owed to Merit and were unjustly enriched at the expense of and to the detriment of Merit between February 2019 and October 2019, and seeks unspecified damages, costs, and professional fees. The parties have negotiated a tentative agreement to settle the dispute; however, that agreement is not final and remains subject to court approval. As currently proposed, the settlement would result in an expense to Merit of \$1.0 million. The estimated expense associated with the tentative settlement has been reflected in our financial results reported for the nine-month period ended September 30, 2022. On October 18, 2022, the court entered an order preliminarily approving the settlement and providing for notice to the Company’s shareholders, subject to further consideration at a settlement hearing scheduled for February 16, 2023.

SEC Inquiry

We received a request from the Division of Enforcement of the U.S. Securities and Exchange Commission (“SEC”) seeking the voluntary production of information relating to the business activities of Merit’s subsidiary in China, including interactions with hospitals and health care officials in China. We are cooperating with this request and investigating the matter and, at this time, are unable to predict the scope, timing, significance or outcome of this matter.

Legal costs for proceedings, legal actions and claims discussed above, such as outside counsel fees and expenses, are charged to expense in the period(s) incurred.

11. Earnings Per Common Share (EPS). The computation of weighted average shares outstanding and the basic and diluted earnings per common share for the three and nine-month periods ended September 30, 2022 and 2021 consisted of the following (in thousands, except per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Net income	\$ 15,272	\$ 11,967	\$ 41,115	\$ 27,841
Average common shares outstanding	56,835	56,302	56,707	56,033
Basic EPS	\$ 0.27	\$ 0.21	\$ 0.73	\$ 0.50
Average common shares outstanding	56,835	56,302	56,707	56,033
Effect of dilutive stock awards	751	1,247	866	1,241
Total potential shares outstanding	57,586	57,549	57,573	57,274
Diluted EPS	\$ 0.27	\$ 0.21	\$ 0.71	\$ 0.49
Equity awards excluded as the impact was anti-dilutive (1)	1,641	419	1,612	815

(1) Does not reflect the impact of incremental repurchases under the treasury stock method.

12. Stock-Based Compensation Expense. Stock-based compensation expense before income tax expense for the three and nine-month periods ended September 30, 2022 and 2021 consisted of the following (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Cost of sales				
Nonqualified stock options	\$ 150	\$ 383	\$ 1,247	\$ 1,019
Research and development				
Nonqualified stock options	476	355	1,412	910
Selling, general and administrative				
Nonqualified stock options	2,166	2,071	5,297	4,512
Performance-based restricted stock units	647	1,193	2,719	2,896
Restricted stock units	454	409	1,382	1,149
Cash-settled performance-based share-based awards ("Liability Awards")	705	446	1,634	1,103
Total selling, general and administrative	3,972	4,119	11,032	9,660
Stock-based compensation expense before taxes	\$ 4,598	\$ 4,857	\$ 13,691	\$ 11,589

We recognize stock-based compensation expense (net of a forfeiture rate), for those awards which are expected to vest, on a straight-line basis over the requisite service period. We estimate the forfeiture rate based on our historical experience and expectations about future forfeitures.

Nonqualified Stock Options

During the nine-month periods ended September 30, 2022 and 2021, we granted stock options representing 203,606 and 656,350 shares of our common stock, respectively. We use the Black-Scholes methodology to value the stock-based compensation expense for options. In applying the Black-Scholes methodology to the option grants, the fair value of our stock-based awards granted was estimated using the following assumptions for the periods indicated below:

	Nine Months Ended September 30,	
	2022	2021
Risk-free interest rate	1.4% - 3.4%	0.5% - 0.7%
Expected option term	4.0 years	4.0 years
Expected dividend yield	—	—
Expected price volatility	46.2% - 47.4%	46.3% - 46.7%

The average risk-free interest rate is determined using the U.S. Treasury rate in effect as of the date of grant, based on the expected term of the stock award. We determine the expected term of stock options using the historical exercise behavior of employees. The expected price volatility was determined using a weighted average of daily historical volatility of our stock price over the corresponding expected option term and implied volatility based on recent trends of the daily historical volatility. For awards with a vesting period, compensation expense is recognized on a straight-line basis over the service period, which corresponds to the vesting period.

As of September 30, 2022, the total remaining unrecognized compensation cost related to non-vested stock options was \$22.0 million, which was expected to be recognized over a weighted average period of 2.3 years.

Stock-Settled Performance-Based Restricted Stock Units (“Performance Stock Units”)

During the nine-month periods ended September 30, 2022 and 2021, we granted performance stock units to certain of our executive officers which represent up to 120,710 and 128,883 shares of our common stock, respectively. Conversion of the performance stock units occurs at the end of the relevant performance periods, or one year after the agreement date, whichever is later. The conversion ratio is based upon attaining targeted levels of free cash flow (“FCF”) and relative shareholder return as compared to the Russell 2000 Index (“rTSR”), as defined in the award agreements.

We use Monte-Carlo simulations to estimate the grant-date fair value of the performance stock units linked to total shareholder return. The fair value of each performance stock unit was estimated as of the grant date using the following assumptions for awards granted in the periods indicated below:

	Nine Months Ended September 30,	
	2022	2021
Risk-free interest rate	1.6% - 2.7%	0.1% - 0.3%
Performance period	2.6 - 2.8 years	1.8 - 2.8 years
Expected dividend yield	—	—
Expected price volatility	38.5% - 46.2%	43.7% - 49.3%

The risk-free interest rate of return was determined using the U.S. Treasury rate at the time of grant with a term equal to the expected term of the award. The expected volatility was based on the weighted average volatility of our stock price and the average volatility of our compensation peer group's stock price. The expected dividend yield was assumed to be zero because, at the time of the grant, we had no plans to declare a dividend.

Compensation expense is recognized using the grant-date fair value for the number of shares that are probable of being awarded based on the performance conditions. Each reporting period, this probability assessment is updated, and cumulative adjustments are recorded based on the level of FCF that is expected to be achieved. At the end of the performance period, cumulative expense is calculated based on the actual level of FCF achieved. As of

September 30, 2022, the total remaining unrecognized compensation cost related to stock-settled performance stock units was \$6.5 million, which is expected to be recognized over a weighted average period of 1.7 years.

Liability Awards

During the nine-month periods ended September 30, 2022 and 2021, we granted liability awards to our Chief Executive Officer with total target cash incentives, each in the amount of \$1.0 million. These awards entitle him to a target cash payment based upon attaining targeted levels of FCF and rTSR, as defined in the award agreements. Settlement generally occurs based upon the same performance metrics, vesting period, and performance period as our performance stock units.

The fair value of these awards is remeasured at each reporting period until the awards are settled. These awards are classified as liabilities and reported in accrued expenses and other long-term obligations within our consolidated balance sheet. As of September 30, 2022, the total remaining unrecognized compensation cost related to cash-settled performance-based share-based awards was \$2.7 million, which is expected to be recognized over a weighted average period of 1.9 years.

Restricted Stock Units

During the nine-month periods ended September 30, 2022 and 2021, we granted restricted stock units to our non-employee directors representing 30,500 and 26,226 shares of our common stock, respectively. The expense recognized for restricted stock units is equal to the closing stock price on the date of grant, which is recognized over the vesting period. Restricted stock units granted to each director are subject to such director's continued service through the vesting date, which is one year from the date of grant. As of September 30, 2022, the total remaining unrecognized compensation cost related to restricted stock units was \$1.2 million, which will be recognized over the remaining vesting period.

13. Segment Reporting. We report our operations in two operating segments: cardiovascular and endoscopy. Our cardiovascular segment consists of four product categories: peripheral intervention, cardiac intervention, custom procedural solutions, and OEM. Within these product categories, we sell a variety of products, including cardiology and radiology devices (which assist in diagnosing and treating coronary arterial disease, peripheral vascular disease and other non-vascular diseases), as well as embolotherapeutic, cardiac rhythm management, electrophysiology, critical care, breast cancer localization and guidance, biopsy, and interventional oncology and spine devices. Our endoscopy segment consists of gastroenterology and pulmonology devices which assist in the palliative treatment of expanding esophageal, tracheobronchial and biliary strictures caused by malignant tumors. We evaluate the performance of our operating segments based on net sales and income from operations.

Financial information relating to our reportable operating segments and reconciliations to the consolidated totals for the three and nine-month periods ended September 30, 2022 and 2021, were as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Net sales				
Cardiovascular	\$ 278,949	\$ 259,704	\$ 832,555	\$ 773,002
Endoscopy	8,226	7,317	25,011	23,257
Total net sales	<u>287,175</u>	<u>267,021</u>	<u>857,566</u>	<u>796,259</u>
Income from operations				
Cardiovascular	17,435	14,411	51,836	33,389
Endoscopy	1,222	1,520	5,310	5,631
Total income from operations	<u>18,657</u>	<u>15,931</u>	<u>57,146</u>	<u>39,020</u>
Total other expense — net	<u>(1,055)</u>	<u>(1,754)</u>	<u>(4,672)</u>	<u>(5,284)</u>
Income tax expense	<u>2,330</u>	<u>2,210</u>	<u>11,359</u>	<u>5,895</u>
Net income	<u>\$ 15,272</u>	<u>\$ 11,967</u>	<u>\$ 41,115</u>	<u>\$ 27,841</u>

14. Fair Value Measurements.

Assets (Liabilities) Measured at Fair Value on a Recurring Basis

Our financial assets and (liabilities) carried at fair value and measured on a recurring basis as of September 30, 2022 and December 31, 2021 consisted of the following (in thousands):

	Total Fair Value at September 30, 2022	Fair Value Measurements Using		
		Quoted prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Interest rate contract asset, long-term ⁽¹⁾	\$ 3,439	\$ —	\$ 3,439	\$ —
Foreign currency contract assets, current and long-term ⁽²⁾	\$ 9,870	\$ —	\$ 9,870	\$ —
Foreign currency contract liabilities, current and long-term ⁽³⁾	\$ (2,833)	\$ —	\$ (2,833)	\$ —
Contingent consideration liabilities	\$ (18,250)	\$ —	\$ —	\$ (18,250)

	Total Fair Value at December 31, 2021	Fair Value Measurements Using		
		Quoted prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Interest rate contract liability, long-term ⁽¹⁾	\$ (1,447)	\$ —	\$ (1,447)	\$ —
Foreign currency contract assets, current and long-term ⁽²⁾	\$ 2,241	\$ —	\$ 2,241	\$ —
Foreign currency contract liabilities, current and long-term ⁽³⁾	\$ (3,646)	\$ —	\$ (3,646)	\$ —
Contingent consideration liabilities	\$ (48,234)	\$ —	\$ —	\$ (48,234)

⁽¹⁾ The fair value of the interest rate contract is determined using Level 2 fair value inputs and is reported with other long-term assets or other long-term obligations in the consolidated balance sheets.

⁽²⁾ The fair value of the foreign currency contract assets (including those designated as hedging instruments and those not designated as hedging instruments) is determined using Level 2 fair value inputs and is recorded as prepaid expenses and other current assets or other long-term assets in the consolidated balance sheets.

- (3) The fair value of the foreign currency contract liabilities (including those designated as hedging instruments and those not designated as hedging instruments) is determined using Level 2 fair value inputs and is recorded as accrued expenses or other long-term obligations in the consolidated balance sheets.

Certain of our business combinations involve the potential for the payment of future contingent consideration, generally based on a percentage of future product sales or upon attaining specified future revenue or other milestones. The contingent consideration liability is re-measured at the estimated fair value at the end of each reporting period with the change in fair value recognized within operating expenses in the accompanying consolidated statements of income for such period. We measure the initial liability and re-measure the liability on a recurring basis using Level 3 inputs as defined under authoritative guidance for fair value measurements. Changes in the fair value of our contingent consideration liabilities during the three and nine-month periods ended September 30, 2022 and 2021 consisted of the following (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Beginning balance	\$ 17,426	\$ 57,477	\$ 48,234	\$ 55,750
Contingent consideration expense	915	1,115	4,702	3,322
Contingent payments made	(91)	(10,090)	(34,676)	(10,579)
Effect of foreign exchange	—	(19)	(10)	(10)
Ending balance	<u>\$ 18,250</u>	<u>\$ 48,483</u>	<u>\$ 18,250</u>	<u>\$ 48,483</u>

As of September 30, 2022, \$5.5 million in contingent consideration liability was included in other long-term obligations and \$12.8 million in contingent consideration liability was included in accrued expenses in our consolidated balance sheet. As of December 31, 2021, \$13.5 million in contingent consideration liability was included in other long-term obligations and \$34.7 million in contingent consideration liability was included in accrued expenses in our consolidated balance sheet.

Payments related to the settlement of the contingent consideration liability recognized at fair value as of the applicable acquisition date of \$32.9 million and \$10.6 million for the nine-month periods ended September 30, 2022 and 2021, respectively, have been reflected as a cash outflow from financing activities in the accompanying consolidated statements of cash flows. Payments related to increases in the contingent consideration liability subsequent to the date of acquisition of \$1.8 million for the nine-month period ended September 30, 2022 are reflected as operating cash flows.

The recurring Level 3 measurement of our contingent consideration liabilities included the following significant unobservable inputs at September 30, 2022 and December 31, 2021 (amounts in thousands):

Contingent consideration liability	Fair value at September 30, 2022	Valuation technique	Unobservable inputs		Weighted Average ⁽¹⁾
			Range		
Revenue-based royalty payments contingent liability	\$ 2,322	Discounted cash flow	Discount rate	14% - 17%	15.9%
			Projected year of payments	2022-2034	2026
Revenue milestones contingent liability	\$ 12,551	Monte Carlo simulation	Discount rate	7.5% - 14%	7.6%
			Projected year of payments	2022-2032	2023
Regulatory approval contingent liability	\$ 3,377	Scenario-based method	Discount rate	5.7%	
			Probability of milestone payment	80%	
			Projected year of payment	2024-2025	2025

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Contingent consideration liability	Fair value at December 31,	Valuation technique	Unobservable inputs		Weighted
	2021		Discount rate	Range	Average ⁽¹⁾
Revenue-based royalty payments contingent liability	\$ 2,870	Discounted cash flow	Discount rate	13% - 16%	14.7%
			Projected year of payments	2022-2034	2026
Revenue milestones contingent liability	\$ 41,671	Monte Carlo simulation	Discount rate	7.5% - 12.5%	8.2%
			Projected year of payments	2022-2031	2022
Regulatory approval contingent liability	\$ 3,693	Scenario-based method	Discount rate	2.6%	
			Probability of milestone payment	80%	
			Projected year of payment	2024-2025	2025

⁽¹⁾ Unobservable inputs were weighted by the relative fair value of the instruments. No weighted average is reported for contingent consideration liabilities without a range of unobservable inputs.

The contingent consideration liability is re-measured to fair value each reporting period. Significant increases or decreases in projected revenues, based on our most recent internal operational budgets and long-range strategic plans, discount rates or the time until payment is made would have resulted in a significantly lower or higher fair value measurement. Our determination of the fair value of the contingent consideration liability could change in future periods based upon our ongoing evaluation of these significant unobservable inputs. We intend to record any such change in fair value to operating expenses in our consolidated statements of income.

Contingent Payments to Related Parties

During the nine-month period ended September 30, 2022, we made contingent payments of \$1.6 million to a former director of Merit and former shareholder of Cianna Medical, Inc. (“Cianna Medical”), which we acquired in 2018. We made no such payments during the nine-month period ended September 30, 2021. The terms of the acquisition, including contingent consideration payments, were determined prior to the appointment of the former Cianna Medical shareholder as a Merit director. As a former shareholder of Cianna Medical, the former Merit director may be eligible for additional payments for the achievement of sales milestones specified in our merger agreement with Cianna Medical.

Fair Value of Other Assets (Liabilities)

The carrying amount of cash and cash equivalents, receivables, and trade payables approximate fair value because of the immediate, short-term maturity of these financial instruments. Our long-term debt re-prices frequently due to variable rates and entails no significant changes in credit risk and, as a result, we believe the fair value of long-term debt approximates carrying value. The fair value of assets and liabilities whose carrying value approximates fair value is determined using Level 2 inputs, with the exception of cash and cash equivalents, which use Level 1 inputs.

We analyze our investments in privately-held companies to determine if they should be accounted for using the equity method based on our ability to exercise significant influence over operating and financial policies of the company in which we have invested. Investments not accounted for under the equity method of accounting are accounted for at cost minus impairment, if applicable, plus or minus changes in valuation resulting from observable transactions for identical or similar investments.

Impairment Charges

We recognize or disclose the fair value of certain assets, such as non-financial assets, primarily property and equipment, right-of-use operating lease assets, equity investments, intangible assets and goodwill in connection with impairment evaluations. Such assets are reported at carrying value and are not subject to recurring fair value measurements. We review our long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Fair value is generally determined based on discounted future cash flow. All our nonrecurring valuations use significant unobservable inputs and therefore fall under Level 3 of the fair value hierarchy.

Intangible Assets. On April 30, 2022, we completed the divestiture of Fibrovein Holdings Limited, which was the owner of all of the capital stock of STD Pharmaceutical Products Limited, in exchange for the termination of our obligations arising from the acquisition transaction in August 2019 and the purchaser’s agreement to make potential future payments upon a qualifying disposition of the STD Pharmaceutical business. During the nine-month period ended September 30, 2022, we had impairment losses related to acquired intangible assets of \$1.7 million (see note 6) in connection with this disposition. In addition to the intangible asset impairment, during the three-month period ended June 30, 2022, we recorded a loss within other income (expense) – net of \$1.3 million primarily associated with the transfer of net assets of the divested entity including approximately \$1.0 million of cash and \$1.2 million of inventory, partially offset by a gain of \$1.0 million from reclassification of foreign currency translation gains.

During the nine-month period ended September 30, 2021 we had losses related to acquired intangible assets of \$1.6 million (see note 6).

Right of Use Operating Lease Assets. During the nine-month period ended September 30, 2021, we identified changes in events and circumstances relating to certain right-of-use (“ROU”) operating lease assets. We compared the anticipated

undiscounted cash flows generated by a sublease to the carrying value of the ROU operating lease and related long-lived assets and determined that the carrying values were not recoverable. Consequently, we recorded impairment losses in the nine-month period ended September 30, 2021 of approximately \$1.4 million, which is equal to the excess of the carrying value of the assets over their estimated fair value. The impairment losses were driven primarily by site consolidation decisions and changes in our projected cash flows for the ROU operating lease assets and related long-lived assets, due to changes in the real estate market as a result of the COVID-19 pandemic. These changes included an increase in the anticipated time to identify lessees, an increase in anticipated lease concessions, and a decrease in the expected lease rates for the properties. The ROU operating lease asset impairment losses in 2021 pertained to our cardiovascular segment. We had no such losses during the three and nine-month periods ended September 30, 2022.

Property and Equipment. During the three and nine-month periods ended September 30, 2021, we had losses of \$1.3 million related to the measurement of property and equipment at fair value based on the discontinuance of the Advocate™ Peripheral Angioplasty Balloon product line, sold under our license agreements with ArraVasc, which pertained to our cardiovascular segment.

Notes Receivable

Our outstanding long-term notes receivable, including accrued interest and an allowance for current expected credit losses, were \$2.4 million and \$2.3 million as of September 30, 2022, and December 31, 2021, respectively. As of September 30, 2022 and December 31, 2021, we had an allowance for current expected credit losses of \$0.2 million and \$0.2 million, respectively, associated with these notes receivable. We assess the allowance for current expected credit losses on an individual security basis, due to the limited number of securities, using a probability of default model, which is based on relevant information about past events, including historical experience, current conditions and reasonable and supportable forecasts that affect the expected collectability of securities, and other security specific factors. The table below presents a rollforward of the allowance for current expected credit losses on our notes receivable for the three and nine-month periods ended September 30, 2022 and 2021 (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Beginning balance	\$ 192	\$ 1,107	\$ 199	\$ 730
Provision for credit loss expense	(6)	113	(13)	490
Ending balance	\$ 186	\$ 1,220	\$ 186	\$ 1,220

15. Accumulated Other Comprehensive Income (Loss). The changes in each component of accumulated other comprehensive income (loss) for the three and nine-month periods ended September 30, 2022 and 2021 were as follows:

	<u>Cash Flow Hedges</u>	<u>Foreign Currency Translation</u>	<u>Total</u>
Balance as of June 30, 2022	\$ 4,584	\$ (15,303)	\$ (10,719)
Other comprehensive income (loss)	4,995	(9,003)	(4,008)
Income taxes	(942)	85	(857)
Reclassifications to:			
Revenue	(1,491)		(1,491)
Cost of sales	440		440
Interest expense	(94)		(94)
Net other comprehensive income (loss)	<u>2,908</u>	<u>(8,918)</u>	<u>(6,010)</u>
Balance as of September 30, 2022	<u>\$ 7,492</u>	<u>\$ (24,221)</u>	<u>\$ (16,729)</u>
	<u>Cash Flow Hedges</u>	<u>Foreign Currency Translation</u>	<u>Total</u>
Balance as of June 30, 2021	\$ (3,992)	\$ (842)	\$ (4,834)
Other comprehensive income (loss)	15	(2,873)	(2,858)
Income taxes	(377)	346	(31)
Reclassifications to:			
Revenue	1,500		1,500
Cost of sales	(312)		(312)
Interest expense	319		319
Net other comprehensive income (loss)	<u>1,145</u>	<u>(2,527)</u>	<u>(1,382)</u>
Balance as of September 30, 2021	<u>\$ (2,847)</u>	<u>\$ (3,369)</u>	<u>\$ (6,216)</u>

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	<u>Cash Flow Hedges</u>	<u>Foreign Currency Translation</u>	<u>Total</u>
Balance as of December 31, 2021	\$ (2,464)	\$ (5,527)	\$ (7,991)
Other comprehensive income (loss)	13,220	(17,739)	(4,519)
Income taxes	(3,226)	81	(3,145)
Reclassifications to:			
Revenue	(1,303)		(1,303)
Cost of sales	886		886
Interest expense	379		379
Other expense — net		(1,036)	(1,036)
Net other comprehensive income (loss)	9,956	(18,694)	(8,738)
Balance as of September 30, 2022	<u>\$ 7,492</u>	<u>\$ (24,221)</u>	<u>\$ (16,729)</u>
	<u>Cash Flow Hedges</u>	<u>Foreign Currency Translation</u>	<u>Total</u>
Balance as of December 31, 2020	\$ (6,940)	\$ 1,488	\$ (5,452)
Other comprehensive income (loss)	536	(5,535)	(4,999)
Income taxes	(1,349)	678	(671)
Reclassifications to:			
Revenue	4,674		4,674
Cost of sales	(966)		(966)
Interest expense	1,198		1,198
Net other comprehensive income (loss)	4,093	(4,857)	(764)
Balance as of September 30, 2021	<u>\$ (2,847)</u>	<u>\$ (3,369)</u>	<u>\$ (6,216)</u>

16. Subsequent Events. On October 3, 2022, we entered into an asset purchase agreement to acquire substantially all the assets of BioTrace Medical, Inc. (“BioTrace”), developer of the Tempo® Temporary Pacing Lead device. Subject to the terms and conditions of the asset purchase agreement, we paid \$2.5 million in cash at closing. Additionally, upon achievement of the first device sold in the United States, we are obligated to pay a total of six annual royalty payments at an amount of up to 10% of net sales. We intend to account for this transaction as an asset purchase and will capitalize the acquired assets, including developed technology, in our consolidated balance sheet.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the consolidated financial statements and related condensed notes thereto, which are included in Part I of this report. Our future financial condition and results of operations, as well as any forward-looking statements, are subject to inherent risks and uncertainties that may adversely impact our operations and financial results. These risks and uncertainties are discussed in Part I, Item 1A "Risk Factors" in the 2021 Annual Report on Form 10-K and in Part II, Item 1A "Risk Factors" in this report.

OVERVIEW

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the consolidated financial statements and related condensed notes thereto, which are included in Part I of this report.

We design, develop, manufacture, market and sell medical products for interventional and diagnostic procedures. For financial reporting purposes, we report our operations in two operating segments: cardiovascular and endoscopy. Our cardiovascular segment consists of four product categories: peripheral intervention, cardiac intervention, custom procedural solutions, and OEM. Within these product categories, we sell a variety of products, including cardiology and radiology devices (which assist in diagnosing and treating coronary arterial disease, peripheral vascular disease and other non-vascular diseases), as well as embolotherapeutic, cardiac rhythm management, electrophysiology, critical care, breast cancer localization and guidance, biopsy, and interventional oncology and spine devices. Our endoscopy segment consists of gastroenterology and pulmonology devices which assist in the palliative treatment of expanding esophageal, tracheobronchial and biliary strictures caused by malignant tumors.

For the three-month period ended September 30, 2022, we reported sales of \$287.2 million, an increase of \$20.2 million or 7.5%, compared to sales for the three-month period ended September 30, 2021 of \$267.0 million. For the nine-month period ended September 30, 2022, we reported sales of \$857.6 million, an increase of \$61.3 million or 7.7% compared to sales for the nine-month period ended September 30, 2021 of \$796.3 million. For the three and nine-month periods ended September 30, 2022, foreign currency fluctuations (net of hedging) decreased our net sales by \$8.0 million and \$15.8 million, respectively, assuming applicable foreign exchange rates in effect during the comparable prior-year periods.

Gross profit as a percentage of sales was 44.8% for the three-month period ended September 30, 2022, compared to 45.1% for the three-month period ended September 30, 2021. Gross profit as a percentage of sales was 44.8% for the nine-month periods ended September 30, 2022 and 2021.

Net income for the three-month period ended September 30, 2022 was \$15.3 million, or \$0.27 per share, compared to net income of \$12.0 million, or \$0.21 per share, for the three-month period ended September 30, 2021. Net income for the nine-month period ended September 30, 2022 was \$41.1 million, or \$0.71 per share, compared to net income of \$27.8 million, or \$0.49 per share, for the nine-month period ended September 30, 2021.

Recent Developments and Trends

In addition to the trends identified in the 2021 Annual Report on Form 10-K under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations - Overview," our business in 2022 has been impacted, and we believe will continue to be impacted, by the following recent developments and trends:

- Our revenue results during the three-month period ended September 30, 2022 were driven primarily by stronger than anticipated demand in the U.S. and more favorable than anticipated international sales trends, particularly in the EMEA and Asia Pacific ("APAC") regions.

- During the third quarter of 2022, we launched four new products, including a new version of our Elation Pulmonary Balloon Dilator, our SafeGuard Focus Cool™ Compression Device, our Prelude Roadster™ Guide Sheath, and our TEMNO Elite™ Soft Tissue Biopsy System.
- Our dedication to the Foundations for Growth program has helped offset inflationary cost pressures in certain raw materials, shipping, and freight expenses.
- As of September 30, 2022, we had cash, cash equivalents, and restricted cash of \$53.6 million and net available borrowing capacity of approximately \$509 million.

RESULTS OF OPERATIONS

The following table sets forth certain operational data as a percentage of sales for the periods indicated:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Net sales	100 %	100 %	100 %	100 %
Gross profit	44.8	45.1	44.8	44.8
Selling, general and administrative expenses	31.3	32.4	30.2	32.5
Research and development expenses	6.7	6.4	6.4	6.4
Impairment charges	—	—	0.2	0.5
Contingent consideration expense	0.3	0.4	0.5	0.4
Acquired in-process research and development expense	—	—	0.8	—
Income from operations	6.5	6.0	6.7	4.9
Other expense — net	(0.4)	(0.7)	(0.5)	(0.7)
Income before income taxes	6.1	5.3	6.1	4.2
Net income	5.3	4.5	4.8	3.5

Sales

Sales for the three-month period ended September 30, 2022 increased by 7.5%, or \$20.2 million, compared to the corresponding period in 2021. Sales for the nine-month period ended September 30, 2022 increased by 7.7%, or \$61.3 million, compared to the corresponding period in 2021. Listed below are the sales by product category within each of our financial reporting segments for the three and nine-month periods ended September 30, 2022 and 2021 (in thousands, other than percentage changes):

	% Change	Three Months Ended September 30,		% Change	Nine Months Ended September 30,	
		2022	2021		2022	2021
Cardiovascular						
Peripheral Intervention	9.5 %	\$ 110,698	\$ 101,059	9.3 %	\$ 327,426	\$ 299,573
Cardiac Intervention	8.8 %	86,848	79,813	7.4 %	257,909	240,203
Custom Procedural Solutions	(7.6)%	45,692	49,435	(1.7)%	141,047	143,492
OEM	21.5 %	35,711	29,397	18.3 %	106,173	89,734
Total	7.4 %	278,949	259,704	7.7 %	832,555	773,002
Endoscopy						
Endoscopy Devices	12.4 %	8,226	7,317	7.5 %	25,011	23,257
Total	7.5 %	\$ 287,175	\$ 267,021	7.7 %	\$ 857,566	\$ 796,259

Cardiovascular Sales. Our cardiovascular sales for the three-month period ended September 30, 2022 were \$278.9 million, up 7.4% when compared to the corresponding period of 2021 of \$259.7 million. Sales for the three-month period ended September 30, 2022 were favorably affected by increased sales of:

- (a) Peripheral intervention products, which increased by \$9.6 million, or 9.5%, from the corresponding period of 2021. This increase was driven primarily by sales of our access, drainage, embolotherapy and radar localization products, offset partially by decreased sales of our intervention products.
- (b) Cardiac intervention products, which increased by \$7.0 million, or 8.8%, from the corresponding period of 2021. This increase was driven primarily by sales of our intervention and cardiac rhythm management/electrophysiology (“CRM/EP”) products, offset partially by decreased sales of our fluid management products (including our Medallion® Syringes, which saw increased demand in the prior period due to COVID-19 vaccination efforts).
- (c) OEM products, which increased by \$6.3 million, or 21.5%, from the corresponding period of 2021. This increase was driven primarily by sales of our access and fluid management products, and kits.

The foregoing increase in sales for the three-month period ended September 30, 2022 was partially offset by decreased sales of custom procedural solutions products, which decreased by (\$3.7) million, or (7.6)%, from the corresponding period of 2021. This decrease was driven primarily by decreased sales of our critical care products and kits, offset partially by increased sales of our trays.

Our cardiovascular sales for the nine-month period ended September 30, 2022 were \$832.6 million, up 7.7% when compared to the corresponding period of 2021 of \$773.0 million. Sales for the nine-month period ended September 30, 2022 were favorably affected by increased sales of:

- (a) Peripheral intervention products, which increased by \$27.9 million, or 9.3%, from the corresponding period of 2021. This increase was driven primarily by sales of our radar localization, drainage, angiography, access, and embolotherapy products, partially offset by decreased sales of our intervention products.
- (b) Cardiac intervention products, which increased by \$17.7 million, or 7.4%, from the corresponding period of 2021. This increase was driven primarily by sales of our intervention, angiography, and CRM/EP products, offset partially by decreased sales of our fluid management products (including our Medallion® Syringes, which saw increased demand in the prior period due to COVID-19 vaccination efforts).
- (c) OEM products, which increased by \$16.4 million, or 18.3%, from the corresponding period of 2021. This increase was driven primarily by sales of our access, fluid management, intervention, angiography, and coating products, as well as kits, offset partially by decreased sales of our CRM/EP products.

The foregoing increase in sales for the nine-month period ended September 30, 2022 was partially offset by decreased sales of custom procedural solutions products, which decreased by (\$2.4) million, or (1.7)%, from the corresponding period of 2021. This decrease was driven primarily by sales of our critical care products, offset partially by increased sales of our trays.

Endoscopy Sales. Our endoscopy sales for the three-month period ended September 30, 2022 were \$8.2 million, up 12.4%, when compared to sales in the corresponding period of 2021 of \$7.3 million. Our endoscopy sales for the nine-month period ended September 30, 2022 were \$25.0 million, up 7.5%, when compared to sales in the corresponding period of 2021 of \$23.3 million. Sales for the three and nine-month periods ended September 30, 2022 compared to the corresponding periods in 2021 were favorably affected by increased sales of our Elation Pulmonary Balloon Dilator and EndoMAXX® fully covered esophageal stent products, offset partially by decreased sales of our other stents.

Geographic Sales

Listed below are sales by geography for the three and nine-month periods ended September 30, 2022 and 2021 (in thousands, other than percentage changes):

	% Change	Three Months Ended September 30,		% Change	Nine Months Ended September 30,	
		2022	2021		2022	2021
United States	8.6 %	\$ 164,571	\$ 151,505	6.8 %	\$ 482,237	\$ 451,648
International	6.1 %	122,604	115,516	8.9 %	375,329	344,611
Total	7.5 %	\$ 287,175	\$ 267,021	7.7 %	\$ 857,566	\$ 796,259

United States Sales. U.S. sales for the three-month period ended September 30, 2022 were \$164.6 million, or 57.3% of net sales, up 8.6% when compared to the corresponding period of 2021. U.S. sales for the nine-month period ended September 30, 2022 were \$482.2 million, or 56.2% of net sales, up 6.8% when compared to the corresponding period of 2021. The increase in our domestic sales was driven primarily by our peripheral intervention and OEM products.

International Sales. International sales for the three-month period ended September 30, 2022 were \$122.6 million, or 42.7% of net sales, up 6.1% when compared to the corresponding period of 2021 of \$115.5 million. The increase in our international sales for the three-month period ended September 30, 2022, compared to the three-month period ended September 30, 2021, included increased sales in our APAC operations of \$3.2 million or 5.7%, in our ROW operations of \$1.5 million or 17.4%, and in our EMEA operations of \$2.3 million or 4.7%.

International sales for the nine-month period ended September 30, 2022 were \$375.3 million, or 43.8% of net sales, up 8.9% when compared to the corresponding period of 2021 of \$344.6 million. The increase in our international sales for the nine-month period ended September 30, 2022, compared to the nine-month period ended September 30, 2021, included increased sales in our APAC operations of \$13.0 million or 7.7%, in our ROW operations of \$9.0 million or 39.3%, and in our EMEA operations of \$8.7 million or 5.7%.

Gross Profit

Our gross profit as a percentage of sales decreased to 44.8% for the three-month period ended September 30, 2022, compared to 45.1% for the three-month period ended September 30, 2021. The decrease in gross profit percentage was primarily due to unfavorable variances primarily from the impact of inflationary pressures on material costs, and higher freight costs, offset partially by favorable changes in product mix, lower standard costs from efficiencies gained in our Foundations for Growth program, and lower obsolescence expense as a percentage of sales.

Our gross profit as a percentage of sales was 44.8% for the nine-month periods ended September 30, 2022 and September 30, 2021. Gross profit percentage increased primarily due to changes in product mix, lower standard costs from efficiencies gained in our Foundations for Growth program and lower intangible amortization expense as a percentage of sales, which was offset by unfavorable variances primarily from the impact of inflationary pressures on material costs and higher freight costs.

Operating Expenses

Selling, General and Administrative Expense. Selling, general and administrative ("SG&A") expenses increased \$3.3 million, or 3.8%, for the three-month period ended September 30, 2022 compared to the corresponding period of 2021. As a percentage of sales, SG&A expenses were 31.3% for the three-month period ended September 30, 2022, compared to 32.4% for the corresponding period of 2021. For the three-month period ended September 30, 2022, SG&A expenses increased compared to the corresponding period of 2021 primarily due to increased labor related costs associated with headcount, increased commissions associated with sales, and increased travel related costs as restrictions continue to lift post pandemic, offset partially by lower due diligence costs associated with acquisitions.

SG&A expenses increased \$0.2 million, or 0.1%, for the nine-month period ended September 30, 2022 compared to the corresponding period of 2021. As a percentage of sales, SG&A expenses were 30.2% for the nine-month period ended September 30, 2022, compared to 32.5% for the corresponding period of 2021. For the nine-month period ended September 30, 2022, SG&A expenses increased compared to the corresponding period of 2021 primarily due to increased labor related costs associated with headcount, increased commissions associated with sales, and increased travel related costs as restrictions continue to lift post pandemic, offset partially by lower due diligence costs associated with acquisitions, and \$6.1 million of contract termination costs recorded in SG&A during the prior year 2021 to renegotiate certain terms of an acquisition agreement.

Research and Development Expenses. Research and development (“R&D”) expenses for the three-month period ended September 30, 2022 were \$19.2 million, up 13.2%, when compared to R&D expenses in the corresponding period of 2021 of \$17.0 million. R&D expenses for the nine-month period ended September 30, 2022 were \$55.1 million, up 8.3%, when compared to R&D expenses in the corresponding period of 2021 of \$50.8 million. The increases in R&D expenses for the three and nine-month periods ended September 30, 2022 compared to the corresponding periods in 2021 were largely due to higher labor-related costs, increased clinical expenses for certain R&D projects (including clinical trials for our Embosphere® Microspheres and WRAPSODY™ Endoprosthesis) and higher expenses related to implementation of the Medical Device Regulation in the European Union.

Impairment Charges. For the three-month periods ended September 30, 2022 and September 30, 2021, we recorded no impairment charges. For the nine-month period ended September 30, 2022, we recorded impairment charges of \$1.7 million of intangible assets due to the divestiture of the STD Pharmaceutical business, which we completed on April 30, 2022. For the nine-month period ended September 30, 2021 we recorded \$4.3 million of impairment charges. These impairments included \$1.6 million of intangible assets and \$1.3 million of property and equipment due to the planned discontinuance of the Advocate™ Peripheral Angioplasty Balloon product line, sold under our license agreements with ArraVasc, and \$1.4 million of impairments of certain right-of-use “ROU” operating lease assets due to site consolidation decisions and changes in our projected cash flows for the underlying assets.

Contingent Consideration Expense. For the three and nine-month periods ended September 30, 2022, we recognized contingent consideration expense from changes in the estimated fair value of our contingent consideration obligations stemming from our previously disclosed business acquisitions of \$0.9 million and \$4.7 million, respectively, compared to contingent consideration expense of \$1.1 million and \$3.3 million for the three and nine-month periods ended September 30, 2021. Expense in each period related to changes in the probability and timing of achieving certain revenue and operational milestones, as well as expense for the passage of time.

Acquired In-process Research and Development. For the three-month period ended September 30, 2022 we incurred no acquired in-process research and development costs. For the nine-month period ended September 30, 2022, we recognized \$6.7 million in acquired in-process research and development costs primarily associated with our acquisition of Restore Endosystems. We did not incur acquired in-process research and development charges during the three and nine-month periods ended September 30, 2021.

Operating Income

The following table sets forth our operating income by financial reporting segment for the three and nine-month periods ended September 30, 2022 and 2021 (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Operating Income				
Cardiovascular	\$ 17,435	\$ 14,411	\$ 51,836	\$ 33,389
Endoscopy	1,222	1,520	5,310	5,631
Total operating income	<u>\$ 18,657</u>	<u>\$ 15,931</u>	<u>\$ 57,146</u>	<u>\$ 39,020</u>

Cardiovascular Operating Income. Our cardiovascular operating income for the three-month period ended September 30, 2022 was \$17.4 million, compared to cardiovascular operating income in the corresponding period of 2021 of \$14.4 million. The increase in cardiovascular operating income during the three-month period ended September 30, 2022 compared to the corresponding period of 2021 was primarily a result of higher sales (\$278.9 million compared to \$259.7 million), partially offset by a decreased gross margin and higher SG&A and R&D expenses.

Our cardiovascular operating income for the nine-month period ended September 30, 2022 was \$51.8 million, compared to cardiovascular operating income in the corresponding period of 2021 of \$33.4 million. The increase in cardiovascular operating income during the nine-month period ended September 30, 2022 compared to the corresponding period of 2021 was primarily a result of higher sales (\$832.6 million compared to \$773.0 million), partially offset by higher SG&A, contingent consideration expense and \$6.7 million of acquired in-process research and development charges.

Endoscopy Operating Income. Our endoscopy operating income for the three-month period ended September 30, 2022 was \$1.2 million, compared to endoscopy operating income of \$1.5 million for the corresponding period of 2021. Our endoscopy operating income for the nine-month period ended September 30, 2022 was \$5.3 million, compared to endoscopy operating income of \$5.6 million for the corresponding period of 2021. The decrease in endoscopy operating income for the three and nine-month periods ended September 30, 2022 compared to the corresponding periods of 2021 was primarily a result of decreased gross margin and higher SG&A expenses.

Other Expense – Net

Our other expense for the three-month periods ended September 30, 2022 and 2021 was \$1.1 million and \$1.8 million, respectively. The change in other expense was primarily related to decreased expense from realized and unrealized foreign currency losses, partially offset by an increase in interest expense associated with rising interest rates.

Our other expense for the nine-month periods ended September 30, 2022 and 2021 was \$4.7 million and \$5.3 million, respectively. The change in other expense was primarily related to decreased expense from realized and unrealized foreign currency losses, partially offset by a \$1.3 million loss on the divestiture of the STD Pharmaceutical business.

Effective Tax Rate

Our provision for income taxes for the three-month periods ended September 30, 2022 and 2021 was a tax expense of \$2.3 million and \$2.2 million, respectively, which resulted in an effective tax rate of 13.2% and 15.6%, respectively. Our provision for income taxes for the nine-month periods ended September 30, 2022 and 2021 was a tax expense of \$11.4 million and \$5.9 million, respectively, which resulted in an effective tax rate of 21.6% and 17.5%, respectively. The increase in the income tax expense and the corresponding change in the effective income tax rate for the three and nine-month periods ended September 30, 2022, when compared to the prior-year periods, was primarily due to decreased benefit from discrete items such as share-based compensation and deferred compensation. Our effective tax rate differs from the U.S. statutory rate primarily due to the impact of GILTI inclusions, state income taxes, foreign taxes, other non-deductible permanent items and discrete items (such as share-based compensation).

Net Income

Our net income for the three-month periods ended September 30, 2022 and 2021 was \$15.3 million and \$12.0 million, respectively. The increase in our net income for the three-month period ended September 30, 2022 was primarily the result of higher sales, partially offset by lower gross margins as a percentage of sales, and higher SG&A and R&D expenses.

Our net income for the nine-month periods ended September 30, 2022 and 2021 was \$41.1 million and \$27.8 million, respectively. The increase in our net income for the nine-month period ended September 30, 2022 was primarily the result of higher sales and lower impairment charges (\$1.7 million for the nine-month period ended September 30, 2022 compared to \$4.3 million for the corresponding period of 2021), partially offset by higher R&D expenses, higher contingent consideration expense (\$4.7 million for the nine-month period ended September 30, 2022 compared to \$3.3 million for the corresponding period of 2021), increased acquired in-process research and development charges, and higher income tax expense.

LIQUIDITY AND CAPITAL RESOURCES

Capital Commitments, Contractual Obligations and Cash Flows

At September 30, 2022 and December 31, 2021, our current assets exceeded current liabilities by \$286.8 million and \$245.9 million, respectively, and we had cash, cash equivalents and restricted cash of \$53.6 million and \$67.8 million, respectively, of which \$50.4 million and \$55.7 million, respectively, were held by foreign subsidiaries. We currently believe future repatriation of cash and other property held by our foreign subsidiaries will generally not be subject to U.S. federal income tax. As a result, we are not permanently reinvested with respect to our historic unremitted foreign earnings. In addition, cash held by our subsidiary in China is subject to local laws and regulations that require government approval for the transfer of such funds to entities located outside of China. As of September 30, 2022, and December 31, 2021, we had cash, cash equivalents and restricted cash of \$26.3 million and \$28.5 million, respectively, within our subsidiary in China.

Cash flows provided by operating activities. We generated cash from operating activities of \$86.3 million and \$101.4 million during the nine-month periods ended September 30, 2022 and 2021, respectively. Net cash provided by operating activities decreased \$15.1 million for the nine-month period ended September 30, 2022 compared to the nine-month period ended September 30, 2021. Significant factors affecting operating cash flows during these periods included:

- Net income was approximately \$41.1 million and \$27.8 million for the nine-month periods ended September 30, 2022 and 2021, respectively.
- Cash used for inventories was (\$30.7) million and (\$11.2) million for the nine-month periods ended September 30, 2022 and 2021, respectively. The increase in inventory was associated with our strategy to proactively invest in our inventory balances to build the requisite safety stock and encourage high customer service levels.
- Cash provided by (used for) accrued expenses was (\$8.9) million and \$19.6 million for the nine-month periods ended September 30, 2022 and 2021, respectively, due primarily to the decrease in the current portion of contingent consideration liabilities, payment of approximately \$18.25 million into escrow in connection with the settlement of a securities class action lawsuit, and the timing of payment of bonuses, partially offset by the timing and payment of payroll accruals and other accrued liabilities in each period.
- Cash provided by (used for) other receivables was \$5.7 million and (\$3.2) million for the nine-month periods ended September 30, 2022 and 2021, respectively, due primarily to the collection of approximately \$8.2 million of insurance proceeds in connection with the consolidated securities class action lawsuit we settled in April 2022.

Cash flows used in investing activities. We used cash in investing activities of \$40.1 million and \$22.6 million for the nine-month periods ended September 30, 2022 and 2021, respectively. We used cash for capital expenditures of property and equipment of \$32.5 million and \$19.6 million in the nine-month periods ended September 30, 2022 and 2021, respectively. Capital expenditures in each period were primarily related to investment in property and equipment to support development and production of our products. Historically, we have incurred significant expenses in connection with facility construction, production automation, product development and the introduction of new products. We anticipate that we will spend approximately \$55 to \$60 million in 2022 for property and equipment.

Cash outflows invested in acquisitions for the nine-month period ended September 30, 2022 were approximately \$4.7 million and were primarily related to our \$3.0 million upfront payment in our purchase of Restore Endosystems and our additional equity investment in Fluidix of \$1.4 million. Cash outflows invested in acquisitions for the nine-month period ended September 30, 2021 were approximately \$1.9 million and were primarily related to our settlement of the first deferred payment for our acquisition of KA Medical, LLC completed in November 2020.

Cash flows used in financing activities. Cash used in financing activities for the nine-month periods ended September 30, 2022 and 2021 was \$54.5 million and \$66.0 million, respectively. We decreased our net borrowings by

approximately \$26.3 and \$72.6 million for the nine-month periods ended September 30, 2022 and 2021, respectively, by paying down our debt. We completed payment of contingent consideration of \$32.8 million and \$10.6 million for the nine-month periods ended September 31, 2022 and 2021, respectively, principally related to sales milestone payments connected to our acquisitions of Cianna Medical and Vascular Insights, LLC.

As of September 30, 2022, we had outstanding borrowings of \$216.9 million and issued letter of credit guarantees of \$1.9 million under the Third Amended Credit Agreement, with additional available borrowings of approximately \$509 million, based on the maximum net leverage ratio and the aggregate revolving credit commitment pursuant to the Third Amended Credit Agreement. Our interest rate as of September 30, 2022 was a fixed rate of 2.71% with respect to \$75 million of the principal amount as a result of an interest rate swap and a variable floating rate of 4.12% with respect to \$141.9 million of the principal amount. Our interest rate as of December 31, 2021 was a fixed rate of 2.71% on \$75 million as a result of an interest rate swap and a variable floating rate of 1.10% on \$168.1 million.

We currently believe that our existing cash balances, anticipated future cash flows from operations and borrowings under the Third Amended Credit Agreement will be adequate to fund our current and currently planned future operations for the next twelve months and the foreseeable future. In the event we pursue and complete significant transactions or acquisitions in the future, additional funds will likely be required to meet our strategic needs, which may require us to raise additional funds in the debt or equity markets.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

Our financial results are affected by the selection and application of accounting policies and methods. In the nine-month period ended September 30, 2022 there were no changes to the application of critical accounting policies previously disclosed in Part II, Item 7 of the 2021 Annual Report on Form 10-K.

CAUTIONARY NOTICE REGARDING FORWARD-LOOKING STATEMENTS

This report includes “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). All statements in this report, other than statements of historical fact, are “forward-looking statements” for purposes of these provisions, including, without limitation, any projections of earnings, revenues or other financial items, any statements of the plans and objectives of our management for future operations, any statements concerning proposed new products or services, any statements regarding the integration, development or commercialization of the business or any assets acquired from other parties, any statements regarding future economic conditions or performance, and any statements of assumptions underlying any of the foregoing. All forward-looking statements included in this report are made as of the date hereof and are based on information available to us as of such date. We assume no obligation to update any forward-looking statement. In some cases, forward-looking statements can be identified by the use of terminology such as “may,” “will,” “expects,” “plans,” “should,” “anticipates,” “intends,” “seeks,” “believes,” “estimates,” “potential,” “forecasts,” “continue,” or other forms of these words or similar words or expressions, or the negative thereof or other comparable terminology. Although we believe that the expectations reflected in the forward-looking statements contained herein are reasonable, there can be no assurance that such expectations or any of the forward-looking statements will prove to be correct. Actual results will likely differ, and could differ materially, from those projected or assumed in the forward-looking statements. Prospective investors are cautioned not to unduly rely on any such forward-looking statements.

All forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by these cautionary statements. Our actual results will likely differ, and may differ materially, from anticipated results. Financial estimates are subject to change and are not intended to be relied upon as predictions of future operating results, and we assume no obligation to update or disclose revisions to those estimates. If we do update or correct one or more forward-looking statements, investors and others should not conclude that we will make additional updates or corrections.

NOTICE REGARDING TRADEMARKS

This report includes trademarks, tradenames and service marks that are our property or the property of others. Solely for convenience, such trademarks and tradenames sometimes appear without any “™” or “®” symbol. However, failure to include such symbols is not intended to suggest, in any way, that we will not assert our rights or the rights of any applicable licensor, to these trademarks and tradenames.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Quantitative and qualitative disclosures about exchange rate risk are included in Part II, Item 7A "Quantitative and Qualitative Disclosures About Market Risk" of the 2021 Annual Report on Form 10-K. In the nine-month period ended September 30, 2022, there were no material changes from the information provided therein.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management is responsible for establishing and maintaining adequate disclosure controls and procedures for our company. Consequently, our management, with the participation of our chief executive officer and chief financial officer, evaluated the effectiveness of our disclosure controls and procedures pursuant to Rule 13a-15 under the Exchange Act as of September 30, 2022. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints, and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs. Based on that evaluation, our chief executive officer and chief financial officer concluded that our disclosure controls and procedures are designed at a reasonable assurance level and are effective to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms, and that such information is accumulated and communicated to our management, including our chief executive officer and chief financial officer, as appropriate, to allow timely decisions regarding required disclosure.

Changes in Internal Control Over Financial Reporting

During the nine-month period ended September 30, 2022, there were no changes in our internal control over financial reporting that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934).

PART II - OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

See Note 10 “Commitments and Contingencies” set forth in the notes to our consolidated financial statements included in Part I, Item 1 of this report.

ITEM 1A. RISK FACTORS

In addition to other information set forth in this report, readers should carefully consider the factors discussed in Part I, Item 1A. "Risk Factors" of the 2021 Annual Report on Form 10-K, as updated and supplemented below. Any of the risk factors disclosed in our reports could materially affect our business, financial condition or future results. The risks described here and in our 2021 Annual Report on Form 10-K are not the only risks we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially and adversely

affect our business, financial condition and/or operating results. The discussion of the risk factors below updates the corresponding disclosure under the same headings in the 2021 Annual Report on Form 10-K and may contain material changes to the corresponding risk factor discussion in our 2021 Annual Report on Form 10-K.

Business, Economic, Industry and Operational Risks

Changes in general economic conditions, geopolitical conditions, domestic and foreign trade policies, monetary policies and other factors beyond our control may adversely impact our business and operating results.

Our operations and performance depend significantly on global, regional and U.S. economic and geopolitical conditions. Russia's invasion and military attacks on Ukraine have triggered significant sanctions from U.S. and European leaders. These events continue to cause increasingly volatile global economic conditions. Resulting changes in U.S. trade policy could trigger retaliatory actions by Russia, its allies and other affected countries, including China, resulting in a "trade war." On March 8, 2022, President Biden issued an executive order that bans the importation of Russian oil, liquefied natural gas and coal. On April 8, 2022, the President signed into law two bills suspending trade relations with Russia and Belarus and banning the import of Russian energy. These events have resulted in increased costs for raw materials we use in our manufacturing and could result in Russia and other foreign governments imposing tariffs on products that we export outside the U.S. or otherwise limiting our ability to sell our products abroad. These increased costs in our business generally are not a direct result of the conflict in Ukraine or government action, but rather we are affected by the adverse impact this conflict has on global inflationary pressures, energy prices and supply chain operations. Also, in light of these events, we have substantially suspended our operations in Russia. Although our operations in Russia have not historically constituted a material portion of our business, the closure of our operations in Russia, combined with the general economic impact of the conflict, could have a material, adverse effect on our revenues and costs for materials and services. Furthermore, if the conflict between Russia and Ukraine continues for a long period of time, or if other countries, including the U.S., become further involved in the conflict, we could face significant adverse effects to our overall business and financial condition.

The United Kingdom's ("UK") departure from the European Union ("EU") (commonly known as "Brexit") has created uncertainties affecting business operations in the UK, the EU and a number of other countries, including with respect to compliance with the regulatory regimes regarding the labeling and registration of the products we sell in these markets. While we have taken proactive steps to mitigate possible disruption to our operations, we still could face increased costs, volatility in exchange rates, market instability and other risks, depending on the effects of existing and future agreements between the UK and EU regarding Brexit and the future EU/UK trading relationship.

The above factors, including a number of other economic and geopolitical factors both in the U.S. and abroad, could ultimately have material adverse effects on our business, financial condition, results of operations or cash flows, including the following:

- effects of significant changes in economic, monetary and fiscal policies in the U.S. and abroad including currency fluctuations, inflationary pressures and significant income tax changes;
- a global or regional economic slowdown in any of our market segments;
- changes in government policies and regulations affecting Merit or its significant customers;
- industrial policies in various countries that favor domestic industries over multinationals or that restrict foreign companies altogether;
- new or stricter trade policies and tariffs enacted by countries, such as China, in response to changes in U.S. trade policies and tariffs;
- postponement of spending, in response to tighter credit, financial market volatility and other factors;
- rapid material escalation of the cost of regulatory compliance and litigation;
- difficulties protecting intellectual property;
- longer payment cycles;
- credit risks and other challenges in collecting accounts receivable; and
- the impact of each of the foregoing on outsourcing and procurement arrangements.

Termination or interruption of our supply relationships and increases in labor costs and the prices of our component parts, finished products, third-party services and raw materials, particularly petroleum-based products, is negatively impacting our business and could have a further adverse effect on our business, operations or financial condition.

We rely on raw materials, component parts, finished products and third-party services in connection with our business. For example, substantially all of our products are sterilized by only a few different entities. If any of these sterilizers goes out of business or fails to comply with quality or regulatory requirements, we may be unable to find a suitable supplier to replace them. This could significantly delay or stop production and cause sales of such products to materially decline. Additionally, many of our products have components that are manufactured using resins, plastics and other petroleum-based materials which are available from a limited number of suppliers. We are experiencing a growing trend among suppliers of polymer resins to refuse to supply resin to medical device manufacturers or to require such manufacturers to assume additional risks due to the potential for product liability claims. Additionally, there is no assurance that crude oil supplies will be uninterrupted or that petroleum-based manufacturing materials will be available for purchase in the future. The actions by the U.S. government in response to the conflict between Russia and Ukraine, among other factors, have had an adverse impact on the cost of the petroleum-based manufacturing materials that we purchase. The military conflict in Ukraine has also had a general, adverse impact on supply chains and further hinders our ability to find the materials we need to make our products. Supply disruptions such as these are making it harder for us to find favorable pricing and reliable sources for the materials we need, putting upward pressure on our costs and increasing the risk that we may be unable to acquire the materials and services we need to continue to make certain products.

The availability and price of these materials, parts, products and services are affected by a variety of factors beyond our control, including the willingness of suppliers to sell into the medical device industry, changes in supply and demand, general economic conditions, labor costs, fuel-related transportation costs, liability concerns, climate change (including new and existing laws and regulations to address climate change), competition, import duties, tariffs, currency exchange rates and political uncertainty around the world. Our suppliers often pass some of their cost increases on to us, and if such increased costs are sustained or increase further, our suppliers may pass further cost increases on to us. In addition to the effect on resin prices, transportation costs have generally increased and may further increase if crude oil prices increase. Our transportation and service providers are typically able to pass any significant increases in oil prices on to us. Our costs may also be impacted by laws to increase minimum wages, including the potential increase to the federal minimum wage in the United States that has been recently proposed by the current administration.

Our ability to recover such increased costs may depend upon our ability to raise prices on our products. Due to the highly competitive nature of the healthcare industry and the cost-containment efforts of our customers and third-party payers, we may be unable to pass along cost increases through higher prices. If we are unable to fully recover these costs through price increases or offset these increases through cost reductions, or we experience terminations or interruption of our relationships with our suppliers, we could experience lower margins and profitability, and our results of operations, financial condition and cash flows could be materially harmed.

Our international operations make us subject to the U.S. Foreign Corrupt Practices Act and similar anti-bribery laws in non-U.S. jurisdictions, and our failure, or the failure of our distributors and agents, to comply with these laws could subject us to civil and criminal penalties and adversely affect our business.

We currently conduct our business in various foreign countries, and we expect to continue to expand our foreign operations. As a result, we are subject to the U.S. Foreign Corrupt Practices Act (“FCPA”), the U.K. Bribery Act, and similar anti-corruption laws in non-U.S. jurisdictions. These laws generally prohibit companies and their intermediaries from illegally offering things of value to any individual for the purpose of obtaining or retaining business.

Compliance with the FCPA and other anti-bribery laws presents challenges to our operations. Our policies mandate compliance with the FCPA and all other applicable anti-bribery laws. Further, we expect our employees, distributors, agents and others who work for us or on our behalf to comply with these anti-bribery laws. Despite our training and compliance programs, our internal control policies and procedures may not always protect us from reckless or criminal acts committed by our employees, distributors or agents. If our employees, distributors or agents violate the provisions of the FCPA or other anti-bribery laws, or even if there are allegations of such violations, we could be subject to investigations or civil and criminal penalties or other sanctions, which could have a material, adverse effect on our reputation, business, results of operations, financial condition or cash flows.

As disclosed in Note 10 “Commitments and Contingencies” to our consolidated financial statements, although we are unable to predict the scope, timing, significance or outcome of the SEC inquiry referenced in that note, the inquiry may cause a diversion of our management’s time and attention and could have a material adverse effect on our reputation, business, results of operations, financial condition or cash flows.

ITEM 6. EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
3.1	Second Amended and Restated Articles of Incorporation*
3.2	Third Amended and Restated Bylaws*
10.1	Indemnification Agreement, dated as of June 17, 2021, between the Company and Stephen C. Evans †
10.2	Form of Indemnification Agreement, dated as of May 19, 2022, between the Company and each of Laura Kaiser and Michael McDonnell †
10.3	Indemnification Agreement, dated as of October 22, 2022, between the Company and Neil Peterson †
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101	The following financial information from the quarterly report on Form 10-Q for the quarter ended September 30, 2022, formatted in Inline Extensible Business Reporting Language (iXBRL): (i) Consolidated Balance Sheets, (ii) Consolidated Statements of Income, (iii) Consolidated Statements of Comprehensive Income (iv) Consolidated Statements of Stockholders' Equity, (v) Consolidated Statements of Cash Flows, and (vi) related Condensed Notes to the Unaudited Consolidated Financial Statements, tagged in detail.
104	Cover Page Interactive Data File (the cover page XBRL tags are embedded within the Inline XBRL document).

* These exhibits are incorporated herein by reference.

† Indicates management contract or compensatory plan or arrangement.

SIGNATURES

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

MERIT MEDICAL SYSTEMS, INC.

Date: October 28, 2022

By: /s/ FRED P. LAMPROPOULOS
Fred P. Lampropoulos, President and
Chief Executive Officer

Date: October 28, 2022

By: /s/ RAUL PARRA
Raul Parra
Chief Financial Officer and Treasurer

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (the “Agreement”) is made as of June 17, 2021, by and between Merit Medical Systems, Inc., a Utah corporation (“Company”), and Stephen Evans, an individual (“Indemnitee”).

RECITALS

A. The Company is aware that because of the increased exposure to litigation costs, talented and experienced persons are increasingly reluctant to serve or continue serving as directors and officers of corporations unless they are protected by comprehensive liability insurance and indemnification.

B. The statutes and judicial decisions regarding the duties of directors and officers are often difficult to apply, ambiguous, or conflicting, and therefore often fail to provide such directors and officers with adequate guidance regarding the proper course of action.

C. The Board of Directors of the Company (the “Board”), has concluded that, in order to retain and attract talented and experienced individuals to serve as officers and directors of the Company and its subsidiaries and to encourage such individuals to take the business risks necessary for the success of the Company and its subsidiaries, the Company should contractually indemnify its officers and directors, and the officers and directors of its subsidiaries, in connection with claims against such officers and directors relating to their services to the Company and its subsidiaries and has further concluded that the failure to provide such contractual indemnification could be detrimental to the Company, its subsidiaries and shareholders.

D. Indemnitee’s willingness to serve as a director of the Company is predicated, in substantial part, upon the Company’s willingness to indemnify Indemnitee in accordance with the principles reflected above, to the fullest extent permitted by the laws of the State of Utah, and upon the other undertakings set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises made in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the Company and Indemnitee, intending to be legally bound hereby, hereby agree as follows:

1. **Definitions.**

(a) **Agent.** “Agent” with respect to the Company means any person who is or was a director, officer, employee or other agent of the Company or a subsidiary; or is or was serving at the request of, for the convenience of, or to represent the interests of, the Company or a subsidiary as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (including without limitation any employee benefit plan whether or not subject to the Employee Retirement Income Security Act of 1974, as amended (“ERISA”)); or was a director, officer, employee or agent of a predecessor corporation (or other predecessor entity or enterprise) of the Company or a subsidiary, or was a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (including without limitation any employee benefit plan whether or not subject to the ERISA) at the request of, for the convenience of, or to represent the interests of such predecessor.

(b) **Change in Control.** “Change in Control” shall mean, and shall be deemed to have occurred if, on or after the date of this Agreement: (i) any “person” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) or group acting in concert, other than a trustee or other fiduciary holding securities under an employee

benefit plan of the Company acting in such capacity or a corporation owned directly or indirectly by the shareholders of the Company in substantially the same proportions as their ownership of stock of the Company, becomes the “beneficial owner” (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total voting power represented by the Company’s then outstanding voting securities; (ii) during any period of two (2) consecutive years, individuals who at the beginning of such period constitute the Board and any new director whose election by the Board or nomination for election by the Company’s shareholders was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; (iii) the shareholders of the Company approve a merger or consolidation of the Company with any other corporation other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least eighty percent (80%) of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; or (iv) the shareholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of (in one transaction or a series of related transactions) all or substantially all of the Company’s assets.

(c) **Company.** References to the “Company” shall include, in addition to Merit Medical Systems, Inc., any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which Merit Medical Systems, Inc. (or any of its wholly-owned subsidiaries) is a party which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees, agents or fiduciaries, so that if Indemnitee is or was a director, officer, employee, agent or fiduciary of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise, Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

(d) **Expenses.** “Expenses” means all direct and indirect costs of any type or nature whatsoever (including, without limitation, all reasonable attorneys’ and experts’ fees, costs of investigation and related disbursements) reasonably incurred by Indemnitee in connection with the investigation (whether formal or informal), settlement, defense or appeal of a Proceeding covered hereby or the establishment or enforcement of a right to indemnification under this Agreement, including without limitation in the case of an appeal the premium for, and other costs relating to, any costs bond or supersedeas bond or other appeal bond or its equivalent.

(e) **Independent Legal Counsel.** “Independent Legal Counsel” shall mean an attorney or firm of attorneys, selected in accordance with the provisions of Section 2(i) hereof, who shall not have otherwise performed services for the Company or Indemnitee within the preceding three years (other than with respect to matters concerning the rights of Indemnitee under this Agreement, or of other Indemnitees under similar indemnity agreements).

(f) **Other References.** References to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on Indemnitee with respect to an employee benefit plan; and references to “serving at the request of the Company” shall include any service as a director, officer, employee, agent or fiduciary of the Company which imposes duties on, or involves services by, such director, officer, employee, agent or fiduciary with respect to an employee benefit plan, its participants or its beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan, Indemnitee shall be deemed to have acted in a manner “not opposed to the best interests of the Company” as referred to in this Agreement.

(g) **Proceeding.** “Proceeding” means any threatened, pending, or completed claim, suit, action, proceeding or alternative dispute resolution mechanism, or any hearing or investigation, whether civil, criminal, administrative, investigative

or otherwise, including without limitation any situation which Indemnitee believes in good faith might lead to the institution of any such proceeding.

(h) **Reviewing Party.** “Reviewing Party” shall mean, subject to the provisions of Section 2(g), any person or body appointed by the Board in accordance with applicable law to review the Company’s obligations hereunder and under applicable law, which may include a member or members of the Board, Independent Legal Counsel or any other person or body not a party to the particular Proceeding for which Indemnitee is seeking indemnification, as set forth in Section 2(i).

2. **Indemnification.**

(a) **Third Party Proceedings.** The Company shall defend, indemnify and hold harmless Indemnitee to the fullest extent permitted by the Utah Revised Business Corporation Act (the “Act”) if Indemnitee is or was a party or is threatened to be made a party to any Proceeding (other than an action by or in the right of the Company) by reason of the fact that Indemnitee is or was or is claimed to be an Agent of the Company, any subsidiary of the Company or any committee or subcommittee of the Board, by reason of any action or inaction on the part of Indemnitee while an Agent of the Company, against all Expenses and liabilities of any type whatsoever (including, but not limited to, judgments, fines, ERISA excise taxes or penalties, and amounts paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld)) actually and reasonably incurred by Indemnitee in connection with such Proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe Indemnitee’s conduct was unlawful.

(b) **Proceedings By or in the Right of the Company.** The Company shall defend, indemnify and hold harmless Indemnitee to the fullest extent permitted by the Act if Indemnitee was or is a party or is threatened to be made a party to any Proceeding by or in the right of the Company or any subsidiary of the Company to procure a judgment in its favor by reason of the fact that Indemnitee is or was or is claimed to be an Agent of the Company, all Expenses and liabilities of any type whatsoever (including, but not limited to, legal fees, judgments, fines, ERISA excise taxes or penalties, and amounts paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld)), in each case to the extent actually and reasonably incurred by Indemnitee in connection with the defense or settlement of such Proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and its stockholders, except that no indemnification shall be made in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudicated by court order or judgment to be liable to the Company in the performance of Indemnitee’s duty to the Company and its stockholders unless and only to the extent that the court in which such action or proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses, which such court shall deem proper.

(c) **Presumptions; Burden of Proof.** In making any determination concerning Indemnitee’s right to indemnification, there shall be a presumption that Indemnitee has satisfied the applicable standard of conduct, and the Company may overcome such presumption only by its adducing clear and convincing evidence to the contrary. For purposes of this Agreement, the termination of any Proceeding by judgment, order, settlement (whether with or without court approval) or conviction, or upon a plea of nolo contendere, or its equivalent, shall not create a presumption that Indemnitee did not meet any particular standard of conduct or have any particular belief or that a court has determined that indemnification is not permitted by this Agreement or applicable law. In addition, neither the failure of any Reviewing Party to have made a determination as to whether Indemnitee has met any particular standard of conduct or had any particular belief, nor an actual determination by any Reviewing Party that Indemnitee has not met such standard of conduct or did not have such belief, prior to the commencement of legal proceedings by Indemnitee to secure a judicial determination that Indemnitee should be indemnified under this Agreement under applicable law, shall be a defense to Indemnitee’s claim or create a presumption that Indemnitee has not met any particular standard of conduct or did not have any particular belief. Any determination concerning Indemnitee’s right to indemnification that is adverse to Indemnitee may be challenged by Indemnitee in the courts of the State of Utah. No determination by the Company (including without limitation by its directors or any Independent Legal Counsel) that Indemnitee has not satisfied any applicable standard of conduct shall be a defense to any claim by Indemnitee for indemnification or

reimbursement or advance payment of Expenses by the Company hereunder or create a presumption that Indemnitee has not met any applicable standard of conduct.

(d) **Reliance as a Safe Harbor.** For purposes of this Agreement, and without creating any presumption as to a lack of good faith if the following circumstances do not exist, Indemnitee shall be deemed to have acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company if Indemnitee's actions or omissions to act are taken in good faith reliance upon the records of the Company, including its financial statements, or upon information, opinions, reports or statements furnished to Indemnitee by other Agents of the Company or any of its subsidiaries in the course of their duties, or by committees of the Board or by any other person (including legal counsel, accountants and financial advisors) as to matters Indemnitee reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company. In addition, the knowledge and/or actions, or failures to act, of any Agent of the Company shall not be imputed to Indemnitee for purposes of determining the right to indemnify hereunder.

(e) **Actions Where Indemnitee Is Deceased.** If Indemnitee was or is a party, or is threatened to be made a party, to any Proceeding by reason of the fact that Indemnitee is or was an Agent of the Company, or by reason of anything done or not done by Indemnitee in any such capacity, and prior to, during the pendency of, or after completion of, such Proceeding, Indemnitee shall die, then the Company shall defend, indemnify and hold harmless the estate, heirs and legatees of Indemnitee against any and all Expenses and liabilities reasonably incurred by or for such persons or entities in connection with the investigation, defense, settlement or appeal of such Proceeding on the same basis as provided for Indemnitee in Sections 2(a) and 2(b) above.

(f) **Extent of Insurance.** The Expenses and liabilities covered hereby shall be net of any payments made irrevocably to or on behalf of Indemnitee by any D&O Insurance carriers or others and, for the avoidance of doubt, the Company will not be liable for the payment of any Expenses or liabilities for which Indemnitee has received payment from a D&O Insurance carrier or other person unless and until the D&O Insurance Carrier or such other person requests reimbursement of such Expenses or liabilities from Indemnitee.

(g) **Review of Indemnification Obligations.** Notwithstanding the foregoing, in the event any Reviewing Party shall have determined (in a written opinion, in any case in which Independent Legal Counsel is the Reviewing Party) that Indemnitee is not entitled to be indemnified hereunder under applicable law: (i) the Company shall have no further obligation under Section 2(a) or Section 2(b) to make any payments to Indemnitee not made prior to such determination by such Reviewing Party; and (ii) the Company shall be entitled to be reimbursed by Indemnitee (who hereby agrees to reimburse the Company) for all Expenses theretofore paid to Indemnitee to which Indemnitee is not entitled hereunder under applicable law; provided, however, that if Indemnitee has commenced or thereafter commences legal proceedings in a court of competent jurisdiction to secure a determination that Indemnitee is entitled to be indemnified hereunder under applicable law, any determination made by any Reviewing Party that Indemnitee is not entitled to be indemnified hereunder under applicable law shall not be binding and Indemnitee shall not be required to reimburse the Company for any Expenses theretofore paid in indemnifying Indemnitee until a final judicial determination is made with respect thereto (as to which all rights of appeal therefrom have been exhausted or lapsed). Indemnitee's obligation to reimburse the Company for any Expenses shall be unsecured and no interest shall be charged thereon.

(h) **Indemnitee Rights on Unfavorable Determination; Binding Effect.** If any Reviewing Party determines that Indemnitee substantively is not entitled to be indemnified hereunder in whole or in part under applicable law, Indemnitee shall have the right to commence litigation seeking an initial determination by the court or challenging any such determination by such Reviewing Party or any aspect thereof, including the legal or factual bases therefor, and the Company hereby consents to service of process and to appear in any such proceeding.

(i) **Selection of Reviewing Party; Change in Control.** A determination, if required by applicable law, with respect to Indemnitee's entitlement to indemnification shall be made in accordance with the provisions of this paragraph (i). If there has not been a Change in Control, a Reviewing Party shall be selected by the Board, and if there has been such a Change in Control (other than a Change in Control which has been approved by a majority of the Board who were directors immediately prior to such Change in Control), any Reviewing Party with respect to all matters thereafter arising concerning the rights of Indemnitee to indemnification of Expenses

under this Agreement or any other agreement or under the Company's Articles of Incorporation or Bylaws as now or hereafter in effect, or under any other applicable law, if desired by Indemnitee, shall be Independent Legal Counsel selected by Indemnitee and approved by the Company (which approval shall not be unreasonably withheld, conditioned or delayed). Such counsel, among other things, shall render its written opinion to the Company and Indemnitee as to whether and to what extent Indemnitee would be entitled to be indemnified hereunder under applicable law and the Company agrees to abide by such opinion. The Company agrees to pay the reasonable fees of the Independent Legal Counsel referred to above and to indemnify fully such counsel against any and all expenses (including attorneys' fees), claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

Notwithstanding any other provision of this Agreement, the Company shall not be required to pay Expenses of more than one Independent Legal Counsel in connection with all matters concerning a single Indemnitee (other than to the extent local counsel or counsel with particular expertise are required), and such Independent Legal Counsel shall be the Independent Legal Counsel for any or all other Indemnitees unless: (i) the employment of separate counsel by one or more Indemnitees has been previously authorized by the Board in writing; or (ii) an Indemnitee shall have provided to the Company a written statement that such Indemnitee has reasonably concluded that there may be a conflict of interest between such Indemnitee and the other Indemnitees with respect to the matters arising under this Agreement.

3. **Expenses; Indemnification Procedure.**

(a) **Advancement of Expenses.** The Company shall advance all expenses incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of any civil or Proceeding referred to in Section 2(a) or Section 2(b) hereof (including amounts actually paid in settlement of any such Proceeding if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld, conditioned or delayed). Indemnitee hereby undertakes to repay such amounts advanced only if, and to the extent that, it shall ultimately be determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company as authorized hereby.

(b) **Notice/Cooperation by Indemnitee.** Promptly after receipt by Indemnitee of notice of the commencement or threat of any Proceeding covered hereby, Indemnitee shall (to the extent legally permitted) notify the Company of the commencement or threat thereof, provided that any failure to so notify shall not relieve the Company of any of its obligations hereunder. Notice to the Company shall be directed to the Chief Executive Officer of the Company and the Chief Legal Officer of the Company, and shall be given in accordance with the provisions of Section 12(i) below. In addition, Indemnitee shall give the Company such information and cooperation as it may reasonably require and as shall be within Indemnitee's power.

(c) **Notice to Insurers.** If, at the time of the receipt of a notice of a claim pursuant to Section 3(b) hereof, the Company has D&O Insurance (as defined in Section 6(a) below) in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies, including any advancement of expenses.

(d) Indemnitee shall be entitled to retain one or more counsel from time to time selected by Indemnitee in Indemnitee's reasonable discretion to act as its counsel in and for the investigation, defense, settlement or appeal of each Proceeding. The Company shall not waive any privilege or right available to Indemnitee in any such Proceeding.

(e) The Company shall bear all reasonable fees and Expenses (including invoices for advance retainers) of such counsel, and all reasonable fees and Expenses invoiced by other persons or entities, in connection with the investigation, defense, settlement or appeal of each such Proceeding. Such fees and Expenses are referred to herein as "Covered Expenses."

(f) Until a determination to the contrary under Section 4 hereof is made, the Company shall advance all Covered Expenses in connection with each Proceeding. Indemnitee shall qualify for advances upon the execution and delivery to the Company of this Agreement which shall constitute an undertaking providing that Indemnitee undertakes to the extent required by law to repay the advance if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that

Indemnitee is not entitled to be indemnified by the Company. No other form of undertaking shall be required other than the execution of this Agreement. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay the expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement.

(g) **Selection of Counsel.** In the event the Company shall be obligated hereunder to provide indemnification for and/or make any advancement of Expenses with respect to the Expenses of any Proceeding, the Company, if appropriate, shall be entitled to assume the defense of such Proceeding with counsel selected by the Company, subject to approval by Indemnitee (which approval shall not be unreasonably withheld), upon the delivery to Indemnitee of written notice of the Company's election to do so. After delivery of such notice and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees or expenses of separate counsel subsequently retained by or on behalf of Indemnitee with respect to the same Proceeding; provided that: (i) Indemnitee shall have the right to employ Indemnitee's separate counsel in any such Proceeding at Indemnitee's expense; and (ii) if (A) the employment of separate counsel by Indemnitee has been previously authorized by the Company, (B) Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense, or (C) the Company shall not continue to retain such counsel to defend such Proceeding, then the fees and expenses of Indemnitee's separate counsel shall be Expenses for which Indemnitee may receive indemnification or advancement of Expenses hereunder.

(h) Each advance to be made hereunder shall be paid by the Company to Indemnitee within ten (10) business days following delivery of a written request therefor by Indemnitee to the Company.

(a) The Company acknowledges the potentially severe damage to Indemnitee should the Company fail timely to make such advances to Indemnitee.

(b) The Company shall not settle any Proceeding if, as a result of such settlement, any fine or obligation is imposed on Indemnitee without Indemnitee's prior written consent.

4. **Determination of Right to Indemnification.**

(a) To the extent Indemnitee has been successful on the merits or otherwise in defense of any Proceeding, claim, issue or matter covered hereby, Indemnitee need not repay any of the Expenses advanced in connection with the investigation, defense or appeal of such Proceeding.

(b) Indemnitee shall have the right to advancement by the Company prior to the final disposition of any Proceeding of any and all Expenses relating to, arising out of or resulting from any Proceeding paid or incurred by Indemnitee or which Indemnitee determines are reasonably likely to be paid or incurred by Indemnitee.

(c) Subject to the provisions of Section 2(g), notwithstanding a determination by a Reviewing Party or a court that Indemnitee is not entitled to indemnification with respect to a specific Proceeding, Indemnitee shall have the right to apply to the courts of the State of Utah for the purpose of enforcing Indemnitee's right to indemnification pursuant to this Agreement.

(d) Subject to the provisions of Section 2(i), the Company shall indemnify Indemnitee against all Expenses reasonably incurred by Indemnitee in connection with any Proceeding under Sections 4(b) or 4(c) and against all Expenses reasonably incurred by Indemnitee in connection with any other Proceeding between the Company and Indemnitee involving the interpretation or enforcement of the rights of Indemnitee under this Agreement unless a court of competent jurisdiction finds that each of the material claims and/or defenses of Indemnitee in any such Proceeding were frivolous or made in bad faith.

(e) The Company hereby agrees to indemnify Indemnitee to the fullest extent permitted by the Act, notwithstanding that such indemnification is not specifically authorized by the other provisions of this Agreement, the Company's Articles of Incorporation, the Company's Bylaws or by statute. In the event of any change after the date of this Agreement to the Act or in any applicable law, statute or rule which expands the right of a Utah corporation to indemnify a member of its board of directors or an officer, employee, agent or fiduciary, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits afforded by such change. In the event of any change to the Act or in any applicable law, statute or rule which narrows the right of a Utah corporation to indemnify its Agent, such change, to the extent not otherwise required by the Act or such law, statute or rule to be applied to this Agreement, shall have no effect on this Agreement or the parties' rights and obligations hereunder except as set forth in Section 8 hereof.

(f) **Nonexclusivity.** The indemnification and the payment of Expense advances provided by this Agreement shall be in addition to any rights to which Indemnitee may be entitled under the Company's Articles of Incorporation, its Bylaws, any other agreement, any vote of shareholders or disinterested directors, the Act, or otherwise. The indemnification and the payment or advancement of Expenses provided under this Agreement shall continue as to Indemnitee for any action taken or not taken while serving in an indemnified capacity even though subsequent thereto Indemnitee may have ceased to serve in such capacity.

(g) **No Duplication of Payments.** The Company shall not be liable under this Agreement to make any payment in connection with any Proceeding to the extent Indemnitee has otherwise actually received payment (under any insurance policy, provision of the Company's Articles of Incorporation, Bylaws or otherwise) of the amounts otherwise payable hereunder.

(h) **Partial Indemnification.** If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses incurred in connection with any Proceeding, but not, however, for all of the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion of such Expenses to which Indemnitee is entitled.

5. **Mutual Acknowledgement.** Both the Company and Indemnitee acknowledge that in certain instances, Federal law or public policy may override applicable state law and prohibit the Company from indemnifying its directors and officers under this Agreement or otherwise. For example, the Company and Indemnitee acknowledge that the Securities and Exchange Commission (the "SEC") has taken the position that indemnification is not permissible for liabilities arising under certain federal securities laws, and federal legislation prohibits indemnification for certain ERISA violations. Indemnitee understands and acknowledges that the Company has undertaken or may be required in the future to undertake with the SEC to submit the question of indemnification to a court in certain circumstances for a determination of the Company's right under public policy to indemnify Indemnitee.

6. **Officer and Director Liability Insurance.**

(a) The Company hereby covenants and agrees with Indemnitee that, subject to Section 6(b), the Company shall obtain and maintain in full force and effect directors' and officers' liability insurance ("D&O Insurance"), in reasonable amounts as the Board shall determine from established and reputable insurers with an AM Best rating of A.VI or better, but no less than the amounts in effect upon initial procurement of the D&O Insurance. In all policies of D&O Insurance, Indemnitee shall be named as an insured.

(b) Notwithstanding the foregoing, the Company shall have no obligation to obtain or maintain D&O Insurance if the Board determines in good faith that the premium costs for such insurance are (i) disproportionate to the amount of coverage provided after giving effect to exclusions, and (ii) substantially more burdensome to the Company than the premiums charged to the Company for its initial D&O Insurance; provided that Indemnitee is given written notice of any such determination within thirty (30) days of the date that it is made (but in no event shall such notice be given less than ten (10) days prior to the termination of any existing D&O Insurance); provided, further, that the Company will be required to obtain and maintain "tail" insurance policies covering Indemnitee for any act or omission taken prior to the termination of the D&O Insurance. For the avoidance of doubt, the Company shall still be

obligated to provide indemnification for and/or make any advancement of Expenses with respect to the Expenses of any Proceeding pursuant to the terms of this Agreement, regardless of whether the Company maintains D&O Insurance covering Indemnitee.

(c) Indemnitee shall be covered by the D&O Insurance policies that the Company is required to maintain hereunder in such a manner as to provide Indemnitee the same rights and benefits as are provided to the most favorably insured of the Company's directors, if Indemnitee is a director; or of the Company's officers, if Indemnitee is not a director of the Company but is an officer; or of the Company's key employees, agents or fiduciaries, if Indemnitee is not an officer or director but is a key employee, agent or fiduciary.

7. **Severability.** Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. The Company's inability, pursuant to court order, to perform its obligations under this Agreement shall not constitute a breach of this Agreement. The provisions of this Agreement shall be severable as provided in this Section 7. If this Agreement or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify Indemnitee to the full extent permitted by any applicable portion of this Agreement that shall not have been invalidated, and the balance of this Agreement not so invalidated shall be enforceable in accordance with its terms.

8. **Exceptions.** Any other provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement:

(a) **Claims Initiated by Indemnitee.** To indemnify or advance expenses to Indemnitee with respect to Proceedings or claims initiated or brought voluntarily by Indemnitee and not by way of defense, other than: (i) Proceedings under Sections 4(b) or 4(c); (ii) Proceedings brought to establish or enforce a right to indemnification under this Agreement or the provisions of the Company's Articles of Incorporation or Bylaws unless a court of competent jurisdiction determines that each of the material assertions made by Indemnitee in such Proceeding were not made in good faith or were frivolous; or (iii) proceedings or claims instituted by Indemnitee with the approval by the Board;

(b) **Unauthorized Settlement.** To indemnify Indemnitee under this Agreement for any amounts paid in settlement of a Proceeding covered hereby without the prior written consent of the Company to such settlement, which consent will not be unreasonably withheld provided that the Company's consent is not required if the Company is refusing to indemnify or advance Expenses to Indemnitee;

(c) **Insured Claims.** To indemnify Indemnitee for expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, ERISA excise taxes or penalties, and amounts paid in settlement) to the extent such expenses or liabilities have been paid directly to Indemnitee by an insurance carrier under a policy of officers' and directors; liability insurance maintained by the Company; or

(d) **Claims Under Section 16(b).** To indemnify Indemnitee for expenses or the payment of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 16(b) of the Securities Exchange Act of 1934, as amended, or any similar successor statute.

9. **Witness Expenses.** The Company agrees to compensate Indemnitee for the reasonable value of Indemnitee's time spent, and to reimburse Indemnitee for all Expenses (including reasonable attorneys' fees and travel costs) reasonably incurred by Indemnitee, in connection with being a witness, or if Indemnitee is threatened to be made a witness, with respect to any Proceeding, by reason of Indemnitee serving or having served as an Agent of the Company.

10. **Attorneys' Fees.** In the event that any action is instituted by Indemnitee under this Agreement to enforce or interpret any of the terms hereof, Indemnitee shall be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by Indemnitee with respect to such action, unless as a part of such action, the court of competent jurisdiction determines that each of the material assertions made by Indemnitee as a basis for such action were not made in good faith or were frivolous. In the event of an action instituted by or in the name of the Company under this Agreement or to enforce or interpret any of the terms of this Agreement, Indemnitee shall be entitled to be paid all court costs and expenses, including attorneys' fees, incurred by Indemnitee in defense of such

action (including with respect to Indemnitee's counterclaims and cross-claims made in such action), unless as a part of such action the court determines that each of Indemnitee's material defenses to such action were made in bad faith or were frivolous.

11. **Duration.** All agreements and obligations of the Company contained herein shall continue during the period that Indemnitee is an Agent of the Company and shall continue thereafter (a) so long as Indemnitee may be subject to any possible claim for which Indemnitee may be indemnified hereunder (including any rights of appeal thereto) and (b) throughout the pendency of any Proceeding (including any rights of appeal thereto) commenced by Indemnitee to enforce or interpret Indemnitee's rights under this Agreement, even if, in either case, Indemnitee may have ceased to serve in such capacity at the time of any such Proceeding.

12. **Miscellaneous.**

(a) **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Utah, without giving effect to principles of conflict of law.

(b) **Consent to Jurisdiction.** The Company and Indemnitee each hereby irrevocably consent to the jurisdiction of the courts of the State of Utah for all purposes in connection with any action or proceeding which arises out of or relates to this Agreement and agree that any action instituted under this Agreement shall be commenced, prosecuted and continued only in the federal and state courts located in the State of Utah in and for Salt Lake County, which shall be the exclusive and only proper forum for adjudicating such a claim.

(c) **Entire Agreement; Enforcement of Rights.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussions between them. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party. The parties hereto agree that the indemnification agreement, dated as of [●], [●], by and between the parties hereto (the "Previous Agreement") is hereby superseded by this Agreement; provided, however, that, any action or Proceeding commenced prior to the date hereof shall continue to be governed by the terms and conditions of the Previous Agreement and, for the avoidance of doubt, such Previous Agreement shall not be superseded with respect to any such action or Proceeding.

(d) **Construction.** This Agreement is the result of negotiations between and has been reviewed by each of the parties hereto and their respective counsel, if any; accordingly, this Agreement shall be deemed to be the product of all of the parties hereto, and no ambiguity shall be construed in favor of or against any one of the parties hereto.

(e) **Counterparts.** This Agreement may be signed in counterparts. This Agreement constitutes a separate agreement between the Company and Indemnitee and may be supplemented or amended as to Indemnitee only by a written instrument signed by the Company and Indemnitee, with such amendment binding only the Company and Indemnitee. All waivers must be in a written document signed by the party to be charged. No waiver of any of the provisions of this Agreement shall be implied by the conduct of the parties. A waiver of any right hereunder shall not constitute a waiver of any other right hereunder.

(f) **Interpretation of Agreement.** This Agreement shall be interpreted and enforced so as to provide indemnification to Indemnitee to the fullest extent now or hereafter permitted by the Act.

(g) **Subrogation.** In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all documents required and shall do all acts that may be necessary to secure such rights and to enable the Company to effectively bring suit to enforce such rights.

(h) **Continuation of Indemnity; Binding Effect.** Indemnitee's rights hereunder shall continue after Indemnitee has ceased acting an Agent of the Company and the benefits hereof shall inure to the benefit of the heirs, executors and administrators of Indemnitee. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part, of the business and/or assets of the Company, by written agreement in form and

substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(i) **Notices.** All notices, demands, consents, requests, approvals and other communications required or permitted hereunder shall be in writing and shall be deemed to have been properly given if hand delivered (effective upon receipt or when refused), or if sent by a courier freight prepaid (effective upon receipt or when refused), in the case of the Company, at the addresses listed below, or to such other addresses as the parties may notify each other in writing.

To Company: Merit Medical Systems, Inc.
Attention: Chief Legal Officer
1600 West Merit Parkway
South Jordan, Utah 84095

To Indemnitee: At Indemnitee's residence address and facsimile number on the records of the Company from time to time.

(j) **Evidence of Coverage.** Upon request by Indemnitee, the Company shall provide evidence of the liability insurance coverage required by this Agreement. The Company shall promptly notify Indemnitee of any change in the Company's D&O Insurance coverage.

[Remainder of Page Intentionally Left Blank; Signatures appear on the following page.]

The parties hereto have agreed and accept this Agreement as of the day and year set forth on the first page of this Agreement.

MERIT MEDICAL SYSTEMS, INC.

By: /s/ Fred P. Lampropoulos

Name: Fred P. Lampropoulos

Title: Chief Executive Officer

INDEMNITEE:

/s/ Stephen Evans

Stephen Evans, an individual

[Signature Page to Indemnification Agreement]

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (the "Agreement") is made as of May 19, 2022, by and between Merit Medical Systems, Inc., a Utah corporation ("Company"), and [Name], an individual ("Indemnitee").

RECITALS

A. The Company is aware that because of the increased exposure to litigation costs, talented and experienced persons are increasingly reluctant to serve or continue serving as directors and officers of corporations unless they are protected by comprehensive liability insurance and indemnification.

B. The statutes and judicial decisions regarding the duties of directors and officers are often difficult to apply, ambiguous, or conflicting, and therefore often fail to provide such directors and officers with adequate guidance regarding the proper course of action.

C. The Board of Directors of the Company (the "Board"), has concluded that, in order to retain and attract talented and experienced individuals to serve as officers and directors of the Company and its subsidiaries and to encourage such individuals to take the business risks necessary for the success of the Company and its subsidiaries, the Company should contractually indemnify its officers and directors, and the officers and directors of its subsidiaries, in connection with claims against such officers and directors relating to their services to the Company and its subsidiaries and has further concluded that the failure to provide such contractual indemnification could be detrimental to the Company, its subsidiaries and shareholders.

D. Indemnitee's willingness to serve as a director of the Company is predicated, in substantial part, upon the Company's willingness to indemnify Indemnitee in accordance with the principles reflected above, to the fullest extent permitted by the laws of the State of Utah, and upon the other undertakings set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises made in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the Company and Indemnitee, intending to be legally bound hereby, hereby agree as follows:

1. **Definitions.**

(a) **Agent.** "Agent" with respect to the Company means any person who is or was a director, officer, employee or other agent of the Company or a subsidiary; or is or was serving at the request of, for the convenience of, or to represent the interests of, the Company or a subsidiary as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (including without limitation any employee benefit plan whether or not subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA")); or was a director, officer, employee or agent of a predecessor corporation (or other predecessor entity or enterprise) of the Company or a subsidiary, or was a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (including without limitation any employee benefit plan whether or not subject to the ERISA) at the request of, for the convenience of, or to represent the interests of such predecessor.

(b) **Change in Control.** "Change in Control" shall mean, and shall be deemed to have occurred if, on or after the date of this Agreement: (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) or group acting in concert, other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company acting in such capacity or a corporation owned directly or indirectly by

the shareholders of the Company in substantially the same proportions as their ownership of stock of the Company, becomes the “beneficial owner” (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total voting power represented by the Company’s then outstanding voting securities; (ii) during any period of two (2) consecutive years, individuals who at the beginning of such period constitute the Board and any new director whose election by the Board or nomination for election by the Company’s shareholders was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; (iii) the shareholders of the Company approve a merger or consolidation of the Company with any other corporation other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least eighty percent (80%) of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; or (iv) the shareholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of (in one transaction or a series of related transactions) all or substantially all of the Company’s assets.

(c) **Company.** References to the “Company” shall include, in addition to Merit Medical Systems, Inc., any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which Merit Medical Systems, Inc. (or any of its wholly-owned subsidiaries) is a party which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees, agents or fiduciaries, so that if Indemnitee is or was a director, officer, employee, agent or fiduciary of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise, Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

(d) **Expenses.** “Expenses” means all direct and indirect costs of any type or nature whatsoever (including, without limitation, all reasonable attorneys’ and experts’ fees, costs of investigation and related disbursements) reasonably incurred by Indemnitee in connection with the investigation (whether formal or informal), settlement, defense or appeal of a Proceeding covered hereby or the establishment or enforcement of a right to indemnification under this Agreement, including without limitation in the case of an appeal the premium for, and other costs relating to, any costs bond or supersedeas bond or other appeal bond or its equivalent.

(e) **Independent Legal Counsel.** “Independent Legal Counsel” shall mean an attorney or firm of attorneys, selected in accordance with the provisions of Section 2(i) hereof, who shall not have otherwise performed services for the Company or Indemnitee within the preceding three years (other than with respect to matters concerning the rights of Indemnitee under this Agreement, or of other Indemnitees under similar indemnity agreements).

(f) **Other References.** References to “other enterprises” shall include employee benefit plans; references to “finances” shall include any excise taxes assessed on Indemnitee with respect to an employee benefit plan; and references to “serving at the request of the Company” shall include any service as a director, officer, employee, agent or fiduciary of the Company which imposes duties on, or involves services by, such director, officer, employee, agent or fiduciary with respect to an employee benefit plan, its participants or its beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan, Indemnitee shall be deemed to have acted in a manner “not opposed to the best interests of the Company” as referred to in this Agreement.

(g) **Proceeding.** “Proceeding” means any threatened, pending, or completed claim, suit, action, proceeding or alternative dispute resolution mechanism, or any hearing or investigation, whether civil, criminal, administrative, investigative or otherwise, including without limitation any situation which Indemnitee believes in good faith might lead to the institution of any such proceeding.

(h) **Reviewing Party.** “Reviewing Party” shall mean, subject to the provisions of Section 2(g), any person or body appointed by the Board in accordance with applicable law to review the Company’s obligations hereunder and under applicable law, which may include a member or members of the Board, Independent Legal Counsel or any other person or body not a party to the particular Proceeding for which Indemnitee is seeking indemnification, as set forth in Section 2(i).

2. **Indemnification.**

(a) **Third Party Proceedings.** The Company shall defend, indemnify and hold harmless Indemnitee to the fullest extent permitted by the Utah Revised Business Corporation Act (the “Act”) if Indemnitee is or was a party or is threatened to be made a party to any Proceeding (other than an action by or in the right of the Company) by reason of the fact that Indemnitee is or was or is claimed to be an Agent of the Company, any subsidiary of the Company or any committee or subcommittee of the Board, by reason of any action or inaction on the part of Indemnitee while an Agent of the Company, against all Expenses and liabilities of any type whatsoever (including, but not limited to, judgments, fines, ERISA excise taxes or penalties, and amounts paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld)) actually and reasonably incurred by Indemnitee in connection with such Proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe Indemnitee’s conduct was unlawful.

(b) **Proceedings By or in the Right of the Company.** The Company shall defend, indemnify and hold harmless Indemnitee to the fullest extent permitted by the Act if Indemnitee was or is a party or is threatened to be made a party to any Proceeding by or in the right of the Company or any subsidiary of the Company to procure a judgment in its favor by reason of the fact that Indemnitee is or was or is claimed to be an Agent of the Company, all Expenses and liabilities of any type whatsoever (including, but not limited to, legal fees, judgments, fines, ERISA excise taxes or penalties, and amounts paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld)), in each case to the extent actually and reasonably incurred by Indemnitee in connection with the defense or settlement of such Proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and its stockholders, except that no indemnification shall be made in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudicated by court order or judgment to be liable to the Company in the performance of Indemnitee’s duty to the Company and its stockholders unless and only to the extent that the court in which such action or proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses, which such court shall deem proper.

(c) **Presumptions; Burden of Proof.** In making any determination concerning Indemnitee’s right to indemnification, there shall be a presumption that Indemnitee has satisfied the applicable standard of conduct, and the Company may overcome such presumption only by its adducing clear and convincing evidence to the contrary. For purposes of this Agreement, the termination of any Proceeding by judgment, order, settlement (whether with or without court approval) or conviction, or upon a plea of nolo contendere, or its equivalent, shall not create a presumption that Indemnitee did not meet any particular standard of conduct or have any particular belief or that a court has determined that indemnification is not permitted by this Agreement or applicable law. In addition, neither the failure of any Reviewing Party to have made a determination as to whether Indemnitee has met any particular standard of conduct or had any particular belief, nor an actual determination by any Reviewing Party that Indemnitee has not met such standard of conduct or did not have such belief, prior to the commencement of legal proceedings by Indemnitee to secure a judicial determination that Indemnitee should be indemnified under this Agreement under applicable law, shall be a defense to Indemnitee’s claim or create a presumption that Indemnitee has not met any particular standard of conduct or did not have any particular belief. Any determination concerning Indemnitee’s right to indemnification that is adverse to Indemnitee may be challenged by Indemnitee in the courts of the State of Utah. No determination by the Company (including without limitation by its directors or any Independent Legal Counsel) that Indemnitee has not satisfied any applicable standard of conduct shall be a defense to any claim by Indemnitee for indemnification or reimbursement or advance payment of Expenses by the Company hereunder or create a presumption that Indemnitee has not met any applicable standard of conduct.

(d) **Reliance as a Safe Harbor.** For purposes of this Agreement, and without creating any presumption as to a lack of good faith if the following circumstances do not exist, Indemnitee shall be deemed to have acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company if Indemnitee's actions or omissions to act are taken in good faith reliance upon the records of the Company, including its financial statements, or upon information, opinions, reports or statements furnished to Indemnitee by other Agents of the Company or any of its subsidiaries in the course of their duties, or by committees of the Board or by any other person (including legal counsel, accountants and financial advisors) as to matters Indemnitee reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company. In addition, the knowledge and/or actions, or failures to act, of any Agent of the Company shall not be imputed to Indemnitee for purposes of determining the right to indemnity hereunder.

(e) **Actions Where Indemnitee Is Deceased.** If Indemnitee was or is a party, or is threatened to be made a party, to any Proceeding by reason of the fact that Indemnitee is or was an Agent of the Company, or by reason of anything done or not done by Indemnitee in any such capacity, and prior to, during the pendency of, or after completion of, such Proceeding, Indemnitee shall die, then the Company shall defend, indemnify and hold harmless the estate, heirs and legatees of Indemnitee against any and all Expenses and liabilities reasonably incurred by or for such persons or entities in connection with the investigation, defense, settlement or appeal of such Proceeding on the same basis as provided for Indemnitee in Sections 2(a) and 2(b) above.

(f) **Extent of Insurance.** The Expenses and liabilities covered hereby shall be net of any payments made irrevocably to or on behalf of Indemnitee by any D&O Insurance carriers or others and, for the avoidance of doubt, the Company will not be liable for the payment of any Expenses or liabilities for which Indemnitee has received payment from a D&O Insurance carrier or other person unless and until the D&O Insurance Carrier or such other person requests reimbursement of such Expenses or liabilities from Indemnitee.

(g) **Review of Indemnification Obligations.** Notwithstanding the foregoing, in the event any Reviewing Party shall have determined (in a written opinion, in any case in which Independent Legal Counsel is the Reviewing Party) that Indemnitee is not entitled to be indemnified hereunder under applicable law: (i) the Company shall have no further obligation under Section 2(a) or Section 2(b) to make any payments to Indemnitee not made prior to such determination by such Reviewing Party; and (ii) the Company shall be entitled to be reimbursed by Indemnitee (who hereby agrees to reimburse the Company) for all Expenses theretofore paid to Indemnitee to which Indemnitee is not entitled hereunder under applicable law; provided, however, that if Indemnitee has commenced or thereafter commences legal proceedings in a court of competent jurisdiction to secure a determination that Indemnitee is entitled to be indemnified hereunder under applicable law, any determination made by any Reviewing Party that Indemnitee is not entitled to be indemnified hereunder under applicable law shall not be binding and Indemnitee shall not be required to reimburse the Company for any Expenses theretofore paid in indemnifying Indemnitee until a final judicial determination is made with respect thereto (as to which all rights of appeal therefrom have been exhausted or lapsed). Indemnitee's obligation to reimburse the Company for any Expenses shall be unsecured and no interest shall be charged thereon.

(h) **Indemnitee Rights on Unfavorable Determination; Binding Effect.** If any Reviewing Party determines that Indemnitee substantively is not entitled to be indemnified hereunder in whole or in part under applicable law, Indemnitee shall have the right to commence litigation seeking an initial determination by the court or challenging any such determination by such Reviewing Party or any aspect thereof, including the legal or factual bases therefor, and the Company hereby consents to service of process and to appear in any such proceeding.

(i) **Selection of Reviewing Party; Change in Control.** A determination, if required by applicable law, with respect to Indemnitee's entitlement to indemnification shall be made in accordance with the provisions of this paragraph (i). If there has not been a Change in Control, a Reviewing Party shall be selected by the Board, and if there has been such a Change in Control (other than a Change in Control which has been approved by a majority of the Board who were directors immediately prior to such Change in Control), any Reviewing Party with respect to all matters thereafter arising concerning the rights of

Indemnitee to indemnification of Expenses under this Agreement or any other agreement or under the Company's Articles of Incorporation or Bylaws as now or hereafter in effect, or under any other applicable law, if desired by Indemnitee, shall be Independent Legal Counsel selected by Indemnitee and approved by the Company (which approval shall not be unreasonably withheld, conditioned or delayed). Such counsel, among other things, shall render its written opinion to the Company and Indemnitee as to whether and to what extent Indemnitee would be entitled to be indemnified hereunder under applicable law and the Company agrees to abide by such opinion. The Company agrees to pay the reasonable fees of the Independent Legal Counsel referred to above and to indemnify fully such counsel against any and all expenses (including attorneys' fees), claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto. Notwithstanding any other provision of this Agreement, the Company shall not be required to pay Expenses of more than one Independent Legal Counsel in connection with all matters concerning a single Indemnitee (other than to the extent local counsel or counsel with particular expertise are required), and such Independent Legal Counsel shall be the Independent Legal Counsel for any or all other Indemnitees unless: (i) the employment of separate counsel by one or more Indemnitees has been previously authorized by the Board in writing; or (ii) an Indemnitee shall have provided to the Company a written statement that such Indemnitee has reasonably concluded that there may be a conflict of interest between such Indemnitee and the other Indemnitees with respect to the matters arising under this Agreement.

3. **Expenses; Indemnification Procedure.**

(a) **Advancement of Expenses.** The Company shall advance all expenses incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of any civil or Proceeding referred to in Section 2(a) or Section 2(b) hereof (including amounts actually paid in settlement of any such Proceeding if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld, conditioned or delayed). Indemnitee hereby undertakes to repay such amounts advanced only if, and to the extent that, it shall ultimately be determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company as authorized hereby.

(b) **Notice/Cooperation by Indemnitee.** Promptly after receipt by Indemnitee of notice of the commencement or threat of any Proceeding covered hereby, Indemnitee shall (to the extent legally permitted) notify the Company of the commencement or threat thereof, provided that any failure to so notify shall not relieve the Company of any of its obligations hereunder. Notice to the Company shall be directed to the Chief Executive Officer of the Company and the Chief Legal Officer of the Company, and shall be given in accordance with the provisions of Section 12(i) below. In addition, Indemnitee shall give the Company such information and cooperation as it may reasonably require and as shall be within Indemnitee's power.

(c) **Notice to Insurers.** If, at the time of the receipt of a notice of a claim pursuant to Section 3(b) hereof, the Company has D&O Insurance (as defined in Section 6(a) below) in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies, including any advancement of expenses.

(d) Indemnitee shall be entitled to retain one or more counsel from time to time selected by Indemnitee in Indemnitee's reasonable discretion to act as its counsel in and for the investigation, defense, settlement or appeal of each Proceeding. The Company shall not waive any privilege or right available to Indemnitee in any such Proceeding.

(e) The Company shall bear all reasonable fees and Expenses (including invoices for advance retainers) of such counsel, and all reasonable fees and Expenses invoiced by other persons or entities, in connection with the investigation, defense, settlement or appeal of each such Proceeding. Such fees and Expenses are referred to herein as "Covered Expenses."

(f) Until a determination to the contrary under Section 4 hereof is made, the Company shall advance all Covered Expenses in connection with each Proceeding. Indemnitee shall qualify for advances upon the execution and delivery to the Company of this Agreement which shall constitute an undertaking providing that Indemnitee undertakes to the extent required by law to repay the advance if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final

judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company. No other form of undertaking shall be required other than the execution of this Agreement. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay the expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement.

(g) **Selection of Counsel.** In the event the Company shall be obligated hereunder to provide indemnification for and/or make any advancement of Expenses with respect to the Expenses of any Proceeding, the Company, if appropriate, shall be entitled to assume the defense of such Proceeding with counsel selected by the Company, subject to approval by Indemnitee (which approval shall not be unreasonably withheld), upon the delivery to Indemnitee of written notice of the Company's election to do so. After delivery of such notice and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees or expenses of separate counsel subsequently retained by or on behalf of Indemnitee with respect to the same Proceeding; provided that: (i) Indemnitee shall have the right to employ Indemnitee's separate counsel in any such Proceeding at Indemnitee's expense; and (ii) if (A) the employment of separate counsel by Indemnitee has been previously authorized by the Company, (B) Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense, or (C) the Company shall not continue to retain such counsel to defend such Proceeding, then the fees and expenses of Indemnitee's separate counsel shall be Expenses for which Indemnitee may receive indemnification or advancement of Expenses hereunder.

(h) Each advance to be made hereunder shall be paid by the Company to Indemnitee within ten (10) business days following delivery of a written request therefor by Indemnitee to the Company.

(a) The Company acknowledges the potentially severe damage to Indemnitee should the Company fail timely to make such advances to Indemnitee.

(b) The Company shall not settle any Proceeding if, as a result of such settlement, any fine or obligation is imposed on Indemnitee without Indemnitee's prior written consent.

4. **Determination of Right to Indemnification.**

(a) To the extent Indemnitee has been successful on the merits or otherwise in defense of any Proceeding, claim, issue or matter covered hereby, Indemnitee need not repay any of the Expenses advanced in connection with the investigation, defense or appeal of such Proceeding.

(b) Indemnitee shall have the right to advancement by the Company prior to the final disposition of any Proceeding of any and all Expenses relating to, arising out of or resulting from any Proceeding paid or incurred by Indemnitee or which Indemnitee determines are reasonably likely to be paid or incurred by Indemnitee.

(c) Subject to the provisions of Section 2(g), notwithstanding a determination by a Reviewing Party or a court that Indemnitee is not entitled to indemnification with respect to a specific Proceeding, Indemnitee shall have the right to apply to the courts of the State of Utah for the purpose of enforcing Indemnitee's right to indemnification pursuant to this Agreement.

(d) Subject to the provisions of Section 2(i), the Company shall indemnify Indemnitee against all Expenses reasonably incurred by Indemnitee in connection with any Proceeding under Sections 4(b) or 4(c) and against all Expenses reasonably incurred by Indemnitee in connection with any other Proceeding between the Company and Indemnitee involving the interpretation or enforcement of the rights of Indemnitee under this Agreement unless a court of competent jurisdiction finds that each of the material claims and/or defenses of Indemnitee in any such Proceeding were frivolous or made in bad faith.

(e) The Company hereby agrees to indemnify Indemnitee to the fullest extent permitted by the Act, notwithstanding that such indemnification is not specifically authorized by the other provisions of this Agreement, the

Company's Articles of Incorporation, the Company's Bylaws or by statute. In the event of any change after the date of this Agreement to the Act or in any applicable law, statute or rule which expands the right of a Utah corporation to indemnify a member of its board of directors or an officer, employee, agent or fiduciary, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits afforded by such change. In the event of any change to the Act or in any applicable law, statute or rule which narrows the right of a Utah corporation to indemnify its Agent, such change, to the extent not otherwise required by the Act or such law, statute or rule to be applied to this Agreement, shall have no effect on this Agreement or the parties' rights and obligations hereunder except as set forth in Section 8 hereof.

(f) **Nonexclusivity.** The indemnification and the payment of Expense advances provided by this Agreement shall be in addition to any rights to which Indemnitee may be entitled under the Company's Articles of Incorporation, its Bylaws, any other agreement, any vote of shareholders or disinterested directors, the Act, or otherwise. The indemnification and the payment or advancement of Expenses provided under this Agreement shall continue as to Indemnitee for any action taken or not taken while serving in an indemnified capacity even though subsequent thereto Indemnitee may have ceased to serve in such capacity.

(g) **No Duplication of Payments.** The Company shall not be liable under this Agreement to make any payment in connection with any Proceeding to the extent Indemnitee has otherwise actually received payment (under any insurance policy, provision of the Company's Articles of Incorporation, Bylaws or otherwise) of the amounts otherwise payable hereunder.

(h) **Partial Indemnification.** If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses incurred in connection with any Proceeding, but not, however, for all of the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion of such Expenses to which Indemnitee is entitled.

5. **Mutual Acknowledgement.** Both the Company and Indemnitee acknowledge that in certain instances, Federal law or public policy may override applicable state law and prohibit the Company from indemnifying its directors and officers under this Agreement or otherwise. For example, the Company and Indemnitee acknowledge that the Securities and Exchange Commission (the "SEC") has taken the position that indemnification is not permissible for liabilities arising under certain federal securities laws, and federal legislation prohibits indemnification for certain ERISA violations. Indemnitee understands and acknowledges that the Company has undertaken or may be required in the future to undertake with the SEC to submit the question of indemnification to a court in certain circumstances for a determination of the Company's right under public policy to indemnify Indemnitee.

6. **Officer and Director Liability Insurance.**

(a) The Company hereby covenants and agrees with Indemnitee that, subject to Section 6(b), the Company shall obtain and maintain in full force and effect directors' and officers' liability insurance ("D&O Insurance"), in reasonable amounts as the Board shall determine from established and reputable insurers with an AM Best rating of A.VI or better, but no less than the amounts in effect upon initial procurement of the D&O Insurance. In all policies of D&O Insurance, Indemnitee shall be named as an insured.

(b) Notwithstanding the foregoing, the Company shall have no obligation to obtain or maintain D&O Insurance if the Board determines in good faith that the premium costs for such insurance are (i) disproportionate to the amount of coverage provided after giving effect to exclusions, and (ii) substantially more burdensome to the Company than the premiums charged to the Company for its initial D&O Insurance; provided that Indemnitee is given written notice of any such determination within thirty (30) days of the date that it is made (but in no event shall such notice be given less than ten (10) days prior to the termination of any existing D&O Insurance); provided, further, that the Company will be required to obtain and maintain "tail" insurance policies covering Indemnitee for any act or omission taken prior to the termination of the D&O Insurance. For the avoidance of doubt, the Company shall still be obligated to provide indemnification for and/or make any advancement of Expenses with respect

to the Expenses of any Proceeding pursuant to the terms of this Agreement, regardless of whether the Company maintains D&O Insurance covering Indemnitee.

(c) Indemnitee shall be covered by the D&O Insurance policies that the Company is required to maintain hereunder in such a manner as to provide Indemnitee the same rights and benefits as are provided to the most favorably insured of the Company's directors, if Indemnitee is a director; or of the Company's officers, if Indemnitee is not a director of the Company but is an officer; or of the Company's key employees, agents or fiduciaries, if Indemnitee is not an officer or director but is a key employee, agent or fiduciary.

7. **Severability.** Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. The Company's inability, pursuant to court order, to perform its obligations under this Agreement shall not constitute a breach of this Agreement. The provisions of this Agreement shall be severable as provided in this Section 7. If this Agreement or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify Indemnitee to the full extent permitted by any applicable portion of this Agreement that shall not have been invalidated, and the balance of this Agreement not so invalidated shall be enforceable in accordance with its terms.

8. **Exceptions.** Any other provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement:

(a) **Claims Initiated by Indemnitee.** To indemnify or advance expenses to Indemnitee with respect to Proceedings or claims initiated or brought voluntarily by Indemnitee and not by way of defense, other than: (i) Proceedings under Sections 4(b) or 4(c); (ii) Proceedings brought to establish or enforce a right to indemnification under this Agreement or the provisions of the Company's Articles of Incorporation or Bylaws unless a court of competent jurisdiction determines that each of the material assertions made by Indemnitee in such Proceeding were not made in good faith or were frivolous; or (iii) proceedings or claims instituted by Indemnitee with the approval by the Board;

(b) **Unauthorized Settlement.** To indemnify Indemnitee under this Agreement for any amounts paid in settlement of a Proceeding covered hereby without the prior written consent of the Company to such settlement, which consent will not be unreasonably withheld provided that the Company's consent is not required if the Company is refusing to indemnify or advance Expenses to Indemnitee;

(c) **Insured Claims.** To indemnify Indemnitee for expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, ERISA excise taxes or penalties, and amounts paid in settlement) to the extent such expenses or liabilities have been paid directly to Indemnitee by an insurance carrier under a policy of officers' and directors; liability insurance maintained by the Company; or

(d) **Claims Under Section 16(b).** To indemnify Indemnitee for expenses or the payment of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 16(b) of the Securities Exchange Act of 1934, as amended, or any similar successor statute.

9. **Witness Expenses.** The Company agrees to compensate Indemnitee for the reasonable value of Indemnitee's time spent, and to reimburse Indemnitee for all Expenses (including reasonable attorneys' fees and travel costs) reasonably incurred by Indemnitee, in connection with being a witness, or if Indemnitee is threatened to be made a witness, with respect to any Proceeding, by reason of Indemnitee serving or having served as an Agent of the Company.

10. **Attorneys' Fees.** In the event that any action is instituted by Indemnitee under this Agreement to enforce or interpret any of the terms hereof, Indemnitee shall be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by Indemnitee with respect to such action, unless as a part of such action, the court of competent jurisdiction determines that each of the material assertions made by Indemnitee as a basis for such action were not made in good faith or were frivolous. In the event of an action instituted by or in the name of the Company under this Agreement or to enforce or interpret any of the terms of this Agreement, Indemnitee shall be entitled to be paid all court costs and expenses, including attorneys' fees, incurred

by Indemnitee in defense of such action (including with respect to Indemnitee's counterclaims and cross-claims made in such action), unless as a part of such action the court determines that each of Indemnitee's material defenses to such action were made in bad faith or were frivolous.

11. **Duration.** All agreements and obligations of the Company contained herein shall continue during the period that Indemnitee is an Agent of the Company and shall continue thereafter (a) so long as Indemnitee may be subject to any possible claim for which Indemnitee may be indemnified hereunder (including any rights of appeal thereto) and (b) throughout the pendency of any Proceeding (including any rights of appeal thereto) commenced by Indemnitee to enforce or interpret Indemnitee's rights under this Agreement, even if, in either case, Indemnitee may have ceased to serve in such capacity at the time of any such Proceeding.

12. **Miscellaneous.**

(a) **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Utah, without giving effect to principles of conflict of law.

(b) **Consent to Jurisdiction.** The Company and Indemnitee each hereby irrevocably consent to the jurisdiction of the courts of the State of Utah for all purposes in connection with any action or proceeding which arises out of or relates to this Agreement **and agree that any action instituted under this Agreement shall be commenced, prosecuted and continued only in the federal and state courts located in the State of Utah in and for Salt Lake County, which shall be the exclusive and only proper forum for adjudicating such a claim.**

(c) **Entire Agreement; Enforcement of Rights.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussions between them. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party. The parties hereto agree that the indemnification agreement, dated as of [●], [●], by and between the parties hereto (the "Previous Agreement") is hereby superseded by this Agreement; provided, however, that, any action or Proceeding commenced prior to the date hereof shall continue to be governed by the terms and conditions of the Previous Agreement and, for the avoidance of doubt, such Previous Agreement shall not be superseded with respect to any such action or Proceeding.

(d) **Construction.** This Agreement is the result of negotiations between and has been reviewed by each of the parties hereto and their respective counsel, if any; accordingly, this Agreement shall be deemed to be the product of all of the parties hereto, and no ambiguity shall be construed in favor of or against any one of the parties hereto.

(e) **Counterparts.** This Agreement may be signed in counterparts. This Agreement constitutes a separate agreement between the Company and Indemnitee and may be supplemented or amended as to Indemnitee only by a written instrument signed by the Company and Indemnitee, with such amendment binding only the Company and Indemnitee. All waivers must be in a written document signed by the party to be charged. No waiver of any of the provisions of this Agreement shall be implied by the conduct of the parties. A waiver of any right hereunder shall not constitute a waiver of any other right hereunder.

(f) **Interpretation of Agreement.** This Agreement shall be interpreted and enforced so as to provide indemnification to Indemnitee to the fullest extent now or hereafter permitted by the Act.

(g) **Subrogation.** In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all documents required and shall do all acts that may be necessary to secure such rights and to enable the Company to effectively bring suit to enforce such rights.

(h) **Continuation of Indemnity; Binding Effect.** Indemnitee's rights hereunder shall continue after Indemnitee has ceased acting an Agent of the Company and the benefits hereof shall inure to the benefit of the heirs, executors and administrators of Indemnitee. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(i) **Notices.** All notices, demands, consents, requests, approvals and other communications required or permitted hereunder shall be in writing and shall be deemed to have been properly given if hand delivered (effective upon receipt or when refused), or if sent by a courier freight prepaid (effective upon receipt or when refused), in the case of the Company, at the addresses listed below, or to such other addresses as the parties may notify each other in writing.

To Company: Merit Medical Systems, Inc.
Attention: Chief Legal Officer
1600 West Merit Parkway
South Jordan, Utah 84095

To Indemnitee: At Indemnitee's residence address and facsimile number on the records of the Company from time to time.

(j) **Evidence of Coverage.** Upon request by Indemnitee, the Company shall provide evidence of the liability insurance coverage required by this Agreement. The Company shall promptly notify Indemnitee of any change in the Company's D&O Insurance coverage.

[Remainder of Page Intentionally Left Blank; Signatures appear on the following page.]

The parties hereto have agreed and accept this Agreement as of the day and year set forth on the first page of this Agreement.

MERIT MEDICAL SYSTEMS, INC.

By: ___/s/ Fred P. Lampropoulos ____

Name: Fred P. Lampropoulos

Title: Chief Executive Officer

INDEMNITEE:

_____/s/ [Name]_____

[Name], an individual

[Signature Page to Indemnification Agreement]

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (the "Agreement") is made as of October 22, 2022, by and between Merit Medical Systems, Inc., a Utah corporation ("Company"), and Neil Peterson, an individual ("Indemnitee").

RECITALS

A. The Company is aware that because of the increased exposure to litigation costs, talented and experienced persons are increasingly reluctant to serve or continue serving as directors and officers of corporations unless they are protected by comprehensive liability insurance and indemnification.

B. The statutes and judicial decisions regarding the duties of directors and officers are often difficult to apply, ambiguous, or conflicting, and therefore often fail to provide such directors and officers with adequate guidance regarding the proper course of action.

C. The Board of Directors of the Company (the "Board"), has concluded that, in order to retain and attract talented and experienced individuals to serve as officers and directors of the Company and its subsidiaries and to encourage such individuals to take the business risks necessary for the success of the Company and its subsidiaries, the Company should contractually indemnify its officers and directors, and the officers and directors of its subsidiaries, in connection with claims against such officers and directors relating to their services to the Company and its subsidiaries and has further concluded that the failure to provide such contractual indemnification could be detrimental to the Company, its subsidiaries and shareholders.

D. Indemnitee's willingness to serve as an officer of the Company is predicated, in substantial part, upon the Company's willingness to indemnify Indemnitee in accordance with the principles reflected above, to the fullest extent permitted by the laws of the State of Utah, and upon the other undertakings set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises made in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the Company and Indemnitee, intending to be legally bound hereby, hereby agree as follows:

1. **Definitions.**

(a) **Agent.** "Agent" with respect to the Company means any person who is or was a director, officer, employee or other agent of the Company or a subsidiary; or is or was serving at the request of, for the convenience of, or to represent the interests of, the Company or a subsidiary as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (including without limitation any employee benefit plan whether or not subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA")); or was a director, officer, employee or agent of a predecessor corporation (or other predecessor entity or enterprise) of the Company or a subsidiary, or was a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (including without limitation any employee benefit plan whether or not subject to the ERISA) at the request of, for the convenience of, or to represent the interests of such predecessor.

(b) **Change in Control.** "Change in Control" shall mean, and shall be deemed to have occurred if, on or after the date of this Agreement: (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) or group acting in concert, other than a trustee or other fiduciary holding securities under an employee

benefit plan of the Company acting in such capacity or a corporation owned directly or indirectly by the shareholders of the Company in substantially the same proportions as their ownership of stock of the Company, becomes the “beneficial owner” (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total voting power represented by the Company’s then outstanding voting securities; (ii) during any period of two (2) consecutive years, individuals who at the beginning of such period constitute the Board and any new director whose election by the Board or nomination for election by the Company’s shareholders was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; (iii) the shareholders of the Company approve a merger or consolidation of the Company with any other corporation other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least eighty percent (80%) of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; or (iv) the shareholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of (in one transaction or a series of related transactions) all or substantially all of the Company’s assets.

(c) **Company.** References to the “Company” shall include, in addition to Merit Medical Systems, Inc., any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which Merit Medical Systems, Inc. (or any of its wholly-owned subsidiaries) is a party which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees, agents or fiduciaries, so that if Indemnitee is or was a director, officer, employee, agent or fiduciary of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise, Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

(d) **Expenses.** “Expenses” means all direct and indirect costs of any type or nature whatsoever (including, without limitation, all reasonable attorneys’ and experts’ fees, costs of investigation and related disbursements) reasonably incurred by Indemnitee in connection with the investigation (whether formal or informal), settlement, defense or appeal of a Proceeding covered hereby or the establishment or enforcement of a right to indemnification under this Agreement, including without limitation in the case of an appeal the premium for, and other costs relating to, any costs bond or supersedeas bond or other appeal bond or its equivalent.

(e) **Independent Legal Counsel.** “Independent Legal Counsel” shall mean an attorney or firm of attorneys, selected in accordance with the provisions of Section 2(i) hereof, who shall not have otherwise performed services for the Company or Indemnitee within the preceding three years (other than with respect to matters concerning the rights of Indemnitee under this Agreement, or of other Indemnitees under similar indemnity agreements).

(f) **Other References.** References to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on Indemnitee with respect to an employee benefit plan; and references to “serving at the request of the Company” shall include any service as a director, officer, employee, agent or fiduciary of the Company which imposes duties on, or involves services by, such director, officer, employee, agent or fiduciary with respect to an employee benefit plan, its participants or its beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan, Indemnitee shall be deemed to have acted in a manner “not opposed to the best interests of the Company” as referred to in this Agreement.

(g) **Proceeding.** “Proceeding” means any threatened, pending, or completed claim, suit, action, proceeding or alternative dispute resolution mechanism, or any hearing or investigation, whether civil, criminal, administrative, investigative

or otherwise, including without limitation any situation which Indemnitee believes in good faith might lead to the institution of any such proceeding.

(h) **Reviewing Party.** “Reviewing Party” shall mean, subject to the provisions of Section 2(g), any person or body appointed by the Board in accordance with applicable law to review the Company’s obligations hereunder and under applicable law, which may include a member or members of the Board, Independent Legal Counsel or any other person or body not a party to the particular Proceeding for which Indemnitee is seeking indemnification, as set forth in Section 2(i).

2. **Indemnification.**

(a) **Third Party Proceedings.** The Company shall defend, indemnify and hold harmless Indemnitee to the fullest extent permitted by the Utah Revised Business Corporation Act (the “Act”) if Indemnitee is or was a party or is threatened to be made a party to any Proceeding (other than an action by or in the right of the Company) by reason of the fact that Indemnitee is or was or is claimed to be an Agent of the Company, any subsidiary of the Company or any committee or subcommittee of the Board, by reason of any action or inaction on the part of Indemnitee while an Agent of the Company, against all Expenses and liabilities of any type whatsoever (including, but not limited to, judgments, fines, ERISA excise taxes or penalties, and amounts paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld)) actually and reasonably incurred by Indemnitee in connection with such Proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe Indemnitee’s conduct was unlawful.

(b) **Proceedings By or in the Right of the Company.** The Company shall defend, indemnify and hold harmless Indemnitee to the fullest extent permitted by the Act if Indemnitee was or is a party or is threatened to be made a party to any Proceeding by or in the right of the Company or any subsidiary of the Company to procure a judgment in its favor by reason of the fact that Indemnitee is or was or is claimed to be an Agent of the Company, all Expenses and liabilities of any type whatsoever (including, but not limited to, legal fees, judgments, fines, ERISA excise taxes or penalties, and amounts paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld)), in each case to the extent actually and reasonably incurred by Indemnitee in connection with the defense or settlement of such Proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and its stockholders, except that no indemnification shall be made in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudicated by court order or judgment to be liable to the Company in the performance of Indemnitee’s duty to the Company and its stockholders unless and only to the extent that the court in which such action or proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses, which such court shall deem proper.

(c) **Presumptions; Burden of Proof.** In making any determination concerning Indemnitee’s right to indemnification, there shall be a presumption that Indemnitee has satisfied the applicable standard of conduct, and the Company may overcome such presumption only by its adducing clear and convincing evidence to the contrary. For purposes of this Agreement, the termination of any Proceeding by judgment, order, settlement (whether with or without court approval) or conviction, or upon a plea of nolo contendere, or its equivalent, shall not create a presumption that Indemnitee did not meet any particular standard of conduct or have any particular belief or that a court has determined that indemnification is not permitted by this Agreement or applicable law. In addition, neither the failure of any Reviewing Party to have made a determination as to whether Indemnitee has met any particular standard of conduct or had any particular belief, nor an actual determination by any Reviewing Party that Indemnitee has not met such standard of conduct or did not have such belief, prior to the commencement of legal proceedings by Indemnitee to secure a judicial determination that Indemnitee should be indemnified under this Agreement under applicable law, shall be a defense to Indemnitee’s claim or create a presumption that Indemnitee has not met any particular standard of conduct or did not have any particular belief. Any determination concerning Indemnitee’s right to indemnification that is adverse to Indemnitee may be challenged by Indemnitee in the courts of the State of Utah. No determination by the Company (including without limitation by its directors or any Independent Legal Counsel) that Indemnitee has not satisfied any applicable standard of conduct shall be a defense to any claim by Indemnitee for indemnification or

reimbursement or advance payment of Expenses by the Company hereunder or create a presumption that Indemnitee has not met any applicable standard of conduct.

(d) **Reliance as a Safe Harbor.** For purposes of this Agreement, and without creating any presumption as to a lack of good faith if the following circumstances do not exist, Indemnitee shall be deemed to have acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company if Indemnitee's actions or omissions to act are taken in good faith reliance upon the records of the Company, including its financial statements, or upon information, opinions, reports or statements furnished to Indemnitee by other Agents of the Company or any of its subsidiaries in the course of their duties, or by committees of the Board or by any other person (including legal counsel, accountants and financial advisors) as to matters Indemnitee reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company. In addition, the knowledge and/or actions, or failures to act, of any Agent of the Company shall not be imputed to Indemnitee for purposes of determining the right to indemnity hereunder.

(e) **Actions Where Indemnitee Is Deceased.** If Indemnitee was or is a party, or is threatened to be made a party, to any Proceeding by reason of the fact that Indemnitee is or was an Agent of the Company, or by reason of anything done or not done by Indemnitee in any such capacity, and prior to, during the pendency of, or after completion of, such Proceeding, Indemnitee shall die, then the Company shall defend, indemnify and hold harmless the estate, heirs and legatees of Indemnitee against any and all Expenses and liabilities reasonably incurred by or for such persons or entities in connection with the investigation, defense, settlement or appeal of such Proceeding on the same basis as provided for Indemnitee in Sections 2(a) and 2(b) above.

(f) **Extent of Insurance.** The Expenses and liabilities covered hereby shall be net of any payments made irrevocably to or on behalf of Indemnitee by any D&O Insurance carriers or others and, for the avoidance of doubt, the Company will not be liable for the payment of any Expenses or liabilities for which Indemnitee has received payment from a D&O Insurance carrier or other person unless and until the D&O Insurance Carrier or such other person requests reimbursement of such Expenses or liabilities from Indemnitee.

(g) **Review of Indemnification Obligations.** Notwithstanding the foregoing, in the event any Reviewing Party shall have determined (in a written opinion, in any case in which Independent Legal Counsel is the Reviewing Party) that Indemnitee is not entitled to be indemnified hereunder under applicable law: (i) the Company shall have no further obligation under Section 2(a) or Section 2(b) to make any payments to Indemnitee not made prior to such determination by such Reviewing Party; and (ii) the Company shall be entitled to be reimbursed by Indemnitee (who hereby agrees to reimburse the Company) for all Expenses theretofore paid to Indemnitee to which Indemnitee is not entitled hereunder under applicable law; provided, however, that if Indemnitee has commenced or thereafter commences legal proceedings in a court of competent jurisdiction to secure a determination that Indemnitee is entitled to be indemnified hereunder under applicable law, any determination made by any Reviewing Party that Indemnitee is not entitled to be indemnified hereunder under applicable law shall not be binding and Indemnitee shall not be required to reimburse the Company for any Expenses theretofore paid in indemnifying Indemnitee until a final judicial determination is made with respect thereto (as to which all rights of appeal therefrom have been exhausted or lapsed). Indemnitee's obligation to reimburse the Company for any Expenses shall be unsecured and no interest shall be charged thereon.

(h) **Indemnitee Rights on Unfavorable Determination; Binding Effect.** If any Reviewing Party determines that Indemnitee substantively is not entitled to be indemnified hereunder in whole or in part under applicable law, Indemnitee shall have the right to commence litigation seeking an initial determination by the court or challenging any such determination by such Reviewing Party or any aspect thereof, including the legal or factual bases therefor, and the Company hereby consents to service of process and to appear in any such proceeding.

(i) **Selection of Reviewing Party; Change in Control.** A determination, if required by applicable law, with respect to Indemnitee's entitlement to indemnification shall be made in accordance with the provisions of this paragraph (i). If there has not been a Change in Control, a Reviewing Party shall be selected by the Board, and if there has been such a Change in Control (other than a Change in Control which has been approved by a majority of the Board who were directors immediately prior to such Change in Control), any Reviewing Party with respect to all matters thereafter arising concerning the rights of Indemnitee to indemnification of Expenses

under this Agreement or any other agreement or under the Company's Articles of Incorporation or Bylaws as now or hereafter in effect, or under any other applicable law, if desired by Indemnitee, shall be Independent Legal Counsel selected by Indemnitee and approved by the Company (which approval shall not be unreasonably withheld, conditioned or delayed). Such counsel, among other things, shall render its written opinion to the Company and Indemnitee as to whether and to what extent Indemnitee would be entitled to be indemnified hereunder under applicable law and the Company agrees to abide by such opinion. The Company agrees to pay the reasonable fees of the Independent Legal Counsel referred to above and to indemnify fully such counsel against any and all expenses (including attorneys' fees), claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

Notwithstanding any other provision of this Agreement, the Company shall not be required to pay Expenses of more than one Independent Legal Counsel in connection with all matters concerning a single Indemnitee (other than to the extent local counsel or counsel with particular expertise are required), and such Independent Legal Counsel shall be the Independent Legal Counsel for any or all other Indemnitees unless: (i) the employment of separate counsel by one or more Indemnitees has been previously authorized by the Board in writing; or (ii) an Indemnitee shall have provided to the Company a written statement that such Indemnitee has reasonably concluded that there may be a conflict of interest between such Indemnitee and the other Indemnitees with respect to the matters arising under this Agreement.

3. **Expenses; Indemnification Procedure.**

(a) **Advancement of Expenses.** The Company shall advance all expenses incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of any civil or Proceeding referred to in Section 2(a) or Section 2(b) hereof (including amounts actually paid in settlement of any such Proceeding if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld, conditioned or delayed). Indemnitee hereby undertakes to repay such amounts advanced only if, and to the extent that, it shall ultimately be determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company as authorized hereby.

(b) **Notice/Cooperation by Indemnitee.** Promptly after receipt by Indemnitee of notice of the commencement or threat of any Proceeding covered hereby, Indemnitee shall (to the extent legally permitted) notify the Company of the commencement or threat thereof, provided that any failure to so notify shall not relieve the Company of any of its obligations hereunder. Notice to the Company shall be directed to the Chief Executive Officer of the Company and the Chief Legal Officer of the Company, and shall be given in accordance with the provisions of Section 12(i) below. In addition, Indemnitee shall give the Company such information and cooperation as it may reasonably require and as shall be within Indemnitee's power.

(c) **Notice to Insurers.** If, at the time of the receipt of a notice of a claim pursuant to Section 3(b) hereof, the Company has D&O Insurance (as defined in Section 6(a) below) in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies, including any advancement of expenses.

(d) Indemnitee shall be entitled to retain one or more counsel from time to time selected by Indemnitee in Indemnitee's reasonable discretion to act as its counsel in and for the investigation, defense, settlement or appeal of each Proceeding. The Company shall not waive any privilege or right available to Indemnitee in any such Proceeding.

(e) The Company shall bear all reasonable fees and Expenses (including invoices for advance retainers) of such counsel, and all reasonable fees and Expenses invoiced by other persons or entities, in connection with the investigation, defense, settlement or appeal of each such Proceeding. Such fees and Expenses are referred to herein as "Covered Expenses."

(f) Until a determination to the contrary under Section 4 hereof is made, the Company shall advance all Covered Expenses in connection with each Proceeding. Indemnitee shall qualify for advances upon the execution and delivery to the Company of this Agreement which shall constitute an undertaking providing that Indemnitee undertakes to the extent required by law to repay the advance if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that

Indemnitee is not entitled to be indemnified by the Company. No other form of undertaking shall be required other than the execution of this Agreement. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay the expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement.

(g) **Selection of Counsel.** In the event the Company shall be obligated hereunder to provide indemnification for and/or make any advancement of Expenses with respect to the Expenses of any Proceeding, the Company, if appropriate, shall be entitled to assume the defense of such Proceeding with counsel selected by the Company, subject to approval by Indemnitee (which approval shall not be unreasonably withheld), upon the delivery to Indemnitee of written notice of the Company's election to do so. After delivery of such notice and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees or expenses of separate counsel subsequently retained by or on behalf of Indemnitee with respect to the same Proceeding; provided that: (i) Indemnitee shall have the right to employ Indemnitee's separate counsel in any such Proceeding at Indemnitee's expense; and (ii) if (A) the employment of separate counsel by Indemnitee has been previously authorized by the Company, (B) Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense, or (C) the Company shall not continue to retain such counsel to defend such Proceeding, then the fees and expenses of Indemnitee's separate counsel shall be Expenses for which Indemnitee may receive indemnification or advancement of Expenses hereunder.

(h) Each advance to be made hereunder shall be paid by the Company to Indemnitee within ten (10) business days following delivery of a written request therefor by Indemnitee to the Company.

(a) The Company acknowledges the potentially severe damage to Indemnitee should the Company fail timely to make such advances to Indemnitee.

(b) The Company shall not settle any Proceeding if, as a result of such settlement, any fine or obligation is imposed on Indemnitee without Indemnitee's prior written consent.

4. **Determination of Right to Indemnification.**

(a) To the extent Indemnitee has been successful on the merits or otherwise in defense of any Proceeding, claim, issue or matter covered hereby, Indemnitee need not repay any of the Expenses advanced in connection with the investigation, defense or appeal of such Proceeding.

(b) Indemnitee shall have the right to advancement by the Company prior to the final disposition of any Proceeding of any and all Expenses relating to, arising out of or resulting from any Proceeding paid or incurred by Indemnitee or which Indemnitee determines are reasonably likely to be paid or incurred by Indemnitee.

(c) Subject to the provisions of Section 2(g), notwithstanding a determination by a Reviewing Party or a court that Indemnitee is not entitled to indemnification with respect to a specific Proceeding, Indemnitee shall have the right to apply to the courts of the State of Utah for the purpose of enforcing Indemnitee's right to indemnification pursuant to this Agreement.

(d) Subject to the provisions of Section 2(i), the Company shall indemnify Indemnitee against all Expenses reasonably incurred by Indemnitee in connection with any Proceeding under Sections 4(b) or 4(c) and against all Expenses reasonably incurred by Indemnitee in connection with any other Proceeding between the Company and Indemnitee involving the interpretation or enforcement of the rights of Indemnitee under this Agreement unless a court of competent jurisdiction finds that each of the material claims and/or defenses of Indemnitee in any such Proceeding were frivolous or made in bad faith.

(e) The Company hereby agrees to indemnify Indemnitee to the fullest extent permitted by the Act, notwithstanding that such indemnification is not specifically authorized by the other provisions of this Agreement, the Company's Articles of Incorporation, the Company's Bylaws or by statute. In the event of any change after the date of this Agreement to the Act or in any applicable law, statute or rule which expands the right of a Utah corporation to indemnify a member of its board of directors or an officer, employee, agent or fiduciary, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits afforded by such change. In the event of any change to the Act or in any applicable law, statute or rule which narrows the right of a Utah corporation to indemnify its Agent, such change, to the extent not otherwise required by the Act or such law, statute or rule to be applied to this Agreement, shall have no effect on this Agreement or the parties' rights and obligations hereunder except as set forth in Section 8 hereof.

(f) **Nonexclusivity.** The indemnification and the payment of Expense advances provided by this Agreement shall be in addition to any rights to which Indemnitee may be entitled under the Company's Articles of Incorporation, its Bylaws, any other agreement, any vote of shareholders or disinterested directors, the Act, or otherwise. The indemnification and the payment or advancement of Expenses provided under this Agreement shall continue as to Indemnitee for any action taken or not taken while serving in an indemnified capacity even though subsequent thereto Indemnitee may have ceased to serve in such capacity.

(g) **No Duplication of Payments.** The Company shall not be liable under this Agreement to make any payment in connection with any Proceeding to the extent Indemnitee has otherwise actually received payment (under any insurance policy, provision of the Company's Articles of Incorporation, Bylaws or otherwise) of the amounts otherwise payable hereunder.

(h) **Partial Indemnification.** If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses incurred in connection with any Proceeding, but not, however, for all of the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion of such Expenses to which Indemnitee is entitled.

5. **Mutual Acknowledgement.** Both the Company and Indemnitee acknowledge that in certain instances, Federal law or public policy may override applicable state law and prohibit the Company from indemnifying its directors and officers under this Agreement or otherwise. For example, the Company and Indemnitee acknowledge that the Securities and Exchange Commission (the "SEC") has taken the position that indemnification is not permissible for liabilities arising under certain federal securities laws, and federal legislation prohibits indemnification for certain ERISA violations. Indemnitee understands and acknowledges that the Company has undertaken or may be required in the future to undertake with the SEC to submit the question of indemnification to a court in certain circumstances for a determination of the Company's right under public policy to indemnify Indemnitee.

6. **Officer and Director Liability Insurance.**

(a) The Company hereby covenants and agrees with Indemnitee that, subject to Section 6(b), the Company shall obtain and maintain in full force and effect directors' and officers' liability insurance ("D&O Insurance"), in reasonable amounts as the Board shall determine from established and reputable insurers with an AM Best rating of A.VI or better, but no less than the amounts in effect upon initial procurement of the D&O Insurance. In all policies of D&O Insurance, Indemnitee shall be named as an insured.

(b) Notwithstanding the foregoing, the Company shall have no obligation to obtain or maintain D&O Insurance if the Board determines in good faith that the premium costs for such insurance are (i) disproportionate to the amount of coverage provided after giving effect to exclusions, and (ii) substantially more burdensome to the Company than the premiums charged to the Company for its initial D&O Insurance; provided that Indemnitee is given written notice of any such determination within thirty (30) days of the date that it is made (but in no event shall such notice be given less than ten (10) days prior to the termination of any existing D&O Insurance); provided, further, that the Company will be required to obtain and maintain "tail" insurance policies covering Indemnitee for any act or omission taken prior to the termination of the D&O Insurance. For the avoidance of doubt, the Company shall still be

obligated to provide indemnification for and/or make any advancement of Expenses with respect to the Expenses of any Proceeding pursuant to the terms of this Agreement, regardless of whether the Company maintains D&O Insurance covering Indemnitee.

(c) Indemnitee shall be covered by the D&O Insurance policies that the Company is required to maintain hereunder in such a manner as to provide Indemnitee the same rights and benefits as are provided to the most favorably insured of the Company's directors, if Indemnitee is a director; or of the Company's officers, if Indemnitee is not a director of the Company but is an officer; or of the Company's key employees, agents or fiduciaries, if Indemnitee is not an officer or director but is a key employee, agent or fiduciary.

7. **Severability.** Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. The Company's inability, pursuant to court order, to perform its obligations under this Agreement shall not constitute a breach of this Agreement. The provisions of this Agreement shall be severable as provided in this Section 7. If this Agreement or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify Indemnitee to the full extent permitted by any applicable portion of this Agreement that shall not have been invalidated, and the balance of this Agreement not so invalidated shall be enforceable in accordance with its terms.

8. **Exceptions.** Any other provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement:

(a) **Claims Initiated by Indemnitee.** To indemnify or advance expenses to Indemnitee with respect to Proceedings or claims initiated or brought voluntarily by Indemnitee and not by way of defense, other than: (i) Proceedings under Sections 4(b) or 4(c); (ii) Proceedings brought to establish or enforce a right to indemnification under this Agreement or the provisions of the Company's Articles of Incorporation or Bylaws unless a court of competent jurisdiction determines that each of the material assertions made by Indemnitee in such Proceeding were not made in good faith or were frivolous; or (iii) proceedings or claims instituted by Indemnitee with the approval by the Board;

(b) **Unauthorized Settlement.** To indemnify Indemnitee under this Agreement for any amounts paid in settlement of a Proceeding covered hereby without the prior written consent of the Company to such settlement, which consent will not be unreasonably withheld provided that the Company's consent is not required if the Company is refusing to indemnify or advance Expenses to Indemnitee;

(c) **Insured Claims.** To indemnify Indemnitee for expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, ERISA excise taxes or penalties, and amounts paid in settlement) to the extent such expenses or liabilities have been paid directly to Indemnitee by an insurance carrier under a policy of officers' and directors; liability insurance maintained by the Company; or

(d) **Claims Under Section 16(b).** To indemnify Indemnitee for expenses or the payment of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 16(b) of the Securities Exchange Act of 1934, as amended, or any similar successor statute.

9. **Witness Expenses.** The Company agrees to compensate Indemnitee for the reasonable value of Indemnitee's time spent, and to reimburse Indemnitee for all Expenses (including reasonable attorneys' fees and travel costs) reasonably incurred by Indemnitee, in connection with being a witness, or if Indemnitee is threatened to be made a witness, with respect to any Proceeding, by reason of Indemnitee serving or having served as an Agent of the Company.

10. **Attorneys' Fees.** In the event that any action is instituted by Indemnitee under this Agreement to enforce or interpret any of the terms hereof, Indemnitee shall be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by Indemnitee with respect to such action, unless as a part of such action, the court of competent jurisdiction determines that each of the material assertions made by Indemnitee as a basis for such action were not made in good faith or were frivolous. In the event of an action instituted by or in the name of the Company under this Agreement or to enforce or interpret any of the terms of this Agreement,

Indemnitee shall be entitled to be paid all court costs and expenses, including attorneys' fees, incurred by Indemnitee in defense of such action (including with respect to Indemnitee's counterclaims and cross-claims made in such action), unless as a part of such action the court determines that each of Indemnitee's material defenses to such action were made in bad faith or were frivolous.

11. **Duration.** All agreements and obligations of the Company contained herein shall continue during the period that Indemnitee is an Agent of the Company and shall continue thereafter (a) so long as Indemnitee may be subject to any possible claim for which Indemnitee may be indemnified hereunder (including any rights of appeal thereto) and (b) throughout the pendency of any Proceeding (including any rights of appeal thereto) commenced by Indemnitee to enforce or interpret Indemnitee's rights under this Agreement, even if, in either case, Indemnitee may have ceased to serve in such capacity at the time of any such Proceeding.

12. **Miscellaneous.**

(a) **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Utah, without giving effect to principles of conflict of law.

(b) **Consent to Jurisdiction.** The Company and Indemnitee each hereby irrevocably consent to the jurisdiction of the courts of the State of Utah for all purposes in connection with any action or proceeding which arises out of or relates to this Agreement **and agree that any action instituted under this Agreement shall be commenced, prosecuted and continued only in the federal and state courts located in the State of Utah in and for Salt Lake County, which shall be the exclusive and only proper forum for adjudicating such a claim.**

(c) **Entire Agreement; Enforcement of Rights.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussions between them. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party. The parties hereto agree that the indemnification agreement, dated as of [●], [●], by and between the parties hereto (the "Previous Agreement") is hereby superseded by this Agreement; provided, however, that, any action or Proceeding commenced prior to the date hereof shall continue to be governed by the terms and conditions of the Previous Agreement and, for the avoidance of doubt, such Previous Agreement shall not be superseded with respect to any such action or Proceeding.

(d) **Construction.** This Agreement is the result of negotiations between and has been reviewed by each of the parties hereto and their respective counsel, if any; accordingly, this Agreement shall be deemed to be the product of all of the parties hereto, and no ambiguity shall be construed in favor of or against any one of the parties hereto.

(e) **Counterparts.** This Agreement may be signed in counterparts. This Agreement constitutes a separate agreement between the Company and Indemnitee and may be supplemented or amended as to Indemnitee only by a written instrument signed by the Company and Indemnitee, with such amendment binding only the Company and Indemnitee. All waivers must be in a written document signed by the party to be charged. No waiver of any of the provisions of this Agreement shall be implied by the conduct of the parties. A waiver of any right hereunder shall not constitute a waiver of any other right hereunder.

(f) **Interpretation of Agreement.** This Agreement shall be interpreted and enforced so as to provide indemnification to Indemnitee to the fullest extent now or hereafter permitted by the Act.

(g) **Subrogation.** In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all documents required and shall do all acts that may be necessary to secure such rights and to enable the Company to effectively bring suit to enforce such rights.

(h) **Continuation of Indemnity; Binding Effect.** Indemnitee's rights hereunder shall continue after Indemnitee has ceased acting an Agent of the Company and the benefits hereof shall inure to the benefit of the heirs, executors and administrators of Indemnitee. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or

otherwise) to all, substantially all or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(i) **Notices.** All notices, demands, consents, requests, approvals and other communications required or permitted hereunder shall be in writing and shall be deemed to have been properly given if hand delivered (effective upon receipt or when refused), or if sent by a courier freight prepaid (effective upon receipt or when refused), in the case of the Company, at the addresses listed below, or to such other addresses as the parties may notify each other in writing.

To Company: Merit Medical Systems, Inc.
Attention: Chief Legal Officer
1600 West Merit Parkway
South Jordan, Utah 84095

To Indemnitee: At Indemnitee's residence address and facsimile number on the records of the Company from time to time.

(j) **Evidence of Coverage.** Upon request by Indemnitee, the Company shall provide evidence of the liability insurance coverage required by this Agreement. The Company shall promptly notify Indemnitee of any change in the Company's D&O Insurance coverage.

13. **No Employment Rights.** Nothing contained in this Agreement is intended to create in Indemnitee any right to continued employment. Indemnitee specifically acknowledges that Indemnitee's employment with or services to the Company or any of its subsidiaries is at will and Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment agreement between Indemnitee and the Company (or any of its subsidiaries), other applicable formal severance policies duly adopted by the Board or, with respect to service as a director or officer of the Company, the Company's Articles of Incorporation and Bylaws, as applicable.

[Remainder of Page Intentionally Left Blank; Signatures appear on the following page.]

The parties hereto have agreed and accept this Agreement as of the day and year set forth on the first page of this Agreement.

MERIT MEDICAL SYSTEMS, INC.

By: /s/ Fred P. Lampropoulos

Name: Fred P. Lampropoulos

Title: Chief Executive Officer

INDEMNITEE:

 /s/ Neil Peterson

Neil Peterson, an individual

[Signature Page to Indemnification Agreement]

CERTIFICATION

I, Fred P. Lampropoulos, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q (the "Report") of Merit Medical Systems, Inc. (the "Registrant");
2. Based on my knowledge, this Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Report;
3. Based on my knowledge, the financial statements, and other financial information included in this Report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this Report;
4. The Registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with general accepted accounting principles;
 - c) evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Report based on such evaluation; and
 - d) disclosed in this Report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and
5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Date: October 28, 2022

/s/ Fred P. Lampropoulos

Fred P. Lampropoulos
President and Chief Executive Officer
(principal executive officer)

CERTIFICATION

I, Raul Parra, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q (the "Report") of Merit Medical Systems, Inc. (the "Registrant");
2. Based on my knowledge, this Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Report;
3. Based on my knowledge, the financial statements, and other financial information included in this Report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this Report;
4. The Registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with general accepted accounting principles;
 - c) evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Report based on such evaluation; and
 - d) disclosed in this Report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and
5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Date: October 28, 2022

/s/ Raul Parra

Raul Parra
Chief Financial Officer
(principal financial officer)

Certification of Principal Executive Officer
Pursuant to 18 U.S.C. Section 1350, as Adopted
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Quarterly Report on Form 10-Q of Merit Medical Systems, Inc. (the "Company") for the quarter ended September 30, 2022, as filed with the Securities and Exchange Commission (the "Report"), I, Fred P. Lampropoulos, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15 (d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: October 28, 2022

/s/ Fred P. Lampropoulos

Fred P. Lampropoulos
President and Chief Executive Officer
(principal executive officer)

This certification accompanies the foregoing Report pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Registrant for purposes of Section 18 of the Securities Exchange Act of 1934, as amended. A signed original of this certification has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

Certification of Chief Financial Officer
Pursuant to 18 U.S.C. Section 1350, as Adopted
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Quarterly Report on Form 10-Q of Merit Medical Systems, Inc. (the "Company") for the quarter ended September 30, 2022, as filed with the Securities and Exchange Commission (the "Report"), I, Raul Parra, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15 (d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: October 28, 2022

/s/ Raul Parra

Raul Parra

Chief Financial Officer

(principal financial officer)

This certification accompanies the foregoing Report pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Registrant for purposes of Section 18 of the Securities Exchange Act of 1934, as amended. A signed original of this certification has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.
