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**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, 2024

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 value	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 28, 2024
Common Stock, no par value	58,279,409

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

<b>ASSETS</b>	<b>September 30,</b>	<b>December 31,</b>
	<b>2024</b>	<b>2023</b>
	<b>(unaudited)</b>	
<b>Current assets:</b>		
Cash and cash equivalents	\$ 523,128	\$ 587,036
Trade receivables — net of allowance for credit losses — 2024 — \$9,266 and 2023 — \$9,023	189,831	177,885
Other receivables	15,325	10,517
Inventories	310,527	303,871
Prepaid expenses and other current assets	27,105	24,286
Prepaid income taxes	4,216	4,016
Income tax refund receivables	8,185	859
Total current assets	<u>1,078,317</u>	<u>1,108,470</u>
<b>Property and equipment:</b>		
Land and land improvements	26,108	26,017
Buildings	192,323	191,491
Manufacturing equipment	334,787	316,930
Furniture and fixtures	66,593	63,044
Leasehold improvements	59,005	53,638
Construction-in-progress	66,699	61,439
Total property and equipment	745,515	712,559
Less accumulated depreciation	(355,862)	(329,036)
Property and equipment — net	<u>389,653</u>	<u>383,523</u>
<b>Other assets:</b>		
<b>Intangible assets:</b>		
Developed technology — net of accumulated amortization — 2024 — \$361,725 and 2023 — \$321,488	322,325	283,999
Other — net of accumulated amortization — 2024 — \$82,979 and 2023 — \$76,887	49,839	41,884
Goodwill	399,448	382,240
Deferred income tax assets	7,253	7,288
Right-of-use operating lease assets	68,867	63,047
Other assets	62,382	54,793
Total other assets	<u>910,114</u>	<u>833,251</u>
<b>Total assets</b>	<b><u>\$ 2,378,084</u></b>	<b><u>\$ 2,325,244</u></b>

See condensed notes to consolidated financial statements.

(continued)

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

<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<b>September 30,</b>	<b>December 31,</b>
	<b>2024</b>	<b>2023</b>
	<b>(unaudited)</b>	
Current liabilities:		
Trade payables	\$ 60,808	\$ 65,944
Accrued expenses	127,255	120,447
Short-term operating lease liabilities	11,469	12,087
Income taxes payable	1,547	5,086
Total current liabilities	<u>201,079</u>	<u>203,564</u>
Long-term debt	750,505	823,013
Deferred income tax liabilities	5,571	5,547
Long-term income taxes payable	347	347
Liabilities related to unrecognized tax benefits	1,912	1,912
Deferred compensation payable	19,218	17,167
Deferred credits	1,527	1,605
Long-term operating lease liabilities	57,178	56,259
Other long-term obligations	17,341	13,830
Total liabilities	<u>1,054,678</u>	<u>1,123,244</u>
Commitments and contingencies		
Stockholders' equity:		
Preferred stock — 5,000 shares authorized; no shares issued as of September 30, 2024 and December 31, 2023	—	—
Common stock, no par value — 100,000 shares authorized; issued and outstanding as of September 30, 2024 - 58,274 and December 31, 2023 - 57,858	669,207	638,150
Retained earnings	667,594	575,184
Accumulated other comprehensive loss	(13,395)	(11,334)
Total stockholders' equity	<u>1,323,406</u>	<u>1,202,000</u>
Total liabilities and stockholders' equity	<u>\$ 2,378,084</u>	<u>\$ 2,325,244</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,	
	2024	2023	2024	2023
Net sales	\$ 339,845	\$ 315,230	\$ 1,001,356	\$ 932,851
Cost of sales	182,310	173,031	531,006	499,508
Gross profit	<u>157,535</u>	<u>142,199</u>	<u>470,350</u>	<u>433,343</u>
<b>Operating expenses:</b>				
Selling, general and administrative	99,644	86,854	288,657	277,925
Research and development	20,527	19,646	62,272	61,089
Impairment charges	—	—	—	270
Contingent consideration expense	103	562	292	2,177
Acquired in-process research and development	—	—	—	1,550
Total operating expenses	<u>120,274</u>	<u>107,062</u>	<u>351,221</u>	<u>343,011</u>
Income from operations	<u>37,261</u>	<u>35,137</u>	<u>119,129</u>	<u>90,332</u>
<b>Other income (expense):</b>				
Interest income	6,652	181	21,489	533
Interest expense	(7,501)	(4,841)	(23,226)	(10,534)
Other income (expense) — net	245	(255)	(544)	291
Total other expense — net	<u>(604)</u>	<u>(4,915)</u>	<u>(2,281)</u>	<u>(9,710)</u>
Income before income taxes	36,657	30,222	116,848	80,622
Income tax expense	<u>8,213</u>	<u>4,388</u>	<u>24,438</u>	<u>13,840</u>
Net income	<u>\$ 28,444</u>	<u>\$ 25,834</u>	<u>\$ 92,410</u>	<u>\$ 66,782</u>
<b>Earnings per common share</b>				
Basic	\$ 0.49	\$ 0.45	\$ 1.59	\$ 1.16
Diluted	\$ 0.48	\$ 0.44	\$ 1.57	\$ 1.14
<b>Weighted average shares outstanding</b>				
Basic	58,231	57,682	58,110	57,525
Diluted	59,537	58,375	58,948	58,345

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,	
	2024	2023	2024	2023
Net income	\$ 28,444	\$ 25,834	\$ 92,410	\$ 66,782
Other comprehensive income (loss):				
Cash flow hedges	(6,585)	(539)	(5,324)	1,192
Income tax benefit (expense)	1,555	129	1,257	(286)
Foreign currency translation adjustment	7,153	(2,914)	2,061	(2,190)
Income tax benefit (expense)	(89)	17	(55)	(17)
Total other comprehensive income (loss)	2,034	(3,307)	(2,061)	(1,301)
Total comprehensive income	<u>\$ 30,478</u>	<u>\$ 22,527</u>	<u>\$ 90,349</u>	<u>\$ 65,481</u>

See condensed notes to consolidated financial statements.

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

	<u>Common Stock</u>		<u>Retained Earnings</u>	<u>Accumulated Other Comprehensive Loss</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>			
Balance — January 1, 2024	57,858	\$ 638,150	\$ 575,184	\$ (11,334)	\$ 1,202,000
Net income			28,240		28,240
Other comprehensive loss				(1,122)	(1,122)
Stock-based compensation expense		4,934			4,934
Options exercised	213	7,394			7,394
Issuance of common stock under Employee Stock Purchase Plan	5	336			336
Shares issued from time-vested restricted stock units	47	—			—
Shares surrendered in exchange for payment of payroll tax liabilities	(21)	(1,592)			(1,592)
Balance — March 31, 2024	58,102	649,222	603,424	(12,456)	1,240,190
Net income			35,726		35,726
Other comprehensive loss				(2,973)	(2,973)
Stock-based compensation expense		6,301			6,301
Options exercised	66	2,913			2,913
Issuance of common stock under Employee Stock Purchase Plan	4	288			288
Shares issued from time-vested restricted stock units	20	—			—
Balance — June 30, 2024	58,192	658,724	639,150	(15,429)	1,282,445
Net income			28,444		28,444
Other comprehensive income				2,034	2,034
Stock-based compensation expense		5,990			5,990
Options exercised	80	4,247			4,247
Issuance of common stock under Employee Stock Purchase Plan	2	246			246
Balance — September 30, 2024	<u>58,274</u>	<u>\$ 669,207</u>	<u>\$ 667,594</u>	<u>\$ (13,395)</u>	<u>\$ 1,323,406</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 Loss	Total
	Shares	Amount			
Balance — January 1, 2023	57,306	\$ 675,174	\$ 480,773	\$ (11,550)	\$ 1,144,397
Net income			20,703		20,703
Other comprehensive income				621	621
Stock-based compensation expense		3,498			3,498
Options exercised	123	3,726			3,726
Issuance of common stock under Employee Stock Purchase Plan	4	302			302
Shares issued from time-vested restricted stock units	61	—			—
Shares surrendered in exchange for payment of payroll tax liabilities	(22)	(1,592)			(1,592)
Balance — March 31, 2023	57,472	681,108	501,476	(10,929)	1,171,655
Net income			20,245		20,245
Other comprehensive income				1,385	1,385
Stock-based compensation expense		4,980			4,980
Options exercised	128	5,154			5,154
Issuance of common stock under Employee Stock Purchase Plan	4	281			281
Shares issued from time-vested restricted stock units	30	—			—
Balance — June 30, 2023	57,634	691,523	521,721	(9,544)	\$ 1,203,700
Net income			25,834		25,834
Other comprehensive loss				(3,307)	(3,307)
Stock-based compensation expense		5,206			5,206
Options exercised	247	7,555			7,555
Issuance of common stock under Employee Stock Purchase Plan	4	237			237
Shares surrendered in exchange for payment of payroll tax liabilities	(53)	(3,531)			(3,531)
Shares surrendered in exchange for exercise of stock options	(86)	(5,809)			(5,809)
Balance — September 30, 2023	<u>57,746</u>	<u>\$ 695,181</u>	<u>\$ 547,555</u>	<u>\$ (12,851)</u>	<u>\$ 1,229,885</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,	
	2024	2023
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net income	\$ 92,410	\$ 66,782
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	74,093	66,359
Loss on sale or abandonment of property and equipment	215	4,761
Write-off of certain intangible assets and other long-term assets	401	461
Acquired in-process research and development	—	1,550
Amortization of right-of-use operating lease assets	9,043	8,621
Fair value adjustments related to contingent consideration liabilities	292	2,177
Amortization of deferred credits	(77)	(78)
Amortization of long-term debt issuance costs	4,431	744
Stock-based compensation expense	18,958	15,346
Changes in operating assets and liabilities, net of acquisitions and divestitures:		
Trade receivables	(9,540)	(3,852)
Other receivables	(4,670)	(1,040)
Inventories	(2,844)	(34,426)
Prepaid expenses and other current assets	(5,871)	(72)
Prepaid income taxes	—	(24)
Income tax refund receivables	(7,530)	(8,682)
Other assets	(3,860)	(719)
Trade payables	(6,489)	(20,332)
Accrued expenses	(614)	(599)
Income taxes payable	(2,246)	(3,431)
Deferred compensation payable	2,051	245
Operating lease liabilities	(9,056)	(8,573)
Other long-term obligations	2,958	(2,318)
Total adjustments	59,645	16,118
Net cash, cash equivalents, and restricted cash provided by operating activities	152,055	82,900
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Capital expenditures for:		
Property and equipment	(31,668)	(27,151)
Intangible assets	(2,138)	(1,756)
Proceeds from the sale of property and equipment	5	181
Issuance of note receivables	(6,662)	—
Cash paid in acquisitions and investments, net of cash acquired	(113,743)	(138,278)
Net cash, cash equivalents, and restricted cash used in investing activities	\$ (154,206)	\$ (167,004)

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,	
	2024	2023
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Proceeds from issuance of common stock	\$ 15,424	\$ 11,446
Proceeds from issuance of long-term debt	—	480,499
Payments on long-term debt	(76,063)	(391,624)
Long-term debt issuance costs	—	(5,240)
Contingent payments related to acquisitions	(209)	(3,502)
Payment of taxes related to an exchange of common stock	(1,592)	(5,123)
Net cash, cash equivalents, and restricted cash (used in) provided by financing activities	(62,440)	86,456
Effect of exchange rates on cash, cash equivalents, and restricted cash	724	(2,181)
Net increase (decrease) in cash, cash equivalents and restricted cash	(63,867)	171
<b>CASH, CASH EQUIVALENTS AND RESTRICTED CASH:</b>		
Beginning of period	589,144	60,558
End of period	\$ 525,277	\$ 60,729
<b>RECONCILIATION OF CASH, CASH EQUIVALENTS AND RESTRICTED CASH TO THE CONSOLIDATED BALANCE SHEETS:</b>		
Cash and cash equivalents	523,128	58,673
Restricted cash reported in prepaid expenses and other current assets	2,149	2,056
Total cash, cash equivalents and restricted cash	\$ 525,277	\$ 60,729
<b>SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION</b>		
Cash paid during the period for:		
Interest (net of capitalized interest of \$712 and \$941, respectively)	\$ 20,977	\$ 9,572
Income taxes	33,054	24,875
<b>SUPPLEMENTAL DISCLOSURES OF NON-CASH INVESTING AND FINANCING ACTIVITIES</b>		
Property and equipment purchases in accounts payable	\$ 8,907	\$ 4,613
Acquisition purchases in accrued expenses and other long-term obligations	4,894	3,674
Merit common stock surrendered (0 and 86 shares, respectively) in exchange for exercise of stock options	—	5,809
Right-of-use operating lease assets obtained in exchange for operating lease liabilities	9,191	7,560

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, 2024 and 2023 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. 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, 2024 and December 31, 2023, and our results of operations and cash flows for the three and nine-month periods ended September 30, 2024 and 2023. The results of operations for the three and nine-month periods ended September 30, 2024 and 2023 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, 2023 (the "2023 Annual Report on Form 10-K").

**2. Recently Issued Accounting Standards.** In November 2023, the Financial Accounting Standards Board ("FASB") issued Accounting Standard Update ("ASU") 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures*, which requires a public entity to disclose significant segment expenses and other segment items on an annual and interim basis and to provide in interim periods all disclosures about reportable segment's profit or loss and assets that are currently required annually. ASU 2023-07 is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. Early adoption is permitted. The provisions of this update must be applied retrospectively to all periods presented in the financial statements. We are currently assessing the anticipated impact of this standard on our consolidated financial statement disclosures.

In December 2023, the FASB issued ASU 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures*, to improve annual basis income tax disclosures related to (1) rate reconciliation, (2) income taxes paid, and (3) other disclosures related to pretax income (or loss) and income tax expense (or benefit) from continuing operations. ASU 2023-09 is effective for fiscal years beginning after December 15, 2024, with early adoption permitted. These amendments are to be applied on a prospective basis. Retrospective application is permitted. We are currently evaluating the impact this standard will have on our consolidated financial statement disclosures.

We currently believe there are no other issued and not yet effective accounting standards that are 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 2023 Annual Report on Form 10-K.

*Disaggregation of Revenue*

Our revenue is disaggregated based on reporting segment, product category and geographic region. We design, develop, manufacture and market medical products for interventional, diagnostic and therapeutic 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.

The following tables present revenue from contracts with customers by reporting segment, product category and geographic region for the three and nine-month periods ended September 30, 2024 and 2023 (in thousands):

	Three Months Ended September 30, 2024			Three Months Ended September 30, 2023		
	United States	International	Total	United States	International	Total
<b>Cardiovascular</b>						
Peripheral Intervention	\$ 84,217	\$ 53,715	\$ 137,932	\$ 78,617	\$ 49,768	\$ 128,385
Cardiac Intervention	37,248	53,521	90,769	36,593	52,513	89,106
Custom Procedural Solutions	30,774	19,994	50,768	29,602	19,022	48,624
OEM	38,093	5,293	43,386	34,207	5,762	39,969
Total	190,332	132,523	322,855	179,019	127,065	306,084
<b>Endoscopy</b>						
Endoscopy Devices	16,160	830	16,990	8,486	660	9,146
Total	<u>\$ 206,492</u>	<u>\$ 133,353</u>	<u>\$ 339,845</u>	<u>\$ 187,505</u>	<u>\$ 127,725</u>	<u>\$ 315,230</u>
	Nine Months Ended September 30, 2024			Nine Months Ended September 30, 2023		
	United States	International	Total	United States	International	Total
<b>Cardiovascular</b>						
Peripheral Intervention	\$ 245,832	\$ 165,973	\$ 411,805	\$ 219,257	\$ 148,820	\$ 368,077
Cardiac Intervention	109,431	165,889	275,320	106,588	161,621	268,209
Custom Procedural Solutions	90,564	59,414	149,978	85,556	60,153	145,709
OEM	106,202	20,739	126,941	101,341	21,999	123,340
Total	552,029	412,015	964,044	512,742	392,593	905,335
<b>Endoscopy</b>						
Endoscopy Devices	35,221	2,091	37,312	25,705	1,811	27,516
Total	<u>\$ 587,250</u>	<u>\$ 414,106</u>	<u>\$ 1,001,356</u>	<u>\$ 538,447</u>	<u>\$ 394,404</u>	<u>\$ 932,851</u>

**4. Acquisitions and Investments.** On July 1, 2024, we entered into an Asset Purchase Agreement (the “EGS Purchase Agreement”) with EndoGastric Solutions, Inc., a Delaware corporation (“EGS”), pursuant to which we acquired the EsophyX® Z+ device and various assets related thereto (collectively, the “EGS Acquisition”), which are designed to deliver a durable, minimally invasive non-pharmacological treatment option for patients suffering from gastroesophageal reflux disease. We acquired the purchased assets identified under the EGS Purchase Agreement for a purchase price of \$105 million, which amount we financed at closing through current borrowings under our long-term debt obligations, plus the assumption or reimbursement of certain liabilities of EGS. We accounted for the EGS Acquisition under the acquisition method of accounting as a business combination. The sales related to the EGS Acquisition have been included in our endoscopy segment since the acquisition date and were \$6.8 million for the three and nine-month periods ended September 30, 2024. It is not practical to separately report earnings related to the EGS Acquisition, as we began to immediately integrate the acquisition into the existing operations, sales distribution networks and management structure of our endoscopy business segment. Acquisition-related costs associated with the EGS Acquisition, which were included in selling, general and administrative expenses in the consolidated statements of income were approximately \$1.8 million. The purchase price was preliminarily allocated as follows (in thousands):

**Assets Acquired**

Trade receivables	\$	2,568
Inventories		3,553
Prepaid expenses and other current assets		99
Property and equipment		258
Intangible assets		
Developed technology		72,800
Trademarks		5,400
Customer list		6,600
Goodwill		16,997
Total assets acquired		108,275

**Liabilities Assumed**

Trade payables		494
Accrued expenses		2,752
Total liabilities assumed		3,246

<b>Total net assets acquired</b>	<b>\$</b>	<b>105,029</b>
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We are amortizing the EGS developed technology intangible assets over ten years, the trademark intangible assets over 11 years, and the customer list intangible asset on an accelerated basis over 11 years. We have estimated the weighted average life of the intangible assets acquired from EGS to be 10.1 years. The goodwill consists largely of the synergies expected from combining operations and is expected to be deductible for income tax purposes. The pro forma effects to our consolidated results of operations of the EGS Acquisition are not material in relation to reported sales.

On May 17, 2024, Merit Medical Ireland Limited (“MM Ireland”), our indirect wholly-owned subsidiary, entered into a Subscription and Shareholder Agreement (the “CrannMed Agreement”) with CrannMed Limited, a company organized under the laws of Ireland (“CrannMed”). Pursuant to the terms of the CrannMed Agreement, MM Ireland paid €3.0 million to purchase preferred shares of CrannMed. At CrannMed’s election at any time after August 16, 2024, MM Ireland is obligated to pay an additional €3.0 million to acquire additional preferred shares of CrannMed, subject to certain conditions (the “Second Tranche Investment”); no additional amount has been distributed to CrannMed as of September 30, 2024. Additionally, upon the request of CrannMed and subject to the completion of the Second Tranche Investment and other conditions, MM Ireland may pay to CrannMed up to an additional €2.0 million in the form of equity, debt or other investment for the purpose of funding clinical trial activities of CrannMed. MM Ireland’s investment in CrannMed has been recorded as an equity investment accounted for at cost and reflected within other assets in the accompanying consolidated balance sheets because MM Ireland is not able to exercise significant influence over the operations of CrannMed. MM Ireland’s total current investment in CrannMed represented an ownership interest of approximately 10.8% of the outstanding capital stock of CrannMed at the date of the initial purchase.

On March 8, 2024, we entered into an asset purchase agreement with Scholten Surgical Instruments, Inc. (“SSI”) to acquire the assets associated with the Biopptome, Novatome, and Sensatome devices. The total purchase price of the SSI assets included an up-front payment of \$3 million, and three deferred payments, including (i) \$1 million payable upon the earlier of (a) the first anniversary of the closing date or (b) the date on which Merit can independently manufacture the purchased devices (“Deferred Payment Date”), (ii) \$1 million payable upon the first anniversary of the Deferred Payment Date, and (iii) \$1 million payable upon the second anniversary of the Deferred Payment Date. We have accounted for this transaction as an asset purchase, and recorded the amount paid and deferred payments as a developed technology intangible asset, which we are amortizing over eight years.

During March 2024, we paid \$0.3 million to acquire additional 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 investment has been recorded as an equity investment 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 represented an ownership interest of approximately 19.9% of the outstanding capital stock of Fluidx at the date of this investment.

On June 8, 2023, we entered into an asset purchase agreement with AngioDynamics, Inc. ("AngioDynamics") to acquire the assets associated with a portfolio of dialysis catheter products and the BioSentry® Biopsy Tract Sealant System for a purchase price of \$100 million (collectively, the "AngioDynamics Acquisition"). We accounted for the AngioDynamics Acquisition under the acquisition method of accounting as a business combination. The sales related to the AngioDynamics Acquisition have been included in our cardiovascular segment since the acquisition date and were \$21.0 million and \$8.3 million for the nine-month periods ended September 30, 2024 and 2023, respectively. It is not practical to separately report earnings related to the AngioDynamics Acquisition, as we began to immediately integrate the acquisition into the existing operations, sales distribution networks and management structure of our cardiovascular business segment. Acquisition-related costs associated with the AngioDynamics Acquisition, which were included in selling, general and administrative expenses in the consolidated statements of income included in the 2023 Annual Report on Form 10-K, were approximately \$4.9 million. The purchase price was allocated as follows (in thousands):

<b>Assets Acquired</b>		
Prepaid expenses	\$	2,000
Inventories		5,254
Property and equipment		108
Intangible assets		
Developed technology		65,200
Trademarks		4,000
Customer list		5,800
Goodwill		17,638
<b>Total net assets acquired</b>	<b>\$</b>	<b>100,000</b>

We are amortizing the AngioDynamics developed technology intangible assets over ten years, the trademark intangible assets over 11 years, and the customer list intangible asset on an accelerated basis over ten years. We have estimated the weighted average life of the intangible assets acquired from AngioDynamics to be 10.5 years. The goodwill consists largely of the synergies expected from combining operations and is expected to be deductible for income tax purposes. The pro forma effects to our consolidated results of operations of the AngioDynamics Acquisition are not material in relation to reported sales and it was deemed impracticable to obtain information to determine earnings associated with the acquired product lines which represent only a small portion of the product lines of a large, consolidated company without standalone financial information.

On May 4, 2023, we entered into an asset purchase agreement to acquire the assets associated with the Surfacor® Inside-Out® Access Catheter System from Bluegrass Vascular Technologies, Inc. (“Bluegrass”), for a purchase price of \$32.7 million. Prior to the acquisition, we held an equity investment of 1,251,878 Bluegrass common shares, representing an approximately 19.5% ownership interest in Bluegrass. The fair value of this previously-held equity investment of approximately \$245,000 is included in the purchase price allocation. We accounted for this transaction under the acquisition method of accounting as a business combination. The sales and results of operations related to the acquisition have been included in our cardiovascular segment since the acquisition date and were not material. Acquisition-related costs associated with the Bluegrass acquisition, which were included in selling, general and administrative expenses in the consolidated statements of income included in the 2023 Annual Report on Form 10-K, were not material. The purchase price was allocated as follows (in thousands):

<b>Assets Acquired</b>	
Inventories	\$ 175
<b>Intangible assets</b>	
Developed technology	28,000
Trademarks	900
Goodwill	3,898
<b>Total net assets acquired</b>	<b>\$ 32,973</b>

We are amortizing the Bluegrass developed technology intangible asset over 15 years and the related trademarks over 13 years. We have estimated the weighted average life of the intangible assets acquired from Bluegrass to be 14.9 years. The goodwill consists largely of the synergies expected from combining operations and is expected to be deductible for income tax purposes. The pro forma effects to our consolidated results of operations of the Bluegrass acquisition are not material.

**5. Inventories.** Inventories at September 30, 2024 and December 31, 2023 consisted of the following (in thousands):

	<u>September 30, 2024</u>	<u>December 31, 2023</u>
Finished goods	\$ 159,647	\$ 158,893
Work-in-process	37,694	25,420
Raw materials	113,186	119,558
Total inventories	<u>\$ 310,527</u>	<u>\$ 303,871</u>

**6. Goodwill and Intangible Assets.** The change in the carrying amount of goodwill by segment for the nine-month period ended September 30, 2024 is detailed as follows (in thousands):

	<u>Cardiovascular</u>	<u>Endoscopy</u>	<u>Total</u>
Goodwill balance at January 1	\$ 382,240	\$ —	\$ 382,240
Effect of foreign exchange	211	—	211
Additions and adjustments as the result of acquisitions	—	16,997	16,997
Goodwill balance at September 30	<u>\$ 382,451</u>	<u>\$ 16,997</u>	<u>\$ 399,448</u>

Total accumulated goodwill impairment losses aggregated to \$8.3 million as of September 30, 2024 and December 31, 2023, respectively. We did not have any goodwill impairments for the nine-month periods ended September 30, 2024 or 2023.

Other intangible assets at September 30, 2024 and December 31, 2023 consisted of the following (in thousands):

	September 30, 2024		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Patents	\$ 30,472	\$ (12,315)	\$ 18,157
Distribution agreements	3,250	(2,975)	275
License agreements	11,599	(8,979)	2,620
Trademarks	40,538	(23,235)	17,303
Customer lists	46,959	(35,475)	11,484
Total	<u>\$ 132,818</u>	<u>\$ (82,979)</u>	<u>\$ 49,839</u>

  

	December 31, 2023		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Patents	\$ 28,877	\$ (10,916)	\$ 17,961
Distribution agreements	3,250	(2,919)	331
License agreements	11,142	(8,327)	2,815
Trademarks	35,135	(20,804)	14,331
Customer lists	40,367	(33,921)	6,446
Total	<u>\$ 118,771</u>	<u>\$ (76,887)</u>	<u>\$ 41,884</u>

Aggregate amortization expense for the three and nine-month periods ended September 30, 2024 was \$16.9 million and \$46.4 million, respectively. Aggregate amortization expense for the three and nine-month periods ended September 30, 2023 was \$15.4 million and \$41.1 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. If a triggering event is identified, 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. We did not identify indicators of impairment for our intangible assets based on our consideration of triggering events for the nine-month periods ended September 30, 2024 and 2023, respectively.

Estimated amortization expense for developed technology and other intangible assets for the next five years consisted of the following as of September 30, 2024 (in thousands):

	Estimated Amortization Expense
Remaining 2024	\$ 17,783
2025	69,119
2026	58,484
2027	54,947
2028	53,409

**7. Income Taxes.** Our provision for income taxes for the three-month periods ended September 30, 2024 and 2023 was a tax expense of \$8.2 million and \$4.4 million, respectively, which resulted in an effective tax rate of 22.4% and 14.5%, respectively. Our provision for income taxes for the nine-month periods ended September 30, 2024 and 2023 was a tax expense of \$24.4 million and \$13.8 million, respectively, which resulted in an effective tax rate of 20.9% and 17.2%, respectively. The increase in the effective income tax rate for the three and nine-month periods ended September 30, 2024, when compared to the respective prior-year periods, was primarily due to decreased benefit from discrete items such as share-based compensation and decreased foreign tax credit utilization. The increase in the income tax expense for the nine-month period ended September 30, 2024, when compared to the prior-year period, was primarily due to increased pre-tax book income. 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 nondeductible permanent items and discrete items (such as share-based compensation).



The Organization for Economic Cooperation and Development (“OECD”) Pillar Two global minimum tax rules, which generally provide for a minimum effective tax rate of 15%, are intended to apply for tax years beginning in 2024. On February 2, 2023, the OECD issued administrative guidance providing transition and safe harbor rules around the implementation of the Pillar Two global minimum tax. Under a transitional safe harbor released July 17, 2023, the undertaxed profits rule top-up tax in the jurisdiction of a company’s ultimate parent entity will be zero for each fiscal year of the transition period, if that jurisdiction has a corporate tax rate of at least 20%. The safe harbor transition period will apply to fiscal years beginning on or before December 31, 2025 and ending before December 31, 2026. While we expect our effective income tax rate and cash income tax payments could increase in future years as a result of the global minimum tax, we do not anticipate a material impact to our fiscal 2024 consolidated results of operations. Our assessment could be affected by legislative guidance and future enactment of additional provisions within the Pillar Two framework. We are closely monitoring developments and evaluating the impact these new rules are anticipated to have on our tax rate, including eligibility to qualify for these safe harbor rules.

**8. Debt.** Principal balances outstanding under our long-term debt obligations as of September 30, 2024 and December 31, 2023 consisted of the following (in thousands):

	<u>September 30, 2024</u>	<u>December 31, 2023</u>
Term loans	\$ 23,000	\$ 99,063
Revolving credit loans	—	—
Convertible notes	747,500	747,500
Less unamortized debt issuance costs	(19,995)	(23,550)
Total long-term debt	<u>750,505</u>	<u>823,013</u>
Less current portion	—	—
Long-term portion	<u>\$ 750,505</u>	<u>\$ 823,013</u>

Future minimum principal payments on our long-term debt, as of September 30, 2024, were as follows (in thousands):

<u>Years Ending December 31,</u>	<u>Future Minimum Principal Payments</u>
Remaining 2024	\$ —
2025	—
2026	—
2027	—
2028	23,000
Thereafter	747,500
Total future minimum principal payments	<u>\$ 770,500</u>

*Fourth Amended and Restated Credit Agreement*

On June 6, 2023, we entered into a Fourth Amended and Restated Credit Agreement (the "Fourth A&R Credit Agreement"). The Fourth A&R Credit Agreement is a syndicated loan agreement with Wells Fargo Bank, National Association and other parties. The Fourth A&R Credit Agreement amended and restated in its entirety our previously outstanding Third Amended and Restated Credit Agreement and all amendments thereto. The Fourth A&R Credit Agreement provides for a term loan of \$150 million and a revolving credit commitment of up to an aggregate amount of \$700 million, inclusive of sub-facilities for multicurrency borrowings, standby letters of credit and swingline loans. On June 6, 2028, all principal, interest and other amounts outstanding under the Fourth 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.

On December 5, 2023, we executed an amendment to the Fourth Amended Credit Agreement (as amended, the "Amended Fourth A&R Credit Agreement") to facilitate the issuance of our Convertible Notes described below. Among other things, the amendment also updated the definition of the “Applicable Margin” as used in the Amended Fourth A&R Credit Agreement to determine the interest rates and amended the financial covenants, all as described below.

Term loans made under the Amended Fourth A&R Credit Agreement bear interest, at our election, at either (i) the Base Rate plus the Applicable Margin (as defined in the Amended Fourth A&R Credit Agreement) or, (ii) Adjusted Term SOFR plus the Applicable Margin (as defined in the Amended Fourth A&R Credit Agreement). Revolving credit loans bear interest, at our election, at either (a) the Base Rate plus the Applicable Margin, (b) Adjusted Term SOFR plus the Applicable Margin, (c) Adjusted Eurocurrency Rate plus the Applicable Margin (as defined in the Amended Fourth A&R Credit Agreement), or (d) Adjusted Daily Simple SONIA plus the Applicable Margin (as defined in the Amended Fourth A&R Credit Agreement). Swingline loans bear interest at the Base Rate plus the Applicable Margin. Interest on each loan featuring the Base Rate and each Daily Simple SONIA Loan is due and payable on the last business day of each calendar month; interest on each loan featuring the Eurocurrency Rate and each Term SOFR 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 Amended Fourth A&R Credit Agreement is collateralized by substantially all of our assets. The Amended Fourth A&R 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 Amended Fourth A&R Credit Agreement requires that we maintain certain financial covenants, as follows:

	<u>Covenant Requirement</u>
Consolidated Total Net Leverage Ratio <sup>(1)</sup>	5.0 to 1.0
Consolidated Senior Secured Net Leverage Ratio <sup>(2)</sup>	3.0 to 1.0
Consolidated Interest Coverage Ratio <sup>(3)</sup>	3.0 to 1.0

- (1) Maximum Consolidated Total Net Leverage Ratio (as defined in the Amended Fourth A&R Credit Agreement) as of any fiscal quarter end.
- (2) Maximum Consolidated Senior Secured Net Leverage Ratio (as defined in the Amended Fourth A&R Credit Agreement) as of any fiscal quarter end.
- (3) Minimum ratio of Consolidated EBITDA (as defined in the Amended Fourth A&R Credit Agreement and adjusted for certain expenditures) to Consolidated Interest Expense (as defined in the Amended Fourth A&R Credit Agreement) for any period of four consecutive fiscal quarters.

We were in compliance with these financial covenants set forth in the Amended Fourth A&R Credit Agreement as of September 30, 2024.

As of September 30, 2024, we had outstanding borrowings of \$23.0 million and issued letter of credit guarantees of \$2.4 million under the Amended Fourth A&R Credit Agreement, with additional available borrowings of approximately \$697 million, based on the maximum net leverage ratio and the aggregate revolving credit commitment pursuant to the Amended Fourth A&R Credit Agreement. Our interest rate as of September 30, 2024 was a variable rate of 6.70% with respect to the outstanding principal amount. Our interest rate as of December 31, 2023 was a fixed rate of 3.39% on \$75 million as a result of an interest rate swap and a variable floating rate of 7.21% on \$24.1 million. The foregoing interest rates do not reflect potential future changes in the Applicable Margin.

#### *Convertible Notes*

In December 2023, we issued convertible notes which bear interest at 3.00% per year, payable semi-annually in arrears on February 1 and August 1 of each year, beginning on August 1, 2024 (the “Convertible Notes”). The Convertible Notes are senior unsecured obligations (as defined in the indenture governing the Convertible Notes (the “Indenture”)) of Merit and will mature on February 1, 2029, unless repurchased, redeemed or converted in accordance with their terms prior to such date. The net proceeds from the sale of the Convertible Notes were approximately \$724.8 million after deducting offering and issuance costs and before the costs of the Capped Call Transactions, as described below.

The initial conversion rate of the notes will be 11.5171 shares of our common stock (the “Common Stock”) per \$1,000 principal amount of notes, which equates to an initial conversion price of approximately \$86.83 per share of Common Stock, subject to adjustments as provided in the Indenture upon the occurrence of certain specified events. In addition, holders of the Convertible Notes (“Holders”) will have the right to require Merit to repurchase all or a part of their notes upon the occurrence of a “fundamental change” (as defined in the Indenture) in cash at a fundamental change repurchase price of 100% of their principal amount plus accrued and unpaid interest up to, but excluding, the fundamental change repurchase date.

Conversion can occur at the option of the Holders at any time on or after October 1, 2028. Prior to October 1, 2028, Holders may only elect to convert the Convertible Notes under the following circumstances: (1) During the five business day period after any ten consecutive trading day period in which, for each day of that period, the trading price per \$1,000 principal amount of the Convertible Notes for such trading day was less than 98% of the product of the last reported sale price of the Common Stock and the applicable conversion rate on such trading day; (2) Merit issues to common stockholders any rights, options, or warrants, entitling them, for a period of not more than 60 days, to purchase shares of Common Stock at a price per share less than the average closing sale price of 10 consecutive trading days, or Merit’s election to make a distribution to common stockholders exceeding 10% of the previous day’s closing sale price; (3) Upon the occurrence of a Fundamental Change, as set forth in the Indenture; (4) During any calendar quarter (and only during such calendar quarter) beginning after March 31, 2024, if, the last reported sale price per share of the Common Stock exceeds 130% of the applicable conversion price on each applicable trading day for at least 20 trading days (whether or not consecutive) in the period of the 30 consecutive trading day period ending on, and including, the last trading day of the immediately preceding calendar quarter; or (5) Prior to the related redemption date if Merit calls any Convertible Notes for redemption. As of September 30, 2024, none of the conditions permitting the Holders to convert their Convertible Notes early had been met. Therefore, the Convertible Notes are classified as long-term debt obligations.

On or after February 7, 2027, we may redeem for cash all or part of the Convertible Notes, at our option, if the last reported sales price of Common Stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive), including the trading day immediately preceding the date on which we provide notice of redemption, during any 30 consecutive trading days ending on, and including, the trading day immediately before the date we send the related notice of the redemption.

Upon conversion, Merit will (1) pay cash up to the aggregate principal amount of the Convertible Notes to be converted and (2) pay or deliver, as the case may be, cash, shares of Common Stock, or a combination of cash and shares of Common Stock, at Merit’s election, in respect of the remainder, if any, of its conversion obligation in excess of the aggregate principal amount of the Convertible Notes being converted.

#### *Capped Call Transactions*

In December 2023, in connection with the pricing of the Convertible Notes, Merit entered into privately negotiated capped call transactions (“Capped Call Transactions”) with certain of the initial purchasers and/or their respective affiliates and certain other financial institutions. The Capped Call Transactions cover, subject to customary anti-dilution adjustments, the number of shares of Common Stock initially underlying the Convertible Notes and are generally expected to reduce potential dilution to the Common Stock upon any conversion of Convertible Notes and/or offset any cash payments Merit is required to make in excess of the principal amount of converted Convertible Notes, as the case may be, with such reduction and/or offset subject to a cap, based on a cap price initially equal to approximately \$114.68 per share of Common Stock, subject to certain adjustments under the terms of the Capped Call Transactions. The cost of the Capped Call Transactions was approximately \$66.5 million. The Capped Call Transactions do not meet the criteria for separate accounting as a derivative as they are indexed to the Common Stock. The premiums paid for the Capped Call Transactions have been included as a net reduction to Common Stock within stockholders' equity.

## 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 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 Amended Fourth A&R Credit Agreement that varies in accordance with changes in the benchmark interest rate.

### *Derivatives 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. In June 2023, certain terms under the swap agreement were amended to reflect the transition from LIBOR to SOFR, an alternative reference rate. Under the interest rate swap agreement, we fixed the one-month SOFR rate on that portion of our borrowings under the Amended Fourth A&R Credit Agreement at 1.64% for the period from June 1, 2023 to July 31, 2024. The variable portion of the interest rate swap is tied to the one-month SOFR 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.

As of September 30, 2024, the term of our interest rate swap has expired. On December 31, 2023, our interest rate swap qualified as a cash flow hedge. The fair value of our interest rate swap as of December 31, 2023 was an asset of \$1.5 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.

*Derivatives 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 forward contracts is to reduce the variability of cash flows associated with the forecasted purchase or sale of the foreign currencies. As of September 30, 2024 and December 31, 2023, we had entered into foreign currency forward contracts, which qualified as cash flow hedges, with aggregate notional amounts of \$155.4 million and \$141.1 million, respectively.

*Derivatives 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. As of September 30, 2024 and December 31, 2023, we had entered into foreign currency forward contracts related to those balance sheet accounts with aggregate notional amounts of \$115.6 million and \$108.4 million, respectively.

**Balance Sheet Presentation of Derivative Instruments.** As of September 30, 2024 and December 31, 2023, 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, 2024</u>	<u>December 31, 2023</u>
<i>Assets</i>			
Interest rate swap	Prepaid expenses and other assets	\$ —	\$ 1,503
Foreign currency forward contracts	Prepaid expenses and other assets	612	2,061
Foreign currency forward contracts	Other assets (long-term)	137	216
<i>(Liabilities)</i>			
Foreign currency forward contracts	Accrued expenses	(2,968)	(1,898)
Foreign currency forward contracts	Other long-term obligations	(1,085)	(499)

***Fair Value of Derivative Instruments Not Designated as Hedging Instruments***

	<u>Balance Sheet Location</u>	<u>September 30, 2024</u>	<u>December 31, 2023</u>
<i>Assets</i>			
Foreign currency forward contracts	Prepaid expenses and other assets	\$ 685	\$ 828
<i>(Liabilities)</i>			
Foreign currency forward contracts	Accrued expenses	(1,753)	(1,463)

**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):

Derivative instrument	Amount of Gain/(Loss) Recognized in OCI		Location in statements of income	Consolidated Statements of Income		Amount of Gain/(Loss) Reclassified from AOCI	
	Three Months Ended September 30,			Three Months Ended September 30,		Three Months Ended September 30,	
	2024	2023		2024	2023	2024	2023
Interest rate swap	\$ 1	\$ 126	Interest expense	\$ (7,501)	\$ (4,841)	\$ 255	\$ 685
Foreign currency forward contracts	(5,443)	1,503	Revenue	339,845	315,230	709	866
			Cost of sales	(182,310)	(173,031)	179	617

Derivative instrument	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,	
	2024	2023		2024	2023	2024	2023
Interest rate swap	\$ 152	\$ 726	Interest expense	\$ (23,226)	\$ (10,534)	\$ 1,656	\$ 1,850
Foreign currency forward contracts	(1,308)	6,067	Revenue	1,001,356	932,851	1,549	2,851
			Cost of sales	(531,006)	(499,508)	963	900

As of September 30, 2024, \$2.0 million, or \$1.5 million after taxes, was expected to be reclassified from AOCI to earnings in revenue and cost of sales 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,	
		2024	2023	2024	2023
Foreign currency forward contracts	Other income (expense) — net	\$ (2,124)	\$ (452)	\$ (596)	\$ 2,748

## 10. Commitments and Contingencies.

**Litigation.** In the ordinary course of business, we are involved in various claims and litigation matters. These proceedings, actions and claims may involve product liability, intellectual property, contract disputes, employment, governmental inquiries or other matters, including the matter described below. These matters generally involve inherent uncertainties and often require prolonged periods of time to resolve. In certain proceedings, the claimants may seek damages, as well as other compensatory and equitable relief that could result in the payment of significant claims 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 and settlement strategies. 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 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. Unless included in our legal accrual, we are unable to estimate a reasonably possible loss or range of loss associated with any individual material legal proceeding. Legal costs for these matters, such as outside counsel fees and expenses, are charged to expense in the period incurred.

### *SEC Inquiry*

We have received requests 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 (the "SEC Inquiry"). We are cooperating with the requests and investigating the matter. Currently, we are unable to predict the scope, timing, significance or outcome of the SEC Inquiry or estimate a reasonably possible loss or range of loss associated with the matter. It is possible that the ultimate resolution of the SEC Inquiry, if resolved in a manner unfavorable to us, may be materially adverse to our business, financial position, results of operations or liquidity.

In management's opinion, based on its examination of these matters, its experience to date and discussions with counsel, other than the SEC Inquiry, we are not currently involved in any legal proceedings which, individually or in the aggregate, could have a material adverse effect on our financial position, results of operations or cash flows. Our management regularly assesses the risks of legal proceedings in which we are involved, and management's view of these matters may change in the future.

**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, 2024 and 2023 consisted of the following (in thousands, except per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Net income	\$ 28,444	\$ 25,834	\$ 92,410	\$ 66,782
Average common shares outstanding	58,231	57,682	58,110	57,525
Basic EPS	\$ 0.49	\$ 0.45	\$ 1.59	\$ 1.16
Average common shares outstanding	58,231	57,682	58,110	57,525
Effect of dilutive stock awards	866	693	691	820
Effect of dilutive convertible notes	440	—	147	—
Total potential shares outstanding	59,537	58,375	58,948	58,345
Diluted EPS	\$ 0.48	\$ 0.44	\$ 1.57	\$ 1.14
Equity awards excluded as the impact was anti-dilutive <sup>(1)</sup>	448	1,242	821	1,091

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

#### Convertible Notes

For our Convertible Notes, the dilutive effect is calculated using the if-converted method. Upon surrender of the Convertible Notes for conversion, Merit will pay cash up to the aggregate principal amount of the Notes to be converted and pay or deliver, as the case may be, cash, shares of Common Stock or a combination of cash and shares of Common Stock, at Merit's election, in respect of the remainder, if any, of Merit's conversion obligation in excess of the aggregate principal amount of the Convertible Notes being converted. Under the if-converted method, we include the number of shares required to satisfy the remaining conversion obligation, assuming all the Convertible Notes were converted. The convertible notes only have an impact on diluted earnings per share when the average share price of our common stock exceeds the conversion price of \$86.83. The average closing price of the Common Stock for the period ended September 30, 2024 was used as the basis for determining the dilutive effect on EPS.

**12. Stock-Based Compensation Expense.** Stock-based compensation expense before income tax expense for the three and nine-month periods ended September 30, 2024 and 2023 consisted of the following (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Cost of sales				
Nonqualified stock options	\$ 150	\$ 367	\$ 875	\$ 1,240
Research and development				
Nonqualified stock options	440	488	1,221	1,329
Selling, general and administrative				
Nonqualified stock options	1,442	2,083	4,689	5,304
Performance-based restricted stock units	2,884	1,838	7,648	4,470
Restricted stock units	1,074	430	2,792	1,341
Cash-settled performance-based awards	723	591	1,733	1,662
Total selling, general and administrative	6,123	4,942	16,862	12,777
Stock-based compensation expense before taxes	\$ 6,713	\$ 5,797	\$ 18,958	\$ 15,346



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 period ended September 30, 2023, we granted stock options representing 401,535 shares of our Common Stock. We did not grant any stock options during the nine-month period ended September 30, 2024. 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, 2023
Risk-free interest rate	3.6% - 4.6%
Expected option term	4.0 years
Expected dividend yield	—
Expected price volatility	44.6% - 47.1%

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, 2024, the total remaining unrecognized compensation cost related to non-vested stock options was \$13.2 million, which was expected to be recognized over a weighted average period of 1.9 years.

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

During the nine-month periods ended September 30, 2024 and 2023, we granted performance stock units which represented up to 364,810 and 286,863 shares of 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 number of shares delivered upon vesting at the end of the performance periods are based upon performance against specified financial performance metrics and relative total 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,	
	2024	2023
Risk-free interest rate	4.4%	3.9% - 4.6%
Performance period	2.8 years	2.8 years
Expected dividend yield	—	—
Expected price volatility	31.1%	31.4% - 32.6%

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 likely to be awarded based on the performance metrics. Each reporting period, this probability assessment is updated, and cumulative adjustments are recorded based on the financial performance metrics expected to be achieved. At the end of the performance period, cumulative expense is calculated based on the actual performance metrics achieved. As of September 30, 2024, the total remaining unrecognized compensation cost related to stock-settled performance stock units was \$17.5 million, which is expected to be recognized over a weighted average period of 1.9 years.

#### *Cash-Settled Performance-Based Awards*

During the nine-month periods ended September 30, 2024 and 2023, we granted performance stock units to our Chief Executive Officer that provide for settlement in cash upon achievement of specific metrics (“Liability Awards”), with total target cash incentives in the amount of \$1.6 million and \$1.3 million, respectively. The Liability Awards entitle him to a target cash payment based upon our level of rTSR performance and achievement of other performance metrics, as defined in the award agreements.

During the nine-month periods ended September 30, 2024 and 2023, we granted additional performance stock units to certain employees that provide for settlement in cash upon our achievement of specified financial metrics. The cash payable upon vesting at the end of the service period is based upon performance against specified financial performance metrics and relative total shareholder return as compared to the rTSR, as defined in the award agreements. Compensation expense is recognized for the cash payment likely to be awarded based on the performance metrics.

The potential maximum payout of these Liability Awards is 250% of the target cash incentive, resulting in a total potential maximum payout of \$4.4 million and \$4.6 million for Liability Awards granted during the nine-month periods ended September 30, 2024 and 2023, respectively. The settlement generally occurs at the end of three-year performance periods based upon the same performance metrics and vesting period as our performance stock units.

The fair value of these Liability Awards is measured at each reporting period until the awards are settled. As of September 30, 2024 and December 31, 2023, the recorded balance associated with these Liability Awards is \$4.1 million and \$3.4 million, respectively, which are classified as liabilities and reported in accrued expenses and other long-term obligations within our consolidated balance sheets. As of September 30, 2024, the total remaining unrecognized compensation cost related to Liability Awards was \$3.8 million, which is expected to be recognized over a weighted average period of 1.8 years.

#### *Restricted Stock Units*

During the nine-month periods ended September 30, 2024 and 2023, we granted restricted stock units to certain employees and non-employee directors representing 158,719 and 20,358 shares of 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 employee are subject to such employee’s continued employment through the vesting date, which is four years from the date of grant. Restricted stock units granted to each non-employee director are subject to such director’s continued service through the vesting date, which is one year from the grant date. As of September 30, 2024, the total remaining unrecognized compensation cost related to restricted stock units was \$9.1 million, which will be recognized over a weighted average period of 3.1 years.

**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. Our chief operating decision maker is our Chief Executive Officer. 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, 2024 and 2023, were as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
<b>Net sales</b>				
Cardiovascular	\$ 322,855	\$ 306,084	\$ 964,044	\$ 905,335
Endoscopy	16,990	9,146	37,312	27,516
Total net sales	<u>339,845</u>	<u>315,230</u>	<u>1,001,356</u>	<u>932,851</u>
<b>Income from operations</b>				
Cardiovascular	37,555	32,622	113,374	82,966
Endoscopy	(294)	2,515	5,755	7,366
Total income from operations	<u>37,261</u>	<u>35,137</u>	<u>119,129</u>	<u>90,332</u>
Total other expense — net	(604)	(4,915)	(2,281)	(9,710)
Income tax expense	8,213	4,388	24,438	13,840
Net income	<u>\$ 28,444</u>	<u>\$ 25,834</u>	<u>\$ 92,410</u>	<u>\$ 66,782</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, 2024 and December 31, 2023 consisted of the following (in thousands):

	Total Fair Value at September 30, 2024	Fair Value Measurements Using		
		Quoted prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Marketable securities <sup>(1)</sup>	\$ 78	\$ 78	\$ —	\$ —
Foreign currency contract assets, current and long-term <sup>(3)</sup>	\$ 1,434	\$ —	\$ 1,434	\$ —
Foreign currency contract liabilities, current and long-term <sup>(4)</sup>	\$ (5,806)	\$ —	\$ (5,806)	\$ —
Contingent consideration liabilities	\$ (3,419)	\$ —	\$ —	\$ (3,419)

	Total Fair Value at December 31, 2023	Fair Value Measurements Using		
		Quoted prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Marketable securities <sup>(1)</sup>	\$ 78	\$ 78	\$ —	\$ —
Interest rate contract asset, current <sup>(2)</sup>	\$ 1,503	\$ —	\$ 1,503	\$ —
Foreign currency contract assets, current and long-term <sup>(3)</sup>	\$ 3,105	\$ —	\$ 3,105	\$ —
Foreign currency contract liabilities, current and long-term <sup>(4)</sup>	\$ (3,860)	\$ —	\$ (3,860)	\$ —
Contingent consideration liabilities	\$ (3,447)	\$ —	\$ —	\$ (3,447)

<sup>(1)</sup> Our marketable securities, which consist entirely of available-for-sale equity securities, are valued using market prices in active markets. Level 1 instrument valuations are obtained from real-time quotes for transactions in active exchange markets involving identical assets.

- (2) The fair value of the interest rate contract is determined using Level 2 fair value inputs and is recorded as prepaid and other current assets in the consolidated balance sheets.
- (3) 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 a prepaid expense and other current asset or other long-term asset in the consolidated balance sheets.
- (4) 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 expense or other long-term obligation in the consolidated balance sheets.

Certain of our past 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, 2024 and 2023 consisted of the following (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Beginning balance	\$ 3,435	\$ 3,581	\$ 3,447	\$ 18,073
Contingent consideration expense	103	563	292	2,177
Contingent payments made	(119)	(122)	(320)	(16,228)
Ending balance	<u>\$ 3,419</u>	<u>\$ 4,022</u>	<u>\$ 3,419</u>	<u>\$ 4,022</u>

As of September 30, 2024, \$3.0 million in contingent consideration liability was included in other long-term obligations and \$0.4 million in contingent consideration liability was included in accrued expenses in our consolidated balance sheet. As of December 31, 2023, \$3.0 million in contingent consideration liability was included in other long-term obligations and \$0.4 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 \$0.2 million and \$3.5 million for the nine-month periods ended September 30, 2024 and 2023, 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 \$0.1 million and \$12.7 million for the nine-month periods ended September 30, 2024 and 2023, respectively, are reflected as operating cash flows.

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The recurring Level 3 measurement of our contingent consideration liabilities included the following significant unobservable inputs at September 30, 2024 and December 31, 2023 (amounts in thousands):

Contingent consideration liability	Fair value at September 30, 2024	Valuation technique	Unobservable inputs	Range	Weighted Average <sup>(1)</sup>
Revenue-based royalty payments contingent liability	\$ 2,897	Discounted cash flow	Discount rate	11% - 15%	14.4%
			Projected year of payments	2024-2034	2028
Revenue milestones contingent liability	\$ 98	Monte Carlo simulation	Discount rate	12.0%	
			Projected year of payments	2024-2040	2040
Regulatory approval contingent liability	\$ 424	Scenario-based method	Discount rate	5.4%	
			Probability of milestone payment	50.0%	
			Projected year of payment	2024-2030	2030

Contingent consideration liability	Fair value at December 31, 2023	Valuation technique	Unobservable inputs	Range	Weighted Average <sup>(1)</sup>
Revenue-based royalty payments contingent liability	\$ 2,945	Discounted cash flow	Discount rate	12.0% - 16.0%	14.6%
			Projected year of payments	2024-2034	2028
Revenue milestones contingent liability	\$ 93	Monte Carlo simulation	Discount rate	13.0%	
			Projected year of payments	2024-2039	2039
Regulatory approval contingent liability	\$ 409	Scenario-based method	Discount rate	5.5%	
			Probability of milestone payment	50.0%	
			Projected year of payment	2024-2030	2030

<sup>(1)</sup> 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.

### 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 under our Amended Fourth A&R Credit Agreement 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. We believe the fair value our long-term debt under our Convertible Notes approximates carrying value as the notes were issued in December 2023. 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 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.

Our equity investments in privately-held companies were \$22.6 million and \$19.1 million at September 30, 2024 and December 31, 2023, respectively, which are included within other long-term assets in our consolidated balance sheets. 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 investment. 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. During the nine-month period ended September 30, 2023, we recorded impairment charges of \$0.3 million associated with our previously-held equity investment in Bluegrass in connection with the asset acquisition completed on May 4, 2023 (see Note 4). During the nine-month period ended September 30, 2024, we recorded no impairment charges related to our equity investments.

### Current Expected Credit Losses

Our outstanding long-term notes receivable, including accrued interest and an allowance for current expected credit losses, were \$9.3 million and \$3.2 million as of September 30, 2024 and December 31, 2023, respectively. Long-term notes receivable issued were \$6.7 million for the nine-month period ended September 30, 2024 and were related to loans issued to Selio Medical Limited (“Selio”) of \$1.7 million, Solo Pace Inc. (“Solo Pace”) of \$2.0 million and Fluidx of \$3.0 million. As of September 30, 2024 and December 31, 2023, we had an allowance for current expected credit losses of \$1.6 million and \$0.6 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 roll-forward of the allowance for current expected credit losses on our notes receivable for the three and nine-month periods ended September 30, 2024 and 2023 (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Beginning balance	\$ 1,406	\$ 296	\$ 568	\$ 281
Provision for credit loss expense	189	32	1,027	47
Ending balance	\$ 1,595	\$ 328	\$ 1,595	\$ 328

**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, 2024 and 2023 were as follows:

	<u>Cash Flow Hedges</u>	<u>Foreign Currency Translation</u>	<u>Total</u>
Balance as of July 1, 2024	\$ 2,625	\$ (18,054)	\$ (15,429)
Other comprehensive income (loss)	(5,442)	7,153	1,711
Income taxes	1,555	(89)	1,466
Reclassifications to:			
Revenue	(709)		(709)
Cost of sales	(179)		(179)
Interest expense	(255)		(255)
Net other comprehensive income (loss)	(5,030)	7,064	2,034
Balance as of September 30, 2024	\$ (2,405)	\$ (10,990)	\$ (13,395)
	<u>Cash Flow Hedges</u>	<u>Foreign Currency Translation</u>	<u>Total</u>
Balance as of July 1, 2023	\$ 5,682	\$ (15,226)	\$ (9,544)
Other comprehensive income (loss)	1,629	(2,914)	(1,285)
Income taxes	129	17	146
Reclassifications to:			
Revenue	(866)		(866)
Cost of sales	(617)		(617)
Interest expense	(685)		(685)
Net other comprehensive loss	(410)	(2,897)	(3,307)
Balance as of September 30, 2023	\$ 5,272	\$ (18,123)	\$ (12,851)

	Cash Flow Hedges	Foreign Currency Translation	Total
Balance as of January 1, 2024	\$ 1,662	\$ (12,996)	\$ (11,334)
Other comprehensive income (loss)	(1,156)	2,061	905
Income taxes	1,257	(55)	1,202
Reclassifications to:			
Revenue	(1,549)		(1,549)
Cost of sales	(963)		(963)
Interest expense	(1,656)		(1,656)
Net other comprehensive income (loss)	(4,067)	2,006	(2,061)
Balance as of September 30, 2024	\$ (2,405)	\$ (10,990)	\$ (13,395)
	Cash Flow Hedges	Foreign Currency Translation	Total
Balance as of January 1, 2023	\$ 4,366	\$ (15,916)	\$ (11,550)
Other comprehensive income (loss)	6,793	(2,190)	4,603
Income taxes	(286)	(17)	(303)
Reclassifications to:			
Revenue	(2,851)		(2,851)
Cost of sales	(900)		(900)
Interest expense	(1,850)		(1,850)
Net other comprehensive income (loss)	906	(2,207)	(1,301)
Balance as of September 30, 2023	\$ 5,272	\$ (18,123)	\$ (12,851)

**16. Subsequent Events.** On September 16, 2024, we entered into an Asset Purchase Agreement (the “Cook Purchase Agreement”) with Cook Medical Holdings LLC, an Indiana limited liability company (“Cook Medical”), to purchase Cook Medical’s lead management portfolio of medical devices and certain related assets for total cash consideration of approximately \$210 million (collectively, the “Cook Acquisition”). The closing of the proposed Cook Acquisition is expected to occur during the fourth quarter of 2024, subject to the receipt or waiver (in accordance with the provisions of the Cook Purchase Agreement) of certain closing conditions, including clearance under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and other customary closing conditions. We expect to fund the Cook Acquisition through a combination of cash on hand and borrowings under our long-term credit facility. In connection with the projected closing of the Cook Acquisition, we propose to enter into a transition services agreement with Cook Medical, pursuant to which Cook Medical would provide manufacturing and other services to us during a two-year transition period. We are currently evaluating the accounting treatment of the Cook Acquisition, as well as performing the valuation of the assets acquired and the related purchase price allocation.



## 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 2023 Annual Report on Form 10-K and in Part II, Item 1A "Risk Factors" in this report.

### OVERVIEW

We are a leading manufacturer and marketer of proprietary medical devices used in interventional, diagnostic and therapeutic procedures, particularly in cardiology, radiology, oncology, critical care 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.

For the three-month period ended September 30, 2024, we reported sales of \$339.8 million, an increase of \$24.6 million or 7.8% compared to sales for the three-month period ended September 30, 2023 of \$315.2 million. For the nine-month period ended September 30, 2024, we reported sales of \$1,001.4 million, an increase of \$68.5 million or 7.3% compared to sales for the nine-month period ended September 30, 2023 of \$932.9 million. Foreign currency fluctuations (net of hedging) decreased our net sales by (\$0.3) million and (\$5.0) million, respectively, for the three and nine-month periods ended September 30, 2024, assuming applicable foreign exchange rates in effect during the comparable prior-year periods.

Gross profit as a percentage of sales increased to 46.4% for the three-month period ended September 30, 2024 compared to 45.1% for the three-month period ended September 30, 2023. Gross profit as a percentage of sales increased to 47.0% for the nine-month period ended September 30, 2024 compared to 46.5% for the nine-month period ended September 30, 2023.

Net income for the three-month period ended September 30, 2024 was \$28.4 million, or \$0.48 per share, compared to net income of \$25.8 million, or \$0.44 per share, for the three-month period ended September 30, 2023. Net income for the nine-month period ended September 30, 2024 was \$92.4 million, or \$1.57 per share, compared to net income of \$66.8 million, or \$1.14 per share, for the nine-month period ended September 30, 2023.

### Recent Developments and Trends

In addition to the trends identified in the 2023 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 2024 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, 2024 were driven primarily by demand in the U.S. and favorable international sales trends, particularly in our Europe, Middle East and Africa ("EMEA") and Asia Pacific ("APAC") regions.
- On February 28, 2024, we introduced our "Continued Growth Initiatives" Program and related financial targets for the three-year period ending December 31, 2026, which reflects our commitment to better-position Merit for long-term, sustainable growth and enhanced profitability.
- On July 1, 2024, we completed the acquisition of certain assets from EndoGastric Solutions, Inc., which included the EsophyX® Z+, a device intended for the treatment of chronic gastroesophageal reflux disease.

- We entered into an asset purchase agreement for the acquisition of the lead management portfolio of medical devices and certain related asset from Cook Medical Holdings LLC; closing of the acquisition is expected to occur on November 1, 2024.
- As of September 30, 2024, we had cash, cash equivalents, and restricted cash of \$525.3 million and net available borrowing capacity under our Fourth A&R Credit Agreement of approximately \$697 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,	
	2024	2023	2024	2023
Net sales	100 %	100 %	100 %	100 %
Gross profit	46.4	45.1	47.0	46.5
Selling, general and administrative expenses	29.3	27.6	28.8	29.8
Research and development expenses	6.0	6.2	6.2	6.5
Impairment charges	—	—	—	0.0
Contingent consideration expense	0.0	0.2	0.0	0.2
Acquired in-process research and development expense	—	—	—	0.2
Income from operations	11.0	11.1	11.9	9.7
Other expense — net	(0.2)	(1.6)	(0.2)	(1.0)
Income before income taxes	10.8	9.6	11.7	8.6
Net income	8.4	8.2	9.2	7.2

### Sales

Sales for the three-month period ended September 30, 2024 increased by 7.8%, or \$24.6 million, compared to the corresponding period in 2023. Sales for the nine-month period ended September 30, 2024 increased by 7.3%, or \$68.5 million, compared to the corresponding period in 2023. 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, 2024 and 2023 (in thousands, other than percentage changes):

	% Change	Three Months Ended September 30,		% Change	Nine Months Ended September 30,	
		2024	2023		2024	2023
<b>Cardiovascular</b>						
Peripheral Intervention	7.4 %	\$ 137,932	\$ 128,385	11.9 %	\$ 411,805	\$ 368,077
Cardiac Intervention	1.9 %	90,769	89,106	2.7 %	275,320	268,209
Custom Procedural Solutions	4.4 %	50,768	48,624	2.9 %	149,978	145,709
OEM	8.5 %	43,386	39,969	2.9 %	126,941	123,340
Total	5.5 %	322,855	306,084	6.5 %	964,044	905,335
<b>Endoscopy</b>						
Endoscopy Devices	85.8 %	16,990	9,146	35.6 %	37,312	27,516
Total	7.8 %	\$ 339,845	\$ 315,230	7.3 %	\$ 1,001,356	\$ 932,851

Cardiovascular Sales. Our cardiovascular sales for the three-month period ended September 30, 2024 were \$322.9 million, up 5.5% when compared to the corresponding period of 2023 of \$306.1 million. Sales for the three-month period ended September 30, 2024 were favorably affected by increased sales of:

- (a) Peripheral intervention products, which increased by \$9.5 million, or 7.4%, from the corresponding period of 2023. This increase was driven primarily by increased sales of our radar localization, drainage, access, and delivery systems products.
- (b) Cardiac intervention products, which increased by \$1.7 million, or 1.9%, from the corresponding period of 2023. This increase was driven primarily by increased sales of our cardiac rhythm management/electrophysiology (“CRM/EP”) and fluid management products, offset partially by decreased sales of our intervention and hemostasis products.
- (c) Custom procedural solutions products, which increased by \$2.1 million, or 4.4%, from the corresponding period of 2023. This increase was driven primarily by increased sales of our critical care products.
- (d) OEM products, which increased by \$3.4 million, or 8.5%, from the corresponding period of 2023. This increase was driven primarily by increased sales of our kits and access, vertebral compression fracture, and fluid management products, offset partially by decreased sales of our CRM/EP, intervention and angiography products.

Our cardiovascular sales for the nine-month period ended September 30, 2024 were \$964.0 million, up 6.5% when compared to the corresponding period of 2023 of \$905.3 million. Sales for the nine-month period ended September 30, 2024 were favorably affected by increased sales of:

- (a) Peripheral intervention products, which increased by \$43.7 million, or 11.9%, from the corresponding period of 2023. This increase was driven primarily by increased sales of our access, radar localization, drainage, delivery systems, and biopsy products.
- (b) Cardiac intervention products, which increased by \$7.1 million, or 2.7%, from the corresponding period of 2023. This increase was driven primarily by increased sales of our CRM/EP and fluid management products, offset partially by decreased sales of our hemostasis products.
- (c) Custom procedural solutions products, which increased by \$4.3 million, or 2.9%, from the corresponding period of 2023. This increase was driven primarily by increased sales of our kits and critical care products, offset partially by decreased sales of our procedure trays.
- (d) OEM products, which increased by \$3.6 million, or 2.9%, from the corresponding period of 2023. This increase was driven primarily by increased sales of our kits and access, vertebral compression fracture, and fluid management products, offset partially by decreased sales of our CRM/EP and intervention products.

Endoscopy Sales. Our endoscopy sales for the three-month period ended September 30, 2024 were \$17.0 million, up 85.8% when compared to sales in the corresponding period of 2023 of \$9.1 million. Sales for the three-month period ended September 30, 2024 compared to the corresponding period in 2023 were favorably affected by \$6.8 million in sales of the EsophyX® Z+ device acquired from EGS in July 2024 as well as increased sales of our EndoMAXX fully covered esophageal stent and ReSolve Thoracostomy Trays.

Our endoscopy sales for the nine-month period ended September 30, 2024 were \$37.3 million, up 35.6%, when compared to sales in the corresponding period of 2023 of \$27.5 million. Sales for the nine-month period ended September 30, 2024 compared to the corresponding period in 2023 were favorably affected by \$6.8 million in sales of the EsophyX® Z+ device acquired from EGS in July 2024 as well as by increased sales of our EndoMAXX fully covered esophageal stent, Elation Pulmonary Balloon Dilators, BIG60F Alpha™ inflation device, and AERO Tracheobronchial Stent.

## Geographic Sales

Listed below are sales by geography for the three and nine-month periods ended September 30, 2024 and 2023 (in thousands, other than percentage changes):

	% Change	Three Months Ended September 30,		% Change	Nine Months Ended September 30,	
		2024	2023		2024	2023
United States	10.1 %	\$ 206,492	\$ 187,505	9.1 %	\$ 587,250	\$ 538,447
International	4.4 %	133,353	127,725	5.0 %	414,106	394,404
Total	7.8 %	\$ 339,845	\$ 315,230	7.3 %	\$ 1,001,356	\$ 932,851

United States Sales. U.S. sales for the three-month period ended September 30, 2024 were \$206.5 million, or 60.8% of net sales, up 10.1% when compared to the corresponding period of 2023. The increase in our domestic sales for the three-month period ended September 30, 2024, compared to the corresponding period of 2023 was driven primarily by our U.S. Direct and Endoscopy businesses.

U.S. sales for the nine-month period ended September 30, 2024 were \$587.3 million, or 58.6% of net sales, up 9.1% when compared to the corresponding period of 2023. The increase in our domestic sales for the nine-month period ended September 30, 2024, compared to the corresponding period of 2023 was driven primarily by our U.S. Direct and Endoscopy businesses.

International Sales. International sales for the three-month period ended September 30, 2024 were \$133.4 million, or 39.2% of net sales, up 4.4% when compared to the corresponding period of 2023 of \$127.7 million. The increase in our international sales for the three-month period ended September 30, 2024, compared to the corresponding period of 2023 included increased sales in our EMEA operations of \$3.3 million or 5.9%, in our Rest of World (“ROW”) operations of \$1.8 million or 14.3%, and in our APAC operations of \$0.6 million or 0.9%.

International sales for the nine-month period ended September 30, 2024 were \$414.1 million, or 41.4% of net sales, up 5.0% when compared to the corresponding period of 2023 of \$394.4 million. The increase in our international sales for the nine-month period ended September 30, 2024, compared to the nine-month period ended September 30, 2023, included increased sales in our EMEA operations of \$8.9 million or 5.2%, in our ROW operations of \$6.8 million or 19.2%, and in our APAC operations of \$4.0 million or 2.1%.

## Gross Profit

Our gross profit as a percentage of sales increased to 46.4% for the three-month period ended September 30, 2024, compared to 45.1% for the three-month period ended September 30, 2023. The increase in gross profit percentage was primarily due to increased sales combined with favorable changes in product mix partially offset by higher obsolescence expense and higher intangible amortization expense as a percentage of sales associated with acquisitions.

Our gross profit as a percentage of sales increased to 47.0% for the nine-month period ended September 30, 2024, compared to 46.5% for the nine-month period ended September 30, 2023. The increase in gross profit percentage was primarily due to an increase in sales combined with favorable changes in product mix, partially offset by unfavorable manufacturing variances and higher intangible amortization expense as a percentage of sales associated with acquisitions.

## Operating Expenses

Selling, General and Administrative Expense. Selling, general and administrative ("SG&A") expenses increased \$12.8 million, or 14.7%, for the three-month period ended September 30, 2024 compared to the corresponding period of 2023. As a percentage of sales, SG&A expenses were 29.3% for the three-month period ended September 30, 2024, compared to 27.6% for the corresponding period of 2023. For the three-month period ended September 30, 2024, SG&A expenses increased compared to the corresponding period of 2023, primarily due to an increase in labor related costs associated with headcount additions and employee termination benefits in connection with the integration activities for the EGS Acquisition, increased consulting and legal costs associated with acquisition due diligence, increased advertising and promotional expenses.

SG&A expenses increased \$10.7 million, or 3.9%, for the nine-month period ended September 30, 2024 compared to the corresponding period of 2023. As a percentage of sales, SG&A expenses were 28.8% for the nine-month period ended September 30, 2024, compared to 29.8% for the corresponding period of 2023. For the nine-month period ended September 30, 2024, SG&A expenses increased compared to the corresponding period of 2023 primarily due to an increase in labor-related costs in our sales and marketing operations due to increased headcount to support growth and acquisitions, an increase of variable compensation linked to company performance, an increase of stock-based compensation expense associated with new equity grants, and an increased investment in advertising and promotional expenses.

Research and Development Expenses. Research and development ("R&D") expenses for the three-month period ended September 30, 2024 were \$20.5 million, up 4.5%, when compared to R&D expenses in the corresponding period of 2023 of \$19.6 million. For the three-month period ended September 30, 2024, R&D expenses increased compared to the corresponding period of 2023 primarily due to increased labor costs due to increased headcount and increased materials for projects, offset partially by decreased regulatory costs related to clinical studies.

R&D expenses for the nine-month period ended September 30, 2024 were \$62.3 million, up 1.9%, when compared to R&D expenses in the corresponding period of 2023 of \$61.1 million. For the nine-month period ended September 30, 2024, R&D expenses increased compared to the corresponding period of 2023 primarily due to increased labor costs due to increased headcount, increased materials for projects, and increased costs related to clinical studies, offset partially by lower regulatory costs related to implementation of the Medical Device Regulation in the E.U.

Impairment Charges. For the three and nine-month periods ended September 30, 2024, we recognized no impairment charges. For the three-month period ended September 30, 2023, we recognized no impairment charges. For the nine-month period ended September 30, 2023, we recorded impairment charges of \$270 thousand due to the acquisition and subsequent write-off of our equity investment in Bluegrass.

Contingent Consideration Expense. For the three and nine-month periods ended September 30, 2024, 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 \$0.1 million and \$0.3 million, respectively, compared to contingent consideration expense of \$0.6 million and \$2.2 million for the three and nine-month periods ended September 30, 2023, respectively. 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 and nine-month periods ended September 30, 2024, we recognized no acquired in-process research and development costs. For the three-month period ended September 30, 2023, we recognized no acquired in-process research and development costs. For the nine-month period ended September 30, 2023, we recognized \$1.6 million in acquired in-process research and development costs primarily associated with the assets we acquired from Advanced Radiation Therapy, LLC ("ART") on May 1, 2023.

**Operating Income**

The following table sets forth our operating income by financial reporting segment for the three and nine-month periods ended September 30, 2024 and 2023 (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
<b>Operating Income</b>				
Cardiovascular	\$ 37,555	\$ 32,622	\$ 113,374	\$ 82,966
Endoscopy	(294)	2,515	5,755	7,366
Total operating income	<u>\$ 37,261</u>	<u>\$ 35,137</u>	<u>\$ 119,129</u>	<u>\$ 90,332</u>

Cardiovascular Operating Income. Our cardiovascular operating income for the three-month period ended September 30, 2024 was \$37.6 million, compared to cardiovascular operating income in the corresponding period of 2023 of \$32.6 million. The increase in cardiovascular operating income during the three-month period ended September 30, 2024 compared to the corresponding period of 2023 was primarily a result of higher sales (\$322.9 million compared to \$306.1 million), higher gross margin, and lower contingent consideration expense, partially offset by higher SG&A and R&D expenses.

Our cardiovascular operating income for the nine-month period ended September 30, 2024 was \$113.4 million, compared to cardiovascular operating income in the corresponding period of 2023 of \$83.0 million. The increase in cardiovascular operating income during the nine-month period ended September 30, 2024 compared to the corresponding period of 2023 was primarily a result of higher sales (\$964.0 million compared to \$905.3 million), higher gross margin, lower acquired in-process research and development charges, lower impairment charges, and lower contingent consideration expense, partially offset by higher SG&A and R&D expenses.

Endoscopy Operating Income (Loss). Our endoscopy operating loss for the three-month period ended September 30, 2024 was (\$0.3) million, compared to endoscopy operating income of \$2.5 million for the corresponding period of 2023. Our endoscopy operating income for the nine-month period ended September 30, 2024 was \$5.8 million, compared to endoscopy operating income of \$7.4 million for the corresponding period of 2023. The decrease in endoscopy operating income for the three and nine-month periods ended September 30, 2024 compared to the corresponding periods of 2023 was primarily a result of increased SG&A expenses associated with higher labor related costs due to headcount additions and employee termination benefits in connection with the integration activities for the EGS Acquisition, partially offset by increased sales.

**Other Expense – Net**

Our other expense for the three-month periods ended September 30, 2024 and 2023 was \$0.6 million and \$4.9 million, respectively. Our other expense for the nine-month periods ended September 30, 2024 and 2023 was \$2.3 million and \$9.7 million, respectively. The changes in other expense for the three and nine-month periods ended September 30, 2024 compared to the corresponding periods of 2023 were primarily related to increased interest expense associated with the Convertible Note offering completed in December 2023, partially offset by an increase in interest income associated with higher cash and cash equivalents balances.

### Effective Tax Rate

Our provision for income taxes for the three-month periods ended September 30, 2024 and 2023 was a tax expense of \$8.2 million and \$4.4 million, respectively, which resulted in an effective tax rate of 22.4% and 14.5%, respectively. Our provision for income taxes for the nine-month periods ended September 30, 2024 and 2023 was a tax expense of \$24.4 million and \$13.8 million, respectively, which resulted in an effective tax rate of 20.9% and 17.2%, respectively. The increase in the effective income tax rate for the three and nine-month periods ended September 30, 2024, when compared to the prior-year period, was primarily due to decreased benefit from discrete items such as share-based compensation and decreased foreign tax credit utilization. The increase in the income tax expense for the nine-month period ended September 30, 2024, when compared to the prior-year period, was primarily due to increased pre-tax book income.

### Net Income

Our net income for the three-month periods ended September 30, 2024 and 2023 was \$28.4 million and \$25.8 million, respectively. The increase in our net income for the three-month period ended September 30, 2024 was primarily a result of higher sales, higher gross margin associated and lower contingent consideration expense, partially offset by higher SG&A and R&D expenses and higher income tax expense.

Our net income for the nine-month periods ended September 30, 2024 and 2023 was \$92.4 million and \$66.8 million, respectively. The increase in our net income for the nine-month period ended September 30, 2024 was the result of several principal factors, including higher sales and gross margin, lower impairment charges, lower acquired in-process research and development charges, and lower contingent consideration expense, partially offset by higher SG&A and R&D expenses and higher income tax expense.

## LIQUIDITY AND CAPITAL RESOURCES

### Capital Commitments, Contractual Obligations and Cash Flows

As of September 30, 2024 and December 31, 2023, our current assets exceeded current liabilities by \$877.2 million and \$904.9 million, respectively, and we had cash, cash equivalents and restricted cash of \$525.3 million and \$589.1 million, respectively, of which \$55.8 million and \$48.7 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, 2024, and December 31, 2023, we had cash, cash equivalents and restricted cash of \$23.1 million and \$17.6 million, respectively, within our subsidiary in China.

Cash flows provided by operating activities. We generated cash from operating activities of \$152.1 million and \$82.9 million during the nine-month periods ended September 30, 2024 and 2023, respectively. Significant factors affecting operating cash flows during these periods included:

- Net income was \$92.4 million and \$66.8 million for the nine-month periods ended September 30, 2024 and 2023, respectively.
- Cash used for inventories was approximately \$2.8 million and \$34.4 million for the nine-month periods ended September 30, 2024 and 2023, respectively. The increase in inventories during 2023 was principally associated with our strategy to proactively invest in our inventory balances to encourage high customer service levels, as well as to build bridge inventory for production line transfers and increases in safety stock due to vendor supply delays.
- Cash used for trade payables was \$6.5 million and \$20.3 million for the nine-month periods ended September 30, 2024 and 2023, respectively, due primarily to the timing of payments.

*Cash flows used in investing activities.* We used cash in investing activities of \$154.2 million and \$167.0 million for the nine-month periods ended September 30, 2024 and 2023, respectively. We used cash for capital expenditures of property and equipment of \$31.7 million and \$27.2 million in the nine-month periods ended September 30, 2024 and 2023, respectively. Capital expenditures in each period were primarily related to investments 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 \$50 million in 2024 for property and equipment.

Cash outflows for the issuance of notes receivable were \$6.6 million for the nine-month period ended September 30, 2024 and were related to loans issued to Selio of \$1.7 million, Solo Pace of \$2.0 million and Fluidx of \$3.0 million. Cash outflows invested in acquisitions for the nine-month period ended September 30, 2024 were \$113.7 million and were related to assets acquired from EGS (\$105.0 million), assets acquired from SSI (\$3.0 million), our investments in Fluidx (\$0.3 million) and CrannMed (\$3.2 million), and payment of the first deferred payment from our asset purchase agreement with Restore Endosystems, LLC (\$2.0 million). Cash outflows invested in acquisitions for the nine-month period ended September 30, 2023 were \$138.3 million and were primarily related to payments in our asset purchase agreements with AngioDynamics (\$100 million), Bluegrass (\$32.7 million) and ART (\$1.5 million), and our investment in Solo Pace (\$4.0 million).

*Cash flows (used in) provided by financing activities.* Cash (used in) provided by financing activities for the nine-month periods ended September 30, 2024 and 2023 was \$(62.4) million and \$86.5 million, respectively. For the nine-month period ended September 30, 2024, we decreased our net borrowings under our Amended Fourth A&R Credit Agreement by \$(76.1) million. During the nine-month period ended September 30, 2023 we increased our net borrowings by approximately \$88.9 million to finance the acquisitions of AngioDynamics and Bluegrass. We had cash proceeds from the issuance of common stock of \$15.4 million and \$11.5 million for the nine-month periods ended September 30, 2024 and 2023, respectively, related to the exercise of non-qualified stock options. We completed payment of contingent consideration of \$(0.2) million and \$(3.5) million for the nine-month periods ended September 30, 2024 and 2023, respectively, principally related to sales milestone payments connected to our acquisitions of Brightwater Medical, Inc. in 2019 and Cianna Medical, Inc. in 2018.

As of September 30, 2024, we had outstanding borrowings of \$770.5 million and had issued letter of credit guarantees of \$2.4 million, with additional available borrowings of approximately \$697 million under the Amended Fourth A&R Credit Agreement, based on the maximum net leverage ratio and the aggregate revolving credit commitment pursuant to the Amended Fourth A&R Credit Agreement. Our interest rate as of September 30, 2024 was a fixed rate of 3.0% on our Convertible Notes and a variable rate of 6.70% with respect to the principal amount outstanding under the Amended Fourth A&R Credit Agreement. Our interest rate as of December 31, 2023 was a fixed rate of 3.0% on our Convertible Notes, a fixed rate of 3.39% on \$75 million as a result of an interest rate swap, and a variable floating rate of 7.21% on \$24.1 million.

We currently believe that our existing cash balances, anticipated future cash flows from operations and borrowings under our long-term debt agreements 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 may 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, 2024 there were no changes to the application of critical accounting policies previously disclosed in Part II, Item 7 of the 2023 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 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. In some cases, forward-looking statements can be identified by the use of terminology such as “may,” “will,” “expects,” “plans,” “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.

All subsequent forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by these cautionary statements. Financial estimates are subject to change and are not intended to be relied upon as predictions of future operating results. 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. 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. 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, and actual results will likely differ, and could differ materially, from those projected or assumed in the forward-looking statements. Investors are cautioned not to unduly rely on any such forward-looking statements.

#### **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 currency exchange rate risk and interest rate risk are included in Part II, Item 7A “Quantitative and Qualitative Disclosures About Market Risk” in the 2023 Annual Report on Form 10-K. In the nine-month period ended September 30, 2024, 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, 2024. 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, 2024, there were no changes in our internal control over financial reporting that materially affected, or were 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 our 2023 Annual Report on Form 10-K, as updated and supplemented below and in our Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2024 (the "Second Quarter 2024 Form 10-Q"). 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 2023 Annual Report on Form 10-K and Second Quarter 2024 Form 10-Q 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 heading in the 2023 Annual Report on Form 10-K and may contain material changes to the corresponding risk factor discussion in our 2023 Annual Report on Form 10-K.

***We may incur substantial costs when evaluating, negotiating and closing acquisitions, and our failure to integrate acquired businesses may adversely impact our business and financial results.***

We seek to supplement our internal growth through strategic acquisitions and transactions. We have completed a series of strategic acquisitions and transactions in recent years, some of which have been significant, such as the AngioDynamics Acquisition and the EGS Acquisition. We are in the process of completing the proposed Cook Acquisition. We continue to evaluate other potential acquisitions and transactions, certain of which may also be significant. We have incurred, and will likely continue to incur, significant expenses in connection with evaluating, negotiating and consummating various acquisition and other transactions.

Our integration of acquired businesses requires considerable efforts, including corporate restructuring and the coordination of information technologies, research and development, sales and marketing, operations, regulatory, supply chain, manufacturing, quality systems and finance. These efforts result in additional expenses and involve significant management time. Some of the factors that could affect the success of our acquisitions include, among others, the effectiveness of our due diligence process, our ability to execute our business plan for the acquired companies, the strength of the acquired technology, results of clinical trials, regulatory approvals and reimbursement levels of the acquired products and related procedures, the continued performance of critical transition services, our ability to adequately fund acquired in-process research and development projects and retain key employees and our ability to achieve synergies with our acquired companies, such as increasing sales of our products, achieving cost savings and effectively combining technologies to develop new products. Foreign acquisitions involve unique risks, including those related to integration of operations across different geographies, cultures and languages, currency risks and risks associated with the economic, political, legal and regulatory environment in specific countries. In addition, we have and may in the future acquire less than full ownership interests in other businesses, which involve unique challenges for effective collaboration. Further, other parties that hold remaining ownership interests in such businesses may at any time have economic or business goals that are inconsistent with our goals or the goals of such businesses. Our failure to manage these challenges successfully and coordinate the growth of such businesses or other investments could have an adverse impact on our business and our future growth. In addition, we cannot be certain that the businesses we acquire or invest in will become profitable or remain so, and if our acquisitions or investments are not successful, we may record related asset impairment charges in the future or experience other negative consequences on our operating results.

Additionally, past and future acquisitions and transactions may increase the risks of competition we face by, among other things, extending our operations into industry segments and product lines where we have few existing customers or qualified sales personnel and limited expertise. Further, as a result of certain acquisitions, we are selling capital equipment, in addition to our historical sales of disposable medical devices. The sale of capital equipment may create additional risks and potential liability, which may negatively affect our business, operations or financial condition.

In addition, we may not realize competitive advantages, synergies or other benefits anticipated in connection with any such acquisition or other transaction. If we do not adequately identify and value targets for, or manage issues related to, acquisitions and other transactions, such transactions may not produce the anticipated benefits and have an adverse effect on our business, operations or financial condition. We have incurred expenses in connection with the disposition of businesses and assets which we acquired but determined that they did not produce the benefits contemplated at the time of acquisition. We may incur similar expenses in the future.

#### **ITEM 5. OTHER INFORMATION**

During the fiscal quarter ended September 30, 2024, none of our directors or officers informed us of the adoption or termination of a “Rule 10b5-1 trading arrangement” or “non-Rule 10b5-1 trading arrangement,” as those terms are defined in Regulation S-K, Item 408.

**ITEM 6. EXHIBITS**

<u>Exhibit No.</u>	<u>Description</u>
2.1*	<a href="#">Asset Purchase Agreement, dated September 16, 2024, by and between Merit Medical Systems, Inc. and Cook Medical Holdings LLC.</a>
3.1†	<a href="#">Second Amended and Restated Articles of Incorporation.</a>
3.2†	<a href="#">Fourth Amended and Restated Bylaws.</a>
31.1	<a href="#">Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
31.2	<a href="#">Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
32.1	<a href="#">Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
32.2	<a href="#">Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
101	The following financial information from the quarterly report on Form 10-Q for the quarter ended September 30, 2024, 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).

\* Portions of this exhibit have been omitted.

† These exhibits are incorporated herein by reference.

**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 30, 2024

By: /s/ FRED P. LAMPROPOULOS

Fred P. Lampropoulos  
Chief Executive Officer

Date: October 30, 2024

By: /s/ RAUL PARRA

Raul Parra  
Chief Financial Officer and Treasurer

CERTAIN INFORMATION CONTAINED IN THIS DOCUMENT HAS BEEN EXCLUDED BECAUSE IT (I) IS NOT MATERIAL AND (II) IS THE TYPE OF INFORMATION THAT MERIT MEDICAL SYSTEMS, INC. TREATS AS PRIVATE OR CONFIDENTIAL. THE EXCLUDED INFORMATION IS IDENTIFIED BY THE FOLLOWING MARK: [\* \* \*]

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**ASSET PURCHASE AGREEMENT**

**by and between**

**COOK MEDICAL HOLDINGS LLC**

**as Seller**

**and**

**MERIT MEDICAL SYSTEMS, INC.**

**as Buyer**

**dated as of September 16, 2024**

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## **Exhibits**

<u>Exhibit A</u>	Form of Bill of Sale and Assignment and Assumption Agreement
<u>Exhibit B-1</u>	Form of Patent Assignment Agreement
<u>Exhibit B-2</u>	Form of Trademark Assignment Agreement

Exhibit C  
Exhibit D  
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Form of Intellectual Property License Agreement  
Form of Transition Services Agreement  
Form of Notarial Deed

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made as of September 16, 2024 by and between Cook Medical Holdings LLC, an Indiana limited liability company ("Seller"), and Merit Medical Systems, Inc., a Utah corporation ("Buyer"). Buyer and Seller are referred to herein individually as a "Party," and together as the "Parties".

### RECITALS

**A. WHEREAS**, Seller and its Subsidiaries (as hereinafter defined) are, among other things, engaged in the Target Business (as hereinafter defined);

**B. WHEREAS**, the Target Business is comprised of certain assets and liabilities that are currently part of Seller and its Subsidiaries;

**C. WHEREAS**, Seller and its Subsidiaries desire to sell, transfer and assign to Buyer or a Buyer Designee (as hereinafter defined), and Buyer or a Buyer Designee desires to purchase and assume from Seller and its Subsidiaries, the Purchased Assets (as hereinafter defined), and Buyer or a Buyer Designee is willing to assume, the Assumed Liabilities (as hereinafter defined), in each case as more fully described and upon the terms and subject to the conditions set forth herein; and

**D. WHEREAS**, Seller and its Subsidiaries and Buyer or a Buyer Designee desire to enter into the Bill of Sale and Assignment and Assumption Agreement, the Patent Assignment Agreement, the Trademark Assignment Agreement, the Intellectual Property License Agreement and the Transition Services Agreement and its related Regulatory and Quality Agreement (each as hereinafter defined, and collectively, including the exhibits and schedules thereto, the "Collateral Agreements").

**NOW, THEREFORE**, in consideration of the mutual agreements and covenants herein contained and intending to be legally bound hereby, the Parties hereby agree as follows:

#### 1. Definitions.

**1.1. Defined Terms.** For the purposes of this Agreement the following words and phrases shall have the following meanings:

"Affiliate" of any Person means any other Person that controls, is controlled by, or is under common control with such Person, including any Subsidiary. As used herein, "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities or other interests, by contract or otherwise. For the avoidance of doubt, the term "Affiliate" does not include Third Party resellers or distributors.

"Anti-Corruption Laws" means all Laws relating to anti-bribery or anti-corruption (governmental or commercial), including Laws that prohibit the corrupt payment, offer, promise, or authorization of the payment or transfer of anything of value (including gifts or entertainment),

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directly or indirectly, to any public official, commercial entity or any other Person to obtain or retain business or an improper business advantage; such as, without limitation, the U.S. Foreign Corrupt Practices Act of 1977, as amended from time to time, the UK Bribery Act of 2010 and all national and international Laws enacted to implement the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions.

“Antitrust Laws” means all federal, state, provincial and foreign, if any, statutes, rules, regulations, orders, decrees, administrative and judicial doctrines and other Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

“Assigned Intellectual Property” means the Intellectual Property and Information exclusively related to or exclusively used in the operation or conduct of the Target Business, including the distribution and sale of the Business Products including (a) the Assigned Patents, (b) the Assigned Trademarks, and (c) applicable Intellectual Property rights subject to the Transferred-In Licenses, as well as all deliverables and work product under the Transferred Contracts.

“Benefit Plan” means each “employee benefit plan” within the meaning of Section 3(3) of ERISA (whether or not subject to ERISA), and each employment, compensation, bonus, pension, profit sharing, deferred compensation, incentive compensation, stock ownership, stock option, stock appreciation right, stock purchase, phantom stock or other equity or equity-based compensation, performance, retirement, thrift, savings, employee loan, stock bonus, excess benefit, supplemental unemployment, paid time off, vacation, personal days, floating holidays, perquisite, educational, tuition reimbursement, outplacement, fringe benefit, sabbatical, sick leave, change in control, retention, severance, termination, redundancy, transition, “stay,” tax gross-up, employee loan, termination indemnity, jubilee long-service, cafeteria, disability, death benefit, hospitalization, medical, dental, life insurance, vision, family building benefits, retiree medical, retiree life insurance or other retiree health or welfare, accident benefit, housing, transport, welfare benefit, employee assistance, or other plan, policy, program, agreement or arrangement, in each case maintained or contributed to, or required to be maintained or contributed to, by Seller, its Affiliates or any ERISA Affiliate or with respect to which Seller, its Affiliates or any ERISA Affiliate is a party or has any liability (whether actual or contingent, direct or indirect).

“Bill of Sale and Assignment and Assumption Agreement” means that certain Bill of Sale and Assignment and Assumption Agreement, substantially in the form attached hereto as Exhibit A.

“Business Data” means any and all business information and data, including confidential information and Personal Information (whether of employees, contractors, consultants, customers, consumers, vendors, suppliers, service providers or other persons and whether in electronic or any other form or medium) that is accessed, collected, used, processed, stored, shared, distributed, transferred, or disclosed by any of the Business IT Assets, Business Products or otherwise in the course of the conduct of the Target Business.

“Business Day” means a day that is not (a) a Saturday, a Sunday or a statutory or civic holiday in the State of Indiana or Utah, or (b) a day on which banking institutions are required by Law to be closed in the State of Indiana or Utah.

“Business Employees” means the employees of Seller or its Subsidiaries exclusively engaged in providing product management, sales and marketing services to the Target Business, each of whom shall be identified as a Business Employee on Schedule 3.9(a)(i).

“Business Intellectual Property” means the Assigned Intellectual Property, the Licensed Intellectual Property and the Intellectual Property rights in the Purchased Assets.

“Business Products” means those medical devices and other products designed, developed, tested, manufactured, produced, packaged, labeled, marketed, sold or distributed by or on behalf of Seller’s Lead Management business or that are the subject of or covered by any Assigned Intellectual Property as of the Closing, as set forth on Schedule 2.1(a).

“Business Product Approvals” means those Permits (and pending applications therefor), filings and notifications that are necessary for the testing, manufacturing, marketing, promotion, distribution or sale of any Business Product in all jurisdictions in which any such Business Product is used, made, marketed, distributed or sold.

“Business Records” means the books, records, ledgers, tangible data, disks, tapes, other media-storing data and files or other similar information, whether in hardcopy or computer format and whether stored in network facilities or otherwise, in each case to the extent exclusively related to or exclusively used in the operation or conduct of the Target Business or the Purchased Assets, including any advertising, promotional and media materials, training materials, trade show materials and videos, engineering information, design documents, models, manuals and data, product datasheets, sales and purchase correspondence, including price lists, lists of present and former customers, information concerning customer contacts, pricing information, account histories existing for the three (3) years before the Closing, research data and commercial data related to any Business Product, regulatory information relating to any Business Product, including without limitation all device master files, purchasing history, technical characteristics and other information reasonably required for ongoing customer relationships, lists of present and former suppliers or vendors, mailing lists, warranty information, catalogs, sales promotion literature, advertising materials, brochures, bids, records of operation, accounting and financial records, personnel and employment records, standard forms of documents, manuals of operations or business procedures, designs, research materials and product testing reports, and any information relating to any Tax imposed on any Purchased Assets or with respect to the Target Business, but excluding only the portion of such items that (a) contain proprietary information not related to the Target Business, (b) contain any information subject to attorney client privilege or legal or contractual Third Party confidentiality obligation, (c) contain Third Party data not created by Seller or one of its Affiliates and not related to the Target Business, (d) are Excluded Assets or Excluded Liabilities, or (e) contain information that is expressly prohibited by any applicable Law, including Data Protection Laws, from being transferred to Buyer;

“Buyer Designee” means one or more Affiliates of Buyer identified to Seller in accordance with Section 2.9 prior to the Closing Date.

“Buyer’s Knowledge” means the actual knowledge of Fred Lampropoulos, Greg Fredde, and Brian Lloyd, each after reasonable investigation.

“Closing” means the closing of the transactions described in Article 7.

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and the rules and regulations promulgated thereunder.

“Code” means the U.S. Internal Revenue Code of 1986, as amended.

“Confidentiality Agreement” means the Confidentiality Agreement between Seller and Buyer dated February 1, 2024.

“Contract” means any legally binding oral or written contract, subcontract, agreement or commitment, note, bond, mortgage, indenture, lease, sublease, license, sublicense, supply contract, purchase order, sales order, instrument or other legally binding obligation, arrangement or understanding.

“Copyrights” means rights in works of authorship, including without limitation copyrights and copyrightable works, whether registered or unregistered and whether arising under the Laws of the United States or any other jurisdiction anywhere in the world, including moral rights and mask work rights, and all registrations and applications for registration with respect thereto, and renewals, extensions and reversions of any of the foregoing.

“COVID-19” means SARS-CoV-2 or COVID-19, and any evolutions, variants or mutations thereof or related or associated epidemics, pandemics or disease outbreaks.

“COVID-19 Measures” means any quarantine, “shelter in place,” “stay at home,” workforce reduction, reduced capacity, social distancing, shut down, closure sequester, safety or similar Law, directive, guidelines or recommendations promulgated by any Governmental Body, including the Centers for Disease Control and Prevention, the World Health Organization, the Occupational Safety and Health Administration, and the Department of Health or similar Governmental Body of the State of Indiana, the Commonwealth of Pennsylvania, or any other jurisdiction in which the Target Business has operations, in each case, in connection with or in response to COVID-19.

“Data Protection Laws” means all applicable Laws that govern or relate to (a) privacy, security, or confidentiality of any Personal Information or (b) Processing of any personal Information or other Business Data by Seller or its Subsidiaries, including, without limitation, (i) the U.S. Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. § 1921 et seq.) and all regulations promulgated thereunder, as each may be amended from time to time; (ii) the Fair Credit Reporting Act (15 U.S.C. § 1681 et. seq.); (iii) the Telephone Consumer Protection Act, 47 U.S.C. § 227; (iv) the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. §§ 6101-6108); (v) the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (15 U.S.C. 7701-7713); (vi) the California Consumer Privacy Act of 2018; (vii) Section 5 of the (U.S.) Federal Trade Commission Act; (viii) the General Data Protection Regulation (EU) 2016/679; (ix) the UK Data Protection Act 2018; (x) all state Law equivalents of such Laws; (xi) implementing regulations or rulemaking concerning such Laws; and (xii) all Laws requiring notification of a security breach or other unauthorized access, use or disclosure of Personal Information or other Business Data.

“Data Protection Requirements” means all applicable (a) Data Protection Laws; (b) Privacy Policies; (c) terms of any agreements to which Seller or its Affiliates are bound relating to the Processing of Personal Information or other Business Data by Seller or its Affiliates; and (d) applicable industry standards, such as the Payment Card Industry Data Security Standard (PCI-DSS).

“Data Room” means the electronic data room hosted by Datasite LLC for “Project Beagle” (available at <https://login.global.datasite.com/>).

“Encumbrance” means any lien, encumbrance, claim, charge, security interest, mortgage, pledge, easement, encroachment, building or use restriction, capital lease, conditional sale or other title retention agreement, covenant, adverse claims of ownership or use, or other similar restriction.

“Environmental Law” means any Law relating to the environment, natural resources, pollutants, contaminants, wastes, chemicals or public health and safety, including any Law pertaining to (a) treatment, storage, disposal, generation and transportation of toxic or hazardous substances or solid or hazardous waste, (b) air, water and noise pollution, (c) groundwater or soil contamination, (d) the release or threatened release into the environment of toxic or hazardous substances or solid or hazardous waste, including emissions, discharges, injections, spills, escapes or dumping of pollutants, contaminants or chemicals, (e) manufacture, processing, use, distribution, treatment, storage, disposal, transportation or handling of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or oil or petroleum products or solid or hazardous waste, (f) underground and other storage tanks or vessels, abandoned, disposed or discarded barrels, containers and other closed receptacles, (g) public health and safety or (h) the protection of wild life, marine sanctuaries and wetlands, including all endangered and threatened species.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations thereunder.

“ERISA Affiliate” means each Affiliate and any other Person that, together with Seller or any of its Affiliates, is treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or under Section 4001(a)(14) and 4001(b)(1) of ERISA.

“Excluded Contracts” means any Contract (a) under which performance by Seller, counterparty and the Affiliates of both parties, as applicable, have been completed or earlier terminated, and for which there is no remaining payment, warranty, indemnification, maintenance, or support obligation, or obligations relating to license or option to license any Intellectual Property rights of a party therein, (b) that constitute a General Purchase Agreement or (c) not exclusively related to the Purchased Assets or Assumed Liabilities.

“Excluded Taxes” means any liability, obligation or commitment, whether or not accrued, assessed or currently due and payable, with respect to (a) any Taxes of Seller or its Affiliates for any taxable period (including any liability of Seller or its Affiliates for the Taxes of any other Person under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign law) or otherwise as a member of any affiliated, consolidated, combined, or unitary group of which Seller or its Affiliates is or was a member prior to the Closing Date), including as a



transferee or successor, by Contract or otherwise, (b) any Taxes relating to, pertaining to, or arising out of, the Target Business or the Purchased Assets for any Tax period or portion thereof ending on or before the Closing Date or attributable to the operation of the Target Business or ownership of the Purchased Assets prior to the Closing, (c) any Taxes, other than Value Added Tax, required by Law to be paid by Seller or any Affiliate (or withheld from Seller by Buyer or a Buyer Designee and remitted to the appropriate taxing Governmental Body) as a result of their sale of Purchased Assets in any jurisdiction (including any withholding Taxes), (d) any Taxes imposed on Seller or its Affiliates as a transferee or successor, pursuant to any Tax indemnification or sharing agreement, or similar contract or arrangement, or otherwise, which Taxes relate to the Purchased Assets or the Target Business with respect to an event or transaction occurring before the Closing, and (f) any Taxes relating to Excluded Assets or other Excluded Liabilities.

“Exigency Measure” means any action or omission taken or made by Seller or any of its Affiliates or its or their Representatives in good faith to protect the well-being, condition, or safety of Seller or its Representatives, properties, or assets, including in response to, in preparation of, or otherwise to address or minimize the effects of any (i) acts of war, hostilities or terrorism or any escalation or material worsening of any such acts of war, hostilities or terrorism, or the occurrence or escalation of any other calamity or crisis, including any riots, violent or destructive rallies, or similar activities or events; (ii) natural disasters, act of God, or other force majeure event; or (iii) epidemics and pandemics (including in respect of COVID-19).

“Export-Import Laws” means all applicable United State and foreign Laws relating to export, reexport, transfer, and import controls, including the Export Administration Regulations and the EU Dual Use Regulation.

“FDA” means the U.S. Food and Drug Administration and any successor agency thereto.

“Fraud” means, with respect to a Party, an actual and intentional misrepresentation of a material existing fact with respect to the making of a representation or warranty in Article 3 or Article 4, made by such Party, (a) with respect to Seller, to Seller’s Knowledge, or (b) with respect to Buyer, to Buyer’s Knowledge, of its falsity and made for the purpose of inducing the other Party to act, and upon which the other Party justifiably relies with resulting Losses. Fraud shall not include constructive fraud or any other claims based on constructive knowledge, negligent misrepresentation or similar theories.

“GAAP” means U.S. generally accepted accounting principles in effect from time to time.

“General Purchase Agreements” means any Contracts between Seller or an Affiliate of Seller and a Third Party pursuant to which Seller or such Affiliate purchases products or services from such Third Party, including for any of Seller’s or an Affiliate’s retained businesses, in each case that are not exclusively related to or exclusively used in the operation or conduct of the Target Business.

“German Subsidiary” means Cook Deutschland GmbH.

“Governmental Body” means any legislative, executive or judicial unit of any governmental entity or body (supranational, national, federal, provincial, state or local or foreign)

or any department, commission, board, public or private arbitral body, agency, bureau, official or other regulatory, administrative or judicial authority thereof.

“Healthcare Laws” means, collectively, any and all applicable state, federal, national, and foreign healthcare Laws which govern the Target Business and Business Products, including but not limited to: (i) the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.); (ii) all healthcare fraud and abuse laws, including, without limitation, the U.S. Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the U.S. Civil False Claims Act (31 U.S.C. § 3729 et seq.), the federal Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the federal health care program exclusion law (42 U.S.C. § 1320a-7a), the criminal false statements law (42 U.S.C. § 1320a-7b(a)), the Physician Payments Sunshine Act (42 U.S.C. § 1320a-7h), all criminal laws relating to health care fraud and abuse, including but not limited to the health care fraud statutes set forth at 18 U.S.C. §§ 286, 287, 1035, 1347 and 1349; and the U.S. Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. § 1921 et seq.); (iii) the Medicare and Medicaid statutes (Titles XVIII and XIX of the Social Security Act) and any other Law governing a government sponsored or funded healthcare programs; (iv) requirements applicable to medical device advertising under the Federal Trade Commission Act; (v) all implementing regulations of the preceding Laws; (vi) the EU Medical Devices Directives (Directives 93/42/EEC and 90/385/EEC), Regulation (EU) 2017/745, including their implementing national Laws, (vii) any analogous Laws of any applicable jurisdiction; and (viii) any other state, federal, national or foreign Laws which regulate kickbacks, recordkeeping, claims process, documentation requirements, referrals, the hiring of employees or acquisition of services or supplies from those who have been excluded from government healthcare programs, quality, safety, licensure or any other aspect of testing, manufacture, distributing, sale, promotion or marketing of medical devices.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder.

“Information” means documented and undocumented information, including any technical information, and other data and drawings of whatever kind in whatever medium, specifications, techniques, network configurations and architectures, Software, APIs, subroutines, techniques, user interfaces, URLs, works of authorship, algorithms, formulae, protocols, schematics, compositions, processes, designs, bills of material, sketches, photographs, graphs, drawings, samples, non-patented inventions, discoveries, developments and ideas, build instructions, Software code (in any form, including source code and executable or object code), build scripts, test scripts, databases and data collections, past and current manufacturing and distribution methods and processes, tooling requirements, current and anticipated customer requirements, price lists, part lists, customer lists, market studies, business plans, database technologies, systems, structures, architectures, improvements, devices, concepts, methods and information, RTL, GDSII files, whether embodied in Software or otherwise, inventions (whether or not patentable), discoveries, improvements, and technology, breadboards, netlists, mask works, mask sets, wafers, test methodologies, verilog files, emulation and simulation reports, test vectors and hardware development tools, and any and all instantiations of the foregoing in any form and embodied in any media, however documented and whether or not embodied in any tangible form, and any and all notes, analysis, compilations, studies, summaries, and other material containing or based, in

whole or in part, on any information included in the foregoing, and including all tangible embodiments of any of the foregoing.

“Intellectual Property” means any and all intellectual property rights arising from or associated with any of the following, whether protected, created or arising under the Laws of the United States or any other jurisdiction anywhere in the world: (a) Copyrights, (b) Trademarks, (c) Patents, (d) Trade Secrets, (e) mask work rights and any registrations or applications for registration therefor, (f) rights in databases and data collections (including knowledge databases, customer lists and customer databases), whether registered or unregistered, and any registrations or applications for registration therefor, (g) rights in inventions (whether or not patentable) and Information and improvements thereto, (h) Internet domain names and any registrations therefor, and all social media accounts and (j) any other similar, corresponding or equivalent proprietary, intellectual or industrial property rights of any kind or nature now known or hereafter recognized in any jurisdiction worldwide, including any rights in Information.

“Intellectual Property License Agreement” means that certain Intellectual Property License Agreement, substantially in the form attached hereto as Exhibit C.

“Inventory” means the inventory, wherever located, including raw materials, work in process, recycled materials, demo and evaluation inventory, finished products, inventoriable supplies, and non-capital spare parts owned by Seller or a Subsidiary and exclusively related to or exclusively used in the operation or conduct of the Target Business or the Purchased Assets, and any rights of Seller or a Subsidiary to the warranties received from suppliers and any related claims, credits, rights of recovery and set-off with respect to such Inventory, but only to the extent such rights are assignable.

“IRS” means the U.S. Internal Revenue Service.

“Italian Business” means the portion of the Target Business operated by Seller or a Subsidiary of Seller in Italy and comprising the Purchased Assets, the Assumed Liabilities, and the contracts with the Transferred Employees in Italy.

“Law” means any supranational, national, federal, state, provincial or local law (including common law), treaty, statute, ordinance, rule, award, writ, regulation, ordinance, code, order, judgment or injunction, ruling, or any decree or requirement with similar effect of any Governmental Body or Notified Body.

“Lead Management” means Seller’s sub-business unit focused on medical devices intended for use in lead removal procedures of implantable cardiac leads, indwelling catheters and foreign objects, and related medical therapies.

“Leased Equipment” means the vehicles, machinery and equipment and other similar items leased by Seller or a Subsidiary and exclusively related to or exclusively used in the operation or conduct of the Target Business or the Purchased Assets (outside of the United States solely with respect to any such vehicles) as listed on Schedule 1.1(a) but excluding any Excluded Assets or Excluded Liabilities.

“Licensed Intellectual Property” means the Intellectual Property and Information that is owned or controlled by Seller and/or any of its Affiliates that are Excluded Assets and are being licensed to Buyer pursuant to the Intellectual Property License Agreement.

“Manufacture,” “Manufactured,” or “Manufacturing” means all steps, processes, and activities necessary to manufacture, supply and/or produce the Business Products, including without limitation, the manufacturing, processing, packaging, labeling, storing, quality control testing, and distribution of Business Products as part of the operation of the Target Business.

“Manufacturing Assets” means the equipment and tools utilized by Seller solely to Manufacture the Business Products as set forth on Schedule 1.1(b).

“Non-Assignable Licenses” means those Contracts pursuant to which Seller and/or its Affiliates in-licenses Intellectual Property or Information from one or more Third Parties that are related to other businesses of Seller or an Affiliate and not exclusively related to or exclusively used in the operation or conduct of the Target Business, including Contracts for Standard Software, and general corporate-wide information technology and design licenses primarily used in Seller’s or an Affiliate’s retained businesses.

“Non-U.S. Benefit Plan” means each Benefit Plan maintained or contributed to or required to be maintained or contributed to, that covers employees or is subject to the Laws of any jurisdiction outside the United States.

“Notarial Deed” means the deed in substantially the form set forth in Exhibit E, which may be subject to revisions by the Notary Public and which Seller and Buyer shall execute on the Closing Date before the Notary Public.

“Notary Public” means Mr. Carlo Munafo, Notary in Milan or such other individual as may be mutually agreed by the Parties.

“Notified Body” means any organization accredited, designated, licensed, authorized or approved under applicable Healthcare Laws by an EU country or the UK to assess and certify the conformity of medical devices in accordance with applicable Healthcare Laws and any applicable harmonized standards.

“Open Source Materials” means the Software licensed under any license that conforms to the Open Source Initiative’s definition of “open source”, available online at <http://www.opensource.org/osd.html>.

“Patents” means patents, patent applications or invention disclosures worldwide of any kind or nature (including industrial designs and utility models that are subject to statutory protection), and any renewals, adjustments, reissues, reexaminations, extensions, supplemental protection certificates, continuations, continuations-in-part, divisions and substitutions relating to any of the patents and patent applications, as well as all related counterparts to such patents and patent applications, wheresoever issued or pending anywhere in the world, and all rights to claim priority from any of the foregoing.

“Patent Assignment Agreement” means that certain Patent Assignment Agreement, substantially in the form attached hereto as Exhibit B-1.

“Permits” means any permits, licenses, consents, authorizations, orders, declarations, registrations, listings, clearances, exemptions, certifications and other permissions and approvals from Governmental Bodies or Notified Bodies.

“Permitted Encumbrances” means any (a) statutory lien for Taxes, assessments and other governmental charges or liens of carriers, landlords, warehousemen, workmen’s, repairmen’s, mechanics and materialmen incurred in the ordinary course of business, in each case for sums not yet due and payable or due but not delinquent; (b) liens incurred or deposits made in the ordinary course of the Target Business in connection with workers’ compensation, unemployment insurance and other types of social security or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return of money bonds and similar obligations; (c) non-exclusive licenses granted by Seller or an Affiliate in connection with sales of products in the ordinary course of business; and (e) any minor imperfection in title and minor encroachments, if any, that, individually or in the aggregate, are not material in amount, do not materially interfere with the conduct of the Target Business or with the use of the Purchased Assets and do not materially affect the value, merchantability, or use of the Purchased Assets or the Target Business.

“Person” means any individual, corporation, partnership, firm, association, joint venture, joint stock company, trust, unincorporated organization or other entity, or any government or regulatory, administrative, or political subdivision or agency, department, or instrumentality thereof.

“Personal Information” means any information relating to an identified or identifiable natural person; an “identifiable person” is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity, including, without limitation, unique device or browser identifiers, names, addresses, telephone numbers, email addresses, social security numbers, and/or account information; and shall also mean any information that is regulated or protected by one or more Data Protection Laws.

“Post-Closing Tax Period” means any Tax period beginning after the Closing Date, and, in the case of any Straddle Period, the portion of such Straddle Period beginning the day after the Closing Date.

“Pre-Closing Tax Period” means any Tax period ending on or before the Closing Date and, in the case of any Straddle Period, the portion of such Straddle Period ending on the Closing Date.

“Principal Equipment” means the personal property of Seller or an Affiliate exclusively related to or exclusively used in the operation or conduct of the Target Business or the Purchased Assets, including, without limitation, all Manufacturing Assets, machinery, equipment (including any related replacement or spare parts, components, dies, molds, tools, and tooling), phone or conferencing equipment, network equipment, data processing equipment and peripheral equipment and other similar items, but not (a) the Leased Equipment or (b) any such items

primarily related to Excluded Assets or Excluded Liabilities. Principal Equipment includes rights to the warranties received from the manufacturers and distributors of such items and to any related claims, credits, rights of recovery and set-off with respect to such items, but only to the extent that such rights are assignable.

“Privacy Policies” means all published, posted, and internal agreements and policies relating to Seller’s and its Affiliates’ Processing of Personal Information.

“Process” or “Processing” means any operation or set of operations which is performed on data, whether or not by automated means, such as the access, use, collection, treatment, processing, structuring, storage, hosting, recording, organization, adaption, alteration, transfer, retrieval, transmittal, consultation, disclosure, disposal, dissemination, restriction, erasure, destruction or combination of such data.

“Recall” means any voluntary and involuntary recall, correction, market withdrawal, market refund or replacement, “dear doctor” letter, investigator notice, stock recovery or other field action or notice relating to an alleged lack of safety, efficacy or regulatory compliance of any Business Product.

“Representatives” means, with respect to any Person, such Person’s directors, officers, employees, Subsidiaries, Affiliates, investment bankers, attorneys and other advisors or representatives.

“Return” means any return, declaration, report, claim for refund, or information return or statement, and any other document filed or required to be filed in respect of any Tax, including any schedule or attachment thereto or amendment thereof.

“R&W Insurance Policy” means the Buyer-Side Representations and Warranties Insurance Policy Number AC2ZBN001 (as may be amended, modified or otherwise supplemented from time to time) issued by Liberty Surplus Insurance Corporation to Buyer that is being conditionally bound as of the date hereof.

“R&W Insurance Policy Premium” means the premium and related fees and expenses payable to the underwriter and the broker with respect to the R&W Insurance Policy.

“R&W Policy Retention Amount” means the aggregate amount of retention set forth in the R&W Insurance Policy.

“Rollover PTO” means any accrued but not used vacation or other paid time off to which a Transferred Employee is entitled as of the Closing Date that could have been used by the Transferred Employee in the calendar year in which the Closing Date occurs under Seller’s policies with respect to vacation and other paid time off if the Transferred Employee had continued to be subject to such policies for the remainder of such calendar year.

“Sanctions” means all applicable trade and economic sanctions laws, regulations, or trade embargoes imposed, administered or enforced by the U.S. government (including those administered by the U.S. Department of the Treasury’s Office of Foreign Assets Control, the U.S. Department of Commerce and the U.S. Department of State), the United Nations Security Council,

the European Union, any European Union member state or His Majesty's Treasury of the United Kingdom.

"Seller's Knowledge" means the actual knowledge of the individuals specified on Schedule 1.1(c) after reasonable investigation.

"Seller Material Adverse Effect" means any fact, circumstance, change, development, condition or effect that, individually or when taken together with all other such facts, circumstances, changes, conditions or effects that exist at the date of determination of the occurrence of a Seller Material Adverse Effect, had, has or is reasonably likely to have a material adverse effect on (a) the assets, business, operations, condition (financial or otherwise) or results of operations of the Target Business and the Purchased Assets, taken as a whole, or (b) Seller's ability to perform its obligations under this Agreement and the Collateral Agreements or consummate the transactions contemplated hereby or thereby; provided, however, that, with respect to clause (a), no facts, circumstances, changes, conditions or effects (by themselves or when aggregated with any other facts, circumstances, changes, developments, conditions or effects listed below) resulting from, relating to or arising out of the items enumerated in sub-clauses (i) to (ix) below shall be deemed to be or constitute a Seller Material Adverse Effect, and no facts, circumstances, changes, developments, conditions or effects resulting from, relating to or arising out of the following (by themselves or when aggregated with any other facts, circumstances, changes or effects listed below) shall be taken into account when determining whether a Seller Material Adverse Effect has occurred or is reasonably likely to occur: (i) general economic, financial or political conditions in the United States or any other jurisdiction in which the Target Business has substantial business or operations, and any changes therein (including any changes arising out of acts of terrorism, war, weather conditions, epidemics, pandemics, or disease outbreaks (including COVID-19) or public health emergencies, or other force majeure events), except to the extent that such conditions in the industries (or therapeutic areas) in which the Target Business has substantial business or operations have a disproportionate effect on the Target Business compared with other companies or businesses operating in such industries (or therapeutic areas); (ii) changes in the industry that the Target Business is in, and any industry-wide changes therein (including any changes arising out of acts of terrorism, war, weather conditions, epidemics, pandemics, or disease outbreaks (including COVID-19) or public health emergencies, or other force majeure events) except to the extent that such changes in the industries (or therapeutic areas) in which the Target Business is in have a disproportionate effect of any of the Target Business compared with other companies or businesses operating in such industries (or therapeutic areas); (iii) conditions in the financial markets, and any changes therein (including any changes arising out of acts of terrorism, war, weather conditions, epidemics, pandemics, or disease outbreaks (including COVID-19) or public health emergencies, or other force majeure events); (iv) acts of terrorism, armed hostilities, civil unrest or war; (v) COVID-19 Measures; (vi) the announcement or pendency of the transactions contemplated by this Agreement or the identity of the Parties and their respective Affiliates, including any termination of, reduction in or similar negative impact on relationships, contractual or otherwise, with any customers, suppliers, agents, distributors, employees or contractors of the Target Business due to the announcement or pendency of the transactions contemplated by this Agreement or the identity of the Parties and their respective Affiliates; (vii) any failure by the Target Business to meet any internal or published projections, forecasts or revenue or earnings predictions (provided that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded); (viii) any changes in

applicable Laws or accounting rules (including GAAP) or the enforcement, implementation or interpretation thereof; (ix) any action or omission contemplated by this Agreement or taken or omitted with the written request or consent of Buyer; or (x) any actions or omissions by Buyer.

“Shared Contracts” means any and all sales Contracts (other than immaterial purchase orders, pricing acknowledgements, confirmations and similar documents) which relate in part, but not exclusively, to the Business Products.

“Software” means any and all (a) software and computer programs of any type, including software implementations of algorithms, heuristics models and methodologies, whether in source code or object code, (b) testing, validation, verification and quality assurance materials, (c) databases, conversion, interpreters and compilations, including any and all data and collections of data, whether machine readable or otherwise, (d) descriptions, schematics, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, (e) software development processes, practices, methods and policies recorded in permanent form, relating to any of the foregoing, (f) operating systems, management code, firmware, utilities, graphical user interfaces and software engines, and (g) performance metrics, sightings, bug and feature lists, build, release and change control manifests recorded in permanent form, relating to any of the foregoing and (h) documentation, including user manuals, technical manuals, developer notes, developer tools, developers’ kits, utilities, comments and annotations, web materials, and architectural and design specifications and training materials, in each case whether stored, encoded, recorded or written on disk, tape, film, memory device, paper or other media of any nature relating to any of the foregoing.

“Standard Software” means non-customized, off-the-shelf, commercially available Software that is licensed solely in executable or object code form pursuant to a nonexclusive, internal use software license, and not redistributed with or incorporated into, or used directly in, the development, manufacturing or distribution of, any of the Business Products or services of the Target Business and is generally available to the public on standard, non-negotiated terms.

“Straddle Period” means any Tax period that begins on or before and ends after the Closing Date.

“Subsidiary” means, with respect to any Person, any entity of which securities or other ownership interests having voting power to elect a majority of the board of directors or other persons performing similar functions are at any time directly or indirectly owned by such Person or of which a majority of ownership interests are controlled by such Person.

“Target Business” means Seller’s business of designing, developing, testing, manufacturing, producing, packaging, labeling, marketing, selling, and distributing Business Products; provided that, for clarity, the Target Business does not include any billing, order entry, fulfillment, accounting, collections, finance, operations, engineering or other corporate centralized function organizations within Seller, or the provision by Seller and its Affiliates of the services to be provided under the Collateral Agreements, including the Transition Services Agreement, following the Closing.



“Tax” means a tax of any kind, and all charges, fees, customs, levies, duties, imposts, required deposits or other assessments, whether federal, state, local or foreign, including all income, capital gains, gross income, gross receipt, property, franchise, sales, use, excise, registration, withholding, payroll, employment, severance, social security, worker’s compensation, unemployment, occupation, capital stock, ad valorem, value added, transfer, gains, profits, net worth, asset, transaction, real property, personal property, alternative, add-on minimum, escheat or estimated tax or other tax, including any interest, penalties or additions with respect thereto, whether disputed or not and whether or not correctly imposed, imposed upon any Person by any taxing or social security authority or other Governmental Body under applicable Law.

“Third Party” means any Person not an Affiliate of the other referenced Person or Persons.

“Trademark Assignment Agreement” means that certain Trademark Assignment Agreement, substantially in the form attached hereto as Exhibit B-2.

“Trademarks” means trademarks, trade names, corporate names, business names, trade styles, service marks, service names, logos, slogans, trade dress, design rights, 800 numbers, or other source or business identifiers and general intangibles of like nature, together with goodwill associated therewith, whether registered or unregistered and whether arising under the Laws of the United States or any state or territory thereof or any other jurisdiction anywhere in the world, and registrations and applications for registration with respect to, and renewals and extensions of, any of the foregoing.

“Trade Laws” means, with respect to any Person, all applicable customs, trade, antiboycott, and Export-Import Laws in jurisdictions in which such Person or any of its Subsidiaries does business or is otherwise subject to jurisdiction, except to the extent inconsistent with U.S. Law, including the U.S. Export Administration Regulations administered by the U.S. Department of Commerce and all other trade regulations imposed by the U.S. government.

“Trade Secrets” means information of any kind or nature, in whatever form and whether or not embodied in a tangible medium, including customer lists, concepts, ideas, methods, processes, know-how, methodologies, designs, plans, schematics, bill of materials, drawings, formulae, technical data, specifications, research and development information, technology and product roadmaps, models, data bases, marketing materials and other proprietary or confidential information, in each case to the extent any of the foregoing derives economic value from not being generally known to other Persons who can obtain economic value from its disclosure or use, excluding any Copyrights or Patents that cover or protect any of the foregoing.

“Transferred Contracts” means any Contract exclusively related to or exclusively used in the operation or conduct of the Target Business, including without limitation, the Contracts set forth on Schedule 2.1(d) (provided that purchase orders, pricing acknowledgements, confirmations and similar documents that fall into the foregoing categories shall be Transferred Contracts so long as the terms thereof do not materially modify the terms of any of the Contracts to which they relate, but need not each be listed on Schedule 2.1(d)), but excluding the Excluded Contracts. Seller shall use commercially reasonable efforts to provide Buyer with copies of all material purchase orders, pricing acknowledgements, confirmations and similar documents prior to Closing.

“Transferred Governmental Permits” means all Business Product Approvals, and those other Permits, licenses, certificates of inspection, approvals, clearances, registrations, listings, exemptions or other certifications or authorizations issued to Seller or a Subsidiary, including by FDA, a Governmental Body, or a Notified Body, exclusively related to or exclusively used in the operation or conduct of the Target Business that are transferable from Seller or its Subsidiaries to Buyer under applicable Law and are identified on Schedule 2.1(e).

“Transferred In-Licenses” means any Contract pursuant to which Seller or a Subsidiary has the right to use any Intellectual Property or Information of one or more Persons that is exclusively related to or exclusively used in the operation or conduct of the Target Business and is identified on Schedule 2.1(g), but excludes the Nonassignable Licenses.

“Transition Services Agreement” means that certain Transition Services Agreement, substantially in the form attached hereto as Exhibit D.

“UK Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“Value Added Tax” means any value added tax imposed on the supply of goods and services under European Union Directive 2006/112/EC (or under any rules, regulation, orders or instruments authorized by that Directive) and any similar value added tax pursuant to the Laws of any jurisdiction which is not a member of the European Union. Value Added Tax includes Taxes that operate in the same manner as a Value Added Tax but have a different name, including Goods and Services Taxes and Harmonized Sales Taxes.

“WARN Act” means the Worker Adjustment and Retraining Notification Act or similar state or local law.

**1.2. Additional Defined Terms.** For purposes of this Agreement, the following terms shall have the meanings specified in the Sections indicated below:

<u>Term</u>	<u>Section</u>
“ <u>Agreement</u> ” .....	Preamble
“ <u>Allocation</u> ” .....	Section 5.3(b)
“ <u>Asset Level Allocation Statement</u> ” .....	Section 5.3(b)
“ <u>Assigned Patents</u> ” .....	Section 3.12(a)
“ <u>Assigned Registered IP</u> ” .....	Section 3.12(a)
“ <u>Assigned Trademarks</u> ” .....	Section 3.12(a)
“ <u>Assumed Liabilities</u> ” .....	Section 2.3
“ <u>Bulk Sales Laws</u> ” .....	Section 2.7
“ <u>Business Employee Plans</u> ” .....	Section 3.9(b)
“ <u>Business IT Assets</u> ” .....	Section 3.12(k)
“ <u>Buyer</u> ” .....	Preamble
“ <u>Buyer Indemnitee</u> ” .....	Section 9.3
“ <u>Buyer Proprietary Information</u> ” .....	Section 6.3(a)
“ <u>Business Trade Secrets</u> ” .....	Section 3.12(h)
“ <u>Claim Dispute Notice</u> ” .....	Section 9.9

<u>Term</u>	<u>Section</u>
“ <u>Claim Notice</u> ” .....	Section 9.9
“ <u>Closing</u> ” .....	Section 7.5
“ <u>Closing Date</u> ” .....	Section 7.5
“ <u>Closing Effective Time</u> ” .....	Section 7.6
“ <u>Closing Payment</u> ” .....	Section 2.10
“ <u>Collateral Agreements</u> ” .....	Recitals
“ <u>Cutoff Time</u> ” .....	Section 10.12
“ <u>Deferred Purchase Price</u> ” .....	Section 2.10
“ <u>Excluded Assets</u> ” .....	Section 2.2
“ <u>Excluded Leased Equipment</u> ” .....	Section 5.6
“ <u>Excluded Liabilities</u> ” .....	Section 2.4
“ <u>Financial Statements</u> ” .....	Section 3.11(a)
“ <u>German Works Council Consultation</u> ” .....	Section 7.4(a)
“ <u>Indemnified Party</u> ” .....	Section 9.8(a)
“ <u>Indemnifying Party</u> ” .....	Section 9.8(a)
“ <u>Independent Accounting Firm</u> ” .....	Section 5.3(b)
“ <u>Losses</u> ” .....	Section 9.3
“ <u>Material Contracts</u> ” .....	Section 3.10(a)
“ <u>Nonassignable Assets</u> ” .....	Section 2.5(b)
“ <u>Party</u> ” .....	Preamble
“ <u>Property Taxes</u> ” .....	Section 2.8(d)
“ <u>Purchase Price</u> ” .....	Section 2.10
“ <u>Purchased Assets</u> ” .....	Section 2.1
“ <u>Reasonable Efforts</u> ” .....	Section 5.10(a)(iv)
“ <u>Regulatory Approvals</u> ” .....	Section 8.1(b)
“ <u>Required Consents</u> ” .....	Section 3.4(b)
“ <u>Seller</u> ” .....	Preamble
“ <u>Seller Indemnitee</u> ” .....	Section 9.4
“ <u>Seller Name</u> ” .....	Section 5.10
“ <u>Seller Proprietary Information</u> ” .....	Section 6.2
“ <u>Separate Closing</u> ” .....	Section 7.4(b)
“ <u>Termination Date</u> ” .....	Section 11.1(e)
“ <u>Third Party Claim</u> ” .....	Section 9.8(a)
“ <u>Third Party Components</u> ” .....	Section 3.12(f)
“ <u>Top Customer</u> ” .....	Section 3.17
“ <u>Top Distributor</u> ” .....	Section 3.17
“ <u>Top Supplier</u> ” .....	Section 3.17
“ <u>Transferred Employee</u> ” .....	Section 5.4(b)
“ <u>Transfer Taxes</u> ” .....	Section 2.8(b)

**1.3. Other Definitional and Interpretive Matters.** Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

- (a) Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the starting reference date in calculating such period shall be

excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(b) Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(c) Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any "Section" are to the corresponding Section of this Agreement unless otherwise specified.

(d) Herein. The words such as "herein," "hereinafter," "hereof," and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(e) Including. The word "including", or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(f) Currency. References to "\$," "U.S. dollars" and "dollars" are to the currency of the United States of America.

(g) Commercially Reasonable Efforts. Commercially reasonable efforts means that the obligated Party is required to make a diligent, reasonable, and good faith effort to accomplish the applicable objective. Except as expressly provided herein, such obligation, however, does not require that the obligated Party act in a manner that would be contrary to normal commercial practices in order to accomplish the objective. The fact that the objective is or is not actually accomplished is not, by itself, an indication that the obligated Party did or did not in fact utilize its commercially reasonable efforts in attempting to accomplish the objective.

(h) Schedules and Exhibits. The Schedules and Exhibits attached to this Agreement shall be construed with and as an integral part of this Agreement to the same extent as if the same had been set forth verbatim herein. Any matter disclosed by either Party on any one Schedule with respect to any representation or warranty of such Party shall be deemed disclosed for purposes of all other representations, warranties or covenants of such Party to the extent that it is reasonably apparent on the face of such disclosure that it also relates to such other representations or warranties.

(i) Laws and Legislation. A reference to any legislation or other law or to any provision of any legislation or other law shall include any modification, amendment, re-enactment thereof, any legislative or other provision substituted therefor and all rules, regulations and statutory instruments issued or related to such legislation or other law.

(j) Ambiguity. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation

of this Agreement. No prior draft of this Agreement nor any course of performance or course of dealing shall be used in the interpretation or construction of this Agreement. No parol evidence shall be introduced in the construction or interpretation of this Agreement unless the ambiguity or uncertainty in issue is plainly discernible from a reading of this Agreement without consideration of any extrinsic evidence. Although the same or similar subject matters may be addressed in different provisions of this Agreement, the parties intend that, except as reasonably apparent on the face of this Agreement or as expressly provided in this Agreement, each such provision shall be read separately, be given independent significance and not be construed as limiting any other provision of this Agreement (whether or not more general or more specific in scope, substance or content).

## **2. Purchase and Sale of the Target Business.**

**2.1. Purchase and Sale of Assets.** Upon the terms and subject to the conditions of this Agreement, on the Closing Date, Seller shall, or shall cause one or more of its Subsidiaries, as appropriate, to, irrevocably grant, sell, transfer, assign, convey and deliver to Buyer or one or more Buyer Designees, and Buyer or one or more Buyer Designees shall irrevocably purchase, acquire and accept from Seller or the applicable Subsidiary, all of the right, title and interest in, to and under the Purchased Assets that Seller or the applicable Subsidiary owns, leases, licenses, possesses or uses and has the right to transfer as the same shall exist on the Closing Date, wherever located, free and clear of Encumbrances, except for Permitted Encumbrances. For purposes of this Agreement, "Purchased Assets" means the following assets set forth in (a) through (k) below, whether or not any of such assets, properties or rights have any value for accounting purposes or are carried or reflected on or specifically referred to in Seller's or the applicable Subsidiary's books or financial statements:

- (a) the Business Products;
- (b) the Principal Equipment and Purchased Leased Equipment;
- (c) the Assigned Intellectual Property, including all rights to sue for or assert claims against and seek remedies for past, present and future infringements, misappropriations or other violations of any of the Assigned Intellectual Property and rights of priority and protection of interests therein and to retain any and all damages, settlement amounts and other amounts therefrom against any Person on or after the Closing Date;
- (d) the Transferred Contracts;
- (e) the Transferred Governmental Permits;
- (f) all prepaid expenses for leased and rented equipment exclusively used the Target Business;
- (g) all Third Party prepaid milestones, royalties, and maintenance and support for Transferred In-Licenses;

(h) all guarantees, warranties, indemnities, and similar rights in favor of Seller or a Subsidiary related to any item listed in (a) through (f) above;

(i) the Business Records;

(j) all rights to the claims, causes of action (including the right to sue, assert claims and seek remedies), rights of recovery (including the right to retain any damages, settlements and other amounts), and rights of set-off, made or asserted against any Person on or after the Closing Date relating to any item listed above, whether arising out of actions or conditions occurring prior to, on, or after the Closing Date;

(k) all goodwill of Seller of every kind and description pertaining to or used in the Business Products and Target Business, together with the exclusive right of Buyer to represent itself as carrying on the Business Products in succession to Seller; and

(l) to the extent not included in (a) through (j) above, all other assets, properties, and rights exclusively related to or exclusively used in the operation or conduct of the Target Business by Seller or the applicable Subsidiary, whether tangible or intangible, real, personal, or mixed.

**2.2. Excluded Assets.** Notwithstanding the provisions of Section 2.1, it is hereby expressly acknowledged and agreed that the Purchased Assets shall not include, and neither Seller nor any Affiliate is granting, selling, transferring, assigning, conveying or delivering to Buyer or a Buyer Designee, and neither Buyer nor any Buyer Designee is purchasing, acquiring or accepting from Seller or any Affiliate, any of the rights, properties or assets set forth or described in paragraphs (a) through (l) below (the rights, properties and assets expressly excluded by this Section 2.2 or otherwise excluded by the terms of Section 2.1 from the Purchased Assets being referred to herein as the “Excluded Assets”):

(a) any of Seller’s or its Affiliate’s receivables, cash, cash equivalents, bank deposits or similar cash items;

(b) Inventory;

(c) Intellectual Property or Information, including Trade Secrets and manufacturing know-how including but not limited to those in Schedule 2.2(c), owned or controlled by Seller or any Affiliate other than the Assigned Intellectual Property;

(d) any (i) confidential personnel records pertaining to any Business Employee except to the extent required to be transferred by applicable Law; (ii) other books and records that Seller or any Affiliate of Seller is required by Law to retain; and (ii) any information management system of Seller or any Affiliate of Seller other than those exclusively related to or exclusively used in the operation or conduct of the Target Business or the Purchased Assets whether or not contained within computer hardware included as a Purchased Asset pursuant to Section 2.1(b);

(e) subject to Section 5.10 and the Transition Services Agreement, any rights to, or the use of, the Seller Name and any other trademark, design or logo previously or currently used by Seller or any of its Subsidiaries (other than the Assigned Trademarks);

(f) the Excluded Contracts, the Nonassignable Licenses and the Excluded Leased Equipment;

(g) except as specified in Section 2.1, any insurance policies, or rights of proceeds thereof;

(h) any assets of the Benefit Plans;

(i) any interest in and to any owned real property and any leased real property;

(j) any of the rights of Seller under this Agreement (or under any other agreement between Seller, on the one hand, and Buyer, on the other hand, entered into on or after the date of this Agreement);

(k) any interest in any Subsidiary of Seller; and

(l) except as specified in Section 2.1 or in the Intellectual Property License Agreement, all other assets, properties, interests and rights of Seller or any Affiliate that are not Purchased Assets.

**2.3. Assumed Liabilities.** On the Closing Date, Seller shall, or shall cause one or more of its Subsidiaries, as appropriate, to, irrevocably convey, transfer and assign to Buyer or one or more Buyer Designees, and Buyer or one or more Buyer Designees shall accept, assume and agree to pay, perform or otherwise discharge, in accordance with the respective terms and subject to the respective conditions thereof, the Assumed Liabilities. For purposes of this Agreement, "Assumed Liabilities" means solely the liabilities and obligations set forth or described in paragraphs (a) and (b) below, whether or not any such liability or obligation has a value for accounting purposes or is carried or reflected on or specifically referred to in either Seller's or a Subsidiary's books or financial statements:

(a) the liabilities and obligations arising out of facts and circumstances occurring solely after the Closing Date under the Transferred Contracts and Transferred Governmental Permits that are not Excluded Liabilities;

(b) with respect to the Target Business, any product warranty obligations arising from sales of the Business Products in the ordinary course of business after the Closing Date;

(c) Rollover PTO; and

(d) subject to Section 2.4, the obligations and liabilities with respect to the Transferred Employees, the Target Business or the Purchased Assets arising from, or in connection with, the operation or conduct of the Target Business or the ownership of the Purchased Assets by Buyer or a Buyer Designee after the latest of (i) the Closing Date, (ii)

such date a Transferred Employee presents themselves for work with Buyer or a Buyer Designee, or (iii) such other date of commencement of employment as is prescribed by applicable Law or an agreement between Seller and Buyer (or its respective designee) (including each Transferred Employee who is an Inactive Employee whose commencement of employment follows the Closing Date), in accordance with Section 5.4.

**2.4. Excluded Liabilities.** Neither Buyer nor any Buyer Designee shall assume or be obligated to pay, perform or otherwise assume or discharge any liabilities or obligations of Seller or any of its Affiliates, whether direct or indirect, known or unknown, suspected or unsuspected, matured or unmatured, absolute or contingent, except for the Assumed Liabilities (all of such liabilities and obligations not so assumed being referred to herein as the “Excluded Liabilities”). For the avoidance of doubt, the Parties agree that the Excluded Liabilities include, but are not limited to, any and all liabilities or obligations set forth or described in paragraphs (a) through (l) below, whether or not any such liability or obligation has a value for accounting purpose or is carried or reflected on or specifically referred to in Seller’s or the applicable Affiliate’s books or financial statements:

- (a) any Excluded Taxes;
- (b) any liability or obligation arising out of or related to any Excluded Asset;
- (c) any accounts payable or trade payables;
- (d) any indebtedness for borrowed money or guarantees thereof of Seller and its Affiliates or intercompany obligations of Seller or any Affiliate;
- (e) any liability or obligation relating to or arising (whether before, on or after the Closing Date) out of (i) the employment and any termination of such employment by Seller or any Affiliate of any employee or former employee of Seller or an Affiliate; (ii) any employee’s or former employee’s or such employee’s dependents’ rights or obligations with respect to any fringe benefit of employment with Seller or an Affiliate, including any Benefit Plan; (iii) the unpaid vacation, personal days and floating holidays accrued by Transferred Employees that are not required by applicable Law to be provided by Buyer or a Buyer Designee; and (iv) any change in control, retention or severance payments granted or awarded by Seller or an Affiliate prior to the Closing to be paid (if earned) to the Transferred Employees following the Closing;
- (f) any liability and obligation which arises out of or relates to any breach, default or violation by Seller or its Affiliates of any lease, Transferred Contract or Transferred Governmental Permit occurring on or prior to the Closing Date;
- (g) any liability or obligation in connection with, or relating to, any actions, suits, claims or proceedings against Seller or any Affiliate which arise out of, accrue, or relate to (i) the operation or conduct of the Target Business or (ii) the ownership or use of the Purchased Assets, including all claims or allegations of infringement, misappropriation, and other violations of Intellectual Property rights therein, in each case on or before the Closing Date;



(h) any liability or obligation relating to or arising out of any claim of any Third Party relating to or arising out of the manufacture or sale of any Business Product on or before the Closing Date, including any liability for any returns and any warranty claims made prior to the Closing Date (regardless of whether the applicable warranty is express or implied);

(i) any benefit liability or obligation relating to or arising in connection with COBRA or otherwise by operation of applicable Law to provide continuation of health care coverage to employees or former employees of Seller or an Affiliate or their dependents arising from a qualifying event occurring on or before the Closing Date (including, for the avoidance of doubt, such employees or former employees of Seller or an Affiliate (including the Transferred Employees) or their dependents who are "M&A qualified beneficiaries" as defined in Treasury Regulation Section 54.4980B-9, Q&A-4(b) with respect to the transactions contemplated by this Agreement);

(j) any liability or obligation arising from or relating to any Benefit Plan;

(k) any liability or obligation arising from or relating to any Environmental Law; and

(l) any liability or obligation relating to or arising out of the sale, promotion, marketing, manufacture, or distribution of any Business Product on or before the Closing Date, including with respect to any Recall.

**2.5. Further Assurances; Further Conveyances and Assumptions; Consent of Third Parties.**

(a) From time to time following the Closing, Seller and Buyer shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases, acquittances and other instruments, and shall take such further actions, as may be necessary or appropriate to transfer fully to, and vest in, Buyer and the Buyer Designees and each of their respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Buyer or a Buyer Designee under this Agreement and the Collateral Agreements and to assure fully to Seller and its Subsidiaries and each of their respective successors and assigns, the assumption of the liabilities and obligations intended to be assumed by Buyer or a Buyer Designee under this Agreement and the Collateral Agreements, and to otherwise make effective the transactions contemplated hereby and thereby (including (i) transferring back to Seller or a Subsidiary any asset or liability not contemplated by this Agreement to be a Purchased Asset or an Assumed Liability, respectively, if and to the extent that any such asset or liability was erroneously or inadvertently transferred to Buyer or a Buyer Designee at the Closing and (ii) transferring to Buyer or a Buyer Designee any asset or liability contemplated by this Agreement to be a Purchased Asset or an Assumed Liability, respectively, which was erroneously or inadvertently not transferred to Buyer or a Buyer Designee at the Closing).

(b) Nothing in this Agreement nor the consummation of the transactions contemplated hereby shall be construed as an attempt or agreement to transfer or assign any Purchased Asset, including any Transferred Contract, Transferred Governmental Permit, certificate, approval, license, authorization or other right, which by its terms or by Law is nonassignable or cannot be entered into without the consent of a Third Party or a Governmental Body or is cancelable by a Third Party in the event of an assignment ("Nonassignable Assets") unless and until (i) such consents shall have been obtained or (ii) Buyer or a Buyer Designee notifies Seller that any such Purchased Asset should be transferred or assigned notwithstanding the absence of a requisite Third Party consent or Governmental Body consent or the right of a Third Party to cancel such Nonassignable Asset in the event of a transfer or assignment hereunder, in which event such Purchased Asset shall not be a Nonassignable Asset for purposes of this Agreement and shall instead be transferred and assigned hereunder notwithstanding the absence of such Third Party consent or Governmental Body consent or any right of a Third Party to cancel such Purchased Asset. Seller shall use commercially reasonable efforts to obtain such consents and deliver any required notices under all Nonassignable Assets, and Buyer shall, and shall cause its Affiliates to, cooperate with Seller to obtain such consents promptly. To the extent permitted by applicable Law, in the event any requisite consent cannot be or is not for any reason obtained prior to the Closing, from and after the Closing, Seller and Buyer shall, and shall cause their respective Affiliates to, use commercially reasonable efforts to develop a mutually agreeable arrangement (including by way of amendment or addition of services to the Transition Services Agreement) under which Buyer or a Buyer Designee would obtain the benefits and assume the obligations under such Nonassignable Assets in accordance with this Agreement, including by sub-contracting, sub-licensing, or sub-leasing to Buyer or a Buyer Designee. From and after the Closing, Seller shall, and shall cause its Affiliates to, also take or cause to be taken at Seller's expense, such actions in its name or otherwise as mutually agreed to by the Parties (provided, that, Seller's agreement not to be unreasonably withheld or delayed) so as to provide Buyer or the applicable Buyer Designee with the benefits of the Nonassignable Assets and to effect collection of money or other consideration that becomes due and payable under the Nonassignable Assets, and Seller or the applicable Subsidiary shall promptly pay over to Buyer or the applicable Buyer Designee all money or other consideration received by it in respect to all Nonassignable Assets; provided, however, with respect to any Transferred Governmental Permit which is a Nonassignable Asset, Buyer shall be responsible to pay (or as reasonably necessary, reimburse Seller for) the expense of transferring such Transferred Governmental Permit to Buyer as contemplated by this Agreement; and provided further, that Seller shall be entitled to deduct from any money or other consideration collected by Seller and required to be paid over to Buyer or the applicable Buyer Designee as described in this sentence, the out-of-pocket reasonable costs actually incurred by Seller to collect such amounts for the benefit of Buyer and any applicable early termination fees or penalties payable by Seller in connection with the Nonassignable Assets, so long as Seller obtained Buyer's written consent prior to incurring such costs to collect such amounts or paying any such applicable early termination fees or penalties. If after the Closing Date any Nonassignable Asset becomes assignable (either because consent for the assignment or execution thereof is obtained or otherwise), Seller shall promptly notify Buyer and cooperate to assign or transfer such previously Nonassignable Asset to Buyer or the

applicable Buyer Designee. Further, the Parties agree that Transferred Contracts and other Purchased Assets which Seller requires to provide services pursuant to the Transition Services Agreement will not be transferred or assigned until the completion of the services under the Transition Services Agreement that require those Transferred Contracts and other Purchased Assets. Seller shall not terminate or materially extend, amend, modify or waive any right with respect to any such Transferred Contract without Buyer's prior written consent, not to be unreasonably withheld, conditioned or delayed.

(c) Buyer and Seller shall, and shall cause their respective Affiliates to, use their respective commercially reasonable efforts to obtain, or to cause to be obtained, any consent, substitution, approval, or amendment required to transfer all rights and obligations under any and all Transferred Contracts, Transferred Governmental Permits, certificates, approvals, licenses, authorizations or other rights or obligations or liabilities that constitute Purchased Assets or Assumed Liabilities or that are required to perform the obligations under the Collateral Agreements.

(d) From and after the Closing Date, Seller on behalf of itself and its Affiliates authorizes Buyer, to the extent permitted by applicable Law and the terms of the Nonassignable Assets, at Buyer's expense, to perform all the obligations and receive all the benefits of Seller or its Affiliates under the Nonassignable Assets and appoints Buyer its attorney-in-fact to act in its name on its behalf or in the name of the applicable Affiliate of Seller and on such Affiliate's behalf with respect thereto.

(e) Notwithstanding anything in this Agreement to the contrary, unless and until any consent or approval with respect to any Nonassignable Asset is obtained, such Nonassignable Asset shall not constitute a Purchased Asset and any associated liability shall not constitute an Assumed Liability for any purpose under this Agreement.

**2.6. Intellectual Property and Information.** Unless expressly set forth in this Agreement, the Intellectual Property License Agreement or in any Collateral Agreement, no title, right or license of any kind is granted to Buyer pursuant to this Agreement with respect to the Intellectual Property or Information owned or controlled by Seller or any Affiliate of Seller, either directly or indirectly, by implication, by estoppel or otherwise.

**2.7. Bulk Sales Law.** Buyer hereby waives compliance by Seller and any Subsidiary with the requirements and provisions of any "bulk-transfer" Laws of any jurisdiction (collectively, the "Bulk Sales Laws"), including Article 6 of the California Uniform Commercial Code, in each case that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer or a Buyer Designee.

**2.8. Taxes.**

(a) Buyer and any Buyer Designee shall be entitled to deduct and withhold from the consideration or any payment otherwise payable pursuant to this Agreement such amounts as Buyer or any Buyer Designee, as applicable, is required to deduct and withhold under the Code, or any Tax Law, with respect to the making of such payment. Such withheld amounts shall be paid to the applicable Governmental Body. To the extent that

amounts are so withheld and paid to the appropriate Governmental Body, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made. If Buyer or a Buyer Designee intends to deduct or withhold on account of Taxes with respect to any payments made pursuant to this Agreement, Buyer or such Buyer Designee shall use commercially reasonable efforts to provide reasonable advance notice to Seller (or such other Person to whom such amount is payable) of any amounts otherwise payable to Seller (or such other Person) that it intends to deduct and withhold. Notwithstanding anything herein to the contrary, and provided that Seller (or such other Person) provides the properly completed Form W-8, Form W-9 or other similar forms, including any applicable non-U.S. Tax forms, (as applicable) as the applicable Buyer or Buyer Designee reasonably requests and except to the extent otherwise required by Law, Buyer or Buyer Designee shall not be entitled to deduct and withhold from any amount payable or otherwise deliverable pursuant to this Agreement any amounts of Tax. If withholding of Tax is required under this Section 2.8(a), (i) Seller (or such other Person) shall be entitled to claim the benefit of any applicable Tax treaty in any non-U.S. jurisdiction in which withholding is required, (ii) Buyer or the applicable Buyer Designee shall reasonably cooperate in good faith with Seller (or other Person, as applicable) to facilitate any such claim and to minimize or eliminate, to the extent permitted by applicable Laws, any such withholding obligation, and (iii) Buyer or the applicable Buyer Designee shall provide the Person in respect of whom withholding is imposed such documentation to support such Person's claim of having paid the withheld amounts to the applicable taxing authorities.

(b) The payment for any sales, use, transfer, conveyance, stamp, registration, documentary, filing, recording, or similar fees or Taxes (collectively, the "Transfer Taxes") incurred in connection with the transfer of the Purchased Assets and the assumption of the Assumed Liabilities to and by, respectively, Buyer and Buyer Designees pursuant to this Agreement shall be borne solely by Buyer when due.

(c) Unless otherwise provided for in this Agreement, any consideration stated to be payable or to be borne under this Agreement is exclusive of any applicable Value Added Taxes. Notwithstanding anything to the contrary in this Agreement, any Taxes that are Value Added Taxes imposed on assets sold hereunder, to the extent such Taxes are fully recoverable by Buyer or the applicable Buyer Designee (or would have been recoverable or not chargeable if Buyer had designated a local entity registered for Value Added Tax purposes to acquire the assets and operate the acquired business in each applicable country), shall be borne solely by Buyer or Buyer Designees, buy only to the extent that a duly issued invoice has been provided by Seller or a Subsidiary to Buyer or the applicable Buyer Designee, which invoice may be subject to adjustment following the completion of the Asset Level Allocation Statement. In the case and to the extent of Value Added Taxes incurred in connection with the transactions contemplated hereby that are fully or partially recoverable by Buyer or a Buyer Designee, such Taxes shall be properly invoiced by Seller or its Subsidiaries to Buyer or Buyer Designee, as applicable, paid by Buyer or Buyer Designee to Seller or its Subsidiaries, as applicable, and remitted by Seller or its Subsidiaries, as applicable, to the relevant Governmental Body in accordance with applicable Law, and Buyer or Buyer Designee shall be entitled to such recovery. The Party prescribed by Law as primarily liable for the payment of such Value Added Taxes shall

prepare all necessary documents (including all Returns) with respect to all such amounts in a timely manner. For the avoidance of doubt, any adjustment to such documents resulting from changes to valuation shall not cause such documents to be considered untimely. The Parties shall use reasonable efforts and cooperate in good faith to determine the appropriate rate of Value Added Tax and/or, where available, to apply for specific relief for a “transfer of a going concern.” Consistent with the other provisions of this Section **Error! Reference source not found.**, in the event that the competent Tax authority determines that the transactions contemplated hereby do not qualify for such Value Added Taxes relief applied by the Parties, Seller shall charge Buyer Value Added Taxes due on the transactions contemplated hereby and deliver to Buyer a valid Value Added Taxes invoice within the time as may be required by applicable Law. Value Added Taxes should be paid by Buyer to Seller, in addition to the consideration payable pursuant to this Agreement, and Seller shall remit the Value Added Taxes to the relevant Governmental Body, in each case, within such timing as may be required or customary under applicable Law. Any related interest, and/or penalties and/or surcharges imposed by the applicable Governmental Body related to this Agreement will be paid by Seller, Buyer, or the Buyer's Designee, provided that the fault is exclusively attributable to them. If the fault resulting in interest, penalties, and/or surcharges is not exclusively attributable to one party, including any challenges to the application of any applicable exemptions from Value Added Taxes (such as the transfer of a going concern, zero-rating sales, etc.) as discussed and agreed by the Parties, then the Parties shall bear the interest, penalties, and/or surcharges equally.

(d) All real property Taxes (if any), personal property Taxes and similar ad valorem obligations (“Property Taxes”) levied with respect to the Purchased Assets for a Straddle Period shall be apportioned between Seller and Buyer based on the number of days of such Straddle Period, and Seller shall be liable for the proportionate amount of Property Taxes that is attributable to the Pre-Closing Tax Period within such Straddle Period, and Buyer shall be liable for the proportionate amount of Property Taxes that is attributable to the Post-Closing Tax Period within such Straddle Period. Any refund, rebate, abatement or other recovery of Property Taxes attributable to the Pre-Closing Tax Period shall be for the account of Seller, and any refund, rebate, abatement or other recovery of Property Taxes attributable to the Post-Closing Tax Period shall be for the account of Buyer. Upon receipt of any bill (or any refund, rebate, abatement, or other recovery) for such Property Taxes, Buyer or Seller, as applicable, shall present a statement to the other setting forth the amount of reimbursement to which each is entitled under this Section 2.8(d) together with such supporting evidence as is reasonably necessary to calculate the proration amount. The proration amount shall be paid by the Party owing it to the other within thirty (30) days after delivery of such statement. In the event that Buyer or Seller makes any payment for which it is entitled to reimbursement under this Section 2.8(d), the applicable Party shall make such reimbursement promptly but in no event later than thirty (30) days after the presentation of a statement setting forth the amount of reimbursement to which the presenting Party is entitled along with such supporting evidence as is reasonably necessary to calculate the amount of reimbursement. For the avoidance of doubt, Seller shall be responsible for and shall promptly pay when due all Property Taxes levied with respect to the Purchased Assets attributable to a Pre-Closing Tax Period.

(e) Following the Closing, Buyer and Seller shall cooperate as reasonably requested, so long as such request would not adversely impact Seller or its Affiliates, for the purpose of enabling the requesting Party to (i) make any election relating to Taxes, (ii) prepare Returns with respect to the Target Business or the Purchased Assets or (iii) to prepare for and defend audits or other Tax-related examinations by a Governmental Body with respect to the Target Business and the Purchased Assets.

(f) Seller and its Affiliates shall not permit any Tax deficiencies (including penalties and interest) of any kind assessed against or relating to Seller and its Affiliates with respect to any taxable periods ending on or before, or including, the Closing Date of a character or nature that would reasonably be expected to result in Liens (other than any Lien for Taxes that are not yet due and payable) or claims on any of the Purchased Assets or on Buyer's title or use of the Purchased Assets following the Closing or that would reasonably be expected to result in any claim against or liability of Buyer.

**2.9. Buyer Designee.** The Parties agree that Buyer may assign the right to purchase certain of the Purchased Assets to one or more Buyer Designees or that one or more Buyer Designees may enter into a Collateral Agreement. Notwithstanding any such assignment or execution of a Collateral Agreement by a Buyer Designee, Buyer shall remain liable for, and any such assignment or execution shall not relieve Buyer of, its obligations hereunder or thereunder. Any reference to Buyer in this Agreement shall to the extent applicable also be deemed a reference to the applicable Buyer Designee, except where in context of this Agreement such use would not be appropriate.

**2.10. Purchase Price.** In consideration of the grant, sale, transfer, assignment, conveyance and delivery by Seller and the Subsidiaries of the Purchased Assets to Buyer or a Buyer Designee, Buyer and/or a Buyer Designee(s) shall (i) pay to Seller or the applicable Subsidiary at the Closing an aggregate amount in cash equal to \$210,000,000.00, subject to adjustment pursuant to Section Error! Reference source not found. below (the "Closing Payment"), by wire transfer of immediately available funds to an account designated by Seller's written instructions to Buyer at least three (3) Business Days prior to the Closing Date, and (ii) assume the Assumed Liabilities upon the Closing pursuant hereto (the sum of the Closing Payment and the Assumed Liabilities, the "Purchase Price").

**3. Representations and Warranties of Seller.** Except as set forth in the Schedules attached hereto and delivered by Seller to Buyer prior to the execution of this Agreement, Seller represents and warrants to Buyer that as of the date of this Agreement and as of the Closing Date:

**3.1. Organization and Qualification.** Seller is a limited liability company duly organized and validly existing under the Laws of the State of Indiana and has all requisite limited liability company power and authority to carry on the Target Business as currently conducted by it and to own or lease and operate the Purchased Assets and conduct the Target Business as currently conducted. Seller is duly qualified to do business and is in good standing as a foreign corporation (in any jurisdiction that recognizes such concept) in each jurisdiction where the ownership or operation of the Purchased Assets or the operation or conduct of the Target Business requires such qualification, except where the failure to be so qualified or in good standing,

individually or in the aggregate, has not had and would not reasonably be expected to have a Seller Material Adverse Effect.

**3.2. Subsidiaries.** Schedule 3.2 sets forth a list of each Subsidiary of Seller that has title to any Purchased Asset or any Assumed Liability, together with its jurisdiction of organization. Each Subsidiary set forth in Schedule 3.2 is duly organized and validly existing and in good standing (in any jurisdiction that recognizes such concept) under the Laws of its jurisdiction of organization and has all requisite corporate or similar power and authority to own, lease and operate the Purchased Assets owned by it and to carry on its portion of the Target Business as presently conducted by it. Each Subsidiary of Seller set forth on Schedule 3.2 is duly qualified to do business and is in good standing as a foreign corporation or other entity (in any jurisdiction that recognizes such concept) in each jurisdiction where the ownership or operation of its properties and assets or the operation or conduct of the Target Business requires such qualification, except for failures to be so duly organized, validly existing, qualified or in good standing that, individually or in the aggregate, have not had and would not reasonably be expected to have a Seller Material Adverse Effect. The Subsidiaries listed on Schedule 3.2 are the only Subsidiaries of Seller that have title to any Purchased Asset or any obligation that is an Assumed Liability.

**3.3. Authorization; Binding Effect.**

(a) Seller has all requisite limited liability company power and authority to execute, deliver and perform this Agreement and the Collateral Agreements to which it will be a party and to consummate the transactions contemplated hereby and thereby, and the execution, delivery and performance of this Agreement and the Collateral Agreements to which it will be a party have been duly authorized by all requisite corporate action.

(b) Each Subsidiary that will be a party to a Collateral Agreement has all requisite corporate or similar power and authority to execute, deliver and perform the Collateral Agreements to which it will be a party and to consummate the transactions contemplated thereby, and the execution, delivery and performance of the Collateral Agreements to which it will be a party have been duly authorized by all requisite corporate or similar action.

(c) This Agreement has been duly executed and delivered by Seller and this Agreement is, and the Collateral Agreements to which Seller and any of its Subsidiaries will be a party when duly executed and delivered by Seller or such Subsidiary will be, valid and legally binding obligations of Seller or such Subsidiary, enforceable against Seller or such Subsidiary, as applicable, in accordance with their respective terms, except to the extent that enforcement of the rights and remedies created hereby and thereby may be affected by bankruptcy, reorganization, moratorium, insolvency and similar Laws of general application affecting the rights and remedies of creditors and by general equity principles.

**3.4. Non-Contravention; Consents.**

(a) Assuming that all Required Consents (as defined in Section 3.4(b)) have been obtained, the execution, delivery and performance of this Agreement by Seller and the Collateral Agreements by Seller or any of its Subsidiaries that is a party thereto and the consummation of the transactions contemplated hereby and thereby do not and will not: (i) result in a breach or violation of, or conflict with, any provision of Seller's or any of its Subsidiaries' charters, by-laws or similar organizational documents, (ii) violate or result in a breach of or constitute an occurrence of default under any provision of, result in the acceleration or cancellation of any obligation under, or give rise to a right by any party to terminate or amend its obligations under, any Contract to which Seller or a Subsidiary is a party or by which it is bound and which relates to the Target Business or the Purchased Assets, (iii) result in the imposition of any Encumbrance (other than Permitted Encumbrances) upon any of the Purchased Assets or the grant, assignment, or transfer to any other Person of any license or other right or interest under, to, or in any of Assigned Intellectual Property, or (iv) violate any applicable Law of any Governmental Body having jurisdiction over Seller, a Subsidiary that is party to a Collateral Agreement, the Target Business or the Purchased Assets, other than in the case of clauses (ii), (iii) and (iv), any such violations, breaches, defaults, accelerations or cancellations of obligations or rights that, individually or in the aggregate, are not and would not reasonably be expected to be material to the Target Business and would not reasonably be expected to materially impede or delay the Closing.

(b) No consent, approval, order or authorization of, or registration, declaration or filing with, any Person is required to be obtained by Seller or an Affiliate in connection with the execution, delivery and performance of this Agreement and the Collateral Agreements to which Seller or its Subsidiaries will be a party or for the consummation of the transactions contemplated hereby or thereby by Seller or a Subsidiary, except for (i) any filings required to be made under the HSR Act and any applicable filings required under foreign Antitrust Laws and (ii) consents or approvals of Governmental Bodies or other Third Parties that are required to transfer or assign to Buyer or a Buyer Designee any Purchased Assets, Assumed Liabilities, or assign the benefits of or delegate performance with regard thereto in any material respect, each of which are set forth in Schedule 3.4(b) (items (i) and (ii) being referred to herein as the "Required Consents") and (iii) such other consents, approvals, orders, authorizations, registrations, declarations or filings the failure of which to be obtained or made, individually or in the aggregate, are not and would not reasonably be expected to be material to the Target Business and would not reasonably be expected to materially impede or delay the Closing.

### **3.5. Purchased Assets.**

(a) Seller or a Subsidiary has and at the Closing will have good and valid title to, or a valid and binding leasehold interest or license in, all tangible Purchased Assets, free and clear of any Encumbrance, except for Permitted Encumbrances. At the Closing or at such other time as may be specified herein or in the Transition Services Agreement, Seller or a Subsidiary will transfer to Buyer or a Buyer Designee good and valid title to, or, if Seller or a Subsidiary has a leasehold interest or license, a valid and binding leasehold interest or license in, all tangible Purchased Assets, free and clear of any Encumbrance, except for Permitted Encumbrances. Except as set forth on Schedule 3.5(a), Seller or a



Subsidiary is the sole and exclusive owner of all Business Product Approvals, and neither Seller nor any Subsidiary has previously sold, licensed, or transferred in any manner, in whole or in part, directly or indirectly, other than to or among its Affiliates any of the Business Product Approvals.

(b) Schedule 3.5(b) sets forth a list, as of the date hereof, of the Principal Equipment (other than the Manufacturing Assets, which are listed on Schedule 1.1(b)) and the Purchased Leased Equipment. Each material item of Principal Equipment and each material item of Purchased Leased Equipment is in good operating condition and repair, subject to normal wear and tear, suitable for the purposes for which it is currently being used but is otherwise being transferred on a “where is” and, as to condition, “as is” basis.

(c) The Transferred Contracts, Purchased Assets, and Transferred Employees constitute all of the material tangible and intangible property, assets, personnel and rights of Seller or an Affiliate that are exclusively related to or used in the operation or conduct of the Target Business. Except for (i) the goods and services provided and Intellectual Property licensed under the Transition Services Agreement or the Intellectual Property rights licensed under the Intellectual Property License Agreement to the extent not otherwise included in the definition of “Purchased Assets,” and (ii) any billing, order entry, fulfillment, accounting, collections, finance, operations, engineering or other corporate centralized functional organizations within, or controlled by, Seller or an Affiliate, the Transferred Contracts, Purchased Assets and the Transferred Employees and the other rights acquired or licensed under this Agreement and the Collateral Agreements (including the licenses, goods and services to be provided pursuant to the Transition Services Agreement) are sufficient to permit Buyer to operate and conduct the Target Business in substantially the same manner as conducted by Seller immediately prior to the Closing. In the event this Section 3.5(c) is unintentionally breached because Seller or a Subsidiary has in good faith failed to identify and transfer any exclusive asset or property or provide any service necessary for the continued operation or conduct of the Target Business or the Purchased Assets following the Closing (with service time-bound by the duration of the TSA), such breach shall be deemed cured if Seller or the applicable Subsidiary, subject to Section 2.5(c), promptly, but in no event, later than thirty (30) days following such failure to identify and transfer, transfers such properties or assets, including Intellectual Property, provides such goods or services to Buyer or a Buyer Designee, or licenses such Intellectual Property, in each case, at no additional cost to Buyer or a Buyer Designee.

**3.6. Permits.** Schedule 2.1(e) contains a description of each Transferred Governmental Permit. The Transferred Governmental Permits set forth on Schedule 2.1(e) are valid and in full force and effect and no proceeding is pending or, to Seller’s Knowledge, threatened seeking the suspension, modification, limitation, or revocation of any such Transferred Governmental Permit. Schedule 3.6 sets forth a list, as of the date hereof, of all other material Permits that are primarily related to or used in the operation or conduct of the Target Business, other than the Transferred Governmental Permits, each of which is valid and in full force and effect. No penalty has been assessed, and no notice, citation, summons, complaint, or order has been filed or issued to Seller or any Subsidiary, related to any alleged failure by Seller to have any such Transferred Governmental Permit. No review, investigation, or other proceeding is pending or, to Seller’s Knowledge, threatened seeking the suspension, modification, limitation, or revocation of any such

Transferred Governmental Permit. Neither Seller nor any Subsidiary is in violation of or default under any Permit which, individually or in the aggregate, has had or would reasonably be expected to be material to the Target Business, and no event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Transferred Governmental Permit.

### **3.7. Compliance with Laws.**

(a) Except as set forth on Schedule 3.7, with respect to the Purchased Assets and the Target Business, Seller and each Affiliate is in compliance in all material respects with all applicable Law and all decrees, orders, judgments, writs, injunctions and Permits of or from Governmental Bodies by which the Target Business or the Purchased Assets are bound or affected. There are no citations, decisions, adjudications or statements, in each case issued by any Governmental Body, asserting that any Business Product is defective or unsafe or fails to meet the requirements of any applicable Law.

(b) Without limiting the generality of the foregoing, with respect to the Purchased Assets and the Target Business, neither Seller nor any of its Affiliates, nor to Seller's Knowledge, any agent, director, officer, employee or other Person associated with or acting on behalf of Seller or its Affiliates, has since January 1, 2021, directly or indirectly, taken, authorized or promised to take any action which would cause it to be in violation of any applicable Anti-Corruption Laws; used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, made any unlawful payment to any foreign or domestic government official or employee or to any foreign or domestic political party or campaign from corporate funds, or violated any money laundering Laws, or similar legislation in applicable jurisdictions or made any bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment to any person, except for instances of noncompliance or possible noncompliance that, individually or in the aggregate, have not been and would not reasonably be expected to be material to the Target Business or the Purchased Assets. With respect to the Purchased Assets and the Target Business, neither Seller nor any of its Affiliates has since January 1, 2021, received any written notice from any Governmental Body alleging any violation or alleged violation of Anti-Corruption Laws, discovered a violation as a result of an internal investigation or made a voluntary or directed disclosure to any Governmental Body, and, to Seller's Knowledge, there are not facts that would reasonably be expected to lead to such notice.

(c) With respect to the Purchased Assets and the Target Business, Seller and each Affiliate is, and has been for the past six (6) years, in compliance in all material respects with all applicable Trade Laws and Sanctions. Without limiting the foregoing, neither Seller (with respect to the Business Products), nor any of its officers, directors or employees, nor any Representative of Seller (with respect to the Business Products), is currently, or has been in the last six (6) years: (a) a Sanctioned Person, (b) organized or resident in a Sanctioned Country, or (c) engaged in any dealings or transactions, directly or indirectly, with any Sanctioned Person or in or with any Sanctioned Country. In the last six (6) years, all exports, re-exports, imports and transfers by Seller (with respect to the Business Products) have been effected in full compliance with Export-Import Laws. In the

last six (6) years, Seller has not (with respect to the Products) received from any Governmental Body or, to Seller's knowledge, any other Person any notice, inquiry, or internal or external allegation; made any voluntary or involuntary disclosure to a Governmental Body; or conducted any internal investigation or audit, in each case concerning any actual or potential violation of any Trade Laws.

**3.8. Litigation.** Except as set forth on Schedule 3.8, there is no action, suit, consent decree, proceeding, arbitration or governmental investigation pending or, to Seller's Knowledge, threatened by, against or involving Seller or any Affiliate, the Target Business or the Purchased Assets, (i) which seeks to restrain or enjoin the consummation of the transactions contemplated hereby or (ii) that could reasonably be expected to be material to the Target Business or the Purchased Assets. To Seller's Knowledge, there is no reasonable basis for any such action, suit, decree, proceeding, arbitration, or investigation not disclosed on Schedule 3.8 that could reasonably be expected to be material to the Target Business or the Purchased Assets.

**3.9. Business Employees.**

(a) (i) Schedule 3.9(a)(i) contains a complete and accurate list, as of the date hereof, of all the Business Employees, showing for each Business Employee their (A) name, (B) job title, (C) primary work location (country, state (if applicable) and city), (D) employing entity, (E) date of hire or service commencement date, (F) whether paid on a salary, hourly or otherwise, (G) current annual base salary, base wage rate or other wage, (H) immigration status, if any, (I) classification status of U.S. employees under the Fair Labor Standards Act and applicable state or local Law (i.e., exempt or non-exempt), (J) leave of absence status, if any (including, but not limited to, short- or long-term disability leave, military leave, maternity leave, family leave, and/or other administrative leave), (K) full-time or part-time status, (L) whether represented by a works council, union or other labor organization under an agreement to with Seller or any of its Subsidiaries is a party or otherwise subject, and the identity of such works council, union or other labor organization, (M) general eligibility for current annual incentive/bonus or commission opportunity, and (N) accrued, but unused, paid time off, Rollover PTO, sick leave and other leave. There are no individual or sole proprietor independent contractors or consultants engaged by Seller or any of its Subsidiaries who exclusively provide services to the Target Business.

(ii) Except as set forth on Schedule 3.9(a)(ii), no Business Employee or other employee or independent contractor of Seller or any of its Subsidiaries who is providing services for the Target Business is covered by any union, collective bargaining or other similar labor agreement to which Seller or any of its Subsidiaries is a party or otherwise subject (including any agreement with any works council, labor or trade union or other similar labor-relations entity). Except as set forth on Schedule 3.9(a)(ii), (A) there are no pending or, to Seller's Knowledge, threatened union, works council, employee representative or similar labor organizing activities or arrangements with respect to any Business Employee in their capacity as such or the Target Business with Seller or its Subsidiaries; (B) in the three (3) years prior to the date hereof, there has been no labor dispute, other

than routine individual grievances, or, to Seller's Knowledge, any material activity or proceeding by a works council, labor union or trade union or similar labor-relations entity or representative thereof to organize the Business Employees or any other employees or independent contractors of Seller or any of its Subsidiaries who provide services for the Target Business, or any lockouts, strikes, slowdowns, work stoppages or, to Seller's Knowledge, threats thereof by or with respect to the Business Employees or the Target Business; and (C) neither Seller nor any of its Subsidiaries is a party to or bound by any union, collective bargaining or other similar labor agreement (including any agreement with any works council, labor or trade union or other similar labor-relations entity) that covers any individuals providing services for the Target Business.

(iii) No unfair labor practice, labor dispute or labor charge or complaint is pending or to Seller's Knowledge threatened with respect to any Business Employee in their capacity as such or the Target Business.

(iv) Except as set forth on Schedule 3.9(a)(iv), there is no union, works council, employee committee or representative or other labor organization, which, pursuant to applicable Law, Contract or past practice, must be notified or consulted or with which negotiations need to be conducted in connection with the transactions contemplated by this Agreement.

(b) Schedule 3.9(b) contains a complete and accurate list, as of the date hereof, of each Benefit Plan that covers one or more Business Employees (collectively, the "Business Employee Plans"). With respect to each of the Business Employee Plans, Seller has made available to Buyer true and complete copies of, to the extent applicable, (i) the most recent plan document (including all amendments thereto) or, if a written plan document does not exist, a written description describing all material terms thereof, (ii) the applicable trust agreement, insurance contract or other funding arrangement, (iii) the most recent letter received from a Governmental Body regarding the tax-qualified status of such Business Employee Plan (including any IRS determination or opinion letter), (iv) the two most recent annual report (including on Form 5500), financial statements and actuarial valuation report, (v) any material, non-routine correspondence with a Governmental Body during the past three (3) years, and (vi) the most recent summary plan description, including any summaries of material modifications to such summary plan description, and summaries of benefits and coverage.

(c) Each Business Employee Plan and related trust that is intended to be qualified under Section 401(a) of the Code is so qualified and has received a favorable determination letter or may rely on an opinion letter from the IRS as to its qualification in form under the Code, and, to Seller's Knowledge, no event has occurred or conditions exist that could reasonably be expected to cause the loss of such qualified status. To Seller's Knowledge, nothing has occurred with respect to any Business Employee Plan that could reasonably be expected to subject, Buyer or any of its Affiliates to a penalty under Section 502 of ERISA or Tax under Sections 4975 or 4980H of the Code.

(d) No Business Employee Plan provides post-employment or post-service health, welfare, or life insurance benefits other than as required under COBRA or other similar applicable Law. No Business Employee Plan is, and none of Seller, any Subsidiary or any ERISA Affiliate sponsors, maintains, participates in, contributes to (or is obligated to contribute to), or has within the past six (6) years sponsored, maintained, participated in, contributed to, incurred an obligation to contribute to, or has any liability (contingent or otherwise) with respect to: (i) any “multiemployer plan” as defined in Section 3(37) or 4001(a)(3) of ERISA, (ii) any “employee pension benefit plan” as defined in Section 3(2) of ERISA that is subject to Title IV of ERISA, Part 3 of Title I of ERISA or Section 412 of the Code, (iii) any “multiple employer plan” as defined in ERISA or the Code or (iv) any “multiple employer welfare arrangement” as defined under Section 3(40)(A) of ERISA (without regard to Section 514(b)(6)(B) of ERISA).

(e) Each Business Employee Plan (including a Non-U.S. Benefit Plan or any Benefit Plan covering one or more Business Employees that is otherwise not subject to ERISA or the Code) has been established, administered, and maintained in compliance in all material respects with its terms and with the requirements prescribed by any and all applicable Law (including without limitation ERISA, the Code, and any special provisions relating to the tax status of contributions to, earnings of or distributions from such Benefit Plan where each such Benefit Plan was intended to have such tax status). Neither Seller nor any Subsidiary is a party to any agreement, contract or arrangement that provides for, or is otherwise required or obligated to make a payment that would constitute, nonqualified deferred compensation (as defined in Section 409A(d)(1) of the Code) with respect to any Business Employee that does not comply with or satisfy an exemption from Code Section 409A.

(f) Each Business Employee Plan that is a Non-U.S. Benefit Plan (i) has obtained from the Governmental Body having jurisdiction with respect to such Business Employee Plan any determination or registration required to give effect to such Business Employee Plan, if applicable, (ii) if it is intended to qualify for special tax treatment, satisfies in all material respects the requirements for such treatment and (iii) to the extent providing pension, termination indemnities, long-service awards, jubilee payments, post-termination welfare benefits or similar payments or benefits is listed on Schedule 3.9(f) and is fully secured by an insurance policy or is fully funded or book reserved, as applicable, in accordance GAAP or other applicable accounting standards.

(g) Except as provided in Schedule 3.9(g), neither the execution or the delivery of this Agreement nor the consummation of the transactions contemplated hereby, in each case, whether alone or in conjunction with any other event, will (i) result in any payments or benefits becoming due to any Business Employee, (ii) increase the amount of or result in the acceleration of the time of payment, funding or vesting or result in the forfeiture of compensation or benefits under any Business Employee Plan, (iii) result in or entitle any Business Employee to any loan forgiveness or (iv) give rise to any payment or benefit that could reasonably be expected to be characterized as an “excess parachute payment” within the meaning of Section 280G of the Code.

(h) There is no action, suit, consent decree, proceeding, arbitration or governmental investigation pending or, to Seller's Knowledge, threatened relating to a Business Employee Plan (other than routine claims for benefits), and no Business Employee Plan has within the three (3) years prior to the date hereof been the subject of an examination or audit by a Governmental Body or the subject of an application or filing under or is a participant in, an amnesty, voluntary compliance, self-correction or similar program sponsored by any Governmental Body.

(i) With respect to the Target Business, there is not presently pending, existing or, to Seller's Knowledge, threatened, (i) any strike, slowdown, picketing, or work stoppage, (ii) any application for certification of a collective bargaining agent, (iii) any material controversies or material disputes pending or to Seller's Knowledge threatened between Seller or any Subsidiary and any of its employees, or (iv) any material claims, material litigation or material disputes by a works council or other employee representative body, or an applicable Governmental Body against Seller or any of its Subsidiaries.

(j) Except as set forth on Schedule 3.9(j), in the three (3) years prior to the date hereof, there have been no labor or employment-related litigations, administrative proceedings, arbitrations, audits or investigations in effect, pending, or to Seller's Knowledge threatened regarding any Business Employee in their capacity as such, any employee or independent contractor of Seller or any of its Subsidiaries who provides services for the Target Business in their capacity as such, or the Target Business, at law or in equity, or before or by any Governmental Body or arbitrator.

(k) Seller and its Subsidiaries are, and for the past three (3) years have been, in compliance, in all material respects, with all applicable Law regarding labor, employment and/or employment practices, including all applicable Law regarding terms and conditions of employment, health and safety, wages and hours (including the classification of independent contractors and exempt and non-exempt employees), immigration (including the completion of Forms I-9 for all employees and the proper confirmation of employee visas), harassment, discrimination, retaliation, whistleblowing, disability rights and benefits, equal opportunity, plant closures and layoffs, employee trainings and notices, workers' compensation, labor relations, leaves of absences, COVID-19, affirmative action and/or unemployment insurance, with respect to any Business Employee, the Target Business and/or any former employee, independent contractor or other service provider who provided services to the Target Business.

(l) Neither Seller nor any of its Subsidiaries has engaged in any material unfair labor practices within the meaning of the National Labor Relations Act or similar state, local or foreign agency in the preceding twelve (12) month period, with respect to any Business Employee or the Target Business.

(m) Neither Seller nor any of its Subsidiaries in the past three (3) years has become a party to a settlement agreement resolving claims or allegations made of sexual harassment or sexual misconduct against a current executive-level Business Employee or former executive-level employee of Seller or any of its Subsidiaries, who provided services to the Target Business in their capacities as such.

(n) Except as set forth in Schedule 3.9(n), Seller and its Subsidiaries have not experienced or implemented a “plant closing” or “mass layoff” as defined in the WARN Act affecting any single site of employment or one or more facilities or operating units within any single site of employment of Seller and any of its Subsidiaries during the past three (3) years involving the Target Business. In the twelve (12) months prior to the date of this Agreement, Seller and its Subsidiaries have not carried out any “employment loss” (as such term is defined in the WARN Act), temporary layoffs, or hours or pay reductions that would, in the aggregate, require notice under the WARN Act.

(o) The Business Employees are lawfully authorized and have provided appropriate documentation to work in the jurisdiction in which they are working.

(p) Schedule 3.9(a)(i) sets forth, as of the date hereof, the immigration status for all U.S. based Business Employees who are not U.S. citizens or permanent residents and lists any Business Employees based outside of the United States that are not citizens or permanent residents of the jurisdiction in which they perform services. No Business Employee is working on assignment or secondment for Seller or one of its Affiliates while employed by Seller or a different Affiliate located in a different country.

(q) Each Business Employee subject to the terms of a form employment contract, offer letter, or employment agreement is employed on terms materially the same as or consistent with the general terms set forth in the applicable form employment contract, offer letter or employment agreement which Seller has made available to Buyer and which Seller has indicated is used by Seller or its Affiliates in the location in which such Business Employee is working. Seller and its Subsidiaries are in compliance in all material respects with all employment contracts, offer letters and employment agreements that any one of them has with any Business Employee.

### **3.10. Contracts.**

(a) Schedule 3.10(a) contains a complete and accurate list, as of the date hereof, of the Transferred Contracts (other than purchase orders, pricing acknowledgements, confirmations and similar documents) (collectively, the “Material Contracts”). Schedule 3.10(a) identifies any Material Contracts that fall under any of the following categories of Contracts that, in each case, relate to the Target Business:

(i) that involve or could reasonably be expected to involve payments by or to Seller or a Subsidiary of either more than \$250,000 per year or more than \$500,000 in the aggregate over the full term thereof;

(ii) with any one of the Top Customers;

(iii) with any one of the Top Suppliers;

(iv) that contain any provision or covenant prohibiting or limiting the ability of Seller or a Subsidiary to (A) engage in any activity (including geographical restrictions), (B) to compete in any line of business, directly or indirectly, with any Person;

(v) pursuant to which Seller or any of its Subsidiaries is bound to, or has committed to provide or license any Business Product, or Purchased Asset to any Third Party including any reseller or distributor of products (including the Top Distributors) other than Contracts for sales of Business Products in the ordinary course of business pursuant to Seller's standard terms and conditions that have been provided to Buyer or to acquire or license any product, Intellectual Property or service from a Third Party;

(vi) that provide for "most favored nation" terms, including such terms for pricing;

(vii) that create or obligate Seller or a Subsidiary to participate in any joint venture or similar arrangement;

(viii) that contain maintenance, warranty, support or similar obligations, other than as set forth on the standard terms and conditions of sale included in Schedule 3.15(a);

(ix) for any distributor, original equipment manufacturer, reseller, value added reseller, sales, agency or manufacturer's representative relationships that is material to the Target Business or the Purchased Assets, including any with respect to the Business Products;

(x) that provide for Intellectual Property that is exclusively related to or exclusively used in the operation or conduct of the Target Business and is licensed from a Third Party to Seller or any of its Subsidiaries;

(xi) providing for the development of any Business Intellectual Property, independently or jointly, by or for Seller or any of its Affiliates;

(xii) under which any Business Intellectual Property is licensed, assigned, or transferred by Seller or any of its Affiliates to a Third Party;

(xiii) that is with any Governmental Body, university, or research organization;

(xiv) that is a Contract obligating Seller or any of its Subsidiaries to purchase or otherwise obtain any product or service exclusively from a single party or sell any product or service exclusively to a single party;

(xv) that involve, include or otherwise require Seller or any of its Subsidiaries to share profits or pay milestones, royalties or any other contingent payments with or to one or more other Persons; and

(xvi) that constitute any other agreement, commitment, arrangement, or plan not made in the ordinary course of business that is otherwise material to the Target Business.



(b) Each Material Contract is valid, binding, and enforceable against Seller or the applicable Subsidiary and, to Seller's Knowledge, the other parties thereto in accordance with its terms and is in full force and effect. Neither Seller nor any Subsidiary is in default under or in breach of or is otherwise delinquent in performance under any Material Contract (and neither Seller nor any Subsidiary has received any notice alleging any such default, breach, or delinquency). To Seller's Knowledge, each of the other parties thereto has performed all obligations required to be performed by it under, and is not in default under, any Material Contract and no event has occurred that, with notice or lapse of time, or both, would constitute such a default, except for breaches, failures of performance or defaults that would not reasonably be expected to be material to the Target Business or the Purchased Assets. Seller or a Subsidiary has made available to Buyer true and complete copies of all Material Contracts.

### **3.11. Financial Statements.**

(a) Schedule 3.11(a) contains complete copies of the statements setting forth the revenue and specified direct expenses of the Target Business for each of the fiscal year ending December 31, 2022 and December 31, 2023 (collectively, the "Financial Statements"). The Financial Statements have been derived from and have been prepared in accordance with the books and records of Seller and the Subsidiaries (which are accurate and complete in all material respects) on a consistent basis throughout the periods covered thereby and are in accordance with GAAP (except for the omission of footnotes and normal year-end adjustments and any potential adjustments relating to Taxes and Tax adjustments) and Seller's standard accounting policies and procedures and present fairly the performance of the Target Business for such periods. Seller has no reason to believe that such Financial Statements are incorrect or misleading in any material respect. Seller has not received or booked any prepaid revenues for the Target Business applicable to performance due after the Closing Date.

(b) The books of account and other financial records of the Target Business have been kept accurately in the ordinary course of business consistent with applicable Law, the transactions entered therein represent bona fide transactions, and the revenues, expenses, assets and liabilities of the Target Business have been properly recorded therein in all material respects.

(c) The Assumed Liabilities do not include any liabilities or obligations of any type or nature, except for liabilities or obligations incurred in the ordinary course of business consistent with past practice.

(d) Since December 31, 2023, (i) Seller and its Subsidiaries have conducted the Target Business in the ordinary course of business consistent with past practice, (ii) there has not been any Seller Material Adverse Effect and (iii) Seller and its Subsidiaries have not taken any action that, if proposed to be taken after the date hereof, would require the consent of Buyer under Section 5.2.

(e) Except (i) as set forth on Schedule 3.11(e), (ii) liabilities reflected in the Financial Statements, and (iii) liabilities incurred by Seller in the ordinary course of

business since December 31, 2023 and which are not, individually or in the aggregate, material, Seller has not incurred any liabilities or obligations arising out of or related to the Business Products, the Purchased Assets or the exploitation of the Business Products (as conducted by Seller as of the date hereof) of any kind whatsoever, whether accrued, fixed, absolute, contingent, known, unknown, determined, determinable or otherwise (and whether due or becoming due).

### **3.12. Intellectual Property.**

(a) Seller or one of its Affiliates owns exclusively all right, title and interest in and to the Assigned Intellectual Property, free and clear of all Encumbrances. Seller and its Affiliates have not received any notice or claim challenging Seller's or any of its Affiliates' ownership or rights under any Business Intellectual Property or suggesting that any other Person has any claim of legal or beneficial ownership or interest in, or exclusive rights with respect to, any Assigned Intellectual Property, nor to Seller's Knowledge is there a reasonable basis for any such claim. Schedule 3.12(a)(i) contains a complete and accurate list, as of the date hereof, of all Patents that are exclusively related to or exclusively used in the operation or conduct of the Target Business and owned by Seller (the "Assigned Patents"). Schedule 3.12(a)(ii) contains a complete and accurate list, as of the date hereof, of all registered Trademarks and pending applications for registration of Trademarks that are exclusively related to or exclusively used in the operation or conduct of the Target Business, including the distribution and sale of the Business Products (the "Assigned Trademarks" and together with the Assigned Patents, the "Assigned Registered IP"). There are no registered Copyrights, pending applications for registration of Copyrights or unregistered Copyrights, except non-material Copyrights in the Business Records that are exclusively related to or exclusively used in the operation or conduct of the Target Business. There are no Trade Secrets that are exclusively related to or exclusively used in the operation or conduct of the Target Business. There are no Internet domain names or any registrations therefor, or social media accounts that are exclusively related to or exclusively used in the operation or conduct of the Target Business. There is no Software, other than Standard Software and Software provided under the Transition Services Agreement, that is exclusively related to or exclusively used in the operation or conduct of the Target Business. There are no Contracts pursuant to which Seller or an Affiliate has the right to use any Intellectual Property or Information of one or more Persons that is exclusively related to or exclusively used in the operation or conduct of the Target Business. To Seller's Knowledge, Seller or its legal counsel has in its possession and will provide to Buyer promptly and in no event later than ninety (90) days following the Closing Date, complete and accurate copies of all applications, material correspondence with Governmental Bodies or registration organizations, and other material documents related to each such item of Assigned Registered IP. Each of Schedule 3.12(a)(i) or (ii), as applicable, sets forth a complete and accurate listing, as of the date hereof, of the jurisdiction in which each item of Assigned Registered IP has been registered or filed, the applicable registration or serial number or similar identifier, the next action due for each item of Assigned Registered IP, and applicable issuance, registration or grant date. Other than communications with Governmental Bodies or registration organizations in the ordinary course of the prosecution of the Assigned Registered IP, neither Seller nor any of its Affiliates has received any notice or claim challenging the validity or enforceability of

any of the Assigned Intellectual Property or indicating an intention on the part of any Person to bring a claim that any of the Assigned Intellectual Property is invalid or unenforceable, nor to Seller's Knowledge is there a reasonable basis for any claim that any of the Assigned Registered IP is either invalid or unenforceable. All Assigned Registered IP has been registered or obtained in accordance with all applicable legal requirements, and Seller has timely paid all filing, examination, issuance, post registration and maintenance fees and annuities associated with or required with respect thereto. None of the Assigned Registered IP has been in the past six (6) years or is currently involved in any interference, reissue, reexamination, opposition, cancellation, or similar proceeding and, to Seller's Knowledge, no such action is threatened. Neither Seller nor any of its Affiliates has, to Seller's Knowledge, taken any action or failed to take any action that would result in the abandonment, cancellation, forfeiture, relinquishment, invalidation, or unenforceability of any Assigned Intellectual Property.

(b) Except as set forth in Schedule 3.12(b),

(i) neither the operation and conduct of the Target Business by Seller and its Affiliates, nor the use, marketing, sale, import, export, and manufacture of Business Products or the Purchased Assets, nor use of the Business Intellectual Property, by Seller and its Affiliates, have not and do not infringe, misappropriate or otherwise violate, any Intellectual Property rights of any Third Party;

(ii) there is no suit, or proceeding pending against or, to Seller's Knowledge, threatened against, the Target Business, Business Intellectual Property, or the Business Products, including any such suit, proceeding, claim, agreement, or stipulation (x) based upon, or challenging or seeking to deny or restrict, the rights of Seller or any of its Affiliates in any of the Business Intellectual Property, (y) alleging that the use of the Business Intellectual Property, the Purchased Assets, or any other services, processes, or services provided, processes used, or products manufactured, used, imported, exported, marketed, offered for sale or sold with respect to the Target Business conflict with, misappropriate, infringe or otherwise violate any Intellectual Property rights of any Third Party, or (z) alleging that Seller or any of its Affiliates infringed, misappropriated, or otherwise violated any Intellectual Property rights of any Third Party in connection with the operation of the Target Business or the use of the Purchased Assets;

(iii) to Seller's Knowledge, no other Person is infringing, misappropriating or otherwise violating any Business Intellectual Property rights that are material to the conduct of the Target Business or the Purchased Assets as currently conducted or as currently planned to be conducted;

(iv) no legal action, suit, arbitration, audit, claim, hearing, investigation or proceeding (whether federal, state, local or foreign) for infringement, misappropriation, dilution or violation is pending or, to Seller's Knowledge, has been threatened against any Person by Seller or any of its Affiliates, nor to Seller's Knowledge is there a reasonable basis for any such claim; and

(v) (A) there exists no restrictions on the disclosure, use, license or transfer of the Business Intellectual Property (other than the restrictions imposed in the Intellectual Property License Agreement, or by applicable Law); and (B) the consummation of the transactions contemplated by this Agreement will not alter, impair or extinguish any of the Business Intellectual Property or rights therein.

(c) At the Closing, Seller or one of its Affiliates will assign to Buyer the Assigned Intellectual Property in accordance with the applicable assignment agreements and will license to Buyer or Buyer Designee the Licensed Intellectual Property, in accordance with the Intellectual Property License Agreement. Other than Standard Software, the Business Intellectual Property constitutes all the Intellectual Property and Information related to or used in the operation or conduct of the Target Business and is sufficient to permit Buyer to conduct the Target Business immediately following the Closing in substantially the same manner as it is currently conducted. Following the Closing, Buyer will be permitted to exercise all of the rights of Seller, including under Business Intellectual Property, to the same extent Seller would have been able had the transactions contemplated by this Agreement and the Collateral Agreements not occurred and without the payment of any consideration.

(d) None of the Business Intellectual Property has been adjudged invalid or unenforceable in whole or part and, to Seller's Knowledge, all Business Intellectual Property is valid and enforceable.

(e) Seller and its Affiliates have taken reasonable actions to maintain and protect the Assigned Intellectual Property, including payment of applicable maintenance fees and filing of applicable statements of use.

(f) Schedule 3.12(f) contains a complete and accurate list, as of the date hereof, of all material Information (other than Open Source Materials) that is not owned by Seller or its Affiliates and is embedded in, incorporated into or distributed by Seller with the Business Products ("Third Party Components"), in each case identifying (i) the Business Product associated with such Third Party Component and (ii) the license or other agreement granting Seller or any of its Affiliates rights in and to such Third Party Component.

(g) Schedule 3.12(g) contains a complete and accurate list, as of the date hereof, of all Contracts pertaining to licenses or rights Seller has granted, or otherwise agreed not to assert or enforce, with regard to any of the Assigned Intellectual Property. Seller has not granted any licenses or other rights under, or otherwise agreed not to assert or enforce, the Assigned Intellectual Property, except for as provided in the Contracts listed in Schedule 3.12(g).

(h) Seller and its Affiliates have taken reasonable steps to maintain the confidentiality of all assigned Trade Secrets and all material confidential information, including Business Data and Information, to the Target Business and other information that at any time constituted a Trade Secret relating to the Target Business ("Business Trade Secrets"), including taking reasonable steps to ensure that any Business Trade Secrets disclosed by Seller or any of its Affiliates to a Third Party are subject to the confidentiality

undertakings set forth in an applicable valid, enforceable, and written non-disclosure agreement. To Seller's Knowledge, there has been no unauthorized access, use or misappropriation of any Business Trade Secrets. Seller and its Affiliates have not disclosed, nor is Seller or any of its Affiliates under any contractual or other obligation to disclose, to another Person any Business Trade Secrets, except pursuant to a valid, enforceable, and written confidentiality agreement or undertaking, and, to Seller's Knowledge, no Person has breached any such agreement or undertaking. Without limiting the generality of the foregoing, Seller has and enforces in a commercially reasonable manner a policy requiring each Business Employee and independent contractor who has participated in or has made any contributions to the creation of any Business Intellectual Property or has had access to any Business Trade Secrets to enter into, and each such Business Employee and independent contractor has entered into, a valid, enforceable, and written non-disclosure and invention assignment agreement having the same or substantially similar provisions to Seller's standard forms (which have previously been provided to Buyer) that provides for (i) the non-disclosure by such Person of any of Seller's or any of its Affiliates' or licensors' confidential information, (ii) the assignment by such person to Seller or any of its Affiliates of all Intellectual Property relating to the Target Business and arising out of such person's employment or engagement by, or contract with, Seller or any of its Affiliates, and (iii) no use by such Person of any of Seller's or any of its Affiliates' or licensors' confidential information except for approved purposes.

(i) Neither Seller nor any of its Affiliates is or ever was a member or promoter of, or a contributor to, any industry standards body or similar organization that could require or obligate Seller or any such Affiliate to grant or offer to any other Person any license or right to or otherwise impair Seller's or its Affiliates' control of any Business Intellectual Property.

(j) To Seller's Knowledge, no Business Employee or independent contractor of Seller or any of its Affiliates who is engaged in connection with the Target Business is obligated under any agreement or subject to any judgment, decree or order of any court or Governmental Body, or any other restriction that could reasonably be expected to materially interfere with such Business Employee or independent contractor carrying out his or her duties for Seller or such Affiliates, as applicable, or that could reasonably be expected to materially conflict with the Assigned Intellectual Property, the Licensed Intellectual Property, the Purchased Assets, or the Target Business as presently conducted or presently planned to be conducted. No funding, facilities, or personnel of any Governmental Body were used, directly or indirectly, to develop, invent or create, in whole or in part, any Business Intellectual Property.

(k) The information technology assets constituting Principal Equipment (the "Business IT Assets") are designed, implemented, operated and maintained in accordance with customary industry standards and practices for entities operating businesses similar to the Target Business, including with the respect to redundancy, reliability, scalability and security. The Business IT Assets are adequate for and operate and perform in all material respects as required in connection with the operation of the Target Business as currently conducted and as currently planned to be conducted. Seller and each of its Affiliates have in effect industry standard disaster recovery plans, procedures and facilities for its business

and have taken all reasonable steps to safeguard the security and the integrity of the Business IT Assets. Seller and its Affiliates have undertaken all reasonably necessary surveys, audits, inventories, reviews, analyses and/or assessments (including any necessary risk assessments and risk analyses) of the Target Business and operations required by Data Protection Requirements. None of the Business IT Assets contain any “back door,” “drop dead device,” “time bomb,” “Trojan horse,” “vulnerability,” “virus,” or “worm” (as such terms are commonly understood in the software industry) or any other code designed or intended to have, or capable of performing, any of the following functions: (i) disrupting, disabling, harming or otherwise impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device; or (ii) damaging or destroying any data or file without the user’s consent. Except as set forth in Schedule 3.12(k), since January 1, 2018, there have been no unauthorized intrusions or breaches of security with respect to the Business IT Assets, that have resulted in the unauthorized acquisition, destruction, damage, disclosure, loss, corruption, alteration, or use of any Personal Information or other Business Data (“Security Incident”) in the possession, custody or control of Seller or its Affiliates, which has required notification to any Person (including any Governmental Body). To Seller’s Knowledge, no subcontractor of Seller or any of its Affiliates has experienced a Security Incident or made or has been required to make any disclosure or notification pursuant to the applicable Data Protection Requirements in connection with any Security Incident with respect to any Personal Information or other Business Data provided by it to Seller or any of its Affiliates. Seller and each of its Affiliates have implemented any and all security patches or upgrades that are generally available for the Business IT Assets.

(l) Since January 1, 2018, Seller and its Subsidiaries are and have been operating in material compliance with applicable Data Protection Requirements. To the extent required by Data Protection Requirements, Seller and its Subsidiaries have adopted and published Privacy Policies that accurately describe the privacy practices of Seller and its Subsidiaries (as applicable), to any website, mobile application or other electronic platform and complied with those notices and policies, and no such notices or disclosures have been inaccurate, misleading or deceptive. Seller and each of its Affiliates take and has taken reasonable measures designed to ensure that Personal Information is protected against unauthorized access, loss, damage, use, sharing, modification, or other misuse other than as expressly described in the Privacy Policies, and there has been no unauthorized access, loss, damage use, sharing, modification, or other misuse of any Personal Information by Seller or any of its Affiliates.

(m) To Seller’s Knowledge, no Person (including any Governmental Body) has asserted or commenced any action, suit, decree, proceeding, arbitration or investigation with respect to any alleged violation of the applicable Data Protection Requirements or any data privacy or security practices of Seller or its Affiliates, including any loss, damage or unauthorized access, use, disclosure or modification of any Personal Information or other Business Data maintained by, or on behalf of, Seller or its Affiliates. The execution, delivery and performance of this Agreement complies in all material respects with the applicable Data Protection Requirements.

(n) Seller and its Subsidiaries have the necessary authority, rights, consents and authorizations to Process any Personal Information maintained by or on behalf of Seller and its Subsidiaries to the extent required in connection with the operation of the Target Business as currently conducted.

### **3.13. Business Product Liability and Recalls.**

(a) Each Business Product produced or sold is in compliance in all material respects with all applicable Law. There is no design or manufacturing defect, bug or error that: (i) has been established or is being investigated with respect to any Business Product, or (ii) has resulted in, or could reasonably be expected to result in death, personal injury, or property damage, or other material liabilities for returns or other product liability claims with respect to any Business Product.

(b) Except as set forth in Schedule 3.13(b), since January 1, 2021, there has been no action, suit, claim, inquiry, proceeding or investigation in any case by or before any court or Governmental Body and Notified Body pending or, to Seller's Knowledge, threatened against or involving the Target Business or relating to any Business Product, including any action, suit, claim, inquiry, proceeding or investigation alleging that any Business Products have been defective or improperly designed or manufactured, nor has there been any pattern of product failure relating to any Business Product designed, manufactured or sold or offered for sale by the Target Business.

(c) Except as set forth in Schedule 3.13(c), since January 1, 2021, there has been no pending, or to Seller's Knowledge, threatened Recall or investigation of any Business Product and, to Seller's Knowledge, no condition or circumstance exists, that (with or without notice or lapse of time) would directly or indirectly be expected to give rise to or serve as the basis for any Recall or investigation.

### **3.14. FDA and Regulatory Matters.**

(a) Since January 1, 2018, Seller and its Subsidiaries are in compliance in all material respects with all applicable Healthcare Laws regarding registration, license and certification for each site at which a business Product is manufactured, labeled, sold, or distributed. To the extent that any Business Product is exported from the United States, Seller has exported such Business Product in compliance in all material respects with applicable Law since January 1, 2018. All design, development and manufacturing operations performed by or on behalf of Seller are currently being conducted in material compliance with the Quality Systems Regulations of the FDA (21 C.F.R. Part 820), Good Manufacturing Practices at 21 C.F.R. 210, 211, and, to the extent applicable, counterpart Law of all other jurisdictions where compliance is required. Seller is currently in material compliance with all applicable Law relating to the maintenance, compilation and filing of reports, including Medical Device Reports (as defined in 21 CFR Part 803), with regard to the Business Products. Except as set forth in Schedule 3.14(a), since January 1, 2018, with regards to or which would impact the Business Products, Seller has not received from the FDA or any other Governmental Body or Notified Body (i) any written notice contesting the pre-market clearance or approval of, the uses of or the labeling and promotion of any

Business Product, or (ii) any notice of adverse findings, FDA Form 483s, notices of violations, warning letters, criminal proceeding notices under any Law, or other similar communication from the FDA or other Governmental Body or Notified Body alleging or asserting material noncompliance with any Law.

(b) With respect to all Business Products Seller or a Subsidiary and since January 1, 2018, (i) has obtained all applicable Business Product Approvals required by FDA or any other Governmental Body or Notified Body to develop, test, manufacture, market, store, distribute and sell each of the Business Products and in compliance with applicable Law, including without limitation all clearances under Federal Food, Drug, and Cosmetic Act § 510(k), and all approvals, authorizations, registrations, or clearances in any jurisdiction where Seller or any Subsidiary conducts such activities with respect to each of the Business Products and (ii) has made all filings with, and given all notifications to FDA and all other applicable Governmental Bodies and Notified Bodies in all material respects as required by all applicable Law, and all such filings, reports and notifications were complete and accurate on the date filed (or were corrected in or supplemented by a subsequent filing). There is no proceeding pending or, to Seller's Knowledge threatened in writing that could result in the suspension, termination, revocation, cancellation, limitation or impairment of any Business Product Approval, filing or notification, or Business Product research, development, testing, manufacturing, marketing, distribution or sales activities. Seller has made available to Buyer accurate and complete copies, as of the date hereof, of all of the Business Product Approvals for all Business Products identified in Schedule 2.1(a), including all renewals thereof and all amendments thereto.

(c) Since January 1, 2018, Seller's or any Subsidiary's labeling or other promotional or informational material regarding coding or billing relating to any Business Product is accurate, and Seller has not caused any health care provider or other entity to submit any false claims under 31 U.S.C. §§ 3729-3733 or any similar Healthcare Law. Since January 1, 2018, Seller's marketing practices regarding all Business Products are in compliance with the federal open payments rules, 42 U.S.C. § 1320a-7h and 42 C.F.R Part 403, Subpart I, and any similar medical device marketing Law of any other jurisdiction in which Seller markets or sells any Business Product.

(d) Since January 1, 2018, neither Seller, any Subsidiary, nor any Business Employee has been excluded, suspended or debarred from participating in any federal health care program (as defined in 42 U.S.C. §1320a-7b(f)) or been subject to sanction pursuant to 42 U.S.C. §1320a-7a or 1320a-8 or been convicted of a crime described at 42 U.S.C. §1320a-7b. To Seller's Knowledge, no such exclusions are threatened nor is there any basis for such exclusions.

### **3.15. Business Product Warranty.**

(a) Schedule 3.15(a) includes copies of the standard terms and conditions of sale for the Business Products (containing applicable guaranty, warranty and indemnity provisions and support obligations). The Business Products comply with each applicable warranty or other contractual commitment relating to the use, functionality, or performance of such Business Product or any product or system containing or used in conjunction with



such Business Product. Seller has provided Buyer a complete and accurate listing, as of the date hereof, of all product warranty claims related to the Business Products received and logged by Seller or any of its Subsidiaries since January 1, 2021, including a listing of the resolution of such product warranty claims. All Business Products may be manufactured in accordance with their specifications in substantially the same manner as currently conducted in the Target Business.

(b) Except as set forth in Schedule 3.15(b), the products manufactured by the Target Business have been sold by Seller and its Subsidiaries in accordance with the standard terms and conditions of sale. No Business Products have been sold by Affiliates that are not Subsidiaries.

**3.16. Inventory.** The Inventory is, and as of the Closing Date will be of quality and quantity usable and saleable in the ordinary course of the Target Business consistent with past practice, except in each case for excess, obsolete items and items of below-standard quality that have been reserved for or written down to estimated net realizable value in accordance with GAAP applied on a basis consistent with past practices. None of the items in the Inventory are adulterated or misbranded, and all items in the Inventory are in compliance in all material respects with all applicable Law (including without limitation the Federal Food, Drug, and Cosmetic Act).

**3.17. Customers, Suppliers, and Distributors.** Schedule 3.17 contains a list setting forth (i) the ten (10) largest customers (each, a "Top Customer") of the Target Business, by dollar amount as measured by sales during the fiscal year ending December 31, 2023, including purchase agreements, maintenance and service agreements and warranty agreements amount (and the amount of sales with respect to each such customer during such twelve month period), (ii) the ten (10) largest suppliers (each, a "Top Supplier") of any raw material or component for the Target Business, by dollar amount as measured by cost, for the fiscal year ending December 31, 2023, and (iii) the ten (10) largest distributors (each, a "Top Distributor") of the Target Business, by dollar amount of sales to such distributors, for the fiscal year ending December 31, 2023 (and the amount of sales with respect to each such distributor during such twelve (12) month period). Except as set forth in Schedule 3.17, neither Seller nor any of its Affiliates has received any written notice, or to Seller's Knowledge, any other notice, that any such customer has taken action to, or will take action to (a) terminate or modify in a manner materially adverse to Seller its relationship with Seller, (b) cease to purchase or license the Business Products, or reduce the purchase or license of Business Products in any material manner from Seller or any of its Subsidiaries, or (c) renegotiate the price or other material terms, in any material manner, pursuant to which such customer purchases or licenses the Business Products from Seller or any of its Subsidiaries; and, to Seller's Knowledge, no such customers plan to do any of the foregoing. Neither Seller nor any of its Affiliates has received written notice, or to Seller's Knowledge, any other notice, that any such supplier has taken action to, or will take action to (a) terminate or modify in a manner adverse to Seller its relationship with Seller, (b) reduce the amount of goods or services that it is willing to supply to Seller or any of its Subsidiaries or (c) materially increase the price of any goods or services that it has previously supplied to Seller or any of its Subsidiaries; and, to Seller's Knowledge, no such suppliers plan to do any of the foregoing. Neither Seller nor any of its Affiliates has received any written notice, or to Seller's Knowledge, any other notice, that any such distributor has taken action to, or will take action to (a) terminate or modify in a manner materially adverse to Seller its relationship with Seller, (b) cease to purchase the Business Products, or reduce

the purchase of Business Products in any material manner from Seller or any of its Subsidiaries, or (c) renegotiate the price or other material terms, in any material manner, pursuant to which such distributor purchases or licenses the Business Products from Seller or any of its Subsidiaries; and, to Seller's Knowledge, no such distributors plan to do any of the foregoing. All purchase and sale orders and other commitments for purchases and sales made by Seller or any Subsidiary in connection with the Target Business have been made in the ordinary course of business in accordance with past practices, and no payments have been made to any supplier or customers or any of their respective Representatives other than payments to such suppliers or their Representatives for the payment of the invoiced price of supplies purchased or goods sold in the ordinary course of business.

**3.18. Restrictions on the Target Business.** Except for this Agreement and the Collateral Agreements there is no contract, agreement or Law materially affecting (i) Seller's or a Subsidiary's conduct of the Target Business as currently conducted, or (ii) to Seller's Knowledge, Buyer's ability to conduct the Target Business after the Closing as currently conducted or proposed to be conducted by Seller.

**3.19. Taxes.**

(a) There are no liens for Taxes upon any of the Purchased Assets other than statutory liens for Taxes not yet due and payable. No action, proceeding or, to Seller's Knowledge, investigation has been instituted against Seller or any Subsidiary to the extent related to the Target Business or the Purchased Assets, including without limitation any audits by the Internal Revenue Service or other relevant Tax authority of the Returns related to income, employment, franchise or sales Tax, in each case, related to the Target Business or the Purchased Assets. Seller and each Subsidiary (to the extent related to the Target Business or the Purchased Assets) has duly and timely filed all Returns that it was required to file; all such Returns were correct and complete in all material respects; and all Taxes owed by Seller or its Affiliates (to the extent related to the Target Business or the Purchased Assets and whether or not shown on any Return) have been paid. Seller and its Affiliates (to the extent related to the Target Business or the Purchased Assets) have reported, withheld and timely paid all Taxes required to have been reported, withheld and paid in connection with amounts paid or owing by them to any employee, independent contractor, creditor, stockholder or other Third Party. Neither Seller nor any Subsidiary has ever received any claim in writing from a Governmental Body or social security administration in a jurisdiction where Seller or such Subsidiary (to the extent related to the Target Business or the Purchased Assets) does not file Returns that Seller or such Subsidiary is or may be subject to taxation by that jurisdiction.

(b) Neither Seller nor its Affiliates has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency with respect to the Purchased Assets or the Target Business.

(c) None of the Purchased Assets (i) is property required to be treated as owned by another person pursuant to the provisions of Section 168(f)(8) of the U.S. Internal Revenue Code of 1954, as amended and in effect immediately before the enactment of the Tax Reform Act of 1986, (ii) constitutes "tax-exempt use property" or "tax-exempt bond

financed property” within the meaning of Section 168 of the Code, (iii) secures any debt the interest of which is tax-exempt under Section 103(a) of the Code, or (iv) is subject to a 467 rental agreement as defined in Section 467 of the Code.

(d) Notwithstanding anything contained in this Agreement to the contrary, Seller makes no representations or warranties with respect to the existence, availability, amount, usability or limitations (or lack thereof) of any net operating loss, net operating loss carryforward, basis amount, or other Tax attributes of the Target Business after the Closing Date; provided, for the avoidance of doubt, that nothing in this **Section Error! Reference source not found.** alters or effects the covenants, agreements, and other provisions in this Agreement with respect to the Asset Level Allocation Statement.

(e) Neither Seller nor any of its Affiliates is or has been a party to any “listed transaction,” as defined in Section 6707A(c)(2) of the Code.

(f) There is no power of attorney that is currently in effect given by or binding upon Seller or its Affiliates with respect to Taxes related to the Purchased Assets for any period for which the statute of limitations (including any waivers or extensions) has not yet expired.

**3.20. Environmental, Health, and Safety Matters.** Seller and its predecessors and Affiliates have complied in all material respects with all applicable environmental, health, and safety Laws the failure of which to comply with would have an adverse effect on the Purchased Assets or which could create any Encumbrance on the Purchased Assets. Without limiting the generality of the foregoing, Seller and its predecessors and Affiliates have obtained and complied in all material respects with all permits, certificates, licenses, filings, approvals, and other authorizations of any Governmental Body that are required pursuant to any applicable, environmental, health, and safety Laws for Seller’s manufacture and commercialization of the Business Products.

**3.21. Insurance.** Certificates of insurance evidencing coverage for insurance policies have been made available to Buyer. Such insurance policies are in full force and effect and shall remain in full force and effect immediately following the consummation of the transactions contemplated by this Agreement. All premiums due on such insurance policies have been paid in accordance with the payment terms of each insurance policy. The insurance policies do not provide for any retrospective premium adjustment or other experience-based liability on the part of Seller. All such insurance policies (a) are valid and binding in accordance with their terms; (b) are provided by carriers who are financially solvent; and (c) have not been subject to any lapse in coverage. There are no claims relating to the Business Products pending under any such insurance policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. Seller is not in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such insurance policy. The insurance policies are of the type and in the amounts customarily carried by Persons conducting a business similar to Seller and are sufficient for compliance with all applicable Laws and Contracts to which Seller is a party or by which it is bound.

**3.22. Brokers.** Other than Bank of America Securities, no broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller or any Affiliate of Seller.

**4. Representations and Warranties of Buyer.** Except as set forth in Schedules attached hereto and delivered by Buyer to Seller prior to the execution of this Agreement, Buyer represents and warrants to Seller that as of the date of this Agreement and as of Closing Date:

**4.1. Organization and Qualification.** Each of Buyer and any Buyer Designee is a corporation, limited partnership, or other legal entity duly organized, validly existing and in good standing (in any jurisdiction in which such concept exists) under the Laws of the jurisdiction of its incorporation or organization and each of Buyer and any Buyer Designee has all requisite corporate or similar power and authority to carry on its business as currently conducted by it and to own or lease and operate its properties. Each of Buyer and any Buyer Designee is duly qualified to do business and is in good standing as a foreign corporation (in any jurisdiction that recognizes such concept) in each jurisdiction where the ownership or operation of its assets or the conduct of its business requires such qualification, except where the failure to be so qualified or in good standing, individually or in the aggregate, has not had and would not reasonably be expected to have a material adverse effect on Buyer's or any Buyer Designee's ability to consummate the transactions under this Agreement and the Collateral Agreements.

**4.2. Authorization; Binding Effect.** Each of Buyer and any Buyer Designee has all requisite corporate or similar power and authority to execute, deliver and perform this Agreement and the Collateral Agreements to which it will be a party, as the case may be, and to effect the transactions contemplated hereby and thereby and the execution, delivery and performance of this Agreement and the Collateral Agreements by Buyer has been duly authorized by all requisite corporate action and, to the extent not completed on the date hereof by a Buyer Designee, will be duly authorized by all requisite corporate action. This Agreement has been duly executed and delivered by Buyer and this Agreement is, and the Collateral Agreements to which Buyer or a Buyer Designee will be a party when duly executed and delivered by Buyer or such Buyer Designee will be, valid and legally binding obligations of Buyer or such Buyer Designee enforceable against Buyer or such Buyer Designee in accordance with their respective terms, except to the extent that enforcement of the rights and remedies created hereby and thereby may be affected by bankruptcy, reorganization, moratorium, insolvency and similar Laws of general application affecting the rights and remedies of creditors and by general equity principles.

**4.3. Non-Contravention; Consents.**

(a) Assuming that the consents specified in Section 4.3(b) below have been obtained, the execution, delivery and performance of this Agreement and the Collateral Agreements by Buyer and any Buyer Designee and the consummation of the transactions contemplated hereby and thereby do not and will not: (i) result in a breach or violation of any provision of Buyer's or any Buyer Designee's charter or by-laws or similar organizational document, (ii) violate or result in a breach of or constitute an occurrence of default under any provision of, result in the acceleration or cancellation of any obligation under, or give rise to a right by any party to terminate or amend its obligations under, any

Contract to which Buyer or any Buyer Designee is a party or by which it or its assets or properties are bound, or (iii) violate any applicable Law of any Governmental Body having jurisdiction over Buyer or any Buyer Designee or any of their respective properties, other than, in the case of clauses (ii) and (iii), any such violations, breaches, defaults, accelerations or cancellations of obligations or rights that, individually or in the aggregate, would not reasonably be expected to materially impede or delay the Closing.

(b) No consent, approval, order or authorization of, or registration, declaration or filing with, any Person is required to be obtained by Buyer or any Buyer Designee in connection with the execution, delivery and performance of this Agreement or the Collateral Agreements or for the consummation of the transactions contemplated hereby or thereby, except for (i) any filings required to be made under the HSR Act and any applicable filings required under foreign Antitrust Laws and (ii) such consents, approvals, orders, authorizations, registrations, declarations or filings the failure of which to be obtained or made, individually or in the aggregate, would not reasonably be expected to materially impede or delay the Closing.

**4.4. Brokers.** Other than Wells Fargo Securities, LLC, no broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer or any Affiliate of Buyer.

**4.5. No Inducement or Reliance; Independent Assessment; Projections.**

(a) With respect to the Purchased Assets, the Target Business and any other rights or obligations to be transferred hereunder or under the Collateral Agreements or pursuant hereto or thereto, Buyer has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by Seller, any Affiliate of Seller, or any agent, employee, attorney or other representative of Seller or by any other Person representing or purporting to represent Seller that are not expressly set forth in this Agreement or in the Collateral Agreements (including the Schedules and Exhibits hereto and thereto), whether or not any such representations, warranties or statements were made in writing or orally, and none of Seller, any Affiliate of Seller, or any agent, employee, attorney, other representative of Seller or other Person shall have or be subject to any liability to Buyer or any other Person resulting from the distribution to Buyer, or Buyer's use of, any such information, including any information, documents or material made available in any data rooms or management presentations or in any other form in expectation of the transactions contemplated hereby. Notwithstanding the foregoing or anything to the contrary set forth herein, the foregoing shall not apply in the event of Fraud or intentional misrepresentation or to any claims or rights of Buyer, any Buyer Designee, any Affiliate of Buyer or any other Person arising out of Fraud or intentional misrepresentation.

(b) Buyer acknowledges that it has made its own assessment of the present condition and the future prospects of the Target Business and is sufficiently experienced to make an informed judgment with respect thereto. Buyer further acknowledges that neither Seller nor any Affiliate of Seller has made any warranty, express or implied, as to the future

prospects of the Target Business or its profitability for Buyer, or with respect to any forecasts, projections or Target Business plans prepared by or on behalf of Seller and delivered to Buyer in connection with the Target Business and the negotiation and the execution of this Agreement.

(c) In connection with Buyer's investigation of the Target Business, Buyer and its Affiliates have received from Seller and its Representatives certain projections, forecasts, and business plan information. Buyer and its Affiliates acknowledge and agree that there are uncertainties inherent in attempting to make such projections, forecasts and plans, that Buyer and its Affiliates are familiar with such uncertainties, that there can be no assurances that the projections, forecasts and plans are accurate or that the projections, forecasts and plans will be realized, that Buyer and its Affiliates are taking full responsibility for making their own evaluation of the adequacy and accuracy of all projections, forecasts and plans so furnished to them, and that Buyer and its Affiliates shall have no claim against any of Seller, its Affiliates or their respective Representatives with respect thereto.

**4.6. Sufficiency of Funds.** At the Closing, Buyer (i) will have sufficient funds available to pay the Purchase Price and any expenses incurred by Buyer in connection with the transactions contemplated by this Agreement or the Collateral Agreements; (ii) will have the resources and capabilities (financial or otherwise) to perform its obligations hereunder and under the Collateral Agreements; and (iii) will not have incurred any obligation, commitment, restriction or liability of any kind, absolute or contingent, present or future, which would impair or adversely affect its ability to perform its obligations hereunder and under the Collateral Agreements. Buyer understands and acknowledges that under the terms of this Agreement, including for purposes of this Section 4.6, the obligations of Buyer to consummate the transactions contemplated by this Agreement or the Collateral Agreements are not in any way contingent upon or otherwise subject to the consummation by Buyer of any financing arrangements, the obtaining by Buyer of any financing or the availability, grant, provision or extension of any financing to Buyer.

**4.7. Ethical Business Practices and Compliance with Law.**

(a) Neither Buyer nor its Affiliates has, since January 1, 2021, directly or indirectly, made any unlawful payment of corporate funds to any foreign or domestic government official or employee or to any foreign or domestic political party or campaign, except for instances of noncompliance or possible noncompliance, that individual or in the aggregate, have not been and would not reasonably be expected to be material to Buyer.

(b) Since January 1, 2021, to Buyer's Knowledge, Buyer has not used the services of any person disqualified, debarred, banned, subject to debarment or convicted of a crime for which a person could be debarred by the FDA under 21 U.S.C. 335a, as amended (or subject to a similar sanction of any other Governmental Body).

**4.8. Compliance with Law.** Buyer and each Affiliate is in compliance in all material respects with all applicable Laws and all decrees, orders, judgments, writs, injunctions and Permits of or from Governmental Bodies by which Buyer is bound or affected.

## 5. Certain Covenants.

### 5.1. Access and Information.

(a) From and after the date of this Agreement and until the Closing Date, Seller shall give, and cause its Subsidiaries to give, to Buyer and its Affiliates, and their Representatives, reasonable access during Seller's or the applicable Subsidiary's normal business hours to Seller's and the applicable Subsidiary's properties, books, contracts, commitments, reports of examination and records exclusively relating to or exclusively used in the Target Business, the Transferred Employees, the Purchased Assets and the Assumed Liabilities (subject to any limitations that are reasonably required to preserve confidentiality of Seller's retained businesses, any applicable attorney-client privilege or legal or contractual Third Party confidentiality obligation; provided, however, that in the event that access is limited or restricted pursuant to this parenthetical, Seller and its Subsidiaries shall use commercially reasonable efforts to make alternative accommodations to afford access in a manner that does not jeopardize any Seller confidential information, attorney-client privilege or legal or contractual Third Party confidentiality obligation). Seller shall reasonably assist, and cause its Subsidiaries to reasonably assist, Buyer and its Affiliates, and their respective Representatives, in making such investigation and shall cause its counsel, accountants, engineers, consultants and other non-employee Representatives to be reasonably available to any of them for such purposes.

(b) From and after the Closing Date, Seller and Buyer and their respective Subsidiaries shall provide, and shall cause their respective Affiliates to provide, to each other and to their respective Representatives, upon request (subject to any limitations that are reasonably required to preserve the confidentiality of Seller's retained businesses, any applicable attorney-client privilege or legal or contractual Third Party confidentiality obligation; provided, however, that in the event that access is limited or restricted pursuant to this parenthetical, Seller and Buyer and their respective Subsidiaries shall use commercially reasonable efforts to make alternative accommodations to afford access in a manner that does not jeopardize any Seller confidentiality, attorney-client privilege or legal or contractual Third Party confidentiality obligation), reasonable access for inspection and copying of all Business Records (subject to Data Protection Laws and other applicable Law), Transferred Contracts, Transferred In-Licenses, and Transferred Governmental Permits and any other information existing as of the Closing Date and exclusively relating to or exclusively used in the Target Business, the Purchased Assets, the Assumed Liabilities or the Transferred Employees and shall make their respective personnel reasonably available for interviews, regarding the operations or activities exclusively relating to or exclusively used in the Target Business, the Purchased Assets, the Assumed Liabilities or the Transferred Employees and as otherwise may be necessary or desirable to enable the Party requesting such assistance to: (i) comply with any reporting, filing or other requirements imposed by any Governmental Body; (ii) assert or defend any claims or allegations in any litigation or arbitration or in any administrative or legal proceeding other than claims or allegations that one Party to this Agreement has asserted against the other; or (iii) subject to clause (ii) above, perform its obligations under this Agreement. The Party requesting such information or assistance shall reimburse the other Party for all reasonable and necessary out-of-pocket costs and expenses, if any, incurred by such Party

in providing such information and in rendering such assistance. The access to files, books and records contemplated by this Section 5.1(b) shall be during normal business hours and upon reasonable prior notice and shall be subject to such reasonable limitations as the Party having custody or control thereof may impose to preserve the confidentiality of information contained therein.

(c) Buyer agrees to preserve all Business Records, Transferred Contracts, Transferred In-Licenses, and Transferred Governmental Permits in accordance with its corporate policies related to preservation of records.

**5.2. Conduct of the Target Business.** From and after the date of this Agreement and until the Closing Date, except (i) as otherwise contemplated by this Agreement or as set forth in Schedule 5.2; (ii) to the extent necessary to comply with Seller's obligations under this Agreement, (iii) as required by applicable Law, (iv) any Exigency Measure; (v) or as Buyer shall otherwise consent to in writing, Seller and its Affiliates, with respect to the Target Business:

(a) will carry on the Target Business in the ordinary course consistent with past practice and consistent therewith use its commercially reasonable efforts to keep intact the Target Business, keep available the services of the Business Employees and preserve the relationships of the Target Business with customers, suppliers, licensors, licensees, distributors and others that have a business relationship with the Target Business;

(b) will maintain the Purchased Assets, Licensed Intellectual Property, Inventory and all other goods included in the Transition Services Agreement in good operating condition and repair such assets as necessary for the operation of the Target Business in the ordinary course of business;

(c) will not permit, other than as may be required by Law or a Governmental Body, all or any of the Purchased Assets (real or personal, tangible or intangible) and all Licensed Intellectual Property, to be transferred, sold, licensed, disposed of, or subjected to any Encumbrance;

(d) will not acquire any asset that will be a Purchased Asset except in the ordinary course of business consistent with past practice;

(e) will not fail to pay when due any material obligation related to the Target Business;

(f) will not terminate or materially extend, amend, modify or waive any right with respect to any Material Contract, or enter into any Contract that, if entered into prior to the date of this Agreement, would be required to be listed on Schedule 3.10(a) (except for terminations as a result of regulatory compliance issues or for purchase orders entered into in the ordinary course of business consistent with past practice);

(g) will not materially change the manner in which Seller or any of its Subsidiaries extends discounts, credits or warranties to customers of the Target Business or otherwise deals with customers or suppliers of the Target Business (including with respect to the collection of receivables and satisfaction of payables);



(h) will not sell, lease, license, abandon, permit to lapse, or otherwise transfer or assign, grant any interest in or license to, or create or incur any Encumbrance on any of the assets, securities, properties, or interests of the Target Business (including the Assigned Intellectual Property, Intellectual Property rights in the Purchased Assets, and the Licensed Intellectual Property), including not taking any action to abandon, cancel, disclose, misuse, or misappropriate the Assigned Intellectual Property, any Transferred In-Licenses, or any Licensed Intellectual Property in any manner or assert or threaten any claims with respect to the Assigned Intellectual Property, or the Licensed Intellectual Property;

(i) other than as required by applicable Law or consistent with historic practices and policies of Seller, will not terminate or modify in any material way the terms and conditions of employment of any Business Employee, hire any employee who would be a Business Employee, or, except in the ordinary course of business, modify the salaries, wage rates, other compensation or benefits of, or grant any equity, retention, change in control, incentive, severance or termination payment to, any Business Employee (other than making merit based raises or cost of living increases to salaries or wage rates of Business Employees in the ordinary course of business and consistent with past practice and provided that such raises or increases do not exceed five percent (5%) individually as set forth in Schedule 3.9(a)(i);

(j) will not, unless required by Law, enter into any collective bargaining agreement or other similar agreement or arrangement with any labor union or management union or association, works council, employee representative or other labor organization or group of employees representing the Business Employees;

(k) will not dispose of or disclose to any Person any Trade Secrets or confidential information of Seller relating to the Target Business not theretofore generally available to the public;

(l) will not fail to comply in any material respect with all Laws applicable to the Target Business or the Purchased Assets;

(m) will not do any other act which would cause any representation or warranty of Seller in this Agreement to be or become untrue in any material respect or intentionally omit to take any action necessary to prevent any such representation or warranty from being untrue in any material respect;

(n) will not make, change or revoke any Tax election; adopt or change any accounting method with respect to Taxes; file any amended Return; enter into any closing agreement; settle or compromise any Tax claim or assessment; or consent to any extension or waiver of the limitation period applicable to any claim or assessment with respect to Taxes, in each case related solely to the Purchased Assets; and

(o) will not enter into any agreement or commitment with respect to any of the foregoing.

### **5.3. Tax Reporting and Allocation of Consideration.**

(a) Seller and Buyer acknowledge and agree that (i) Seller will be responsible for and will perform all required Tax withholding, payment and reporting duties with respect to any wages and other compensation paid by Seller or a Subsidiary to any Business Employee in connection with the operation or conduct of the Target Business for any Pre-Closing Tax Period and any Tax withholding, payment and reporting related to payments made by Seller or a Subsidiary to any Transferred Employee under a Benefit Plan of Seller or a Subsidiary with respect to any Post-Closing Tax Period, and (ii) Buyer will be responsible for and will perform all required Tax withholding, payment and reporting duties with respect to any wages and other compensation paid by Buyer or a Buyer Designee to any Transferred Employee with respect to any Post-Closing Tax Period. If permitted under Revenue Procedure 2004-53, after the Closing, Buyer and Seller agree to use the standard procedure set forth in Revenue Procedure 2004-53 with respect to the Transferred Employees. For the avoidance of doubt, nothing in this paragraph is intended to modify or adjust the substantive liability of Buyer and Seller under this Agreement with respect to the Taxes described in this paragraph.

(b) Not later than one hundred twenty (120) days after the Closing Date, Buyer shall prepare and deliver to Seller an allocation of the Purchase Price among the Purchased Assets and the covenant not to compete contained in Section 5.14 of this Agreement in accordance with Section 1060 of the Code, the Treasury Regulations promulgated thereunder (and any similar provision of state, local or foreign law, as applicable) and methodologies set forth on Schedule 5.3(b) (the "Asset Level Allocation Statement"). If within thirty (30) days of receiving the Asset Level Allocation Statement, Seller has not objected, the Asset Level Allocation Statement shall be final and binding and the Parties shall file their Returns consistently therewith. If within thirty (30) days Seller objects to the Asset Level Allocation Statement, Seller and Buyer shall cooperate in good faith to resolve their differences, provided that if after thirty (30) days, Seller and Buyer are unable to agree, the Parties shall retain a mutually acceptable, regionally recognized, independent accounting firm or other mutually acceptable, regionally recognized financial services provider (the "Independent Accounting Firm") to resolve their dispute, provided that the Independent Accounting Firm utilize the methodologies for determining fair market value as set forth on Schedule 5.3(b). The determination of the Independent Accounting Firm shall be final and binding on the Parties. The Parties shall make appropriate adjustments to the Asset Level Allocation Statement to reflect the determination of the Independent Accounting Firm. The Parties agree that they will not, and will not permit any of their respective Affiliates to, take a position (except as required pursuant to any order of a Governmental Body) on any Return that is inconsistent with the final Asset Level Allocation Statement (the final Asset Level Allocation Statement being referred to herein as the "Allocation").

(c) Seller shall promptly notify Buyer in writing upon receipt by Seller of notice of any pending or threatened Tax audits or assessments relating to the income, properties or operations of Seller that reasonably may be expected to relate to or give rise to a lien on the Purchased Assets or the Target Business.

#### **5.4. Business Employees.**

(a) Buyer or any Buyer Designee shall make offers of employment, which shall be contingent on the Closing for offers made prior to the Closing, to the Business Employees who are active Business Employees on the Closing Date (including anyone absent due to vacation, holiday, bereavement, jury duty leave or any similar short-term absence that does not affect the Business Employee's status as an active employee, but not including any Inactive Employee). With respect to each Business Employee who is on a leave of absence, short-term or long-term disability leave, medical leave, military leave or any similar leave (an "Inactive Employee") who returns to work within the later of 180 days after the Closing Date, as the case may be, or such longer period as may be required by applicable Law, Buyer or a Buyer Designee will make an offer of employment to such Inactive Employee with such offer to be on terms and conditions consistent with this Section 5.4. Seller shall not be liable for Buyer's or Buyer Designee's failure to offer employment or the timing of any offer of employment to any such Inactive Employee, unless such failure is due to the negligence or willful failure of Seller. Buyer's or Buyer Designee's offer of employment to each Business Employee shall provide for employee benefits under the plans and arrangements provided by Buyer or a Buyer Designee to its similarly situated employees unless Buyer or a Buyer Designee is required by applicable Law to assume or replicate any Business Employee Plan or any benefit provided thereunder, in which case Buyer or Buyer Designee shall provide such required benefits. Seller and any applicable Subsidiary shall cooperate and assist in facilitating Buyer's or a Buyer Designee's offers and will not take any action, or cause any of the Subsidiaries to take any action, which would impede, hinder, interfere or otherwise compete with Buyer's or a Buyer Designee's effort to hire any Business Employee. Without limiting the foregoing, each Party shall comply with all applicable Law in connection with the transfer of the Business Employees to Buyer or a Buyer Designee, including with respect to notice and other procedural requirements. Seller and its applicable Subsidiaries will provide any and all information reasonably required by Buyer or a Buyer Designee in order for Buyer to fulfill its obligations under this Agreement with respect to the Business Employees. The Parties will enter into appropriate documentation for relevant jurisdictions outside the United States where necessary or appropriate for the transfer (or employment, where transfer is not available under applicable Law) by Buyer or a Buyer Designee of any Business Employees. Each Business Employee who accepts Buyer's or a Buyer Designee's offer of employment and commences employment with Buyer or a Buyer Designee shall, as of the effective date of their employment with Buyer or a Buyer Designee, be referred to as a "Transferred Employee." Employment of Transferred Employees with Buyer or a Buyer Designee shall be effective as of the Closing Effective Time, except that the employment of Transferred Employees in a jurisdiction with a delayed closing and employment of an Inactive Employee who becomes employed by Buyer or a Buyer Designee after the Closing Effective Time will become effective as of the date they present themselves for work with Buyer or a Buyer Designee or such other date as is prescribed by applicable Law or an agreement between Seller and Buyer (or its respective designee), and such individual shall be deemed to be a Transferred Employee as of such date, and for purposes of this Agreement, such date shall be substituted for the terms "Closing", "Closing Date" and "Closing Effective Time", respectively, except where the context otherwise requires.

(b) Buyer shall recognize each Transferred Employee's service with Seller or a Subsidiary prior to the Closing for purposes of determining eligibility to participate and vesting in each employee benefit plan of Buyer or a Buyer Designee, including but not limited to any vacation plans and severance plans, to the extent permitted by applicable Law, provided that such service shall not be recognized to the extent such recognition would result in a duplication of benefits or would not be allowed by the applicable employee benefit plan of Buyer or a Buyer Designee, as applicable.

(c) Effective as of the Closing, Seller or the applicable Subsidiary will terminate the employment of any Business Employee who is offered employment in accordance with Section 5.4(a) above and rejects such offer of employment with Buyer or a Buyer Designee, unless applicable Law restricts or penalizes such termination and Seller or a Subsidiary is able to reassign such employee to another position.

(d) Except as set forth in Schedule 5.4(d), Transferred Employees will not be eligible for any severance benefits under the terms of any Benefit Plan.

(e) The Parties agree to cooperate in good faith to determine whether any notification may be required under the WARN Act as a result of the transactions contemplated by this Agreement. Seller will be responsible for providing any notification that may be required under the WARN Act with respect to any of its employees terminated on or prior to Closing. Buyer will be responsible for providing any notification that may be required under the WARN Act with respect to any Transferred Employees terminated after the Closing Date. In addition, Seller shall, at its own expense, give all notices and other information required to be given by Seller to the Business Employees pursuant to COBRA, if any, in connection with the execution of this Agreement and the consummation of the transactions contemplated hereby and shall be solely responsible for providing continuation coverage under COBRA.

(f) No provision of this Section 5.4 shall create any Third Party beneficiary or other rights in any Business Employee or former employee in respect of continued or resumed employment in Seller's business, or with Buyer, and no provision of this Section 5.4 shall create any rights in any such persons in respect of any benefits that may be provided under any plan or arrangement which may be established by Buyer. Nothing contained herein shall be construed as requiring, and Seller, Buyer and their Affiliates shall take no action that would have the effect of requiring, Seller, Buyer, or any of their respective Affiliates to continue any specific Benefit Plan. The provisions of this Section 5.4 are for the sole benefit of Seller and Buyer and nothing in this Section 5.4, expressed or implied, is intended or shall be construed to constitute an amendment of any Benefit Plan or any similar benefit plan of Buyer (or an undertaking to amend any such plan) or other compensation and benefits plan maintained for or provided to Business Employees, including Transferred Employees, prior to, on or following the Closing.

(g) To the extent to which a Transferred Employee would be in breach of any obligation owed to Seller or one of its Affiliates by reason of becoming employed by Buyer or a Buyer Designee (for example, a noncompete obligation), Seller and its Affiliates will waive such obligation.

(h) Subject to applicable Law, nothing in this Agreement shall require Buyer or a Buyer Designee to employ any Business Employees, or any Transferred Employee on anything other than an at-will basis, terminable at any time with or without cause (in jurisdictions where such a concept is recognized).

(i) Seller shall use its commercially reasonable efforts to assist Buyer with the transfer of visas or work permits related to the Transferred Employees.

**5.5. [Intentionally Deleted.]**

**5.6. Leased Equipment.** Promptly after the date hereof, but in no event later than twenty (20) days prior to Closing, Seller shall provide Buyer with a copy of each lease in connection with the Leased Equipment, which shall include the costs and other terms applicable to the Leased Equipment. Buyer shall decide (in its sole discretion) whether such Leased Equipment will (a) transfer to Buyer or a Buyer Designee as of the Closing Date by Buyer or a Buyer Designee assuming the leases for such equipment, (b) become the property of Buyer or a Buyer Designee as of the Closing Date by Buyer or a Buyer Designee paying for the costs of purchasing such equipment pursuant to the leases (the "Purchased Leased Equipment"), or (c) remain the property of Seller or a Subsidiary as of the Closing Date (the "Excluded Leased Equipment").

**5.7. Cooperation; Efforts to Consummate.**

(a) Subject to Section 5.7(b), upon the terms and subject to the conditions set forth in this Agreement, each of the Parties agrees to use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other Parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement, including using reasonable best efforts to accomplish the following: (i) the taking of all acts reasonably necessary to cause the conditions to Closing to be satisfied as promptly as practicable; (ii) the obtaining of all necessary actions or nonactions, waivers, consents and approvals from Governmental Bodies and the making of all necessary registrations and filings (including filings with Governmental Bodies, if any); (iii) the obtaining of all necessary consents, approvals or waivers from Third Parties; and (iv) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement and the Collateral Agreements. Notwithstanding, this Section 5.7 shall not require Seller to make any registrations or filings related to the Business Products under the European Union Medical Device Regulations.

(b) Notwithstanding any to the contrary set forth in this Agreement, nothing in this Section 5.7 shall require, or be construed to require, Buyer or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Buyer or any of its Affiliates; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the

transactions contemplated by this Agreement and the Collateral Agreements; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

#### **5.8. Regulatory Compliance.**

(a) In addition to and without limiting the rights and obligations set forth in Section 5.2, and subject to the other terms and conditions of this Section 5.8 (including Section Error! Reference source not found.), Buyer and Seller shall cooperate with each other and use (and shall cause their respective Subsidiaries to use) their respective commercially reasonable efforts to take or cause to be taken all actions necessary or advisable on its part under this Agreement and applicable Law to consummate the transactions contemplated by this Agreement as promptly as reasonably practicable after the date of this Agreement and in any event prior to the Termination Date, including preparing and delivering or submitting documentation to (i) effect the expirations of all statutory waiting periods under applicable Antitrust Law, as promptly as practicable and (ii) make with and obtain from, any Governmental Body all filings, notices, reports, consents, registrations, approvals, permits and authorizations, in each case, necessary or advisable in order to consummate the transactions contemplated by this Agreement, including the Regulatory Approvals. [ \* \* \* ]

(b) In furtherance of the provisions of Section 5.8, each of Buyer and Seller, as applicable, shall (and shall cause their respective Subsidiaries to):

(i) prepare and file, or cause to be prepared and filed, with respect to the transactions contemplated by this Agreement, all filings which may be required by each of them under the HSR Act and any other similar applicable Antitrust Law as soon as reasonably practicable following the date of this Agreement, but in any event not later than fifteen (15) calendar days after the date of this Agreement, and make, deliver or submit, as applicable, all other initial filings, notices, and reports (or where applicable, drafts thereof) with respect to the Regulatory Approvals, in each case as promptly as reasonably practicable but in any event no later than thirty (30) Business Days after the date of this Agreement unless mutually agreed otherwise (and each Party's consent not to be unreasonably withheld, conditioned, or delayed), and provide each other with final copies of any such filings and requests with respect to the Regulatory Approvals;

(ii) provide or cause to be provided to each Governmental Body any non-privileged information and documents requested by any Governmental Body or that are necessary or advisable to permit consummation of the transactions contemplated by this Agreement as promptly as practicable following any such request or otherwise following the date hereof, and each shall provide each other with copies of any such information and documents; and

(iii) contest or defend through litigation any actual, anticipated or threatened order, lawsuit or other legal proceedings, whether judicial or administrative, challenging this Agreement or seeking to enjoin, restrain, prevent, prohibit, or make illegal the consummation of the transactions contemplated by this

Agreement, including using reasonable best efforts to have any adverse decision, stay or temporary restraining order entered by any court or other Governmental Body vacated, lifted or reversed.

(c) [\* \* \*]

(d) Notwithstanding anything to the contrary set forth in this Agreement, Buyer and Seller shall not, and shall cause their respective Subsidiaries not to, (i) agree to stay, toll or extend the waiting period under the HSR Act or other filing or notice pursuant to any other applicable Antitrust Law, (ii) withdraw any filing or notice made pursuant to the HSR Act or other filing or notice pursuant to any other applicable Antitrust Law or (iii) enter into any timing or similar agreements with any Governmental Body to delay, or otherwise not to consummate as soon as reasonably practicable, the transactions contemplated by this Agreement, in each case without the prior written consent of Buyer or Seller, as applicable, which consent shall not be unreasonably withheld, conditioned or delayed. For the avoidance of doubt, it shall not be unreasonable to withhold such consent if any such action or agreement would cause Closing to occur later than the Termination Date.

(e) Cooperation. Separate and apart from and without limiting or expanding the rights and obligations set forth in Section 5.2, Buyer and Seller shall work cooperatively in connection with obtaining all consents, registrations, approvals, permits, and authorizations, in each case, necessary or advisable in order to consummate the transactions contemplated by this Agreement, including the Regulatory Approvals. Buyer and Seller shall have the right to review in advance and, to the extent reasonably practicable, each shall consult with the other on, and consider in good faith the views of the other in connection with, all the information relating to Buyer and Seller, as the case may be, any of their respective Subsidiaries and any of its or their respective Representatives, that appears in any filing made with, or written materials delivered or submitted to, any Governmental Body in connection with the transactions contemplated by this Agreement. Neither Buyer nor Seller shall, nor shall either permit any of its Subsidiaries or any of its or their respective Representatives to, participate in any discussion, teleconference, videoconference, or meeting with any Governmental Body in respect of any filings, investigation or other inquiry relating to the transactions contemplated by this Agreement unless (to the extent reasonably practicable) it consults with the other in advance and, to the extent permitted by such Governmental Body, gives the other the opportunity to attend and participate thereat.

(f) Buyer shall not, and shall cause its Affiliates not to, acquire (including by merger, consolidation or acquisition of stock or assets or any other means) or publicly announce an intention to so acquire, or enter into any definitive agreements, providing for any acquisitions of, any equity interests in or a material portion of the assets of any Person (or any business or division thereof) to the extent any such acquisition would reasonably be expected (and actually does) cause material additional substantive review of the transaction contemplated by this Agreement under the HSR Act or other applicable Antitrust Law which prevents the conditions set forth in Section 8.1(a) or Section 8.1(b) from being satisfied prior to the Termination Date.

**5.9. Contacts with Suppliers, Customers, and Distributors.** In contemplation of the Closing and conditioned upon receiving Regulatory Approval under the HSR Act, Seller shall permit Buyer to discuss and meet, and shall reasonably cooperate in such discussions and meetings, with any customer, supplier, or distributor of the Target Business that Buyer so requests, including any party to a Shared Contract. Buyer shall notify Seller of any discussions or meetings with any customer, supplier, or distributor of the Target Business. Upon Seller's request, Buyer shall determine (in its sole discretion) whether a representative of Seller or a Subsidiary may accompany Buyer's representative to such meetings and participate with Buyer's representative in such discussions. In addition, Seller and Buyer will prepare a communications plan for business partners of the Target Business, and agree on a plan to contact any suppliers to, or customers of, the Target Business in connection with or pertaining to any subject matter of this Agreement or the Collateral Agreements and to facilitate the transition of the Target Business, including the preparation of letters to all customers, suppliers, distributors and other business partners of the Target Business to notify them of the Closing and provide information regarding the transition of the Target Business to Buyer. Seller will be responsible for contacting parties to any Transferred Contracts for which consent is required in connection with their assignment pursuant to this Agreement. Notwithstanding anything to the contrary contained herein, this Agreement shall not affect Seller's continuing right to contact customers and suppliers in connection with the operation or conduct of the Target Business or performance under the Transition Services Agreement, or any of the retained businesses, nor Buyer's continuing right to contact customers and suppliers in connection with the operation or conduct of its current business. For the avoidance of doubt, nothing in this Section 5.9 shall limit Buyer's right to respond to inquiries from any customer, supplier, or distributor of the Target Business that initiates contact with Buyer.

**5.10. Use of the Seller Name.**

(a) Buyer and Seller agree as follows:

(i) Except as provided in the Transition Services Agreement, Intellectual Property License Agreement, and Trademark License Agreement, after the Closing Date, Buyer and any Buyer Designee shall cease using Seller's and its Subsidiaries' Trade names and trademarks except as set forth on Schedule 5.10(a) (the "Seller Name") in all invoices, letterhead, advertising and promotional materials, office forms or business cards;

(ii) Except as provided below or in the Intellectual property License Agreement, Transition Services Agreement, after the Closing Date, Buyer shall (A) remove the Seller Name or from all labels and packaging of Purchased Assets; and (B) cease using the Seller Name in electronic databases, web sites, product instructions, packaging and other materials, printed or otherwise;

(iii) Buyer and Buyer Designees shall not be required at any time to remove the Seller Name from (A) Inventory of the Target Business that is in existence as of the Closing Date or that is manufactured by Seller pursuant to the Transition Services Agreement following the Closing Date, (B) schematics, plans, manuals, drawings, machinery, datasheets, tooling (including hand tools), Business Records, and the like of the Target Business to the extent that such instrumentalities



are used in the ordinary operation or conduct of the Target Business and are not broadly disseminated as advertisements to the public for use as means to effectuate or enhance sales or (C) with respect to the Business Products, tangible parts and tangible components of such Business Products whose branding is not visible to end consumers in the ordinary course of use;

(iv) Except as provided elsewhere in this Section 5.10 or in the Intellectual Property License Agreement or Transition Services Agreement, upon transfer to Buyer, Buyer and Buyer Designees shall use Reasonable Efforts to remove the Seller Name from those Purchased Assets (such as, but not limited to, tools, and machines) used in association with the Business Products or otherwise reasonably used in the operation or conduct of the Target Business after the Closing. For the purposes of this Section 5.10(a)(iv), "Reasonable Efforts" means Buyer and Buyer Designees shall remove the Seller Name from Purchased Assets but only at such time when such asset is not operated or otherwise is taken out of service in the normal course of business due to regular maintenance or repair (but only for such repairs or maintenance where such removal could normally be undertaken, for example, repair or maintenance of a mold cavity) whichever occurs first; provided that, Buyer or any Buyer Designee shall not use the Seller Name after the date which is twelve (12) months from the Closing Date, except as provided elsewhere in this Section 5.10 or as licensed in the Intellectual Property License Agreement or Transition Services Agreement. Buyer and Buyer Designees shall not be required to perform such removal to the extent set forth in Section 5.10(a)(iii) or on such assets that are not or are no longer used to manufacture the Business Products or other parts, or if discontinuance of use of such assets is reasonably anticipated during such time period, or from assets stored during that period provided that such marks are removed upon such asset's return to service or prior to their sale or other disposition;

(v) Seller hereby grants to Buyer and Buyer Designees a limited right to use the Seller Name as specified in, and during the periods, if any, specified in clauses (i) – (iii) above; and

(vi) Buyer and its Affiliates shall also have the right to use (in a factual manner that constitutes fair use pursuant to applicable Law) the Seller Name solely to the extent necessary to communicate that the Business Products were formerly owned by Seller.

(b) Subject to the Transition Services Agreement, after the Closing, Seller and its Affiliates shall cease any and all use of any Trademark included in the Assigned Trademarks, and any confusingly similar mark.

**5.11. Transition of Manufacturing Equipment.** The Parties acknowledge and agree that certain equipment within the Purchased Assets that is used to Manufacture the Business Products will be retained by Seller in order to fulfil its obligations under the Transition Services Agreement to Manufacture Business Products on behalf of Buyer. The Parties shall work together in good faith to create a mutually agreeable transition plan for such Manufacturing equipment,

provided, however, in no event shall Seller be required to purchase Manufacturing equipment that exists as part of the Purchased Assets in order to fulfill its obligations under the Transition Services Agreement. Further, the Parties acknowledge and agree that Buyer shall be responsible for the cost of all freight and crating for the transfer of all Principal Equipment with a carrier of Buyer's choice and shall bear the risk of loss related of such Principal Equipment FOB shipping Seller's facility. Buyer shall have the right, but not the obligation, to inspect and direct the crating of all Principal Equipment.

#### **5.12. Non-Solicitation.**

(a) None of Seller, any of its Representatives or any of its Affiliates will at any time prior to the date that is two (2) years following the Closing Date, directly or indirectly, solicit the employment of, hire or employ any Transferred Employee without Buyer's prior written consent. The term "solicit the employment" shall not be deemed to include generalized searches for employees through media advertisements, employment firms or otherwise that are not focused on or directed to Transferred Employees, and Seller's subsequent engagement with a Transferred Employee as a result of such Transferred Employee's voluntary response to the same shall not be a breach of this Section 5.12(a). This restriction set forth in this Section 5.12(a) shall not apply to any Transferred Employee whose employment was involuntarily terminated by Buyer, a Buyer Designee, or their respective successors or assigns, after the Closing.

(b) None of Buyer, any of its Representatives or any of its Affiliates will at any time during the term of the Transition Services Agreement and for two (2) years following the expiration or termination of the Transition Services Agreement, directly or indirectly, solicit the employment of any of Seller's retained employees who provided services related to Manufacturing, engineering, regulatory, quality, or other similar or related activities under the Transition Services Agreement without Seller's prior written consent. The term "solicit the employment" shall not be deemed to include generalized searches for employees through media advertisements, employment firms or otherwise that are not focused on or directed to Seller's retained employees as set forth above, and Buyer's subsequent engagement with a Seller retained employee as a result of such Seller retained employee's voluntary response to the same shall not be a breach of this Section 5.12(b).

**5.13. No Negotiation or Solicitation.** Prior to the Closing Date, Seller and its Affiliates will not (and Seller will cause each of its employees, officers, Representatives and agents or advisors not to and shall cause its Affiliates to cause employees, officers, Representatives and agents or advisors not to) directly or indirectly (a) solicit, initiate, entertain, encourage or accept the submission of any proposal, offer or any discussions relating to or that might reasonably be expected to lead to or result in any proposal or offer from any Person relating to the direct or indirect acquisition of the Target Business or any portion of the Purchased Assets (other than purchases of Business Products or services from the Target Business in the ordinary course of business consistent with past practice), or (b) participate in any discussions or negotiations regarding the Target Business, furnish any information with respect thereto, or assist or participate in, or facilitate or encourage in any other manner any effort or attempt by any Person to do or seek any of the foregoing. Seller will notify Buyer if any Person makes any proposal, offer, inquiry or contact with respect to any of the foregoing promptly (and in any event within two (2) Business

Days) after receipt of any such offer or proposal, including the identity of the Person making such proposal, offer, inquiry or contact and all material terms thereof.

#### **5.14. Non-Competition.**

(a) Seller agrees that, as part of the consideration for the payment of the Purchase Price, for a period of five (5) years following the Closing Date, neither Seller nor any of its Affiliates will, directly or indirectly, as a principal, stockholder, joint venturer or otherwise, (i) operate, perform or have any ownership interest in any business that designs, develops, manufactures, markets, sells or distributes products that directly and intentionally compete with the Target Business or (ii) except in connection with patent cross-licenses and other patent licenses entered into by Seller or an Affiliate in connection with patent licensing activities, sales of products or settlement of litigation, in each case in the ordinary course of business consistent with past practice, Seller shall not knowingly grant any license to the Licensed Intellectual Property for the purpose of enabling a Third Party to compete with the Target Business, except that Seller may purchase or otherwise acquire by merger, purchase of assets, stock (including investing as a minority shareholder), controlling interest or otherwise any Person or business or engage in any similar merger and acquisition activity with any Person the primary business of which is not in competition with the Target Business. For the purposes of this Section 5.14(a), ownership of securities of a company whose securities are publicly traded on a recognized securities exchange not in excess of five percent (5%) of any class of such securities shall not be considered to be competition with the Target Business, and a Person shall not be considered to be in the “primary business” of competing with the Target Business if such Person derives less than five percent (5%) of its revenues from products that compete with the Target Business. For the avoidance of doubt, the Parties agree that the agreements and limitations set forth in this Section 5.14 shall not apply to any entity that acquires all or part of Seller or any of its Affiliates in any transaction.

(b) Seller acknowledges that the restrictions set forth in Section 5.14(a) constitute a material inducement to Buyer’s entering into and performing this Agreement. Seller further acknowledges, stipulates and agrees that a breach of such obligation could result in irreparable harm and continuing damage to Buyer for which there may be no adequate remedy at Law and further agrees that in the event of any breach of said obligation, Buyer may be entitled to injunctive relief and to such other relief as is proper under the circumstances.

(c) If any provision contained in this Section shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Section 5.14, but this Section 5.14 shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. It is the intention of the Parties that if any of the restrictions or covenants contained herein is held to cover a geographic area or to be for a length of time which is not permitted by applicable Law, or in any way construed to be too broad or to any extent invalid, such provision shall not be construed to be null, void and of no effect, but to the extent such provision would be valid or enforceable under applicable Law, a court of competent jurisdiction shall construe and interpret or reform this Section 5.14 to

provide for a covenant having the maximum enforceable geographic area, time period and other provisions (not greater than those contained herein) as shall be valid and enforceable under such applicable Law.

**5.15. Post-Closing Remittances.** Subject to the terms of the Transition Services Agreement, if on or after the Closing Date, either Party receives a payment from a Third Party (including a customer of the Target Business) that, pursuant to the terms hereof, should have been paid to the other Party, the Party who receives the payment agrees to hold in trust and remit such payment to the Party entitled thereto within ten (10) Business Days of such receipt.

**5.16. R&W Insurance Policy.** Following the date hereof, Buyer shall use commercially reasonable efforts to maintain the R&W Insurance Policy in full force and effect for the policy period set forth therein (provided, that for the avoidance of doubt, the foregoing shall not be interpreted to in any way limit Buyer's right to control all decisions with respect to any claims or potential claims under the R&W Insurance Policy, including the handling and recovery with respect to such claims and potential claims). Buyer and Seller shall each be responsible for and shall pay fifty percent (50%) of the R&W Insurance Policy Premium and any related fees or underwriting costs.

**5.17. German Works Council Consultation.** Seller (directly or indirectly through the German Subsidiary) shall be responsible for initiating and conducting the German Works Council Consultation in a timely and appropriate manner, which shall be initiated no later than the date hereof. Seller shall inform Buyer on a regular basis on the status of the German Works Council Consultation. Upon Seller's reasonable request, Buyer will cooperate with Seller or the German Subsidiary in good faith to conduct and complete the German Works Council Consultation. Seller shall indemnify Buyer or Buyer Designee against any direct or indirect costs, losses and expenses, suffered or incurred under, or due to, any agreements or arrangements entered into in connection with the German Works Council Consultation, in particular under any social plan concluded in connection with the German Works Council Consultation or any other works council agreement (*Betriebsvereinbarung*) or any collective bargaining agreement (*Tarifvertrag*) applicable to the German Business Employees entered into by Seller or the German Subsidiary after the date hereof. The preceding indemnification obligations do not apply to direct or indirect costs, losses and expenses resulting from an exclusion of the German Purchased Assets from the Closing pursuant to Section 7.4(b).

**5.18. Shared Contracts.** As soon as reasonably practicable following the date of this Agreement, but in any event not later than ten (10) Business Days prior to the Closing, Seller shall make available to Buyer complete and correct copies of the Shared Contracts among Seller or its Affiliates and their customers which are based in the United States, which may include reasonable redactions of confidential and proprietary information not related to the Target Business, and that otherwise contains information that is expressly protected under Data Protection Laws. Seller shall make available to Buyer complete and correct copies of all other Shared Contracts, which may include reasonable redactions of confidential and proprietary information not related to the Target Business, and that otherwise contains information that is expressly protected under Data Protection Laws, on or prior to the Closing. For the avoidance of doubt, (i) the name and contact information of each party to the Shared Contract, and (ii) the economic terms (price, rebates, GPO

fee, etc.) of the Shared Contract relating to the Business Products shall not be redacted from such Shared Contracts.

## **6. Confidential Nature of Information.**

**6.1. Confidentiality Agreement.** Buyer agrees that the Confidentiality Agreement shall apply to (i) all documents, materials and other information that it shall have obtained regarding Seller or its Affiliates during the course of the negotiations leading to the consummation of the transactions contemplated hereby (whether obtained before or after the date of this Agreement), any investigations made in connection therewith and the preparation of this Agreement and related documents and (ii) all analyses, reports, compilations, evaluations and other materials prepared by Buyer or its counsel, accountants or financial advisors to the extent that they contain or otherwise reflect or are based upon, in whole or in part, any of the provided information; provided, however, the Confidentiality Agreement shall be of no further force and effect with respect to information of Seller or its Affiliates the ownership of which is transferred to Buyer or a Buyer Designee at the Closing.

### **6.2. Seller's Proprietary Information.**

(a) Except as provided in Section 6.2(b) and as may be permitted by the Transition Services Agreement or the Intellectual Property License Agreement, from and after the Closing and for a period of seven (7) years following the Closing Date, Buyer agrees that it will keep confidential all of Seller's and its Affiliates' Information that is received from, or made available by, Seller in the course of the transactions contemplated hereby, and marked or identified at the time of disclosure as the proprietary or confidential information of Seller ("Seller Proprietary Information"), including, for purposes of this Section 6.2, information about business plans and strategies, marketing ideas and concepts, especially with respect to unannounced products and services, present and future product plans, pricing, volume estimates, financial data, product enhancement information, business plans, marketing plans, sales strategies, customer information (including customers' applications and environments), market testing information, development plans, specifications, customer requirements, configurations, designs, plans, drawings, apparatus, sketches, software, hardware, data, prototypes, connecting requirements or other technical and business information, but excluding any Seller Proprietary Information the ownership of which is transferred to Buyer or a Buyer Designee at the Closing as part of the Purchased Assets.

(b) Notwithstanding the foregoing, such Seller Proprietary Information shall not be deemed confidential and Buyer shall have no obligation with respect to any such Seller Proprietary Information that:

(i) at the time of disclosure was already known to Buyer other than as a result of this transaction, free of restriction as evidenced by documentation in Buyer's possession;

(ii) is or becomes publicly known through publication, inspection of a product, or otherwise, and through no negligence or other wrongful act of Buyer;

(iii) is received by Buyer from a Third Party without restriction and without breach of any agreement;

(iv) to the extent it is independently developed by Buyer as demonstrated by competent evidence; or

(v) is, subject to Section 6.2(c), required to be disclosed under applicable Law or judicial process.

(c) If Buyer (or any of its Affiliates) is required by applicable Law (for example, by oral or written interrogatories, requests for information or documents, subpoenas, civil investigative demands or other similar legal processes) to disclose any Seller Proprietary Information to a Third Party, Buyer will promptly notify Seller of such request or requirement and will cooperate with Seller, at Seller's cost and expense, in any Seller efforts to seek an appropriate protective order or other appropriate remedy to prevent or limit the disclosure of such Seller Proprietary Information. If, in the absence of a protective order or the receipt of a waiver hereunder, Buyer (or any of its Affiliates) is required by applicable Law (for example, by oral or written interrogatories, requests for information or documents, subpoenas, civil investigative demands or other similar processes) to disclose Seller Proprietary Information, Buyer (or its Affiliate) may disclose only so much of Seller Proprietary Information to the Third Party compelling disclosure as is so required; and such Seller Proprietary Information shall retain its confidentiality protections for all purposes other than the compelled disclosure.

### **6.3. Buyer's Proprietary Information.**

(a) Except as provided in Section 6.3(b), from and after the Closing Date and for a period of seven (7) years thereafter, Seller agrees that it will keep confidential all of (i) Buyer's and its Affiliates' Information that is received from, or made available by, Buyer in the course of the transactions contemplated hereby and marked or identified at the time of disclosure as the proprietary or confidential information of Buyer, and (ii) all of the assigned Trade Secrets and other confidential information that is part of the Purchased Assets or the Assumed Liabilities (collectively, "Buyer Proprietary Information"), including, for purposes of this Section 6.2, information about business plans and strategies, marketing ideas and concepts, especially with respect to unannounced products and services, present and future product plans, pricing, volume estimates, financial data, product enhancement information, business plans, marketing plans, sales strategies, customer information (including customers' applications and environments), market testing information, development plans, specifications, customer requirements, configurations, designs, plans, drawings, apparatus, sketches, software, hardware, data, prototypes, connecting requirements, other technical and business information and information regarding Business Employees. Notwithstanding the foregoing, or anything herein to the contrary, subject to Section 6.3(b) Seller shall maintain all assigned Trade Secrets as Trade Secrets indefinitely, using the same reasonable care and discretion as Seller used for such information prior to Closing and with respect to Seller's own similar Trade Secrets of like importance (but subject to, for the avoidance of doubt, the exceptions set forth in Section 6.3(b) and (c)).

(b) Notwithstanding the foregoing, such Buyer Proprietary Information regarding the Target Business shall not be deemed confidential and Seller shall have no obligation with respect to any such Buyer Proprietary Information that:

(i) is or becomes publicly known through publication, inspection of a product, or otherwise, and through no negligence or other wrongful act of Seller; or

(ii) is received by Seller after the Closing Date from a Third Party without restriction and without breach of any agreement.

(c) If Seller (or any of its Affiliates) is required by applicable Law (for example, by oral or written interrogatories, requests for information or documents, subpoenas, civil investigative demands or other similar legal processes) to disclose any Buyer Proprietary Information to a Third Party, Seller will promptly notify Buyer of such request or requirement and will cooperate with Buyer, at Buyer's cost and expense, in any Buyer efforts to seek an appropriate protective order or other appropriate remedy to prevent or limit the disclosure of such Buyer Proprietary Information. If, in the absence of a protective order or the receipt of a waiver hereunder, Seller (or any of its Affiliates) is required by applicable Law (for example, by oral or written interrogatories, requests for information or documents, subpoenas, civil investigative demands or other similar legal processes) to disclose the Buyer Proprietary Information, Seller (or its Affiliate) may disclose only so much of the Buyer Proprietary Information to the Third Party compelling disclosure as is so required; and such Buyer Proprietary Information shall retain its confidentiality protections for all purposes other than the compelled disclosure.

**6.4. Confidential Nature of Agreements.** Except to the extent that disclosure thereof is required under applicable Law (including accounting, stock exchange or federal securities or labor relations Laws regarding disclosure obligations or pursuant to legal process (such as oral or written interrogatories, requests for information or documents, subpoenas, civil investigative demands or other similar legal processes)), both Parties agree that the terms and conditions of this Agreement, the Collateral Agreements and all Schedules, attachments and amendments hereto and thereto shall be considered confidential or proprietary information protected under this Article 6. Notwithstanding anything in this Article 6 to the contrary, in the event that any such Information is also subject to a limitation on disclosure or use contained in another written agreement between Buyer and Seller or either of their respective Affiliates that is more restrictive than the limitation contained in this Article 6, then the limitation in such agreement shall supersede this Article 6.

**6.5. Covenant to Enforce.** To the extent Seller has disclosed any proprietary or confidential information related to the Purchased Assets or the Target Business to any Third Party and such proprietary or confidential information is subject to a confidentiality agreement, non-disclosure agreement or other similar agreement, upon becoming aware of the disclosure, or any action or inaction that would be reasonably expected to result in the disclosure, of such proprietary or confidential information in violation of any such confidentiality agreement, non-disclosure agreement, or other similar agreement, Seller shall use its commercially reasonable efforts to enforce Seller's rights with respect to such confidentiality agreements, non-disclosure agreements or other similar agreements so as to prevent such Third Party from using or disclosing any such

proprietary or confidential information and Buyer shall reimburse Seller for reasonable out-of-pocket costs and expenses approved by Buyer in writing that are actually incurred by Seller in enforcing such rights.

**7. Closing.** At the Closing, the following transactions shall take place:

**7.1. Deliveries by Seller or the Subsidiaries.** On the Closing Date, Seller shall, or shall cause an Affiliate to, execute and deliver to Buyer or a Buyer Designee the following:

- (a) the Collateral Agreements;
- (b) a certificate of an appropriate officer of Seller, dated the Closing Date, certifying the fulfillment of the conditions set forth in Sections 8.2(a) and 8.2(b), and an incumbency certificate of the corporate Secretary of Seller, dated the Closing Date, in customary form;
- (c) such forms and certificates as Buyer may request pursuant to Treasury Regulations Section 1.1445.2(b), including an IRS Form W-9 of Seller and each Subsidiary that sells Purchased Assets under this Agreement; and
- (d) all such other bills of sale, assignments and other instruments of assignment, transfer or conveyance as Buyer or a Buyer Designee may reasonably request or as may be otherwise necessary to evidence and effect the sale, transfer, assignment, conveyance and delivery of the Purchased Assets to Buyer or a Buyer Designee or to put Buyer or a Buyer Designee in actual possession or control of the Purchased Assets; provided that all information (including documents) capable of electronic transmission will be transmitted to Buyer or the applicable Buyer Designee in such manner, in which case such information shall not be transferred in any tangible form, and any inadvertent transfer of a tangible manifestation of such information shall promptly be returned to Seller or the applicable Subsidiary upon discovery of Buyer's or such Buyer Designee's receipt thereof.

**7.2. Deliveries by Buyer or a Buyer Designee.** On the Closing Date, Buyer shall, or shall cause a Buyer Designee to, execute and deliver to Seller or a Subsidiary the following:

- (a) the Closing Payment, pursuant to Section 2.10;
- (b) the Collateral Agreements;
- (c) a certificate of an appropriate officer of Buyer, dated the Closing Date, certifying the fulfillment of the conditions set forth in Sections 8.3(a) and 8.3(b), and an incumbency certificate of an appropriate officer of Buyer, dated the Closing Date, in customary form; and
- (d) all such documents and instruments as Seller or a Subsidiary may reasonably request or as may be otherwise necessary to evidence and effect evidence and effect the assumption by Buyer or a Buyer Designee of the Assumed Liabilities.



**7.3. Transfer of Italian Business.** On the Closing Date, the Parties shall accomplish all the formalities for the transfer of the Italian Business from Seller or a Subsidiary to Buyer or Buyer Designee, including by entering into the Notarial Deed before the Notary Public, it being understood that such Notarial Deed shall not novate, modify or amend in any manner whatsoever the provisions of this Agreement, which will remain in full force and effect.

**7.4. Transfer of German Assets.**

(a) Seller and Buyer are aware that the German Subsidiary is obligated to complete the reconciliation of interests (*Interessenausgleich*) procedure under Sec. 111, 112 of the German Works Constitution Act (*Betriebsverfassungsgesetz, BetrVG*) with its works council as regards the split of operation (*Betriebsspaltung*) resulting from the transfer of Purchased Assets and Assumed Liabilities currently owned by the German Subsidiary and the transfer of German Business Employees to Buyer or Buyer Designee (the "German Works Council Consultation"). The German Works Council Consultation shall be deemed to have been completed if and as soon as a reconciliation of interests agreement has been reached with the German works council as regards the respective split of operation (*Betriebsspaltung*) resulting from the transfer of the German Business Employees or, as the case may be, the relevant negotiations have finally failed in an arbitration procedure (*Einigungsstellenverfahren*) in the meaning of Sec. 112 of the German Works Constitution Act (*Betriebsverfassungsgesetz, BetrVG*).

(b) In the event that the German Works Council Consultation has not been completed, but all conditions to this Agreement are satisfied (other than those conditions that by their terms are to be satisfied at the Closing, each of which is capable of being satisfied at the Closing) or waived (where permissible pursuant to applicable Law), the Parties shall proceed with the Closing, but shall exclude the German Purchased Assets from the Closing and work together in good faith to provide for a separate Closing (the "Separate Closing") related to the transfer of the German Purchased Assets. In the event Separate Closing is required, the Closing shall occur in accordance with the terms of this Agreement, otherwise unchanged, provided, however the transfer of the German Purchased Assets shall be excluded from the Closing. Seller and Buyer shall work together in good faith to carry out the Separate Closing within five (5) Business Days following the receipt of a legally binding conclusion of the procedure for the participation of the German works council related to Seller's German Subsidiary. Until the Separate Closing is completed, the German Purchased Assets shall be held for the benefit of Buyer and the operation of the Target Business in Germany shall be conducted on behalf, and at the direction of, Buyer (where permissible pursuant to applicable Law).

**7.5. Closing Date.** Subject to the satisfaction or waiver by the appropriate party of all the conditions precedent to Closing specified in Article 8 hereof (other than those conditions which can only be satisfied on the Closing Date, but subject to the satisfaction or waiver (to the extent permitted hereunder) of such conditions), the consummation of the sale and purchase of the Purchased Assets and the other transactions contemplated by and described in this Agreement (the "Closing") shall occur on the last day of the calendar month in which the conditions set forth in Article 8 have been satisfied or waived at least five (5) Business Days prior to such last day or on such other date mutually agreed to by the Parties (such date, the "Closing Date"). The Parties shall

use commercially reasonable efforts to cause the conditions set forth in Article 8 to be satisfied. In lieu of an in-person Closing, the Closing may instead be accomplished by facsimile or email (in PDF format) transmission to the respective offices of legal counsel for the parties of the requisite documents, duly executed where required.

**7.6. Closing Effective Time and Contemporaneous Effectiveness.** The Closing shall be deemed to take place and be effective as of 11:59 p.m. Eastern time on the Closing Date (the "Closing Effective Time"). The Parties hereto acknowledge and agree that all proceedings at the Closing shall be deemed to be taken and all documents to be executed and delivered by all parties at the Closing shall be deemed to have been taken and executed simultaneously, and no proceedings shall be deemed taken nor any document executed or delivered until all have been taken, executed and delivered.

## **8. Conditions Precedent to Closing.**

**8.1. General Conditions.** The respective obligations of Buyer and Seller to consummate the Closing of the transactions contemplated hereby are subject to the fulfillment, prior to or at the Closing, of each of the following conditions:

(a) Legal Proceedings. There shall be no Law, order, regulation, injunction or other action by a Governmental Body in effect which prohibits consummation of the transactions contemplated by this Agreement or the Collateral Agreements and there shall be no pending lawsuit, claim or legal or administrative action relating to the transactions contemplated by this Agreement or any of the Collateral Agreements which seeks to prohibit or restrict the transactions contemplated by this Agreement.

(b) Antitrust Laws. Any applicable waiting periods under applicable Antitrust Laws (and any extensions, thereof, including through a timing or other agreement) relating to the transactions contemplated by this Agreement or the Collateral Agreements have been expired or been terminated, and any approvals of a Governmental Body under applicable Antitrust Laws, respectively, relating to the transactions contemplated by this Agreement or the Collateral Agreements shall have been received (collectively, the "Regulatory Approvals").

**8.2. Conditions Precedent to Buyer's Obligations.** The obligations of Buyer to consummate the Closing of the transactions contemplated hereby are subject to the fulfillment, prior to or at the Closing, of each of the following conditions, any of which may be waived in writing by Buyer:

(a) Representations and Warranties of Seller True and Correct at Closing. The representations and warranties of Seller contained in this Agreement or in any certificate delivered pursuant to the provisions of this Agreement that are qualified by the words "material," "Seller Material Adverse Effect" and similar phrases shall be true and correct in all respects at and as of the date of this Agreement and at and as of the Closing Date as though such representations and warranties were made at and as of the Closing Date, except to the extent that such representations and warranties are made as of a specified date, in which case such representations and warranties shall be true and correct in all respects as

of the specified date, and the representations and warranties of Seller contained in this Agreement or in any Schedule, certificate or document delivered pursuant to the provisions hereof or in connection with the transactions contemplated hereby that are not so qualified shall be true and correct in all material respects at and as of the date of this Agreement and at and as of the Closing Date as though such representations and warranties were made at and as of the Closing Date, except to the extent that such representations and warranties are made as of a specified date, in which case such representations and warranties shall be true and correct in all material respects as of the specified date.

(b) Performance by Seller. Seller and/or the applicable Subsidiary shall have delivered all of the documents required under Section 7.1 and shall have otherwise performed in all material respects all obligations and agreements and complied in all material respects with all covenants required by this Agreement to be performed or complied with by it prior to or at the Closing, including executing the Collateral Agreements.

(c) Seller Material Adverse Effect. There shall not have occurred a Seller Material Adverse Effect from the date hereof to the Closing Date.

(d) Material Consents. Each of the consents set forth on Schedule 8.2(d) shall have been obtained in a form reasonably satisfactory to Buyer and shall be in full force and effect.

(e) Release of Encumbrances. Seller shall have delivered documentation reasonably acceptable to Buyer evidencing the full and unconditional release of any Encumbrance on the Purchased Intellectual Property.

(f) Regulatory Approvals. The Regulatory Approvals shall have been obtained.

**8.3. Conditions Precedent to Seller's Obligations.** The obligations of Seller to effect the Closing of the transactions contemplated hereby are subject to the fulfillment, prior to or at the Closing, of each of the following conditions, any of which may be waived in writing by Seller:

(a) Representations and Warranties of Buyer True and Correct at Closing. The representations and warranties of Buyer contained in this Agreement or in any certificate delivered pursuant to the provisions of this Agreement that are qualified by the words "material," "material adverse effect" and similar phrases shall be true and correct in all respects at and as of the date of this Agreement and at and as of the Closing Date as though such representations and warranties were made at and as of the Closing Date, except to the extent that such representations and warranties are made as of a specified date, in which case such representations and warranties shall be true and correct in all respects as of the specified date, and the representations and warranties of Buyer contained in this Agreement or in any Schedule, certificate or document delivered pursuant to the provisions hereof or in connection with the transactions contemplated hereby that are not so qualified shall be true and correct in all material respects at and as of the date of this Agreement and at and as of the Closing Date as though such representations and warranties were made at and as

of the Closing Date, except to the extent that such representations and warranties are made as of a specified date, in which case such representations and warranties shall be true and correct in all material respects as of the specified date.

(b) **Performance by Buyer.** Buyer and/or the applicable Buyer Designee shall have delivered all of the documents required under Section 7.2 and shall have otherwise performed in all material respects all obligations and agreements and complied in all material respects with all covenants required by this Agreement to be performed or complied with by it prior to or at the Closing, including executing the Collateral Agreements.

## **9. Indemnification.**

**9.1. Survival.** The Parties, intending to modify any applicable statute of limitations, agree that (a) none of the representations and warranties or covenants and agreements (to the extent such covenants and agreements relate to the performance of obligations prior to the Closing) contained in this Agreement or in any Collateral Agreement shall survive Closing and all such provisions shall terminate at Closing and (b) after Closing there shall be no liability or obligation on the part of, nor shall any claim be made by, any Party or any of their respective Affiliates in respect of or relating to the representations and warranties or covenants and agreements (to the extent such covenants and agreements relate to the performance of obligations prior to the Closing) contained in this Agreement or in any Collateral Agreement. This Section 9.1 does not limit (x) any covenants and agreements of the Parties to this Agreement or in any Collateral Agreement that by their terms require performance of obligations after Closing, which shall survive Closing in accordance with their respective terms, (y) Buyer's ability to recover under the R&W Insurance Policy or (z) any claims of Fraud or intentional misrepresentation against a Party hereto committing Fraud or intentional misrepresentation.

**9.2. Certain Waivers.** From and after Closing, except with respect to (a) covenants and agreements contained in this Agreement or in any Collateral Agreement (solely to the extent such covenants and agreements require performance of obligations after Closing) and (b) claims of Fraud or intentional misrepresentation committed by Seller, Buyer hereby waives, from and after Closing, to the fullest extent permitted under Law, any and all rights, claims, and causes of action for any breach of any representation, warranty, covenant or agreement set forth in this Agreement or the Collateral Agreements or otherwise relating to the negotiation, performance, and consummation of this Agreement or the Collateral Agreements or the transactions contemplated hereby and thereby, that it may have against Seller and its Affiliates and each of their respective Representatives as a matter of contract, tort, equity, strict liability, arising under or based upon any Law, or otherwise. Nothing in this Section 9.2 shall limit or affect any rights that Buyer or any of its Affiliates may have under the R&W Insurance Policy.

**9.3. Indemnification by Seller.** Subject to the other terms and conditions of this Article 9, from and after the Closing Date, Seller shall indemnify and defend each of Buyer and its Affiliates and their respective Representatives (collectively, the "Buyer Indemnitees") against, and shall hold each of them harmless from and against, any and all claims, actions, suits, proceedings, liabilities, obligations, losses, and damages, amounts paid in settlement, interest, costs and expenses (including reasonable attorney's fees, court costs and other out-of-pocket

expenses incurred in investigating, preparing or defending the foregoing) (collectively, “Losses”) incurred, sustained or suffered by the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) the breach of or inaccuracy in any representation or warranty made by Seller in Article 3;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller or any Affiliate of Seller after the Closing pursuant to this Agreement; or
- (c) any Excluded Asset or any Excluded Liability.

**9.4. Indemnification by Buyer.** Subject to the other terms and conditions of this Article 9, from and after the Closing Date, Buyer shall indemnify and defend each of Seller and its Affiliates and their respective Representatives (collectively, the “Seller Indemnitees”) against, and shall hold each of them harmless from and against, any and all Losses incurred, sustained or suffered by the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) the breach of or inaccuracy in any representation or warranty made by Buyer in Article 4;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement; or
- (c) any Assumed Liability.

**9.5. Limitation on Seller Indemnification.** Other than with respect to Fraud, Buyer’s sole and exclusive remedy with respect to any Losses incurred by Buyer for which a claim for indemnification can be made pursuant to Section 9.3(a) shall be the R&W Insurance Policy. Seller shall not be responsible for any retention amounts or deductible amounts associated with the R&W Insurance Policy. Notwithstanding anything to the contrary in this Agreement, Seller shall not be obligated to indemnify Buyer Indemnitees from or against any Losses under this Agreement (or any Collateral Agreement) to the extent that such Losses would, when aggregated with indemnification payments made by Seller pursuant to this Article 9, exceed the Purchase Price. Notwithstanding anything to the contrary contained in the Agreement, none of the limitations in this Article 9 (including limitations on the survival period for representations and warranties) shall apply to Fraud except that the aggregate Liability of Seller for any claim that arises as a result of Fraud shall not exceed the Purchase Price.

**9.6. Limitation on Buyer Indemnification.** Notwithstanding anything to the contrary in this Agreement, Buyer shall not be obligated to indemnify Seller Indemnitees from or against any Losses under this Agreement or any Collateral Agreement to the extent that such Losses would, when aggregated with indemnification payments made by Buyer pursuant to this Article 9, exceed the Purchase Price. Notwithstanding anything to the contrary contained in the Agreement, none of the limitations in this Article 9 (including limitations on the survival period for representations and warranties) shall apply to Fraud except that the aggregate Liability of Buyer

for any claim for indemnification that arises as a result of Fraud shall not exceed the Purchase Price.

#### **9.7. General Limitations.**

(a) Except for any claim for indemnification under Section 9.3(a) (to which this Section 9.7(a) shall not apply), no Party shall be liable to the other Party or any other Indemnified Party for any exemplary or punitive Losses (unless awarded in a Third Party Claim) pursuant to or arising out of any indemnification claim.

(b) The indemnification provided in this Article 9 shall be the sole and exclusive remedy after the Closing Date for damages available to the Parties to this Agreement for breach of any of the terms, conditions, and covenants contained herein or any right, claim or action arising from the transactions contemplated by this Agreement (but not claims arising under any Collateral Agreement); provided, however, this exclusive remedy for damages does not preclude a Party from bringing any action (or, in the case of clause (ii) below, limit the amounts recoverable in any action) for (i) specific performance or other equitable remedy to require a Party to perform its obligations under this Agreement or any Collateral Agreement or (ii) Fraud or intentional misrepresentation.

#### **9.8. Third Party Claims.**

(a) Each of the Buyer Indemnitees and the Seller Indemnitees (each an "Indemnified Party") seeking indemnification under this Agreement shall promptly notify the other Party against whom indemnification is sought (the "Indemnifying Party") of the assertion of any claim, or the commencement of any action, suit or proceeding by any Third Party (a "Third Party Claim"), in respect of which indemnity may be sought hereunder and shall give the Indemnifying Party such information with respect thereto as the Indemnifying Party may reasonably request, but failure to give such notice shall not relieve the Indemnifying Party of any liability hereunder (unless and to the extent that the Indemnifying Party has suffered material prejudice by such failure). The Indemnifying Party shall have the right, but not the obligation, exercisable by written notice to the Indemnified Party within twenty (20) days of receipt of notice from the Indemnified Party of the commencement of or assertion of such Third Party Claim, to assume the defense and control the settlement of any such Third Party Claim. Notwithstanding anything to the contrary contained in this Article 9, if the Indemnified Party is a Buyer Indemnified Party, then the Indemnifying Party shall not have the option to assume the defense of any such Third Party Claim (i) which seeks any remedy other than monetary damages, (ii) which claim, or the assumption by Seller of the defense of which claim, Buyer Indemnified Party reasonably determines (A) could materially adversely affect the continuing business operations of Buyer Indemnified Party or any of its Affiliates or their relationships with customers, clients, suppliers or other third parties with whom Buyer Indemnified Party or any of its Affiliates has a material business relationship, (B) would reasonably pose significant regulatory or reputational risk or exposure to Buyer Indemnified Party or (C) is a claim involving a criminal matter or litigation in which the Third Party is a Governmental Body (in which cases Buyer Indemnified Party shall have the right to control the defense of such matter and Seller shall have the right to participate in the defense of such matter at

their own cost and expense), or (iii) which claim is covered by the R&W Insurance Policy and any claims, actions, suits, proceedings, liabilities, obligations, losses, and damages, amounts paid in settlement, interest, costs and expenses (including reasonable attorney's fees, court costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) (collectively, "Losses") arising from or relating to such Third Party Claim are in excess (or are reasonably likely to be in excess) of the retention under such R&W Insurance Policy. Whether or not the Indemnifying Party exercises its right to control the defense of any Third Party Claim as provided above, each Party shall cooperate in the defense of such Third Party Claim and make available all witnesses, pertinent records, materials and information in such Party's possession and control relating thereto as is reasonably required in connection with the defense of such Third Party Claim.

(b) The Indemnifying Party or the Indemnified Party, as the case may be, shall have the right to participate in (but not control), at its own expense, the defense of any Third Party Claim that the other is defending, as provided in this Agreement, excluding any Third Party Claims relating to Taxes of the Indemnified Party.

(c) If the Indemnifying Party has assumed the defense of any Third Party Claim as provided in this Agreement, the Indemnifying Party shall not settle, consent to a settlement of, or consent to the entry of any judgment arising from, such Third Party Claim without the Indemnified Party's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed) unless (i) such settlement or judgment relates solely to monetary damages for which the Indemnified Party has acknowledged and accepted full responsibility to indemnify the Indemnified Party, and (ii) the terms of the settlement include a full and unconditional release of the Indemnified Party and all of its Affiliates in respect of the subject matter of such Third Party Claim and all related claims and damages arising therefrom. The Indemnifying Party shall not, without the Indemnified Party's prior written consent, enter into any compromise or settlement that (i) commits the Indemnified Party to take, or to forbear to take, any action, or (ii) does not provide for a full and unconditional release by such Third Party of the Indemnified Party.

(d) Whether or not the Indemnifying Party chooses to defend or prosecute any Third Party Claim, both Parties hereto shall cooperate in the defense or prosecution thereof and shall furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested in connection therewith or as provided in Section 5.1.

**9.9. Indemnification Claim Procedures Generally.** In the event an Indemnified Party shall claim a right to indemnification pursuant to this Agreement other than a claim pursuant to Section 9.3(a), such Indemnified Party shall send written notice of such indemnification claim to the Indemnifying Party (each such notice, a "Claim Notice"); provided, however, that the failure to give such notice shall not relieve the Indemnifying Party of any liability hereunder (unless and to the extent that the Indemnifying Party has suffered material prejudice by such failure). Any Claim Notice shall specify the basis for such claim, the amount thereof, if known (or a reasonable estimate if not known), and the method of computation thereof, all with reasonable particularity and shall contain a reference to the provisions of this Agreement in respect of which such a claim shall be incurred. Such Claim Notice shall be given as promptly as is reasonably practicable after

the Indemnified Party becomes aware of the basis for each such a claim. If the Indemnifying Party in good faith objects to any claim made by an Indemnified Party in any such Claim Notice, then the Indemnifying Party shall deliver a written notice (a "Claim Dispute Notice") to the Indemnified Party during the thirty (30)-day period commencing upon receipt by the Indemnifying Party of such Claim Notice. Such Claim Dispute Notice shall set forth in reasonable detail the principal basis for the dispute of any claim made by the Indemnified Party in the original Claim Notice. If the Indemnifying Party so contests the existence of an obligation to indemnify or the amount of part or all of such Loss, the Indemnified Party and the Indemnifying Party shall work in good faith to resolve any dispute in respect of such Loss for a period of thirty (30) days, after which the Indemnified Party or Indemnifying Party may submit such dispute to any court of competent jurisdiction. If the Indemnifying Party does not deliver a Claim Dispute Notice to the Indemnified Party prior to expiration of the thirty (30)-day period or if the matters set forth in such Claim Dispute Notice are resolved, then the Indemnifying Party shall be deemed to have accepted the claim for indemnification set forth in such Claim Notice and shall pay such amount to the Indemnified Party.

**9.10. Treatment of Indemnification Payments.** Amounts payable in respect of the Parties' indemnification obligations shall be treated as an adjustment to the Purchase Price for Tax purposes and shall be treated as such by Buyer and Seller on their Returns to the extent permitted by law.

## **10. Miscellaneous Provisions.**

**10.1. Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given or made as follows (i) upon receipt, if mailed by certified or registered mail, return receipt requested; (ii) the time of delivery confirmation in the courier's system, if sent designated for overnight delivery by globally recognized overnight delivery service (such as DHL or Federal Express), fee prepaid; (iii) upon confirmation of receipt, if sent by facsimile or e-mail or (iv) when delivered, if delivered personally, in each case addressed as follows or to such other address or addresses of which the respective Party shall have notified the other in accordance with this Section 10.1.

If to Seller, to:           Cook Medical Holdings LLC  
                                  Attn: General Counsel  
                                  750 Daniels Way  
                                  Bloomington, IN 47404  
                                  Email: cynthia.kretz@cookgroup.com

With a copy (which shall not constitute notice) to:

Ice Miller LLP  
Attn: Stephen J. Hackman and Pierce H. Han  
One American Square, Suite 2900  
Indianapolis, Indiana 46282  
Email:   stephen.hackman@icemiller.com  
          pierce.han@icemiller.com



If to Buyer, to: Merit Medical Systems, Inc.  
Attention: Brian Lloyd, Chief Legal Officer  
1600 West Merit Parkway  
South Jordan, UT 84095  
Email: Brian.Lloyd@merit.com

With a copy (which shall not constitute notice) to:

Parr Brown Gee & Loveless  
Attention: Michael J. Schefer  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
Email: mschefer@parrbrown.com

**10.2. Expenses.** Except as otherwise provided herein, each Party to this Agreement will bear all of the fees, costs and expenses incurred by it in connection with the transactions contemplated hereby, whether or not such transactions are consummated.

**10.3. Entire Agreement; Modification.** The agreement of the Parties, which consists of this Agreement, the Schedules and Exhibits hereto and the documents referred to herein, including the Collateral Agreements, sets forth the entire agreement and understanding between the Parties and supersedes any prior agreement or understanding, written or oral, relating to the subject matter of this Agreement, including the Confidentiality Agreement. No amendment, supplement, modification, or waiver of this Agreement shall be binding unless executed in writing by the Party to be bound thereby, and in accordance with Section 11.3.

**10.4. Assignment; Binding Effect; Severability.** This Agreement may not be assigned by any Party hereto without the other Party's written consent; provided that Buyer may transfer or assign in whole or in part to one or more Buyer Designees its right to purchase all or a portion of the Purchased Assets, but no such transfer or assignment will relieve Buyer of its obligations hereunder. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the successors, legal representatives and permitted assigns of each Party hereto. The provisions of this Agreement are severable, and in the event that any one or more provisions are deemed illegal or unenforceable the remaining provisions shall remain in full force and effect unless the deletion of such provision shall cause this Agreement to become materially adverse to either Party, in which event the Parties shall use commercially reasonable efforts to arrive at an accommodation that best preserves for the Parties the benefits and obligations of the offending provision.

**10.5. Governing Law.** THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY AND ALL CLAIMS OR CAUSES OF ACTION (WHETHER AT LAW OR IN EQUITY, BASED IN CONTRACT, TORT OR OTHERWISE) IN CONNECTION WITH ANY MATTER BASED UPON, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION.

**10.6. Consent to Jurisdiction.** Each of the Parties hereto irrevocably consents to the exclusive jurisdiction and venue of any state and appellate court within the State of Indiana located in Indianapolis, Indiana, including the Indiana Commercial Courts (or, if any such court declines to accept jurisdiction over a particular matter, any federal court within the State of Indiana) in connection with any matter based upon or arising out of this Agreement or the matters contemplated herein, agrees that process may be served upon them in any manner authorized by the Laws of the State of Indiana for such persons and irrevocably waives, to the fullest extent permitted by applicable Law, and covenants not to assert or plead any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

**10.7. WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, AND AGREES TO CAUSE EACH OF ITS AFFILIATES TO WAIVE, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF A PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY OR ITS AFFILIATES WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.7.

**10.8. Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**10.9. Public Announcement.** The Parties agree that the initial press release to be issued with respect to the execution and delivery of this Agreement shall be in a form mutually agreed upon by Buyer and Seller. Each Party shall not, and each Party shall cause each of its Representatives (and direct each of their respective Representatives) not to, directly or indirectly, issue any press release or other public statement relating to the terms of this Agreement or the transactions contemplated hereby or use the other Party's name or refer to the other Party directly or indirectly in connection with the Parties' relationship with each other or the transactions contemplated by this Agreement in any media interview, advertisement, news release, press release or professional or trade publication, or in any print media, whether or not in response to an inquiry, without the prior written approval of the other Party, unless to the extent required by applicable Law, in which case the disclosing Party shall advise the non-disclosing Party of any such requirement and the Parties shall use reasonable best efforts to cause a mutually agreeable press release or other public statement to be issued.

**10.10. No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to or shall (a) confer on any Person other than the Parties and their respective successors or assigns any rights (including Third Party beneficiary rights), remedies, obligations or liabilities

under or by reason of this Agreement or (b) constitute the Parties hereto as partners or as participants in a joint venture. This Agreement shall not provide Third Parties with any remedy, claim, liability, reimbursement, cause of action or other right in excess of those existing without reference to the terms of this Agreement. Nothing in this Agreement shall be construed as giving to any Business Employee, or any other individual, any right or entitlement to employment or continued employment or any right or entitlement under any Benefit Plan, policy or procedure maintained by Seller, except as expressly provided in such Benefit Plan, policy or procedure. No Third Party shall have any rights under Section 502, 503 or 504 of ERISA, any comparable applicable Law of any other jurisdiction, or any regulations thereunder because of this Agreement that would not otherwise exist without reference to this Agreement. No Third Party shall have any right, independent of any right that exists irrespective of this Agreement, under or granted by this Agreement, to bring any suit at Law or equity for any matter governed by or subject to the provisions of this Agreement.

**10.11. Specific Performance.** The Parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof (including if the Parties fail to take such actions as are required to consummate the transactions contemplated hereby) or were otherwise breached. Each Party hereto shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof in the courts described in Section 10.6 without proof of actual damages, in addition to any other remedy to which it is entitled at Law or in equity. No Party will oppose the granting of an injunction, specific performance, or other equitable relief when expressly available pursuant to the terms of this Agreement on the basis that the other Party has an adequate remedy at Law or that an award of specific performance is not an appropriate remedy for any reason at Law or equity. No other Party or any other Person shall be required to obtain, furnish, or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 10.11, and each Party hereto irrevocably waives any right it may have to require the obtaining, furnishing, or posting of any such bond or similar instrument. The right of specific enforcement is an integral part of the transactions contemplated hereby and without that right, neither party would have entered into this Agreement.

**10.12. Electronic Data Room Materials.** No information or document will be considered to have been "made available" to Buyer unless it was uploaded no later than 9:00 a.m. (Eastern time) on the Business Day prior to the date of this Agreement (the "Cutoff Time") to the Data Room and which was fully accessible to Buyer and its Representatives through the earlier of the Closing or the termination of this Agreement. Seller shall deliver a complete copy of the Data Room as of the Cutoff Time to Buyer at Closing on one or more mobile drives (or other digital storage device as Buyer and Seller agree).

## **11. Termination; Amendment and Waiver.**

**11.1. Termination.** This Agreement may be terminated at any time prior to the Closing Date by:

- (a) Mutual Consent. The mutual written consent of Buyer and Seller;

(b) Failure of Buyer Condition. Buyer upon written notice to Seller if any of the conditions to the Closing set forth in Section 8.2 shall have become incapable of fulfillment by the Termination Date and shall not have been waived in writing by Buyer;

(c) Failure of Seller Condition. Seller upon written notice to Buyer if any of the conditions to the Closing set forth in Section 8.3 shall have become incapable of fulfillment by the Termination Date and shall not have been waived in writing by Seller;

(d) Court or Administrative Order. Buyer or Seller, by written notice to the other, if (i) there shall be in effect a final, non-appealable order of a Governmental Body of competent jurisdiction prohibiting, restraining, enjoining or otherwise making unlawful the consummation of the transactions contemplated hereby or (ii) if there shall be any Law that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited; provided that the right to terminate this Agreement and abandon the transactions contemplated by this Agreement pursuant to this Section 11.1(d) shall not be available to Buyer or Seller unless such Party has complied with its obligations under Section 5.7; or

(e) Delay. Buyer or Seller if the Closing shall not have occurred on or prior to the date that is six (6) months from the date hereof (the “Termination Date”); provided, however, that the Party seeking termination pursuant to this clause (e) is not then in breach in any material respect of any of its covenants or agreements contained in this Agreement.

**11.2. Effect of Termination.** In the event of the termination of this Agreement in accordance with Section 11.1, this Agreement shall become void and have no effect, without any liability or obligation on the part of any Party or its directors, officers, Affiliates, stockholders, agents or other Representatives, except for the obligations of the Parties hereto as provided in Article 6 relating to the obligations of Buyer and Seller to keep confidential certain information, Section 10.2 relating to certain expenses, Section 10.5 relating to governing law, Section 10.6 relating to consent to jurisdiction, Section 10.7 relating to waiver of jury trial, Section 10.9 relating to publicity, and this Section 11.2. Nothing in this Section 11.2 shall be deemed to release either Party from any liability for any material breach of any representation, warranty, covenant, or agreement hereunder prior to termination or any Fraud.

**11.3. Amendment and Waiver.** This Agreement may be amended with respect to any provision contained herein at any time prior to the Closing Date by action of the Parties hereto taken by their Boards of Directors or by their duly authorized officers or employees, whether before or after such Party’s action. Any term or condition hereof may be waived and at any time prior to the Closing Date by the Party hereto which is entitled to the benefits thereof by action taken by its Board of Directors or its duly authorized officer or employee, whether before or after the action of such Party. Any such amendment or waiver shall be evidenced by a written instrument duly executed on behalf of each Party by its duly authorized officer or employee. The failure of either Party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision nor shall it in any way affect the validity of this Agreement or the right of such Party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

[SIGNATURES PAGE FOLLOWS]





## 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 30, 2024

/s/ Fred P. Lampropoulos

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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 30, 2024

/s/ Raul Parra

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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, 2024, 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 30, 2024

/s/ Fred P. Lampropoulos  
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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.

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**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, 2024, 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 30, 2024

/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.

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