

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

FORM 8-K/A

AMENDMENT NO. 1 TO CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (date of earliest event reported): April 19, 2022



**Merit Medical Systems, Inc.**

(Exact name of registrant as specified in its charter)

**Utah**  
(State or other jurisdiction of  
incorporation or organization)

**0-18592**  
(Commission  
File Number)

**87-0447695**  
(I.R.S. Employer  
Identification No.)

**1600 West Merit Parkway**  
**South Jordan, Utah**  
(Address of principal executive offices)

**84095**  
(Zip Code)

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

**N/A**  
(Former name or former address, if changed since last report)

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

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

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

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

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

Emerging growth company

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

## EXPLANTORY NOTE

On April 19, 2022, Merit Medical Systems, Inc. (the “Company”) filed a Current Report on Form 8-K (the “Initial Report”), disclosing the retirement of Ronald A. Frost from his position as the Company’s Chief Operating Officer. The Company is filing this Amendment No. 1 on Form 8-K/A in connection with the execution by Mr. Frost and the Company of a Separation Agreement setting forth the terms and conditions of his separation from the Company. The following disclosure supplements, but does not replace, the disclosure set forth in Item 5.02 of the Initial Report and should be read in connection with the Initial Report. This Amendment does not affect any other items of the Initial Report, but does include a new Exhibit 104 for the purpose of filing a new cover page from this Current Report on Form 8-K, formatted in Inline XBRL.

### **Item 5.02. Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers.**

On August 26, 2022, the Company and Ronald A. Frost entered into a Separation Agreement setting forth the terms and conditions of his separation from the Company (the “Frost Separation Agreement”). Pursuant to the terms of the Frost Separation Agreement, among other things: (i) Mr. Frost’s final date of employment with the Company was August 26, 2022; (ii) the Company agreed to pay Mr. Frost a separation payment in the amount of \$1,200,000, (iii) all outstanding Performance Stock Unit Awards granted to Mr. Frost by the Company (“PSUs”) were terminated; and (iv) in lieu of receiving any other payment pursuant to such PSUs, Mr. Frost may be entitled to receive contingent cash payments on the terms and subject to the conditions described in the Frost Separation Agreement. The Frost Separation Agreement also provides for customary releases of all employment-related claims, confidentiality, non-disclosure and non-disparagement covenants, and an agreement not to solicit any employee or customer of the Company for a period of one year. The foregoing summary of the Frost Separation Agreement is qualified in its entirety by reference to the full text of the Frost Separation Agreement, a copy of which is filed as Exhibit 10.1 hereto and incorporated herein by reference.

### **Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
<a href="#">10.1</a>	<a href="#">Separation Agreement dated as of August 26, 2022, by and between Ron Frost and Merit Medical Systems, Inc.</a>
<a href="#">99.1*</a>	<a href="#">Press Release, dated April 21, 2022, entitled “Merit Medical Announces Chief Operating Officer Transition”</a>
104	The cover page from this Amendment No. 1 to Current Report on Form 8-K/A, formatted in Inline XBRL.

\* Previously furnished with the Initial Report.

**SIGNATURES**

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

**MERIT MEDICAL SYSTEMS, INC.**

Date: September 1, 2022

By: /s/ Brian G. Lloyd

Brian G. Lloyd

Chief Legal Officer and Corporate Secretary

*This document affects your legal rights. You are advised to consult with an attorney or other counsel of your choice prior to signing this Agreement.*

## SEPARATION AGREEMENT AND RELEASE OF ALL CLAIMS

THIS SEPARATION AGREEMENT AND RELEASE OF ALL CLAIMS (the “**Agreement**”) is entered into between Merit Medical Systems, Inc., a Utah corporation (“**Employer**”) and Ron Frost (“**Employee**”)(Employer and Employee may be referred to individual as “**Party**” and collectively, the “**Parties**”).

### RECITALS

WHEREAS, Employee has been employed as a Chief Operating Officer by Employer;

WHEREAS, during Employee’s employment, Employer and Employee entered into a Performance Stock Unit Award Agreement with a grant date of February 26, 2020, and a three year performance period (the “**2020 Three-Year PSU**”); a Performance Stock Unit Award Agreement with a grant date of March 19, 2021, and a two year performance period (the “**2021 Two-Year PSU**”); a Performance Stock Unit Award Agreement with a grant date of March 19, 2021, and a three year performance period (the “**2021 Three-Year PSU**”); and a Performance Stock Unit Award Agreement with a grant date of February 26, 2022, with a three year performance period (the “**2022 Three-Year PSU**”)(collectively, the “**PSU Agreements**”);

WHEREAS, the Parties intend for the PSU Agreements to terminate, but desire to condition certain payments on performance provisions of the 2020 Three-Year PSU and 2021 Two-Year PSU as set out below;

WHEREAS, the Parties have agreed that Employee’s employment with Employer will terminate, and the Parties desire to set forth their respective rights and obligations in respect of Employee’s separation from Employer, to be effective August 26, 2022 (the “**Termination Date**”); and

WHEREAS, by this Agreement, and the sums paid to or for the benefit of Employee hereunder, Employer and Employee intend to resolve any and all disputes of any kind or character, if any, between them, including without limitation any and all disputes arising from or related to Employee’s employment with Employer or any Affiliate (as defined below), the termination of that employment, or otherwise.

### AGREEMENT

NOW, THEREFORE, in consideration of the promises set forth herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree to the following terms and conditions, including the recitals by this reference:

#### 1. Additional Definition

Affiliate: As used herein, the term “**Affiliate**” shall mean and refer to any officer, director, shareholder, member, employee, and/or agent of Employer; and/or any subsidiary, division, or affiliate of Employer and/or any entity in which Employer owns, directly or indirectly, a legal or beneficial interest (whether in whole or in part); and/or any individual or entity that owns, directly or indirectly, a legal or beneficial interest (whether in whole or in part) in Employer.

**2. Separation Benefits.** In exchange for Employee’s execution of this Agreement and the releases contained herein, Employer shall pay to or for Employee’s benefit the following:

- a. Payment. The total one-time lump sum of ONE MILLION TWO HUNDRED THOUSAND U.S. DOLLARS (\$1,200,000.00) (paid on the first regular payday immediately following the expiration of the 7-day revocation period set forth in Section 3).

- b. Contingent Payments.** Upon execution of this Agreement, the PSU Agreements will terminate and in lieu of receiving any shares of the Employer's Common Stock (the "**Common Stock**") under the PSU Agreements, Employee may receive certain cash payments, subject to the conditions set forth below:
- i.** Under the 2020 Three-Year PSU, Employee may be paid a cash payment calculated at a total target of \$50,000 multiplied by the applicable FCF Multiplier and applicable rTSR Multiplier from the tables in Section 2 of the 2020 Three-Year PSU based on the performance criteria set out in Section 2 of that agreement. The calculations, conditions, definitions, and payment terms will be the same as set out in Section 2 and 5 of the 2020 Three-Year PSU, provided that in lieu of Common Stock, Employee will be paid any payment in cash based on a total target of \$50,000.
  - ii.** Under the 2021 Two-Year PSU, Employee may be paid a cash payment calculated at a total target of \$50,000 multiplied by the applicable FCF Multiplier and applicable rTSR Multiplier from the tables in Section 2 of the 2020 Three-Year PSU based on the performance criteria set out in Section 2 of that agreement. The calculations, conditions, definitions, and payment terms will be the same as set out in Section 2 and 5 of the 2021 Two-Year PSU, provided that in lieu of Common Stock, Employee will be paid any payment in cash based on a total target of \$50,000.
  - iii.** Pursuant to Section 4.2 of the Merit Medical Systems, Inc. 2018 Long-Term Incentive Plan (the "**Plan**"), the Compensation and Talent Development Committee (the "**Committee**") of the Board of Directors of Employer shall have full discretion to determine the terms and conditions upon which the contingent payments contemplated by this Section 2(b) shall be paid, including the discretion to determine the amounts and circumstances of any such payment. Decisions of the Committee with respect to such payments shall be final, conclusive, and binding on both Parties.
- c. Benefits.** If Employee is eligible due to current coverage and properly elects continuation coverage under Employer's group medical and/or dental insurance plan pursuant to Sections 601 through 607 of the Employee Retirement Income Security Act of 1974, as amended ("**COBRA**"), Employer will pay that portion of the premium (excluding Employer HSA contributions) which Employer paid on behalf of Employee and Employee's enrolled family members prior to the Termination Date through the earlier of (i) February 29, 2024; (ii) the date Employee first becomes eligible for coverage under any group health plan maintained by another employer of Employee or Employee's spouse; or (iii) the date such COBRA continuation coverage otherwise terminates as to Employee under the provisions of Employer's group medical and/or dental insurance plan. Nothing herein shall be deemed to extend the otherwise applicable maximum period in which COBRA continuation coverage is provided or supersede the plan provisions relating to early termination of such COBRA continuation coverage. Employee is responsible to ensure payment of Employee's share of the portion of the premium, if any, to the COBRA Administrator, as defined by the terms of the applicable group health plan(s), by the 1<sup>st</sup> day of each month. Employer's group medical and/or dental insurance plan(s) may change from year to year, in which case, the portion of the premium paid by Employee under this paragraph 2(b) may be adjusted by Employer so that Employee pays the same rate under the new plan(s) as similarly situated employees pay under the new plan(s), provided that Employee will pay the full (non-subsidized rate) if Employee elects to increase coverage during open enrollment. For example, if Employee moves from a single health insurance plan to a family health insurance plan, Employee will pay the full rate for the family health insurance plan.

Payment of any monies to or on behalf of Employee under this Section 2 shall be subject to all applicable federal, state, and local payroll withholding taxes.

### **3. Review and Revocation.**

**a.** Employee acknowledges and agrees that Employee has twenty-one (21) days from the date Employee receives this Agreement to consider the terms of and to sign this Agreement. Employee may, at Employee's sole and absolute discretion, sign this Agreement prior to the expiration of the above review period.

**b.** Employee may revoke this Agreement for a period of up to 7 days after Employee signs it (not counting the day it was signed) and that the Agreement shall not become effective or enforceable until the 7-day revocation period has expired. To revoke this Agreement, Employee must give written notice stating that Employee wishes to revoke the Agreement to Mike Voigt, Merit Medical Systems, Inc., 1600 West Merit Parkway, South Jordan, UT 84095, mike.voigt@merit.com. Any notice stating that Employee wishes to revoke this Agreement must be emailed (with a reply confirmation from the above Merit representative), hand-delivered, or mailed (with confirmation of delivery) to Employer, as set forth in this paragraph, in sufficient time to be received by Employer on or before the expiration of the 7-day revocation period.

#### 4. Release of All Claims.

a. In consideration for the payment stated in Section 2 and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Employee, for Employee and Employee's heirs, assigns, and all persons and entities claiming by, through, or under Employee, hereby irrevocably, unconditionally, and completely releases, discharges, and agrees to hold harmless Employer and its Affiliates (hereinafter referred to, both individually and collectively, as "**Releasees**") of and from any and all claims, liabilities, charges, demands, grievances, lawsuits, and causes of action of any kind or nature whatsoever, including without limitation claims for contribution, subrogation, or indemnification, whether direct or indirect, liquidated or unliquidated, known or unknown, which Employee has, had, or may claim to have against Releasees (hereinafter collectively referred to as "**Claim(s)**").

b. The release, discharge, and agreement to hold harmless set forth in this Section 4 includes, without limitation, any Claim(s) that Employee had, has, or may claim to have against Releasees:

- i. for wrongful or constructive discharge or termination, negligent or intentional infliction of emotional distress, breach of express or implied contract, breach of the covenant of good faith and fair dealing, violation of public policy, defamation, promissory estoppel, detrimental reliance, retaliation, tortious interference with contract or prospective economic advantage, invasion of privacy, whistleblower protection, hostile work environment, personal injury (whether physical or mental), or any other Claim(s), whether arising in tort or in contract;
- ii. for discrimination, hostile work environment / harassment, retaliation, or otherwise arising under federal, state, or local law, including without limitation Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Equal Pay Act, all claims under Titles 29 and 42 of the United States Code, the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, or any other federal, state, or local law prohibiting discrimination, harassment, or retaliation on the basis of race, color, national origin and ancestry, religion, age, sex (including breastfeeding and related conditions), sexual orientation, gender identity / gender expression, physical or mental disability, medical condition, marital status, military and veteran status, or any other protected group status;
- iii. for discrimination, hostile work environment / harassment, retaliation, or otherwise arising under the Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act arising on or before the date of this Agreement;
- iv. arising under the Employee Retirement Income Security Act ("**ERISA**") the Family and Medical Leave Act ("**FMLA**"), or the National Labor Relations Act ("**NLRA**");
- v. arising under the Dodd-Frank Wall-Street Reform and Consumer Protection Act or other whistleblower protection to the full extent allowed by law;
- vi. arising under the Worker Adjustment and Retraining Notification Act, as amended (and any state or local equivalents, often referred to as mini-WARN acts);
- vii. for unpaid wages, bonuses, commissions, or other compensation of any type or kind to the full extent allowed by law;

viii. arising under any state or local law, including without limitation, Utah state law, the Utah Antidiscrimination Act, the Utah Minimum Wage Act, the Utah Employment Selection Procedures Act, and the Utah Occupational Safety and Health Act;

ix. for attorney's fees and/or costs; and/or

x. for any other Claim(s) in any way related to or arising out of Employee's employment with Employer or the termination of that employment.

c. Employee hereby represents and warrants that Employee has not brought a complaint, claim, charge, action or proceeding against any of the Releasees in any jurisdiction or forum.

d. Nothing in this Agreement waives Employee's rights, if any, to (i) continue Employee's participation in Employer's employee health benefit plan, as allowed by COBRA and the terms, conditions, and limitations of the plan, (ii) any vested rights that Employee may have under any employee pension or welfare benefit plan in which Employee participated as an employee of Employer, and/or (iii) any claims Employee has or may claim to have for worker's compensation or unemployment benefits, and/or (iv) any claims that are non-waivable by law.

**5. Exclusion for Certain Claims.** Notwithstanding the foregoing, Employer and Employee agree that the release set forth in Section 4 above shall not apply to any claims arising after the date Employee signs this Agreement, nor shall anything herein prevent Employee or Employer from instituting any action to enforce the terms of this Agreement. **Employee understands that nothing contained in this Agreement limits Employee's ability to file a charge or complaint with the Equal Employment Opportunity Commission, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission or any other federal, state or local governmental agency or commission ("Government Agencies"). Employee further understands that this Agreement does not limit Employee's ability to communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to Merit. This Agreement does not limit Employee's right to receive an award for information provided to any Government Agencies.** Notwithstanding the foregoing, Employee agrees that, to the full extent allowed by law, Employee is not entitled to and hereby waives any right to recover compensation, damages, or any other form of relief of any type or kind and/or reinstatement to employment that may be awarded or ordered by any court or administrative agency to or for Employee's benefit arising from or relating to any Claim(s) released by Employee under this Agreement. Employee further specifically acknowledges and agrees that Employee is waiving, on behalf of Employee and Employee's attorneys, all claims for fees and expenses and court costs

**6. Full and Complete Release.** Employee understands and agrees that Employee is releasing and waiving any Claim(s) that Employee does not know exists or may exist in Employee's favor at the time Employee signs this Agreement which, if known by Employee, would materially affect Employee's decision to sign this Agreement. Nonetheless, for the purpose of implementing a full and complete release of all Claim(s), Employee expressly acknowledges that the release set forth in Section 4 is intended to include, without limitation, all Claim(s) that Employee does not know or suspect to exist in Employee's favor and that the release set forth in Section 4 includes the release and extinguishment of any such Claim(s). In addition, Employee agrees that Employee will not seek re-employment with Employer at any time in the future and that the provisions of this Section 6 are adequate and legal grounds to (a) reject Employee's application for re-employment or (b) terminate Employee's employment should Employee be rehired by Employer in violation of this Section 6.

**7. Return of Goods to Employer.** Employee covenants and warrants that Employee returned to Employer, and has not retained a copy of, (i) any and all documents or other information about Employer, including without limitation confidential or proprietary information (whether developed by Employee or by any other employee of Employer), (ii) all electronic equipment and electronic information storage devices (e.g., computers, cellular phones, PDAs, zip drives, thumb drives, disks, etc.), (iii) company credit cards, office keys, etc., and (iv) passwords or combinations to any computer, tablet, cellular phone, or similar electronic device, storage device, storage unit, or filing cabinet that Employee obtained or that were made available to Employee as a consequence of Employee's employment with Employer and/or that contain confidential or proprietary information about Employer or that otherwise are the rightful property of Employer.

**8. No Other Representations.** Employee represents and warrants that no promise or inducement has been offered or made except as herein set forth and that Employee is entering into and executing this Agreement without reliance on any statement or representation not set forth within this Agreement by any other Party, or any person(s) acting on any Party's behalf.

**9. Covenant of Confidentiality.** Employee agrees that, as a material term of this Agreement and to protect the goodwill, the Confidential Information (as defined below), and the business of Employer, Employee shall not, from the date of this Agreement through the end of the Payout Period or at any time thereafter, without the express, prior written consent of the President of Employer: (i) ever reveal, disclose, furnish, make accessible, or disseminate any of Employer's Confidential Information or any other matter concerning the business affairs of Employer or of any customer or vendor of Employer or (ii) ever use or exploit any of Employer's Confidential Information or any other matter concerning the business affairs of Employer or of any customer or vendor of Employer for the personal and/or financial use, gain, or benefit of Employee or of any other person or entity or for any other purpose.

For purposes of this Agreement, "**Confidential Information**" means names, addresses, telephone numbers, contact persons, and other identifying and confidential information about persons, firms, corporations, and/or other entities that are or become customers, accounts, licensors, vendors, and/or suppliers of goods or services to or of Employer; customer lists; details of client or consultant contracts; details of customer usage; non-public pricing policies; operational methods; marketing plans or strategies; product and program developments and plans; research projects; technology and technical processes; business acquisition plans; personnel information and plans; improvements; designs; original works of authorship; derivative works; formulas; processes; compositions of matter; computer software and related information, including without limitation programs, code, concepts, methods, routines, formulas, algorithms, designs, specifications, architectures, or inventions embodied therein, as well as all data, documentation, and copyrights related thereto; patent applications; databases; mask works; trade secrets; know-how; ideas; service marks; planned or proposed Website ideas and plans, including but not limited to look and feel; and other intellectual property or proprietary information rights and any and all rights, applications, extensions and renewals in connection therewith (either proposed, filed, or in preparation for filing); and financial information and general confidential business information of Employer. Such information is confidential and unique, not generally known in the industry, and gives Employer a competitive advantage and significantly enhances Employer's goodwill.

Notwithstanding the foregoing, Confidential Information excludes information not protected by trademark, copyright, patent, or other similar state, federal, or worldwide protection and that, through no fault of Employee, is generally known to the public, is generally employed in the medical device or equipment manufacturing industry at or after the time Employee first learns of such information, or generic information or knowledge which the Employee would have learned in the course of similar employment or work elsewhere in the medical device or equipment manufacturing industry; provided, however, that Employee shall bear the burden of proving that any information disclosed or used by Employee does not meet the definition of Confidential Information set forth above and/or that the disclosure or use of Confidential Information occurred through no fault of Employee.

**Notice Related to Federal Law.** Notwithstanding the foregoing, Employee is hereby notified in accordance with the Defend Trade Secrets Act of 2016 ("DTSA") that Employee will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law; or (ii) in a complaint or other document that is filed under seal in a lawsuit or other proceeding. Employee is further notified that if he or she files a lawsuit for retaliation by Employer for reporting a suspected violation of law, Employee may disclose Employer's trade secrets to his or her attorney and use the trade secret information in the court proceeding if Employee files any document containing the trade secret under seal and does not disclose the trade secret, except pursuant to court order. Employee understands that these are the rights presently in force and that Employee will be bound by any subsequent changes or amendments to the DTSA.



10. [intentionally left blank]

**11. Non-Competition Covenant, Covenant Not to Provide Services, or Solicit.**

- a. Non-Solicitation of Employees:** Employee acknowledges the character of Employer's Business and the substantial amount of time, money, and effort that Employer has spent and will spend in recruitment and training of employees. As a material term of this Agreement and to protect the goodwill, the Confidential Information, and the business of Employer, Employee covenants that, beginning on the Termination Date and continuing for twelve (12) months from the Termination Date, Employee shall not, either individually or on behalf of or with any person or entity, directly or indirectly solicit, or attempt to solicit, divert, hire away, encourage, or otherwise induce any employee, contractor, or consultant of Employer to terminate his/her/its employment or relationship with Employer or hire or engage any person employed by Employer at any point during Employee's last six (6) months of employment with Employer.
- b. Non-Solicitation of Employer's Customers or Prospective Customers:** Employee acknowledges the character of Employer's Business and the substantial amount of time, money, and effort that Employer has spent and will spend in recruitment of customers and/or accounts. As a material term of this Agreement, for the consideration provided in this Agreement, and to protect the goodwill, the Confidential Information, and the business of Employer, Employee covenants that, beginning on the Termination Date and continuing for twelve (12) months from the later of (i) the Termination Date and (ii) the date that Employee breaches any of the provisions of this Section 11, Employee shall not (either individually or on behalf of or with any person or entity, directly or indirectly) sell, solicit, attempt to sell, or provide products or services that are the same as or substantially similar to products or services Employee sold or provided at any time on behalf of Employer to any person or entity that:
- i. Employee had contact or communications with at any time during Employee's last twelve (12) months of employment with Employer; (ii) supervised Employer's account or dealings at any time during Employee's last twelve (12) months of employment with Employer;
  - ii. was a current or former customer or account of Employer with whom Employee (i) had contact or communications at any time during Employee's last twelve (12) months of employment with Employer; (ii) supervised Employer's account or dealings at any time during Employee's last twelve (12) months of employment with Employer;
  - iii. was a prospective customer or account whose business Employee solicited as a representative of or on behalf of Employer within the last twelve (12) months of Employee's employment with Employer; and/or
  - iv. about whom Employee obtained Confidential Information (as defined herein) during Employee's last twelve (12) months of employment with Employer.
- c. Non-Competition:** For the consideration provided in this Agreement and to protect Employer's goodwill with its customers and vendors, the Confidential Information, and/or the business of Employer, Employee agrees that, beginning on the Termination Date and continuing for twelve (12) months from the later of (i) the Termination Date and (ii) the date that Employee breaches any provisions of this Section 11, Employee shall not (directly or indirectly, either individually or on behalf of or with any person or entity) perform:
- i. the same or substantially similar work as Employee performed on behalf of Employer at any time during Employee's last twelve (12) months of employment with Employer for any person or entity that competes with Employer (by selling substantially similar products or providing substantially similar services in any geography in which Employer does business); and/or

ii. work that would require the use and/or disclosure of Confidential Information or that by its nature, is likely to lead to the use and/or disclosure of Confidential information.

- d. Employee's Agreement:** Employee has carefully read and considered the provisions of this Agreement and, having done so, agrees that the restrictions set forth herein are fair, reasonable, and necessary to protect Employer's legitimate business interests, including its goodwill with its clients and employees and its Confidential Information.
- e. Action Upon Breach:** Employee agrees that a breach or threatened breach of this Section 11 will result immediate and irreparable injury to Employer. Employee, therefore, agrees that in the event of a breach or threatened breach of this Section 11, in addition to any other remedy that Employer may have under this Agreement or applicable law, Employer shall be entitled to an injunction, temporary restraining order or other equitable relief restraining Employee from such breach. Nothing herein shall be construed as prohibiting Employer from pursuing any other remedies for such breach or threatened breach.

**12. Wages and Commissions Paid in Full.** Except as specifically set forth in Section 2 above, Employee acknowledges and agrees that Employee has received all monies due and owing to Employee from Employer, including without limitation any monies due and owing for wages (including without limitation overtime), accrued but unused vacation benefits, commissions, bonuses, or otherwise and that Employee has no claim against Employer whatsoever for the payment of any further wages (including without limitation overtime), commissions, bonuses, vacation benefits, or other monies except as specifically set forth in Section 2.

**13. Nondisparagement.** Employee covenants that, as an agreed on material term of this Agreement, Employee will not make any disparaging remarks (whether or not Employee deems such comments to be true and accurate) about Employer or its officers, directors, and employees and shall refrain from saying or doing anything that reasonably could hold Employer or its officers, directors, or employees up to disrepute in the eyes of any other person or entity or that reasonably could interfere with Employer's current or future business plans or activities. This Section will not apply to activities carried out by Employee pursuant to Paragraphs 5 or 10.

**14. Forfeiture of Consideration.** Employee acknowledges and understands that the provisions of Sections 9, 10, and 13 are each a material term of this Agreement and that Employer would not be willing to enter into this Agreement if it did not include the strict confidentiality and nondisparagement obligations set forth herein. Therefore, if Employee breaches the terms of Sections 9, 10, and 13, then Employee agrees that Employer, in its sole discretion, may require that Employee repay to Employer some or all of the money paid by Employer to Employee under Section 2 above. In addition, Employee will remain liable for any actual damages suffered by Employer and/or any officer, director, or employee arising from or relating to Employee's breach of the terms of Sections 9, 10 and 13.

**15. Not an Admission.** This Agreement is not an admission by any Party that either has violated any contract, law, or regulation or that Employer or Employee has discriminated against the other or otherwise infringed on the other's rights and privileges or done any other wrongful act.

**16. Entire Agreement.** This Agreement constitutes the entire integrated understanding between the Parties regarding the subject matter hereof and supersedes all negotiations, representations, prior discussions, and preliminary agreements between the Parties with respect to the subject matter hereof, except that any previous agreements addressing confidentiality, intellectual property assignment to Employer, non-solicitation, and non-competition shall continue to bind Employee and are in addition to the obligations state herein. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied upon by either Party.

**17. No Assignment of Claims.** Except as allowed in Section 5 above, Employee represents that Employee has not made, and will not make, any assignment of Claim(s) released by this Agreement and that no other person or entity had or has any interest in any Claim(s) released by Employee under this Agreement. Employee agrees to indemnify and hold harmless Employer from any and all claims, demands, expenses, costs, attorney's fees, and causes of action asserted by any person or entity due to a violation of this non-assignment provision.

**18. Headings.** The headings contained in this Agreement are for ease of reference only and shall not limit or otherwise affect the interpretation of this Agreement.

**19. Attorney's Fees.** If a civil action or other proceeding is brought to enforce this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees, costs, and expenses incurred, in addition to any other relief to which such Party may be entitled, whether incurred before or after the filing of a civil action or the entry of judgment.

**20. Controlling Law.** This Agreement shall be governed by the laws of the State of Utah. The Parties agree that any dispute between them, whether arising under this Agreement or the enforceability or interpretation thereof, shall be subject to the exclusive jurisdiction of the federal or state courts situated in the State of Utah, and each Party hereby submits itself to the personal jurisdiction of the courts situated in the State of Utah.

**21. Waiver of Jury Trial.** Each Party each hereby waives any right to a trial by jury in any action or proceeding to enforce or defend any rights under this Agreement or any amendment, instrument, document or agreement delivered in connection herewith or hereafter and agree that any such action or proceeding shall be tried before a judge and not before a jury.

**22. Modification and Waiver.** Notwithstanding any state or federal statutory or case law to the contrary, this Agreement may not be modified except by a document signed by Employer and Employee, whether or not such claimed modification is supported by separate consideration. Any waiver by any Party of any breach of any kind or character whatsoever by any other Party, whether such waiver be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement on the part of the other Party. In addition, no course of dealing between the Parties, nor any delay in exercising any rights or remedies hereunder or otherwise, shall operate as a waiver of any of the rights or remedies of the Parties.

**23. Successors.** This Agreement shall inure to and bind the heirs, devisees, executors, administrators, personal representatives, successors, and assigns, as applicable, of the respective Parties.

**24. Severability.** If a court of competent jurisdiction shall find that the provisions of Section 4 of this Agreement are unenforceable, whether in whole or in part, then Employer shall have the right, at its sole option, to rescind this Agreement and to cease any payments due and/or to recover from Employee all sums paid by Employer to Employee under Section 2 of this Agreement provided, however, that the provisions of this sentence shall not be enforceable to the extent prohibited by the Age Discrimination in Employment Act or other applicable law. Except as set forth in the immediately preceding sentence, if any part of this Agreement is found to be unenforceable, the other provisions shall remain fully valid and enforceable. It is the intention and agreement of the Parties that all of the terms and conditions hereof be enforced to the fullest extent permitted by law.

**25. Cooperation.** Employee agrees to cooperate fully with Employer with respect to any investigation, legal proceeding, licensing or contract matter, or other similar matter that may arise following Employee's separation, and Employee further agrees to be available to participate in and, if necessary, to give testimony, in any such matter.

**26. Knowing and Voluntary Execution.** Employee acknowledges that Employee has read this Agreement carefully, has consulted with an attorney or other counsel of Employee's choice or decided that Employee does not want to do so, and has had the opportunity to ask any questions Employee may have regarding this Agreement. Employee acknowledges that Employee fully understands the meaning and terms of this Agreement. Employee acknowledge that Employee has signed this Agreement voluntarily and of Employee's own free will and that Employee is knowingly and voluntarily releasing and waiving all Claim(s) that Employee has or may claim to have against Employer to the full extent allowed by law.

**27. Consultation with Counsel.** Employee acknowledges that Employee has been advised, by this Agreement, to consult an attorney or other counsel of Employee's choice prior to signing this Agreement. Each Party acknowledges that it has had the opportunity, if such Party so chooses, to consult with counsel of such Party's choice prior to signing this Agreement. Each Party agrees that it shall be solely responsible for any attorney's fees incurred by that Party in the negotiation and execution of this Agreement.

**28. Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. Facsimile or other electronically delivered copies of signature pages to this Agreement shall be treated between the Parties as original signatures for all purposes.

**EMPLOYEE**

DATED: August 26, 2022

/s/ Ron Frost  
Ron Frost

**EMPLOYER**

Merit Medical Systems, Inc.

DATED: August 26, 2022

By: /s/ Mike Voigt  
Mike Voigt