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

FORM 8-K

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

Date of Report (Date of the earliest event reported): April 24, 2017 (April 23, 2017)

BECTON, DICKINSON AND COMPANY
(Exact name of registrant as specified in its charter)

New Jersey
(State or other jurisdiction
of incorporation)

001-4802
(Commission
File Number)

22-0760120
(IRS Employer
Identification No.)

1 Becton Drive
Franklin Lakes, New Jersey 07417-1880
(Address of principal executive offices)(Zip Code)

(201) 847-6800
(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))

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

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.*Agreement and Plan of Merger*

On April 23, 2017, Becton, Dickinson and Company, a New Jersey corporation (“BD”), entered into an Agreement and Plan of Merger (the “Merger Agreement”) with C.R. Bard, Inc., a New Jersey corporation (“Bard”), and Lambda Corp., a New Jersey corporation and wholly-owned subsidiary of BD (“Merger Corp”). The Merger Agreement provides, among other things, that, upon the terms and subject to the conditions set forth therein, Merger Corp will merge with and into Bard, with Bard surviving as a wholly-owned subsidiary of BD (the “Merger”).

In the Merger, each outstanding share of common stock, par value \$0.25 per share, of Bard (other than shares, if any, held by BD, Merger Corp and Bard) will be converted into the right to receive (subject to adjustment, as described in the next sentence) (x) \$222.93 in cash, without interest (the “Cash Consideration”), and (y) 0.5077 of a share of common stock, par value \$0.01 per share, of BD (“BD Stock”) (the “Stock Consideration” and, together with the Cash Consideration, the “Merger Consideration”). Under the terms of the Merger Agreement, if the number of shares of BD Stock issuable as a result of the Merger (including shares underlying equity awards granted by BD to holders of Bard equity awards in the Merger) would exceed 19.9% of the issued and outstanding shares of BD Stock immediately prior to the entry into the Merger Agreement, the Stock Consideration will be adjusted downward by the minimum amount necessary so that no more than such number of shares becomes issuable in the Merger, and the Cash Consideration will be correspondingly increased as set forth in the Merger Agreement.

Completion of the Merger is subject to customary closing conditions, including, among others, (1) the adoption of the Merger Agreement by Bard’s stockholders, (2) declaration of the effectiveness by the Securities and Exchange Commission (the “SEC”) of the Registration Statement on Form S-4 to be filed with the SEC by BD in connection with the registration of the shares of BD Stock to be issued in the Merger, (3) approval for listing on the New York Stock Exchange of the BD Stock to be issued in the Merger, (4) obtaining antitrust approvals in the United States and certain other jurisdictions, (5) subject to certain exceptions, the accuracy of the representations and warranties of the other party and (6) material compliance by the other party with its obligations under the Merger Agreement.

The Merger Agreement contains customary representations and warranties that expire at the effective time of the Merger, as well as customary covenants, including covenants relating to the conduct of business between the execution of the Merger Agreement and the effective time of the Merger.

The Merger Agreement also contains certain termination rights for both BD and Bard, and provides that, in connection with a termination of the Merger Agreement under specified circumstances, including a change in the recommendation of the Bard board of directors or a termination of the Merger Agreement by Bard to enter into a definitive agreement for a “Superior Proposal” (as defined in the Merger Agreement), Bard will be required to pay BD a cash termination fee of \$750 million (less any expense reimbursement payments made by Bard).

BD and Bard have agreed that the Chairman of the Bard board of directors immediately prior to the Merger and an independent member of Bard’s board of directors (to be mutually agreed between BD and Bard) will join the BD board of directors following the Merger.

The foregoing description of the Merger Agreement and the transactions contemplated thereby is not complete and is subject to, and qualified in its entirety by reference to, the Merger Agreement, a copy of which is filed with this Current Report on Form 8-K as Exhibit 2.1 and the terms of which are incorporated herein by reference.

The Merger Agreement has been included to provide investors and security holders with information regarding its terms. It is not intended to provide any other factual information about BD, Bard, Merger Corp or their respective subsidiaries and affiliates. The Merger Agreement contains representations and warranties by BD and Merger Corp, on the one hand, and by Bard, on the other hand, made solely for the benefit of the other. The assertions embodied in those representations and warranties are qualified by (i) information in confidential disclosure schedules delivered by each party in connection with the signing of the Merger Agreement and (ii) matters disclosed in Bard's and BD's filings with the SEC on or after January 1, 2014 and October 1, 2014, respectively, and prior to the date of the Merger Agreement. Moreover, certain representations and warranties in the Merger Agreement were made as of a specified date, may be subject to a contractual standard of materiality different from what might be viewed as material to stockholders, or may have been used for the purpose of allocating risk between BD and Merger Corp, on the one hand, and Bard, on the other hand. Accordingly, the representations and warranties in the Merger Agreement should not be relied on by any persons as characterizations of the actual state of facts about BD or Bard at the time they were made or otherwise. In addition, information concerning the subject matter of the representations and warranties may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in BD's or Bard's public disclosures. The Merger Agreement should not be read alone, but should instead be read in conjunction with the other information regarding the Merger Agreement, the Merger, BD, Bard, their respective affiliates and their respective businesses, that will be contained in, or incorporated by reference into, the Registration Statement on Form S-4 that will include a proxy statement of Bard and a prospectus of BD, as well as in the Forms 10-K, Forms 10-Q and other filings that each of BD and Bard file or furnish with the SEC.

Financing the Merger

BD has obtained financing commitments to provide \$15.7 billion aggregate principal amount in unsecured 364-day bridge loans (the "Bridge Facility") to fund the Cash Consideration, as necessary, pursuant to a commitment letter (the "Commitment Letter") entered into on April 23, 2017, between BD and Citigroup Global Markets Inc. ("Citi"). The funding of the Bridge Facility provided for in the Commitment Letter is contingent on the satisfaction of customary conditions, including (i) the execution and delivery of definitive documentation with respect to the Bridge Facility in accordance with the terms sets forth in the Commitment Letter and (ii) the consummation of the Merger in accordance with the Merger Agreement.

The foregoing description of the Commitment Letter and the transactions contemplated thereby is not complete and is subject to, and qualified in its entirety by reference to, the Commitment Letter, a copy of which is filed with this Current Report on Form 8-K as Exhibit 10.1 and the terms of which are incorporated herein by reference.

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

On April 23, 2017, BD's board of directors elected Thomas E. Polen, age 43, as President of BD. Vincent A. Forlenza, the Chairman and Chief Executive Officer of BD, previously also served as President. Mr. Polen has served as BD's Executive Vice President and President - Medical Segment since October 1, 2014, and prior thereto, as Group President from October 2013 to October 2014 and Worldwide President – BD Diagnostic Systems from October 2010 to October 2013.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On April 23 2017, the By-Laws of BD were amended to delete sub-clause (f) of Article IV, Section 1 thereof in order to eliminate the prohibitions on any committee of the Board declaring or paying dividends or issuing additional shares of authorized and unissued capital stock of the Company. The foregoing description of the amendment does not purport to be complete and is qualified in its entirety by reference to the By-Laws, as amended. A copy of BD's By-Laws as amended as of April 23, 2017 is filed with this Current Report on Form 8-K as Exhibit 3.1 and the terms of which are incorporated herein by reference.

Item 8.01 Other Events.

On April 23, 2017, BD and Bard issued a joint press release (the "Press Release") announcing the execution of the Merger Agreement. A copy of the joint press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

On April 24, 2017, BD and Bard will conduct a live conference call and webcast to provide supplemental information regarding the Merger at 8:00 a.m. (ET) for investors and analysts. The telephone number for the call is (800) 585-8367 for participants in the U.S., and the telephone number for international participants is (404) 537-3406. The conference ID code is 13011331. The webcast of the conference call, along with related slides, will be accessible through BD's website at www.bd.com/investors and will be available for replay through the close of business on May 1, 2017. A recorded version of the call will also be available for replay until the close of business on May 1, 2017, and may be accessed at (800) 585-8367 (domestic) or (404) 537-3406 (international). The slides (the "Investor Presentation") that will be made available in connection with this conference call are attached hereto as Exhibit 99.2 and are incorporated herein by reference.

On April 23, 2017, BD made an email available to its employees, a copy of which is attached hereto as Exhibit 99.3 and is incorporated herein by reference.

On April 23, 2017, BD made an announcement available to its employees, a copy of which is attached hereto as Exhibit 99.4 and is incorporated herein by reference.

On April 23, 2017, BD made a letter available to its customers (the "Customer Letter"). A copy of the Customer Letter is attached hereto as Exhibit 99.5 and is incorporated herein by reference.

On April 23, 2017, BD made a letter available to its suppliers (the "Supplier Letter"). A copy of the Supplier Letter is attached hereto as Exhibit 99.6 and is incorporated herein by reference.

On April 23, 2017, BD made available a fact sheet regarding BD and Bard (the "Fact Sheet"). A copy of the Fact Sheet is attached hereto as Exhibit 99.7 and is incorporated herein by reference.

On April 23, 2017, BD made available a video of BD and Bard executives on BD's proposed acquisition of Bard (the "Video"). A transcript of the Video is attached hereto as Exhibit 99.8 and is incorporated herein by reference.

On April 23, 2017, BD posted certain content to a website that is being maintained at <http://BDandBard.transactionannouncement.com> (the "Website"). A screenshot of the Website is attached hereto as Exhibit 99.9 and is incorporated herein by reference.

On April 23, 2017, BD posted the following items to the Website:

- Press Release;
- Fact Sheet; and
- Video.

On April 23, 2017, BD made communications on Twitter, Facebook and LinkedIn regarding the Merger. Copies of these communications made by BD are attached hereto as Exhibit 99.10 to this Current Report on Form 8-K and are incorporated herein by reference.

On April 24, 2017, BD will post the Investor Presentation to the Website.

FORWARD-LOOKING STATEMENTS

This Current Report on Form 8-K contains certain estimates and other “forward-looking statements” within the meaning of the federal securities laws, including Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward looking statements generally are accompanied by words such as “will”, “expect”, “outlook” “anticipate,” “intend,” “plan,” “believe,” “seek,” “see,” “will,” “would,” “target,” or other similar words, phrases or expressions and variations or negatives of these words. Forward-looking statements by their nature address matters that are, to different degrees, uncertain, such as statements regarding the estimated or anticipated future results of BD, and of the combined company following BD’s proposed acquisition of Bard, the anticipated benefits of the proposed combination, including estimated synergies, the expected timing of completion of the transaction and other statements that are not historical facts. These statements are based on the current expectations of BD and Bard management and are not predictions of actual performance.

These statements are subject to a number of risks and uncertainties regarding BD and Bard’s respective businesses and the proposed acquisition, and actual results may differ materially. These risks and uncertainties include, but are not limited to, (i) the ability of the parties to successfully complete the proposed acquisition on anticipated terms and timing, including obtaining required shareholder and regulatory approvals, anticipated tax treatment, unforeseen liabilities, future capital expenditures, revenues, expenses, earnings, synergies, economic performance, indebtedness, financial condition, losses, future prospects, business and management strategies for the management, expansion and growth of the new combined company’s operations and other conditions to the completion of the acquisition, (ii) risks relating to the integration of Bard’s operations, products and employees into BD and the possibility that the anticipated synergies and other benefits of the proposed acquisition will not be realized or will not be realized within the expected timeframe, (iii) the outcome of any legal proceedings related to the proposed acquisition, (iv) access to available financing for the refinancing of BD’s or Bard’s debt on a timely basis and reasonable terms, (v) the ability to market and sell Bard’s products in new markets, including the ability to obtain necessary regulatory product registrations and clearances, (vi) the loss of key senior management or other associates; the anticipated demand for BD’s and Bard’s products, including the risk of future reductions in government healthcare funding, changes in reimbursement rates or changes in healthcare practices that could result in lower utilization rates or pricing pressures, (vii) the impact of competition in the medical device industry, (viii) the risks of fluctuations in interest or foreign currency exchange rates, (ix) product liability claims, (x) difficulties inherent in product development, including the timing or outcome of product development efforts, the ability to obtain regulatory approvals and clearances and the timing and market success of product launches, (xi) risks relating to fluctuations in the cost and availability of raw materials and other sourced products and the ability to maintain favorable supplier arrangements and relationships, (xii) successful compliance with governmental regulations applicable to BD, Bard and the combined company, (xiii) changes in regional, national or foreign economic conditions, (xiv) uncertainties of litigation, and (xv) other factors discussed in BD’s and Bard’s respective filings with the Securities Exchange Commission.

The forward-looking statements in this document speak only as of date of this document. BD and Bard undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date hereof, except as required by applicable laws or regulations.

IMPORTANT INFORMATION FOR INVESTORS

In connection with the proposed transaction, BD will file with the SEC a registration statement on Form S-4 that will constitute a prospectus of BD and include a proxy statement of Bard. BD and Bard also plan to file other relevant documents with the SEC regarding the proposed transaction. INVESTORS ARE URGED TO READ THE PROXY STATEMENT/PROSPECTUS AND OTHER RELEVANT DOCUMENTS FILED WITH THE SEC IF AND WHEN THEY BECOME AVAILABLE, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION. You may obtain a free copy of the proxy statement/prospectus (if and when it becomes available) and other relevant documents filed by BD and Bard with the SEC at the SEC's website at www.sec.gov. In addition, you will be able to obtain free copies of these documents by phone, e-mail or written request by contacting the investor relations department of BD or Bard at the following:

Becton, Dickinson and Company
1 Becton Drive
Franklin Lakes, New Jersey 07417
Attn: Investor Relations
1-(800)-284-6845

C.R. Bard, Inc.
730 Central Avenue
Murray Hill, 1 New Jersey 07974
Attn: Investor Relations
1-(800)-367-2273

PARTICIPANTS IN THE SOLICITATION

BD and Bard and their respective directors and executive officers and other members of management and employees may be deemed to be participants in the solicitation of proxies in respect of the proposed transaction. Information about BD's directors and executive officers is available in BD's proxy statement dated December 15, 2016, for its 2017 Annual Meeting of Shareholders. Information about Bard's directors and executive officers is available in Bard's proxy statement dated March 15, 2017, for its 2017 Annual Meeting of Stockholders. Other information regarding the participants in the proxy solicitation and a description of their direct and indirect interests, by security holdings or otherwise, will be contained in the proxy statement/prospectus and other relevant materials to be filed with the SEC regarding the acquisition when they become available. Investors should read the proxy statement/prospectus carefully when it becomes available before making any voting or investment decisions. You may obtain free copies of these documents from BD or Bard as indicated above.

NO OFFER OR SOLICITATION

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the U.S. Securities Act of 1933, as amended.

Item 9.01. Financial Statements and Exhibits.**(d) Exhibits**

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
2.1*	Agreement and Plan of Merger, dated as of April 23, 2017, among C.R. Bard, Inc., Becton, Dickinson and Company and Lambda Corp.
3.1	Amended and Restated Bylaws
10.1	Commitment Letter
99.1	Joint Press Release, dated April 23, 2017
99.2	Investor Presentation, dated April 24, 2017
99.3	Email to Employees, dated April 23, 2017
99.4	Announcement to Employees, dated April 23, 2017
99.5	Letter to Customers, dated April 23, 2017
99.6	Letter to Suppliers, dated April 23, 2017
99.7	Fact Sheet, dated April 23, 2017
99.8	Transcript of the Video, dated April 23, 2017
99.9	Screenshot of the Website, dated April 23, 2017
99.10	Communications on Twitter, Facebook and LinkedIn by BD, dated April 23, 2017

* Pursuant to Item 601(b)(2) of Regulation S-K, the schedules to the Merger Agreement have been omitted from this Report and will be furnished supplementally to the SEC upon request.

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 hereunto duly authorized.

BECTON, DICKINSON AND COMPANY (Registrant)

By: /s/ Gary DeFazio

Name: Gary DeFazio

Title: Senior Vice President and Corporate Secretary

Date: April 24, 2017

EXHIBIT INDEX

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AGREEMENT AND PLAN OF MERGER

dated as of

April 23, 2017

among

C. R. BARD, INC.,

BECTON, DICKINSON AND COMPANY

and

LAMBDA CORP.

TABLE OF CONTENTS

	Article 1	
	Definitions	
Section 1.01	Definitions	5
Section 1.02	Other Definitional and Interpretative Provisions	20
	Article 2	
	THE MERGER; EFFECT ON THE CAPITAL STOCK; EXCHANGE OF CERTIFICATES	
Section 2.01	The Merger	20
Section 2.02	Closing	21
Section 2.03	Effective Time	21
Section 2.04	Effects of the Merger	21
Section 2.05	Effect of the Merger on Capital Stock of the Company and Merger Corp	21
Section 2.06	Certain Adjustments	22
Section 2.07	Fractional Shares	22
Section 2.08	Exchange of Company Stock	23
Section 2.09	Further Assurances	27
Section 2.10	Company Stock Options and Other Stock-Based Awards	27
Section 2.11	Company ESPP	28
Section 2.12	Company MSPP	29
Section 2.13	Company Deferred Units	30
Section 2.14	Company Actions	30
Section 2.15	Parent Actions	30
	Article 3	
	THE SURVIVING CORPORATION	
Section 3.01	Surviving Corporation Matters	31
	Article 4	
	REPRESENTATIONS AND WARRANTIES OF THE COMPANY	
Section 4.01	Corporate Existence and Power	32
Section 4.02	Corporate Authorization	32
Section 4.03	Governmental Authorization	32
Section 4.04	Non-contravention	33
Section 4.05	Capitalization	33
Section 4.06	Subsidiaries	35
Section 4.07	SEC Filings and the Sarbanes-Oxley Act	35
Section 4.08	Financial Statements	37
Section 4.09	Disclosure Documents	38

Section 4.10	Absence of Certain Changes	38
Section 4.11	No Undisclosed Material Liabilities	38
Section 4.12	Compliance with Laws and Court Orders; Governmental Authorizations	39
Section 4.13	Litigation	39
Section 4.14	Properties	40
Section 4.15	Intellectual Property	40
Section 4.16	Taxes	42
Section 4.17	Employees and Employee Benefit Plans	43
Section 4.18	Environmental Matters	46
Section 4.19	Healthcare Regulatory Matters	47
Section 4.20	Material Contracts	49
Section 4.21	Finders' Fees, etc.	52
Section 4.22	Opinion of Financial Advisor	52
Section 4.23	Antitakeover Statutes	52
Section 4.24	Customers and Suppliers	53
Section 4.25	Product Warranties	53
Section 4.26	Anti-Corruption	53
Section 4.27	Insurance	54
Section 4.28	No Additional Representations	54

Article 5

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER CORP

Section 5.01	Corporate Existence and Power	55
Section 5.02	Corporate Authorization	55
Section 5.03	Governmental Authorization	55
Section 5.04	Non-contravention	56
Section 5.05	Capitalization	56
Section 5.06	SEC Filings and the Sarbanes-Oxley Act	57
Section 5.07	Financial Statements	59
Section 5.08	Disclosure Documents	59
Section 5.09	Financing	59
Section 5.10	Absence of Certain Changes	61
Section 5.11	No Undisclosed Material Liabilities	61
Section 5.12	Compliance with Laws and Court Orders; Governmental Authorization	61
Section 5.13	Litigation	62
Section 5.14	No Stockholder Vote Required	62
Section 5.15	Finders' Fees, etc.	62
Section 5.16	No Additional Representations	62

Article 6

COVENANTS OF THE COMPANY

Section 6.01	Conduct of the Company	62
Section 6.02	Company Stockholder Meeting	66

Article 7

COVENANTS OF PARENT AND MERGER CORP

Section 7.01	Conduct of Parent	67
Section 7.02	Obligations of Merger Corp	69
Section 7.03	Approval by Sole Stockholder of Merger Corp	69
Section 7.04	Director and Officer Indemnification	69
Section 7.05	Stock Exchange Listing	71
Section 7.06	Employee Matters	71

Article 8

COVENANTS OF PARENT AND THE COMPANY

Section 8.01	Efforts	75
Section 8.02	Proxy Statement/Prospectus; Registration Statement	78
Section 8.03	No Solicitation	79
Section 8.04	Financing Cooperation	82
Section 8.05	Public Announcements	87
Section 8.06	Notices of Certain Events	88
Section 8.07	Access to Information	89
Section 8.08	Section 16 Matters	89
Section 8.09	Stock Exchange De-listing; 1934 Act Deregistration	90
Section 8.10	Stockholder Litigation	90
Section 8.11	Cooperation as to Certain Indebtedness	90
Section 8.12	Board Representation	92
Section 8.13	Dividend Coordination	92

Article 9

CONDITIONS TO THE MERGER

Section 9.01	Conditions to Obligations of Each Party	92
Section 9.02	Conditions to the Obligations of Parent and Merger Corp	93
Section 9.03	Conditions to the Obligations of the Company	94

Article 10

TERMINATION

Section 10.01	Termination	95
Section 10.02	Effect of Termination	97
Section 10.03	Termination Fees; Expenses	97

Article 11

MISCELLANEOUS

Section 11.01	No Survival of Representations and Warranties	99
Section 11.02	Amendment and Modification	99
Section 11.03	Extension; Waiver	99
Section 11.04	Expenses	99
Section 11.05	Disclosure Letter References	100
Section 11.06	Notices	100
Section 11.07	Counterparts	101
Section 11.08	Entire Agreement; Third Party Beneficiaries	101
Section 11.09	Severability	102
Section 11.10	Assignment	102
Section 11.11	Governing Law	102
Section 11.12	Enforcement; Exclusive Jurisdiction	103
Section 11.13	No Recourse; Waiver of Claims	103
Section 11.14	WAIVER OF JURY TRIAL	104

DISCLOSURE LETTERS

Company Disclosure Letter
Parent Disclosure Letter

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (this “**Agreement**”), dated as of April 23, 2017, among C. R. Bard, Inc., a New Jersey corporation (the “**Company**”), Becton, Dickinson and Company, a New Jersey corporation (“**Parent**”), and Lambda Corp., a New Jersey corporation and a wholly owned subsidiary of Parent (“**Merger Corp**”). Parent, Merger Corp and the Company are referred to individually as a “**Party**” and collectively as “**Parties**”.

WITNESSETH:

WHEREAS, the Parties intend that, on the terms and subject to the conditions set forth in this Agreement, Merger Corp will merge with and into the Company, with the Company surviving the merger as the surviving corporation (the “**Merger**”) and each of the Company’s issued and outstanding shares of common stock, par value \$0.25 per share (the “**Company Stock**”), other than shares of Company Stock owned, directly or indirectly, by Parent, the Company or Merger Corp, will be converted into the Merger Consideration (as defined herein);

WHEREAS, the Boards of Directors of Parent, Merger Corp and the Company have each unanimously (i) determined that the Merger, this Agreement and the transactions contemplated hereby, are fair to, advisable and in the best interests of their respective companies and stockholders and (ii) approved the Merger and the other transactions contemplated hereby;

WHEREAS, the Board of Directors of the Company (the “**Company Board**”) has unanimously resolved to recommend that the Company’s stockholders approve the adoption of this Agreement; and

WHEREAS, Parent, the Company and Merger Corp desire to make certain representations, warranties, covenants and agreements specified herein in connection with this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements contained herein, the Parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.01 Definitions.

(a) As used herein, the following terms have the following meanings:

“**1933 Act**” means the Securities Act of 1933, as amended.

“**1934 Act**” means the Securities Exchange Act of 1934, as amended.

“**1996 Notes**” means the Company’s 6.70% Notes due 2026.

“**2018 Notes**” means the Company’s 1.375% Notes due 2018.

“**2021 Notes**” means the Company’s 4.400% Notes due 2021.

“**2026 Notes**” means the Company’s 3.000% Notes due 2026.

“**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly controls or is controlled by, or is under common control with such Person. The term “control” (including its correlative meanings “controlled” and “under common control with”) shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies of a Person (whether through ownership of 50% or more of such Person’s securities or partnership or other ownership interests, or by Contract or otherwise).

“**Aggregate Share Consideration**” means the aggregate number of shares of Parent Common Stock to be issued to holders of Company Stock pursuant to Section 2.05(b) and to holders of Company RSAs pursuant to Section 2.10 and Company MSPP Units pursuant to Section 2.12(c) plus the aggregate number of shares of Parent Common Stock subject to Adjusted SARs, Adjusted RSUs, Adjusted PLTIP Units and Adjusted MSPP Units.

“**Business Day**” means any day that is not a Saturday, a Sunday or other day that (i) is a statutory holiday under the federal Laws of the United States or (ii) is otherwise a day on which banks in New York, New York are authorized or obligated by Law or executive order to close.

“**Closing Date**” means the date of the Closing.

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

“**Collective Bargaining Agreements**” mean any material Contract or any material side letter to which the Company or any Subsidiaries thereof is bound or that has been entered into between the Company or any Subsidiary thereof and any labor organization, union, works council, employee association, trade union, other similar employee representative body.

“**Company Acquisition Proposal**” means any proposal, indication of interest or offer from any Person (other than Parent and its Subsidiaries or Affiliates) relating to (i) any direct or indirect acquisition or purchase of the business or assets (including equity interests in Subsidiaries) of the Company or any of its Subsidiaries representing 15% or more of the consolidated revenues, net income or assets of the Company, (ii) any issuance, sale or other disposition, directly or indirectly, to any Person of securities representing 15% or more of the total voting power of the Company, (iii) any tender offer or exchange offer that if consummated would result in any Person, directly or indirectly, beneficially owning 15% or more of any class of equity securities of the Company, (iv) any merger, consolidation, amalgamation, share exchange, business combination, reorganization, recapitalization, liquidation, dissolution, or similar transaction involving the Company or any of its Subsidiaries that would result in any Person, directly or indirectly, beneficially owning 15% or more of any class of equity securities of the Company or (v) any combination of the foregoing.

“**Company Adverse Recommendation Change**” means any of the following actions by the Company Board or any committee thereof: (i) withholding or withdrawing (or modifying or

qualifying in a manner adverse to Parent) or proposing publicly to withhold or withdraw (or modify or qualify in a manner adverse to Parent), the Company Board Recommendation, (ii) failing to make the Company Board Recommendation or failing to include the Company Board Recommendation in the Proxy Statement/Prospectus, in each case, subject to the terms and conditions of this Agreement, (iii) approving, recommending or otherwise declaring to be advisable or proposing to approve, recommend or determine to be advisable any Company Acquisition Proposal, (iv) after receipt of any Company Acquisition Proposal, failing to publicly reaffirm the Company Board Recommendation within ten (10) calendar days after Parent requests a reaffirmation thereof in writing, (v) following the commencement of any tender offer or exchange offer that constitutes a Company Acquisition Proposal, publicly be neutral or fail to reject or recommend against any such tender offer or exchange offer, within ten (10) Business Days of such commencement of such tender offer or exchange offer, or (vi) publicly announce an intention, or resolve, to take any of the foregoing actions.

“**Company Balance Sheet**” means the consolidated balance sheet of the Company as of December 31, 2016 and the footnotes thereto set forth in the Company 10-K.

“**Company Balance Sheet Date**” means December 31, 2016.

“**Company Credit Facility**” means the Credit Agreement, dated as of October 12, 2011, among the Company, J.P. Morgan Chase Bank, N.A., as administrative agent, and the lenders party thereto, as amended.

“**Company Disclosure Letter**” means the disclosure letter delivered by the Company to Parent and Merger Corp in connection with, and upon the execution of, this Agreement.

“**Company Material Adverse Effect**” means any effect, change, condition, fact, development, occurrence or event that, individually or in the aggregate with all other effects, changes, conditions, facts, developments, occurrences or events, has had or would reasonably be expected to have a material adverse effect on the business, results of operations or financial condition of the Company and its Subsidiaries, taken as a whole, excluding any effect, change, condition, fact, development, occurrence or event resulting from or arising out of (A) changes in the financial, securities or credit markets or general economic, regulatory or political conditions in the United States or any foreign jurisdiction, except to the extent any such effect, change, condition, fact, development, occurrence or event has a materially disproportionate effect on the Company and its Subsidiaries, taken as a whole, relative to other participants in the industries in which the Company operates, (B) changes or conditions generally affecting the industries, markets or geographical areas in which the Company operates except to the extent any such effect, change, condition, fact, development, occurrence or event has a materially disproportionate effect on the Company and its Subsidiaries, taken as a whole, relative to other participants in the industries in which the Company operates, (C) geopolitical conditions, the outbreak or escalation of hostilities, civil disobedience, acts of war, sabotage or terrorism or any escalation or worsening of the foregoing or any natural disasters (including hurricanes, tornadoes, floods or earthquakes) except to the extent any such effect, change, condition, fact, development, occurrence or event has a materially disproportionate effect on the Company and its Subsidiaries, taken as a whole, relative to other participants in the industries in which the Company operates, (D) any failure by the Company and its Subsidiaries to meet any internal or

published projections, forecasts or predictions in respect of financial or operating performance for any future period (it being understood that this clause (D) shall not prevent a Party from asserting that any effect, change, condition, fact, development, occurrence or event that may have contributed to such failure and that is not otherwise excluded from the definition of Company Material Adverse Effect may be taken into account in determining whether there has been a Company Material Adverse Effect), (E) changes or proposed changes in Law or authoritative interpretation thereof, except to the extent any such effect, change, condition, fact, development, occurrence or event has a materially disproportionate effect on the Company and its Subsidiaries, taken as a whole, relative to other participants in the industries in which the Company operates, (F) changes in GAAP or authoritative interpretation thereof, (G) the taking of any specific action expressly required or expressly permitted by, or the failure to take any specific action expressly prohibited by this Agreement (*provided* that the exception in this clause (G) shall not apply to any representation or warranty contained in Section 4.04), (H) any change in the market price or trading volume of the Company's securities or in its credit ratings (it being understood that this clause (H) shall not prevent a Party from asserting that any effect, change, condition, fact, development, occurrence or event that may have contributed to such failure and that are not otherwise excluded from the definition of Company Material Adverse Effect may be taken into account in determining whether there has been a Company Material Adverse Effect), (I) the execution, announcement or performance of this Agreement or the transactions contemplated hereby, including the impact thereof on the relationships, contractual or otherwise, of the Company or any of its Subsidiaries with employees, labor unions, customers, suppliers or partners (*provided* that the exception in this clause (I) shall not apply to any representation or warranty contained in Section 4.04), (J) any public disclosure by Parent regarding its plans with respect to the conduct of the Company's business following Closing and any action or communication by Parent with respect to or to the Company's employees, and (K) the matters listed on Section 1.01(a)(i) of the Company Disclosure Letter (the "**Scheduled Matters**") only to the extent set forth on Section 1.01(a)(i) of the Company Disclosure Letter.

"**Company Notes**" means the Company's (i) 1996 Notes, (ii) 2021 Notes, (iii) 2018 Notes and (iv) 2026 Notes.

"**Company Product**" means all "drugs" and "devices" (as those terms are defined in Section 201 of the FDCA) and over-the-counter products subject to the FDCA or any similar Law in any foreign jurisdiction that are being researched, tested, developed, commercialized, manufactured, sold or distributed by or on behalf of the Company or any of its Subsidiaries.

"**Company 10-K**" means the Company's annual report on Form 10-K for the fiscal year ended December 31, 2016.

"**Competition Laws**" means the Sherman Antitrust Act, as amended, the Clayton Antitrust Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, and all other Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization, lessening of competition or restraint of trade.

"**Confidentiality Agreement**" means the Confidentiality Agreement, dated March 11, 2017 by and between the Company and Parent.

“**Contract**” means any agreement, arrangement, contract, understanding, instrument, note, bond, mortgage, indenture, deed of trust, lease, license or other commitment, whether written or oral.

“**Disclosure Letter**” means, as the context requires, the Company Disclosure Letter and/or the Parent Disclosure Letter.

“**EMA**” means European Medicines Agency.

“**Environmental Claim**” means any claim, action, suit, proceeding, investigation, Order, demand or notice (written or oral) alleging potential or actual liability (including liability for investigatory costs, cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, attorneys’ fees, fines or penalties) arising out of, based on, resulting from or relating to (i) the presence, Release of, or exposure to any Hazardous Substances, (ii) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law, or (iii) any other matters covered or regulated by, or for which liability is imposed under, Environmental Laws.

“**Environmental Law**” means any Law or Order relating to pollution, the protection, restoration or remediation of or prevention of harm to the environment or natural resources, or the protection of human health and safety, including any Law or Order relating to: (i) the exposure to, or Releases or threatened Releases of, Hazardous Substances; (ii) the generation, manufacture, processing, distribution, use, treatment, containment, disposal, storage, transport or handling of Hazardous Substances; or (iii) recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Substances.

“**Environmental Permits**” means all Governmental Authorizations relating to or required by Environmental Laws.

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

“**ERISA Affiliate**” of any entity means each entity that is treated as a single employer with such entity for purposes of Section 4001(b)(1) of ERISA or Section 414(b), (c), (m) or (o) of the Code.

“**FDA**” means United States Food and Drug Administration.

“**FDCA**” means United States Food, Drug and Cosmetic Act of 1938, as amended.

“**GAAP**” means generally accepted accounting principles in the United States.

“**Governmental Authority**” means any (i) nation or government, any federal, state, city, town, municipality, county, local or other political subdivision thereof or thereto and any department, commission, board, bureau, instrumentality, agency, merger control authority, (ii) any federal, state, local or foreign court, tribunal or arbitrator, (iii) any national securities exchange, or (iv) other governmental entity or quasi-governmental entity created or empowered under a statute (or rule, regulation or ordinance promulgated thereunder) or at the direction of any governmental authority, including those set forth in clauses (i), (ii) or (iii) of this definition, and that is empowered thereunder or thereby to exercise executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Governmental Authorization” means any license, approvals, clearances, permits, certificates, waivers, amendments, consents, exemptions, variances, expirations and terminations of any waiting period requirements (including pursuant to Competition Laws), other actions by, and notices, filings, registrations, qualifications, declarations and designations with, and other authorizations and approvals issued by or obtained from a Governmental Authority, including a Healthcare Regulatory Authority.

“Hazardous Substance” means any material, substance, chemical, or waste (or combination thereof) that (i) is listed, defined, designated, regulated or classified as hazardous, toxic, radioactive, dangerous, a pollutant, a contaminant, petroleum, oil, or words of similar meaning or effect under any Law or Order relating to pollution, waste, the environment, or the protection of human health and safety; or (ii) can form the basis of any liability under any Law or Order relating to pollution, waste, the environment, or the protection of human health and safety.

“Healthcare Regulatory Authority” means any, state, local, federal, national, foreign or multinational governmental health regulatory agency or authority with jurisdiction over (i) the development, testing, marketing, labeling, sale, use, handling and control, safety, efficacy, reliability, manufacturing, approval, pricing, import, export or licensing of any drug, device or over-the-counter pharmaceutical product, (ii) federal, state, or other government healthcare programs under which such products are purchased or (iii) the protection of personal health information. For clarity, references in this Agreement to Healthcare Regulatory Authority shall be deemed to include the EMA and the FDA, the Centers for Medicare and Medicaid Services, the United States Department of Justice, the United States Department of Health and Human Services, Office of Civil Rights, and the Federal Trade Commission and their equivalent foreign entities.

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

“Intellectual Property Rights” means any and all intellectual property rights or similar proprietary rights throughout the world, including all (i) patents, trademarks, service marks, trade names, domain names, copyrights, designs and trade secrets, (ii) applications for and registrations of patents, trademarks, service marks, trade dress, trade names, domain names, social media addresses, copyrights and designs, (iii) processes, formulae, methods, schematics, technology, know-how, data, computer software programs and applications, and (iv) trade secrets and other tangible or intangible proprietary or confidential information and materials.

“Intervening Event” means any material event, occurrence or development that (i) is unknown to the Company Board as of the date of this Agreement, or if known to the Company Board as of the date of this Agreement, the material consequences of which were not known to the Company Board as of the date of this Agreement, and (ii) does not relate to (A) any Company Acquisition Proposal or (B) any actions taken by Parent or the Company in accordance with Section 8.01 or the consequences of any such action; provided, that in no event shall any event, occurrence or development that has had, or would reasonably be expected to have, an

adverse effect on Parent or any of its Subsidiaries constitute an Intervening Event unless such event, occurrence or development has had or would reasonably be expected to have a Parent Material Adverse Effect.

“**IT Assets**” means any and all computers, computer software, source code, firmware, middleware, servers, workstations, routers, hubs, switches, data communications lines and all other information technology systems and equipment, and all associated documentation owned by the Company or its Subsidiaries or licensed or leased to the Company or its Subsidiaries (excluding any public networks).

“**knowledge**” means (i) with respect to the Company, the actual knowledge, after reasonable inquiry, of each of the individuals listed in Section 1.01(a)(ii) of the Company Disclosure Letter and (ii) with respect to Parent, the actual knowledge, after reasonable inquiry, of each of the individuals listed in Section 1.01(a)(ii) of the Parent Disclosure Letter.

“**Laws**” means any United States, federal, state or local or any foreign law (in each case, statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, statute, regulation or other similar requirement enacted, issued, adopted, promulgated, entered into or applied by a Governmental Authority, including Healthcare Laws.

“**Licensed Intellectual Property Rights**” means any and all Intellectual Property Rights owned by a Third Party and licensed or sublicensed to the Company or any of its Subsidiaries or for which the Company or any of its Subsidiaries has obtained a covenant not to be sued.

“**Lien**” means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest, encumbrance or limitation on transfer (other than such a limitation arising under federal or state securities Laws) in respect of such property or asset. For purposes of this Agreement, a Person shall be deemed to own subject to a Lien any property or asset that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such property or asset.

“**Maximum Share Number**” means 19.9% of the issued and outstanding shares of Parent Common Stock immediately prior to the entry into this Agreement (as determined by Parent), rounded down to the nearest whole share.

“**Merger Consideration Value**” means the sum of (i) the Per Share Cash Amount and (ii) the product obtained by multiplying (A) the Per Share Stock Amount and (B) the Parent Stock Closing Price.

“**NJBCA**” means the New Jersey Business Corporation Act, as amended.

“**NYSE**” means the New York Stock Exchange.

“**OFAC**” means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

“**Order**” means any order, writ, injunction, decree, consent decree, judgment, award, injunction, settlement or stipulation issued, promulgated, made, rendered or entered into by or with any Governmental Authority (in each case, whether temporary, preliminary or permanent).

“**Owned Intellectual Property Rights**” means any and all Intellectual Property Rights owned or purported to be owned by the Company or any of its Subsidiaries.

“**Parent Balance Sheet**” means the consolidated balance sheet of Parent as of September 30, 2016 and the footnotes thereto set forth in the Parent 10-K.

“**Parent Balance Sheet Date**” means December 31, 2016.

“**Parent Board**” means the Board of Directors of Parent.

“**Parent Common Stock**” means the common stock, par value \$1.00 per share, of Parent.

“**Parent Disclosure Letter**” means the disclosure letter delivered by Parent to the Company in connection with, and upon the execution of, this Agreement.

“**Parent Material Adverse Effect**” means any effect, change, condition, fact, development, occurrence or event that, individually or in the aggregate with all other effects, changes, conditions, facts, developments, occurrences or events, has had or would reasonably be expected to have a material adverse effect on the business, results of operations or financial condition of Parent and its Subsidiaries, taken as a whole, excluding any effect, change, condition, fact, development, occurrence or event resulting from or arising out of (A) changes in the financial, securities or credit markets or general economic, regulatory or political conditions in the United States or any foreign jurisdiction, except to the extent any such effect, change, condition, fact, development, occurrence or event has a materially disproportionate effect on Parent and its Subsidiaries, taken as a whole, relative to other participants in the industries in which Parent operates, (B) changes or conditions generally affecting the industries, markets or geographical areas in which Parent operates except to the extent any such effect, change, condition, fact, development, occurrence or event has a materially disproportionate effect on Parent and its Subsidiaries, taken as a whole, relative to other participants in the industries in which Parent operates, (C) geopolitical conditions, the outbreak or escalation of hostilities, civil disobedience, acts of war, sabotage or terrorism or any escalation or worsening of the foregoing or any natural disasters (including hurricanes, tornadoes, floods or earthquakes) except to the extent any such effect, change, condition, fact, development, occurrence or event has a materially disproportionate effect on Parent and its Subsidiaries, taken as a whole, relative to other participants in the industries in which Parent operates, (D) any failure by Parent and its Subsidiaries to meet any internal or published projections, forecasts or predictions in respect of financial or operating performance for any future period (it being understood that this clause (D) shall not prevent a Party from asserting that any effect, change, condition, fact, development, occurrence or event that may have contributed to such failure and that are not otherwise excluded from the definition of Parent Material Adverse Effect may be taken into account in determining whether there has been a Parent Material Adverse Effect), (E) changes or proposed changes in Law or authoritative interpretation thereof, except to the extent any such effect, change, condition, fact, development, occurrence or event has a materially disproportionate effect on

Parent and its Subsidiaries, taken as a whole, relative to other participants in the industries in which Parent operates, (F) changes in GAAP or authoritative interpretation thereof, (G) the taking of any specific action expressly required or expressly permitted by, or the failure to take any specific action expressly prohibited by this Agreement (*provided* that the exception in this clause (G) shall not apply to any representation or warranty contained in Section 5.04), (H) any change in the market price or trading volume of Parent's securities or in its credit ratings (it being understood that this clause (H) shall not prevent a Party from asserting that any effect, change, condition, fact, development, occurrence or event that may have contributed to such failure and that are not otherwise excluded from the definition of Parent Material Adverse Effect may be taken into account in determining whether there has been a Parent Material Adverse Effect) and (I) the execution, announcement or performance of this Agreement or the transactions contemplated hereby, including the impact thereof on the relationships, contractual or otherwise, of Parent or any of its Subsidiaries with employees, labor unions, customers, suppliers or partners (*provided* that the exception in this clause (I) shall not apply to any representation or warranty contained in Section 5.04).

"Parent Stock Closing Price" means the volume-weighted average price of a share of Parent Common Stock on the New York Stock Exchange for the five (5) consecutive trading day period ending on the trading day immediately preceding (but not including) the Closing Date (as reported by Bloomberg L.P. or, if not reported therein, in another authoritative source mutually selected by Parent and the Company).

"Parent Stock Issuance" means the issuance of shares of Parent Common Stock as part of the consideration payable to the stockholders of the Company in connection with the Merger.

"Parent 10-K" means Parent's annual report on Form 10-K for the fiscal year ended September 30, 2016.

"Permitted Liens" means (i) Liens for Taxes not yet due and payable for which adequate reserves (as determined in accordance with GAAP) have been established on the Company Balance Sheet, (ii) Liens in favor of vendors, carriers, warehousemen, repairmen, mechanics, workmen, materialmen, construction or similar Liens or other encumbrances arising in the ordinary course of business with respect to amounts not yet overdue or the validity of which is being contested in good faith by appropriate proceedings or that are otherwise not material, (iii) Liens reflected in the Company Balance Sheet or Parent Balance Sheet, as applicable, (iv) with respect to any Real Property Lease, Liens that do not materially impair the value or use of such Real Property Lease or are being contested in the ordinary course of business in good faith, (v) Liens imposed or promulgated by operation of applicable Law with respect to real property and improvements, including zoning regulations, permits, licenses, utility easements, rights of way and similar Liens imposed or promulgated by any Governmental Authority (vi) with respect to the Real Property, minor title defects or irregularities that would not, individually or in the aggregate, reasonably be expected to materially impair the continued use and operation of the assets to which they relate in the business of such entity and its Subsidiaries as presently conducted or are being contested in the ordinary course of business in good faith.

"Person" means an individual, corporation, partnership, limited liability company, association, company, joint venture, estate, trust, association other entity or organization of any kind or nature, including a Governmental Authority, or group (within the meaning of Section 13(d)(3) of the 1934 Act).

“Proceeding” means any suit, action, claim, proceeding, arbitration, mediation, audit or hearing (in each case, whether civil, criminal or administrative) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority.

“Release” means any release, spill, emission, discharge, leaking, pouring, dumping or emptying, pumping, injection, deposit, disposal, dispersal, leaching or migration into the indoor or outdoor environment (including soil, ambient air, surface water, groundwater and surface or subsurface strata) or into or out of any property, including the movement of Hazardous Substances through or in the air, soil, surface water, groundwater or property.

“Sanctioned Person” means any Person that is the target of Sanctions, including (i) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, by the United Nations Security Council, the European Union, or Her Majesty’s Treasury of the United Kingdom, (ii) any Person located, organized or resident in a Sanctioned Territory, or (iii) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (i) and (ii).

“Sanctioned Territory” means a country or territory that is itself the subject or target of any Sanctions (at the date of this Agreement, Crimea, Cuba, Iran, North Korea, Sudan and Syria).

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by a Sanctions Authority.

“Sanctions Authority” means the U.S. government, including OFAC or the U.S. Department of State, the United Nations Security Council, the European Union, and the government of the United Kingdom, including Her Majesty’s Treasury of the United Kingdom.

“Sarbanes-Oxley Act” means the Sarbanes-Oxley Act of 2002, as amended.

“SEC” means the Securities and Exchange Commission.

“Subsidiary” means, with respect to any Person, another Person (other than a natural Person), of which such first Person (i) owns, directly or indirectly, (a) an aggregate amount of the voting securities, other voting ownership or voting partnership interests to elect or appoint a majority of the board of directors or other governing body or (b) if there are no such voting interests, 50% or more of the equity interests therein or (ii) has the right to appoint 50% or more of the directors or managers.

“Superior Proposal” means a bona fide written Company Acquisition Proposal from any Person (other than Parent and its Subsidiaries or Affiliates) (with all references to “15% or more” in the definition of Company Acquisition Proposal being deemed to reference “50% or more”) which the Company Board has, after consultation with the Company’s financial advisors and outside legal counsel, determined in its good faith judgment would, if consummated, result in a transaction more favorable to its stockholders from a financial point of view than the transactions

contemplated by this Agreement after taking into account the likelihood and timing of consummation (as compared to the transactions contemplated hereby) and such other matters that the Company Board deems relevant, including legal, financial (including the financing terms of any such Company Acquisition Proposal), regulatory and other aspects of such Company Acquisition Proposal.

“**Tax**” means any tax or other like assessment or charge of any kind whatsoever, together with any interest, penalty, addition to tax or additional amount imposed by any Taxing Authority.

“**Taxing Authority**” means any Governmental Authority responsible for the imposition of any such tax, assessment or charge (domestic or foreign).

“**Tax Return**” means any report, return, document, declaration or other information or filing supplied or required to be supplied to any Taxing Authority with respect to Taxes, including information returns, any documents with respect to or accompanying payments of estimated Taxes, or with respect to or accompanying requests for the extension of time in which to file any such report, return, document, declaration or other information.

“**Tax Sharing Agreements**” means all existing agreements binding a party or any of its Subsidiaries that provide for the allocation, apportionment, sharing or assignment of any Tax liability or benefit (excluding any indemnification agreement or arrangement pertaining to the sale or lease of assets or subsidiaries and any commercially reasonable indemnity, sharing or similar agreements or arrangements where the inclusion of a Tax indemnification or allocation provision is customary or incidental to an agreement the primary nature of which is not Tax sharing or indemnification).

“**Third Party**” means any Person other than Parent, the Company or any of their respective Affiliates.

“**Treasury Regulations**” means the regulations promulgated under the Code.

“**Willful Breach**” means a material breach that is a consequence of an act undertaken or a failure to take an act by the breaching Party with the knowledge that the taking of such act or the failure to take such act would, or would reasonably be expected to, cause a material breach of this Agreement.

(b) Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
1933 Act	1.01(a)
1934 Act	1.01(a)
1996 Notes	1.01(a)
2017 Bonus Amount	7.06(d)
2018 Notes	1.01(a)
2021 Notes	1.01(a)
2026 Notes	1.01(a)
Acceptable Confidentiality Agreement	8.03(a)
Action	7.04(a)
Adjusted Deferred Unit	2.13(b)

Adjusted MSPP Unit	2.12(b)
Adjusted PLTIP Unit	2.10(d)
Adjusted RSU	2.10(c)
Adjusted SAR	2.10(a)
Affiliate	1.01(a)
Aggregate Share Consideration	1.01(a)
Agreement	Preamble
Alternative Acquisition Agreement	8.03(a)
Anti-takeover Laws	4.23
Book-Entry Shares	2.05(d)
Burdensome Condition	8.01(f)
Business Day	1.01(a)
Certificate	2.05(d)
Certificate of Merger	2.03
Closing	2.02
Closing Date	1.01(a)
Code	1.01(a)
Collective Bargaining Agreements	1.01(a)
Commitment Letter	5.09
Company	Preamble
Company 10-K	1.01(a)
Company Acquisition Proposal	1.01(a)
Company Adverse Recommendation Change	1.01(a)
Company Balance Sheet	1.01(a)
Company Balance Sheet Date	1.01(a)
Company Board	Recitals
Company Board Recommendation	4.02(b)
Company Credit Facility	1.01(a)
Company Deferred Units	2.13(a)
Company Designee	8.12
Company Disclosure Letter	1.01(a)
Company ESPP	2.11
Company Incentive Plan	7.06(d)
Company Indemnified Party	7.04(a)
Company Material Adverse Effect	1.01(a)
Company Material Contract	4.20(a)
Company MSPP	2.12(a)
Company MSPP Unit	2.12(b)
Company Note Offers and Consent Solicitations	8.11(a)
Company Notes	1.01(a)
Company Plan	4.17(a)
Company PLTIP Unit	2.10(d)
Company Product	1.01(a)
Company Qualified Plan	7.06(c)
Company Real Property	4.14(b)
Company Regulatory Permits	4.19(a)

Company RSA	2.10(b)
Company RSU	2.10(c)
Company SEC Documents	4.07(a)
Company Securities	4.05(b)
Company Severance Plan	7.06(a)
Company Stock	Recitals
Company Stock Equivalent Plan	2.13(a)
Company Stock Option	2.10(a)
Company Stockholder Approval	4.02(a)
Company Stockholder Meeting	6.02
Company Subsidiary Securities	4.06(b)
Company Termination Fee	10.03(a)
Company Transaction Litigation	8.10
Competition Actions	8.01(e)
Competition Law Order	8.01(e)
Competition Laws	1.01(a)
Confidentiality Agreement	1.01(a)
Consent Solicitations	8.11(a)
Continuing Employee	7.06(a)
Contract	1.01(a)
D&O Insurance	7.04(c)
Debt Letters	5.09
Debt Offer Documents	8.11(a)
DFS Provisions	11.08
Director Deferral Contracts	2.13(a)
Disclosure Letter	1.01(b)
Divestiture Action	8.01(e)
DOL	4.17(a)
Effective Time	2.03
EMA	1.01(a)
End Date	10.01(b)(i)
Environmental Claim	1.01(a)
Environmental Law	1.01(a)
Environmental Permits	1.01(a)
ERISA	1.01(a)
ERISA Affiliate	1.01(a)
Exchange Agent	2.08(a)
Exchange Fund	2.08(a)
Exchange Ratio	2.05(b)
Exchange Ratio Reduction Number	2.05(c)
FDA	1.01(a)
FDCA	1.01(a)
Final Purchase Period	2.11
Financing	5.09
Financing Parties	8.04(a)
Financing Source Parties	11.08

Financing Source Party	11.08
Foreign Company Plan	4.17(a)
GAAP	1.01(a)
Governmental Authority	1.01(a)
Governmental Authorization	1.01(a)
Hazardous Substance	1.01(a)
Healthcare Laws	4.19(b)
Healthcare Regulatory Authority	1.01(a)
HSR Act	1.01(a)
Indenture	8.11(a)
Intellectual Property Rights	1.01(a)
internal controls	4.07(g)
Intervening Event	1.01(a)
IRS	4.17(b)
IT Assets	1.01(a)
knowledge	1.01(a)
Laws	1.01(a)
Licensed Intellectual Property Rights	1.01(a)
Lien	1.01(a)
Maximum Share Number	1.01(a)
Merger	Recitals
Merger Consideration	2.05(b)
Merger Consideration Value	1.01
Merger Corp	Preamble
Multiemployer Plan	4.17(d)
New Plans	7.06(b)
NJBCA	1.01(a)
NYSE	1.01(a)
OFAC	1.01(a)
Offers to Exchange	8.11(a)
Offers to Purchase	8.11(a)
Old Plans	7.06(b)
Order	1.01(a)
Owned Intellectual Property Rights	1.01(a)
Owned Real Property	4.14(a)
Parent	Preamble
Parent 10-K	1.01(a)
Parent Balance Sheet	1.01(a)
Parent Balance Sheet Date	1.01(a)
Parent Board	1.01(a)
Parent Common Stock	1.01(a)
Parent Disclosure Letter	1.01(a)
Parent Material Adverse Effect	1.01(a)
Parent Plan	7.06(f)
Parent PSUs	5.05(a)
Parent Qualified Plan	7.06(c)

Parent RSUs	5.05(a)
Parent SARs	5.05(a)
Parent SEC Documents	5.06(a)
Parent Stock Closing Price	1.01(a)
Parent Stock Issuance	1.01(a)
Parent Stock Options	5.05(a)
Parties	Preamble
Party	Preamble
PBGC	4.17(c)
Per Share Cash Amount	2.05(b)
Per Share Stock Amount	2.05(b)
Permitted Liens	1.01(a)
Person	1.01(a)
Premium Cap	7.04(c)
Proceeding	1.01(a)
Proxy Statement/Prospectus	4.09
Public Official	4.26
Public Statement	8.05
Real Property Lease	4.14(b)
Redacted Fee Letter	5.09
Redemption	8.11(b)
Registration Statement	4.09
Release	1.01(a)
Representatives	8.07(a)
Required Competition Approval	9.01(e)
Sanctioned Person	1.01(a)
Sanctioned Territory	1.01(a)
Sanctions	1.01(a)
Sanctions Authority	1.01(a)
Sarbanes-Oxley Act	1.01(a)
Scheduled Matters	1.01(a)
SEC	1.01(a)
Specified Company SEC Documents	Article 4
Specified Parent SEC Documents	Article 5
Stock Award Exchange Ratio	2.10(a)
Subsidiary	1.01(a)
Substitute Designee	8.12
Substitute Financing	8.04(a)
Superior Proposal	1.01(a)
Surviving Corporation	2.01
Tax	1.01(a)
Tax Return	1.01(a)
Tax Sharing Agreements	1.01(a)
Taxing Authority	1.01(a)
Third Party	1.01(a)
Treasury Regulations	1.01(a)
U.S. Company Plan	4.17(a)
Willful Breach	1.01(a)

Section 1.02 Other Definitional and Interpretative Provisions. The words “**hereof**”, “**herein**” and “**hereunder**” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The descriptive headings used herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. The definitions contained in this Agreement are applicable to the masculine as well as to the feminine and neuter genders of such term. Whenever the words “**include**”, “**includes**” or “**including**” are used in this Agreement, they shall be deemed to be followed by the words “**without limitation**”, whether or not they are in fact followed by those words or words of like import. “**Writing**”, “**written**” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any Contract are to that Contract as amended, modified or supplemented (including by waiver or consent) from time to time in accordance with the terms hereof and thereof. References to “the transactions contemplated by this Agreement” or words with a similar import shall be deemed to include the Merger. References to any Person include the successors and permitted assigns of that Person. References herein to “\$” or dollars will refer to United States dollars, unless otherwise specified. References from or through any date mean, unless otherwise specified, from and including such date or through and including such date, respectively. References to any period of days will be deemed to be to the relevant number of calendar days unless otherwise specified. The phrase “**made available**” shall be deemed to include any documents filed or furnished with the SEC. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties hereto, and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

ARTICLE 2

THE MERGER; EFFECT ON THE CAPITAL STOCK; EXCHANGE OF CERTIFICATES

Section 2.01 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the NJBCA, at the Effective Time (as defined below), Merger Corp shall be merged with and into the Company, whereupon the separate existence of Merger Corp will cease and the Company shall continue as the surviving corporation (the “**Surviving Corporation**”). As a result of the Merger, the Surviving Corporation shall become a wholly owned Subsidiary of Parent.

Section 2.02 Closing. Subject to the provisions of this Agreement, the closing of the Merger (the “**Closing**”) shall take place in New York City at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Square, New York, New York 10036 on the second Business Day following the satisfaction or, to the extent permitted hereunder, waiver of the conditions set forth in Article 9 (except for any conditions that by their nature can only be satisfied on the Closing Date, but subject to the satisfaction of such conditions or waiver by the Party entitled to waive such conditions), unless another date, time or place is agreed to in writing by Parent and the Company.

Section 2.03 Effective Time. Subject to the provisions of this Agreement, as soon as practicable on the Closing Date, the Company and Merger Corp shall file with the Department of the Treasury of New Jersey the certificate of merger relating to the Merger (the “**Certificate of Merger**”), executed and acknowledged in accordance with the relevant provisions of the NJBCA. The Merger shall become effective at the time that the Certificate of Merger has been duly filed with the Department of the Treasury of New Jersey, or at such later time as Parent and the Company shall agree and specify in the Certificate of Merger (the time the Merger becomes effective, the “**Effective Time**”).

Section 2.04 Effects of the Merger. At and after the Effective Time, the Merger shall have the effects set forth in this Agreement and the applicable provisions of the NJBCA. Without limiting the generality of the foregoing, at the Effective Time, the Surviving Corporation shall possess all the property, rights, privileges, immunities, powers and franchises of the Company and Merger Corp and be subject to all of the obligations, liabilities and duties of the Company and Merger Corp, all as provided under the NJBCA.

Section 2.05 Effect of the Merger on Capital Stock of the Company and Merger Corp. At the Effective Time, by virtue of the Merger and without any action on the part of any holder of any securities of the Company or Merger Corp:

(a) All shares of Company Stock that are owned, directly or indirectly, by Parent, the Company (including shares held as treasury stock or otherwise) or Merger Corp immediately prior to the Effective Time shall be automatically cancelled and shall cease to exist and no consideration shall be delivered in exchange therefor.

(b) Each share of Company Stock issued and outstanding immediately prior to the Effective Time (other than shares to be cancelled in accordance with Section 2.05(a)) shall at the Effective Time be converted into the right to receive (x) \$222.93 in cash (as may be adjusted pursuant to Section 2.05(c)), without interest (the “**Per Share Cash Amount**”), and (y) 0.5077 (such ratio, as may be adjusted pursuant to Section 2.05(c) or Section 2.06, the “**Exchange Ratio**”) of a validly issued, fully paid and non-assessable share of Parent Common Stock (the “**Per Share Stock Amount**”) (and, if applicable, cash in lieu of fractional shares of Parent Common Stock payable in accordance with Section 2.07) (the consideration payable in accordance with this Section 2.05(b), the “**Merger Consideration**”) less any withholding in accordance with Section 2.08(i).

(c) If the Aggregate Share Consideration to be issued in connection with the Merger would exceed the Maximum Share Number, (i) the Exchange Ratio shall be reduced (the

amount of such reduction, the “**Exchange Ratio Reduction Number**”) by the minimum extent necessary such that the Aggregate Share Consideration does not exceed the Maximum Share Number and (ii) the Cash Consideration for all purposes under this Agreement will be increased on a per share basis by an amount in cash equal to the Exchange Ratio Reduction Number multiplied by the Parent Stock Closing Price in accordance with Section 2.05(c) (rounded to the nearest one-hundredth of a cent).

(d) As of the Effective Time, all shares of Company Stock converted into the Merger Consideration pursuant to Section 2.05 shall automatically be cancelled and shall cease to exist, and each holder of (1) a certificate that immediately prior to the Effective Time represented any such shares of Company Stock (a “**Certificate**”) or (2) shares of Company Stock held in book-entry form (“**Book-Entry Shares**”) shall cease to have any rights with respect thereto, except (A) the Merger Consideration and (B) the right to receive any other amounts expressly provided herein, without interest, subject to compliance with the procedures set forth in Section 2.08.

(e) Each share of capital stock of Merger Corp issued and outstanding immediately prior to the Effective Time shall be converted into and become one validly issued, fully paid and nonassessable share of common stock, par value \$0.01 per share, of the Surviving Corporation.

Section 2.06 Certain Adjustments. Notwithstanding anything in this Agreement to the contrary, if, from the date of this Agreement until the earlier of (i) the Effective Time or (ii) any termination of this Agreement in accordance with Article 10, the outstanding shares of Parent Common Stock or Company Stock shall have been changed into a different number of shares or a different class by reason of any reclassification, stock split (including a reverse stock split), recapitalization, split-up, combination, exchange of shares, readjustment, or other similar transaction, or a stock dividend thereon shall be declared with a record date within said period, then the Exchange Ratio and any other similarly dependent items, as the case may be, shall be appropriately adjusted to provide Parent and the holders of Company Stock (including Company Stock Options exercisable for Company Stock) the same economic effect as contemplated by this Agreement prior to such event. Nothing in this Section 2.06 shall be construed to permit any Party to take any action that is otherwise prohibited or restricted by any other provision of this Agreement.

Section 2.07 Fractional Shares. No certificates or scrip representing fractional shares of Parent Common Stock shall be issued upon the conversion of Company Stock pursuant to Section 2.05, and such fractional share interests shall not entitle the owner thereof to any Parent Common Stock or to vote or to any other rights of a holder of Parent Common Stock. All fractional shares of Parent Common Stock to which a single record holder of Company Stock would be otherwise entitled to receive shall be aggregated and calculations shall be rounded to three decimal places. In lieu of any such fractional shares, each holder of Company Stock who would otherwise be entitled to such fractional shares shall be entitled to an amount in cash, without interest, rounded down to the nearest cent, equal to the product of (A) the amount of the fractional share interest in a share of Parent Common Stock to which such holder would, but for this Section 2.07, be entitled under Section 2.05(b) and (B) an amount equal to the average of the volume weighted average price per share of Parent Common Stock on the NYSE (as reported by

Bloomberg L.P. or, if not reported therein, in another authoritative source mutually selected by Parent and the Company) on each of the ten (10) consecutive trading days ending with the complete trading day immediately prior to the Closing Date. As soon as practicable after the determination of the amount of cash, if any, to be paid to holders of Company Stock in lieu of any fractional share interests in Parent Common Stock, the Exchange Agent shall make available such amounts, without interest, to the holders of Company Stock entitled to receive such cash.

Section 2.08 Exchange of Company Stock.

(a) Prior to the Effective Time, Parent shall enter into a customary exchange agreement with a nationally recognized financial institution designated by Parent and reasonably acceptable to the Company (the “**Exchange Agent**”), and shall deposit with the Exchange Agent for the benefit of the holders of shares of Company Stock, for exchange in accordance with this Article 2, through the Exchange Agent, subject to Section 2.08(b)(ii), book-entry shares (or certificates if requested) representing the full number of whole shares of Parent Common Stock issuable pursuant to Section 2.05 in exchange for outstanding shares of Company Stock. Prior to the Effective Time, Parent shall provide or shall cause to be provided to the Exchange Agent cash in an aggregate amount necessary to pay the cash portion of the Merger Consideration, and Parent shall, after the Effective Time on the appropriate payment date, if applicable, provide or cause to be provided to the Exchange Agent any dividends or other distributions payable on such shares of Parent Common Stock pursuant to Section 2.08(c) which had not theretofore been surrendered for exchange or been exchanged pursuant to Section 2.08(b)(ii) (such shares of Parent Common Stock and cash provided to the Exchange Agent, together with any dividends or other distributions with respect thereto, are hereinafter referred to as the “**Exchange Fund**”). For the purposes of such deposit, Parent shall assume that there will not be any fractional shares of Parent Common Stock. Parent shall make available to the Exchange Agent, for addition to the Exchange Fund, from time to time as needed, cash sufficient to pay cash in lieu of fractional shares in accordance with Section 2.07. The Exchange Agent shall deliver the Merger Consideration to be issued pursuant to Section 2.05 out of the Exchange Fund. Except as provided in Section 2.08(h), the Exchange Fund shall not be used for any other purpose.

(b) Exchange Procedures.

(i) Certificates. Parent shall instruct the Exchange Agent to mail, as soon as reasonably practicable after the Effective Time and in any event not later than the fifth Business Day following the Closing Date, to each holder of record of a Certificate whose shares of Company Stock were converted into the Merger Consideration pursuant to Section 2.05, (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent and shall be in customary form and have such other provisions as Parent may reasonably specify) and (ii) instructions for use in effecting the surrender of the Certificates in exchange for the Merger Consideration. Upon surrender of a Certificate for cancellation to the Exchange Agent or to such other agent or agents as may be appointed by Parent, together with such letter of transmittal, duly executed, and such other documents as may reasonably be required by the Exchange Agent, the holder of such Certificate shall be entitled to receive in

exchange therefor, and Parent shall cause the Exchange Agent to pay and deliver in exchange thereof as promptly as practicable, (A) cash in an amount equal to the Per Share Cash Amount multiplied by the number of shares of Company Stock previously represented by such Certificate, (B) the number of shares of Parent Common Stock (which shall be in book-entry form unless a certificate is requested) representing, in the aggregate, the whole number of shares that such holder has the right to receive in respect of such Certificate pursuant to Section 2.05(b) (after taking into account all other Certificates surrendered by such holder pursuant to this Section 2.08(b)(i)), (C) any dividends or other distributions payable pursuant to Section 2.08(c)(i) and (D) cash in lieu of fractional shares of Parent Common Stock payable pursuant to Section 2.07, and the Certificate so surrendered shall forthwith be cancelled. In the event of a transfer of ownership of Company Stock that is not registered in the transfer records of the Company, payment may be made and shares may be issued to a Person other than the Person in whose name the Certificate so surrendered is registered, if such Certificate shall be properly endorsed or otherwise be in proper form for transfer and the Person requesting such payment shall pay any transfer or other similar Taxes required by reason of the payment to a Person other than the registered holder of such Certificate or establish to the satisfaction of Parent that such Tax has been paid or is not applicable. No interest shall be paid or accrue on any cash payable upon surrender of any Certificate.

(ii) Book-Entry Shares. Notwithstanding anything to the contrary contained in this Agreement, any holder of Book-Entry Shares shall not be required to deliver a Certificate or an executed letter of transmittal to the Exchange Agent to receive the Merger Consideration that such holder is entitled to receive pursuant to this Article 2. In lieu thereof, each holder of record of one or more Book-Entry Shares whose shares of Company Stock were converted into the Merger Consideration pursuant to Section 2.05 shall automatically upon the Effective Time be entitled to receive, and Parent shall cause the Exchange Agent to pay and deliver as promptly as practicable after the Effective Time, (A) cash in an amount equal to the Per Share Cash Amount multiplied by the number of shares of Company Stock previously represented by such Book-Entry Shares, (B) the number of shares of Parent Common Stock (which shall be in book-entry form unless a certificate is requested) representing, in the aggregate, the whole number of shares that such holder has the right to receive in respect of such Book-Entry Shares pursuant to Section 2.05(b) (after taking into account all other Book-Entry Shares converted by such holder pursuant to this Section 2.08(b)(ii)), (C) any dividends or distributions payable pursuant to Section 2.08(c)(ii) and (D) cash in lieu of any fractional shares payable pursuant to Section 2.07, and the Book-Entry Shares of such holder shall forthwith be cancelled. No interest shall be paid or accrue on any cash payable upon conversion of any Book-Entry Shares.

(c) Distributions with Respect to Unexchanged Shares

(i) Certificates. No dividends or other distributions with respect to Parent Common Stock with a record date after the Effective Time shall

be paid to the holder of any Certificate formerly representing Company Stock, and no cash payment in lieu of fractional shares shall be paid to any such holder pursuant to Section 2.07, until the surrender of such Certificate in accordance with this Article 2. Subject to applicable Law, following surrender of any such Certificate, there shall be paid to the holder of the shares of Parent Common Stock issued in exchange therefor, without interest, (A) at the time of delivery of such Parent Common Stock by the Exchange Agent pursuant to Section 2.08(b)(i), the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such shares of Parent Common Stock and (B) at the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but prior to such delivery of such Parent Common Stock by the Exchange Agent pursuant to Section 2.08(b)(i), and a payment date subsequent to such delivery of such Parent Common Stock by the Exchange Agent pursuant to Section 2.08(b)(i), payable with respect to such shares of Parent Common Stock.

(ii) Book-Entry Shares. Subject to applicable Law, there shall be paid to the holder of the shares of Parent Common Stock issued in exchange for Book-Entry Shares in accordance with this Article 2, without interest, (A) at the time of delivery of such Parent Common Stock by the Exchange Agent pursuant to Section 2.08(b)(ii), the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such shares of Parent Common Stock and (B) at the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but prior to the time of such delivery by the Exchange Agent pursuant to Section 2.08(b)(ii), and a payment date subsequent to the time of such delivery by the Exchange Agent pursuant to Section 2.08(b)(ii), payable with respect to such shares of Parent Common Stock.

(d) The Merger Consideration issued and paid in accordance with the terms of this Article 2 upon the surrender of the Certificates (or, immediately, in the case of the Book-Entry Shares) shall be deemed to have been issued and paid in full satisfaction of all rights pertaining to such shares of Company Stock (other than the right to receive dividends or other distributions, if any, in accordance with Section 2.08(c)). After the Effective Time, there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of shares of Company Stock that were outstanding immediately prior to the Effective Time. If, after the Effective Time, any Certificates formerly representing shares of Company Stock are presented to the Surviving Corporation or the Exchange Agent for any reason, they shall be cancelled and exchanged as provided in this Article 2.

(e) Any portion of the Exchange Fund that remains undistributed to the former holders of Company Stock for nine months after the Effective Time shall be delivered to the Surviving Corporation, upon demand, and any former holder of Company Stock who has not theretofore complied with this Article 2 shall thereafter look only to the Surviving Corporation for payment of its claim for the Merger Consideration and any dividends or distributions with respect to Parent Common Stock as contemplated by Section 2.08(c).

(f) None of Parent, Merger Corp, the Company, the Surviving Corporation or the Exchange Agent shall be liable to any Person in respect of any shares of Parent Common Stock (or dividends or distributions with respect thereto) or cash from the Exchange Fund delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law. Any Merger Consideration remaining unclaimed by former holders of Company Stock immediately prior to such time as such amounts would otherwise escheat to or become property of any Governmental Authority shall, to the fullest extent permitted by applicable Law, become the property of the Surviving Corporation free and clear of any claims or interest of any Person previously entitled thereto.

(g) In the event any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit, in form and substance reasonably acceptable to Parent, of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent or the Exchange Agent, the posting by such Person of a bond in reasonable amount as Parent or the Exchange Agent may direct, as indemnity against any claim that may be made against it or the Surviving Corporation with respect to such Certificate, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Certificate the Merger Consideration and any unpaid dividends or other distributions that would be payable or deliverable in respect thereof pursuant to Section 2.08(c) had such lost, stolen or destroyed Certificate been surrendered as provided in this Article 2.

(h) The Exchange Agent shall invest the cash included in the Exchange Fund as directed by Parent; *provided, however*, that no such investment income or gain or loss thereon shall affect the amounts payable to holders of Company Stock. Any interest, gains and other income resulting from such investments shall be the sole and exclusive property of Parent payable to Parent upon its request, and no part of such interest, gains and other income shall accrue to the benefit of holders of Company Stock; *provided, however*, that any investment of such cash shall in all events be limited to direct short-term obligations of, or short-term obligations fully guaranteed as to principal and interest by, the U.S. government, in commercial paper rated A-1 or P-1 or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation, respectively, or in certificates of deposit, bank repurchase agreements or banker's acceptances of commercial banks with capital exceeding \$10 billion (based on the most recent financial statements of such bank that are then publicly available), and that no such investment or loss thereon shall affect the amounts payable to holders of Company Stock pursuant to this Article 2. If for any reason (including losses) the cash in the Exchange Fund shall be insufficient to fully satisfy all of the payment obligations to be made in cash by the Exchange Agent hereunder, Parent shall promptly deposit cash into the Exchange Fund in an amount which is equal to the deficiency in the amount of cash required to fully satisfy such cash payment obligations.

(i) Parent, the Surviving Corporation or the Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as may be required to be deducted and withheld with respect to the making of such payment under the Code, or under any provision of state, local or foreign Tax Law. Any amount deducted or withheld pursuant to this Section 2.08(i) and paid over to the relevant Taxing Authority shall be treated as having been paid to the Person in respect of which such deduction or withholding was made. Parent shall pay, or shall cause to be paid, all amounts so deducted or withheld to the appropriate Taxing Authority within the period required under applicable Law.

Section 2.09 Further Assurances. If, at any time after the Effective Time, the Surviving Corporation shall determine that any actions are necessary or desirable to vest, perfect or confirm of record or otherwise in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of either of the Company or Merger Corp acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, then the officers and directors of the Surviving Corporation shall be authorized to take all such actions as may be necessary or desirable to vest all right, title or interest in, to and under such rights, properties or assets in the Surviving Corporation or otherwise to carry out this Agreement.

Section 2.10 Company Stock Options and Other Stock-Based Awards.

(a) Company Stock Options. Each compensatory option to purchase shares of Company Stock (a “**Company Stock Option**”) that is outstanding immediately prior to the Effective Time, whether vested or unvested, shall be converted at the Effective Time into a stock-settled stock appreciation right (each, an “**Adjusted SAR**”), on the same terms and conditions (other than the available methods for payment of Taxes, which will be determined under Parent’s equity program administrative procedures, as in effect from time to time) as were applicable under such Company Stock Option immediately prior to the Effective Time, except for any changes that are required solely to reflect the conversion of such Company Stock Option to an Adjusted SAR, relating to the number of shares of Parent Common Stock equal to the product of (i) the number of shares of Company Stock subject to such Company Stock Option immediately prior to the Effective Time multiplied by (ii) the sum of (A) the Exchange Ratio and (B) the quotient (rounded to four decimal places) obtained by dividing the Per Share Cash Amount by the Parent Stock Closing Price (such sum, the “**Stock Award Exchange Ratio**”), with any fractional shares rounded down to the next lower whole number of shares. The reference price per share of such Adjusted SAR shall be an amount equal to the quotient of (A) the exercise price per share of Company Stock subject to such Company Stock Option immediately prior to the Effective Time divided by (B) the Stock Award Exchange Ratio, with any fractional cents rounded up to the next higher number of whole cents. The reference price per share of any such Adjusted SAR and the number of shares of Parent Common Stock relating to any such Adjusted SAR will be determined in a manner consistent with the requirements of Section 409A of the Code, and, in the case of Company Stock Options that are intended to qualify as incentive stock options within the meaning of Section 422 of the Code, consistent with the requirements of Section 424 of the Code.

(b) Company RSAs. Each compensatory restricted stock award that is outstanding immediately prior to the Effective Time (a “**Company RSA**”), shall be cancelled and converted into the right to receive the Merger Consideration in accordance with Section 2.05(b) on the same terms and conditions as outstanding shares of Company Stock, subject to applicable Tax withholdings, with such Tax withholding to be withheld pro rata from the Per Share Cash Amount and the Per Share Stock Amount (with the Per Share Stock Amount valued, for such purpose, based on the closing price of Parent Common Stock on the Closing Date). The Merger Consideration payable pursuant to this Section 2.10(b) shall be paid as soon as practicable after the Effective Time, but in no event later than three (3) Business Days following the Effective Time.

(c) Company RSUs. Each compensatory restricted stock unit with respect to shares of Company Stock that is not a Company PLTIP Unit or a Company MSPP Unit (a “**Company RSU**”) and is outstanding immediately prior to the Effective Time shall be converted into a restricted stock unit (each, an “**Adjusted RSU**”) with the same terms and conditions as were applicable under such Company RSU immediately prior to the Effective Time (except that any threshold performance condition applicable to such Company RSU immediately prior to the Effective Time shall not apply from and after the Effective Time), and relating to the number of shares of Parent Common Stock equal to the product of (i) the number of shares of Company Stock subject to such Company RSU immediately prior to the Effective Time (determined without regard to whether any applicable threshold performance condition has been achieved) multiplied by (ii) the Stock Award Exchange Ratio, with any fractional shares rounded to the next whole number of shares. Any accrued but unpaid dividend equivalents with respect to any Company RSU will be assumed and become an obligation with respect to the applicable Adjusted RSU.

(d) Company PLTIP Units. Each compensatory restricted stock unit with respect to shares of Company Stock that is subject to performance-based vesting conditions measured over a three-year performance period (a “**Company PLTIP Unit**”) and is outstanding immediately prior to the Effective Time shall be converted into a restricted stock unit (each, an “**Adjusted PLTIP Unit**”) with the same terms and conditions as were applicable under such Company PLTIP Unit immediately prior to the Effective Time (except that the performance-based vesting conditions applicable to such Company PLTIP Unit immediately prior to the Effective Time shall not apply from and after the Effective Time), and relating to the number of shares of Parent Common Stock equal to the product of (i) the number of shares of Company Stock subject to such Company PLTIP Unit immediately prior to the Effective Time multiplied by (ii) the Stock Award Exchange Ratio, with any fractional shares rounded to the next whole number of shares. Any accrued but unpaid dividend equivalents with respect to any Company PLTIP Unit will be assumed and become an obligation with respect to the applicable Adjusted PLTIP Unit. For purposes of this Section 2.10(d), the number of shares of Company Stock subject to each Company PLTIP Unit immediately prior to the Effective Time shall be deemed to equal (A) in the case of each Company PLTIP Unit with a performance period covering 2015–2017, two hundred and forty percent (240%) of the target number of shares of Company Stock underlying such Company PLTIP Unit, (B) in the case of each Company PLTIP Unit with a performance period covering 2016–2018, one hundred and fifty percent (150%) of the target number of shares of Company Stock underlying such Company PLTIP Unit, and (C) in the case of each Company PLTIP Unit with a performance period covering 2017–2019, one hundred percent (100%) of the target number of shares of Company Stock underlying such Company PLTIP Unit.

Section 2.11 Company ESPP. As soon as reasonably practicable after the date hereof, the Company, the Company Board or a committee thereof shall adopt resolutions or take other actions as may be required to provide that (a) the Purchase Period (as defined in the Employee Stock Purchase Plan of the Company, as amended and restated (the “**Company ESPP**”)) in effect as of the date hereof shall be the final Purchase Period (such period, the “**Final Purchase**”)

Period”) and no further Purchase Period shall commence pursuant to the Company ESPP after the date hereof, and (b) each individual participating in the Final Purchase Period on the date of this Agreement shall not be permitted to (i) increase his or her payroll contribution rate pursuant to the Company ESPP from the rate in effect when the Final Purchase Period commenced or (ii) make separate non-payroll contributions to the Company ESPP on or following the date of this Agreement, except as may be required by applicable Law. Prior to the Effective Time, the Company shall take all action that may be necessary to, effective upon the consummation of the Merger, (A) cause the Final Purchase Period, to the extent that it would otherwise be outstanding at the Effective Time, to be terminated no later than five (5) Business Days prior to the date on which the Effective Time occurs; (B) make any pro rata adjustments that may be necessary to reflect the Final Purchase Period, but otherwise treat the Final Purchase Period as a fully effective and completed Purchase Period for all purposes pursuant to the Company ESPP; and (C) cause the exercise (as of no later than five (5) Business Days prior to the date on which the Effective Time occurs) of each outstanding purchase right pursuant to the Company ESPP. On such exercise date, the Company shall apply the funds credited as of such date pursuant to the Company ESPP within each participant’s payroll withholding account to the purchase of whole shares of Company Stock in accordance with the terms of the Company ESPP, and such shares of Company Stock shall be outstanding shares of Company Stock and entitled to the Merger Consideration in accordance with Section 2.05. The Company, the Company Board or a committee thereof shall adopt such resolutions as are necessary to terminate the Company ESPP effective as of immediately prior to the Effective Time (but subject to the consummation of the Merger).

Section 2.12 Company MSPP.

(a) Prior to the date of this Agreement, the Company Board or a committee thereof shall have adopted resolutions or have taken such other actions as may be required to (i) provide that no individual shall be permitted to make an election to defer any amounts under the Management Stock Purchase Program of the Company, as amended and restated (the “**Company MSPP**”), following the date hereof and (ii) terminate the Company MSPP effective as of the Effective Time (but subject to the consummation of the Merger).

(b) At the Effective Time, each award of “Elective Share Units” and each award of “Premium Share Units” (each as defined in the Company MSPP) (each, a “**Company MSPP Unit**”) that is outstanding as of immediately prior to the Effective Time and does not, by its terms (including any applicable deferral election), become payable at the Effective Time shall be converted into an adjusted MSPP unit of Parent (an “**Adjusted MSPP Unit**”) with the same terms and conditions as were applicable under such Company MSPP Unit immediately prior to the Effective Time and relating to the number of shares of Parent Common Stock equal to the product of (i) the number of shares of Company Stock subject to such Company MSPP Unit immediately prior to the Effective Time multiplied by (ii) the Stock Award Exchange Ratio, with any fractional shares rounded to the next whole number of shares.

(c) At the Effective Time, each Company MSPP Unit that is outstanding as of immediately prior to the Effective Time and does, by its terms (including any applicable deferral election), become vested and/or payable at the Effective Time, shall be cancelled and converted into, with respect to each share of Company Stock underlying such Company MSPP Unit, (A)

the right to receive the Merger Consideration in accordance with [Section 2.05\(b\)](#) on the same terms and conditions as outstanding shares of Company Stock, subject to applicable Tax withholdings, with such Tax withholding to be withheld pro rata from the Per Share Cash Amount and the Per Share Stock Amount (with the Per Share Stock Amount valued, for such purpose, based on the closing price of Parent Common Stock on the Closing Date), and (B) the right to receive any dividends or distributions accumulated pursuant to the terms of such Company MSPP Unit that have not been paid prior to the Effective Time, less any required withholding Taxes. The Merger Consideration payable pursuant to this [Section 2.12\(c\)](#) and any accumulated dividends shall be paid as soon as practicable after the Effective Time, but in no event later than three (3) Business Days following the Effective Time.

Section 2.13 [Company Deferred Units](#).

(a) At the Effective Time, the “Units” credited to each account under the Stock Equivalent Plan for Outside Directors of the Company, as amended and restated (the “**Company Stock Equivalent Plan**”) and the “Share Units” credited to an account under a Deferred Compensation Contract Deferral of Directors’ Fees with a non-employee director of the Company (the “**Director Deferral Contracts**”) (collectively, the “**Company Deferred Units**”) outstanding as of immediately prior to the Effective Time shall, to the extent unvested as of the Effective Time, become fully vested at the Effective Time.

(b) At the Effective Time, each such Company Deferred Unit granted under the Company Stock Equivalent Plan shall be converted into a cash-settled deferred share unit (an “**Adjusted Deferred Unit**”) with the same terms and conditions (taking into account the accelerated vesting provided by [Section 2.13\(a\)](#)) as were applicable under such Company Deferred Unit immediately prior to the Effective Time and relating to the number of shares of Parent Common Stock equal to the product of (i) the number of shares of Company Stock subject to such Company Deferred Unit immediately prior to the Effective Time multiplied by (ii) the Stock Award Exchange Ratio, with any fractional shares rounded to the next whole number of shares.

(c) At the Effective Time, each Director Deferral Contract shall be terminated and all amounts credited to the deferred stock and interest accounts thereunder shall be paid in a single lump sum in cash as soon as practicable after the Effective Time, but in no event later than three (3) Business Days following the Effective Time. The cash payment in respect of each Company Deferred Unit credited under a Director Deferral Contract shall equal the product of (i) the number of shares of Company Stock underlying such Company Deferred Unit immediately prior to the Effective Time, multiplied by (ii) the Merger Consideration Value.

Section 2.14 [Company Actions](#). Prior to the Effective Time, the Company shall use its reasonable best efforts to take such actions with respect to the Company’s equity compensation plans or arrangements as are necessary to give effect to the transactions contemplated by [Section 2.10](#), [Section 2.12](#) and [Section 2.13](#).

Section 2.15 [Parent Actions](#). Parent shall use its reasonable best efforts to take such actions as are necessary for the conversion of the Company Stock Options, Company RSUs and Company PLTIP Units pursuant to [Section 2.10](#), the conversion of Company MSPP Units pursuant

to Section 2.12(b), and the conversion of Company Deferred Units pursuant to Section 2.13(b), including the reservation, issuance and listing of Parent Common Stock as is necessary to effectuate the transactions contemplated by Section 2.10 and Section 2.12(b). Parent shall prepare and file with the SEC a registration statement on an appropriate form, or a post-effective amendment to a registration statement previously filed under the 1933 Act, with respect to the shares of Parent Common Stock subject to the Adjusted SARs, Adjusted RSUs, Adjusted PLTIP Units, and Adjusted MSPP Units.

ARTICLE 3

THE SURVIVING CORPORATION

Section 3.01 Surviving Corporation Matters.

(a) At the Effective Time, the certificate of incorporation of the Company, as in effect immediately prior to the Effective Time, but as amended as set forth on Exhibit A hereto, shall be the certificate of incorporation of the Surviving Corporation until further amended in accordance with applicable Law.

(b) At the Effective Time, the bylaws of the Surviving Corporation shall be amended so as to read in their entirety as the by-laws of Merger Corp as in effect immediately prior to the Effective Time, except the references to Merger Corp's name shall be replaced by references to "C. R. Bard, Inc." until further amended in accordance with the provisions thereof and applicable Law.

(c) From and after the Effective Time, until their successors have been duly elected or appointed and qualified, or until their earlier death, resignation or removal: (i) the directors of Merger Corp immediately prior to the Effective Time shall be the directors of the Surviving Corporation and (ii) the officers of the Company immediately prior to the Effective Time shall be the officers of the Surviving Corporation.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Subject to Section 11.05, (a) other than with respect to Section 4.10(b), except as disclosed in the Company SEC Documents (as defined below) publicly filed or furnished by the Company with the SEC between January 1, 2014 and the date that is one Business Day prior to the date of this Agreement (the "**Specified Company SEC Documents**"); *provided*, that (i) any information contained in any part of any Specified Company SEC Document shall only be deemed to be an exception to, or, as applicable, disclosure for the purposes of the Company's representations and warranties set forth in this Agreement if the relevance of such item as an exception to, or, as applicable, disclosure for purposes of, such other section of this Agreement is reasonably apparent on its face and (ii) in no event shall any risk factor disclosure under the heading "Risk Factors" or disclosure set forth in any "forward looking statements" disclaimer or other general statements to the extent they are predictive or forward looking in nature that are included in any part of any Specified Company SEC Document be deemed to be an exception to,

or, as applicable, disclosure for purposes of, any representations and warranties of the Company contained in this Agreement or (b) except as set forth in the Company Disclosure Letter, the Company represents and warrants to Parent and Merger Corp that:

Section 4.01 Corporate Existence and Power. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of New Jersey. The Company has all corporate power and authority to carry on its business as now conducted and is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where such qualification is necessary, except where any failure to have such power or authority or to be so qualified would not reasonably be expected, individually or in the aggregate, (i) to have a Company Material Adverse Effect or (ii) to prevent, materially delay or materially impair the ability of the Company to perform its obligations under this Agreement or to consummate the Merger. Prior to the date of this Agreement, the Company has delivered or made available to Parent true and complete copies of the certificate of incorporation and bylaws of the Company as in effect on the date of this Agreement. The Company is not in violation of, in conflict with, or in default under, its certificate of incorporation or bylaws.

Section 4.02 Corporate Authorization.

(a) The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby are within the Company's corporate power and authority and, except for the required approval of the Company's stockholders in connection with the consummation of the Merger, have been duly authorized by all necessary corporate action on the part of the Company. The affirmative vote at an annual or special meeting of the shareholders of the Company, at which a quorum is present in accordance with the NJBCA and the bylaws of the Company, of holders of the Company Stock representing at least a majority of the votes cast at such meeting (the "**Company Stockholder Approval**") is the only vote of the holders of any of the Company's capital stock necessary in connection with the consummation of the transactions contemplated hereby. This Agreement, assuming due authorization, execution and delivery by Parent and Merger Corp, constitutes a valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at Law).

(b) At a meeting duly called and held, as of the date of this Agreement, the Company Board has (i) unanimously determined that this Agreement and the transactions contemplated hereby are fair to and in the best interests of the Company's stockholders as set forth in Section 14A:6-1 of the NJBCA, (ii) unanimously approved and declared advisable this Agreement and the transactions contemplated hereby and (iii) unanimously resolved to recommend adoption of this Agreement by its stockholders (such recommendation, the "**Company Board Recommendation**").

Section 4.03 Governmental Authorization. The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby require no action by or in respect of, or filing with, any Governmental

Authority, other than (i) the filing of a certificate of merger with respect to the Merger with the Department of the Treasury of New Jersey and appropriate documents with the relevant authorities of other states in which the Company is qualified to do business, (ii) compliance with any applicable requirements of the HSR Act and any non-U.S. Competition Laws, (iii) compliance with any applicable requirements of the 1933 Act, the 1934 Act and any other applicable state or federal securities laws, (iv) compliance with any applicable requirements of the NYSE and (v) any actions or filings the absence of which would not reasonably be expected to, individually or in the aggregate, (x) have a Company Material Adverse Effect or (y) have an effect that would prevent, materially delay or materially impair the ability of the Company to perform its obligations under this Agreement or to consummate the Merger.

Section 4.04 Non-contravention. The execution, delivery and performance by the Company of this Agreement and the consummation of the transactions contemplated hereby by the Company do not and will not (i) assuming the authorizations, consents and approvals referred to in Section 4.03 and the Company Stockholder Approval are obtained, contravene, conflict with, or result in any violation or breach of any provision of the certificate of incorporation or bylaws of the Company, (ii) assuming the authorizations, consents and approvals referred to in Section 4.03 and the Company Stockholder Approval are obtained, contravene, conflict with or result in a violation or breach of any provision of any Law or Order, (iii) assuming the authorizations, consents and approvals referred to in Section 4.03 and the Company Stockholder Approval are obtained, require any consent or other action by any Person under, constitute a default or a violation, or an event that, with or without notice or lapse of time or both, would constitute a default or a violation, under or of, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit to which the Company or any of its Subsidiaries is entitled under, any provision of any agreement or other instrument binding upon the Company or any of its Subsidiaries or any license, franchise, permit, certificate, approval or other similar authorization affecting, or relating in any way to, the assets or business of the Company and its Subsidiaries or (iv) result in the creation or imposition of any Lien, other than any Permitted Lien, on any asset of the Company or any of its Subsidiaries, except, in the case of each of clauses (ii), (iii) and (iv), which have not had, and would not reasonably be expected to have, individually or in the aggregate, (x) a Company Material Adverse Effect or (y) an effect that would prevent, materially delay or materially impair the ability of the Company to perform its obligations under this Agreement or to consummate the Merger.

Section 4.05 Capitalization.

(a) The authorized capital stock of the Company consists of 600,000,000 shares of Company Stock, 5,000,000 shares of preferred stock, par value \$1.00 per share, of the Company. As of April 20, 2017 there were outstanding 72,437,191 shares of Company Stock (of which 53,794 were Company RSAs). As of April 20, 2017, (i) there were outstanding (A) Company Stock Options to purchase an aggregate of 3,043,036 shares of Company Stock, (B) Company RSUs and Company MSPP Units with respect to an aggregate of 1,388,734 shares of Company Stock, (C) Company PLTIP Units with respect to an aggregate of 324,943 shares of Company Stock (assuming the maximum level of performance is achieved), (D) no shares of preferred stock of the Company outstanding and (E) no shares of other series of common stock of the Company outstanding and (ii) 3,117,153 shares of Company Stock were available for

issuance of future awards under the Company's equity compensation plans and arrangements. From April 20, 2017 through the date of this Agreement, the Company has not granted any Company RSAs, Company Stock Options, Company RSUs or Company PLTIP Units.

(b) Except (w) as set forth in Section 4.05(a), (x) for any Company RSUs or Company RSAs that are granted after the date of this Agreement in accordance with this Agreement, (y) for any Company Deferred Units, and (z) for any shares of Company Stock issued upon the exercise of Company Stock Options or the settlement of Company RSUs or Company PLTIP Units, in each case, that were outstanding on April 20, 2017 or, in the case of Company RSUs, that were granted after the date of this Agreement in accordance with this Agreement, there are no issued, reserved for issuance or outstanding (i) shares of capital stock or other voting securities of or other ownership interests in the Company, (ii) securities of the Company convertible into or exchangeable for shares of capital stock or other voting securities of or other ownership interests in the Company, (iii) warrants, calls, options or other rights to acquire from the Company, or other obligation of the Company to issue, any shares of capital stock, voting securities or securities convertible into or exchangeable for capital stock or other voting securities of or other ownership interests in the Company or (iv) restricted shares, stock appreciation rights, performance units, contingent value rights, "phantom" stock or similar securities or rights issued or granted by the Company or any of its Subsidiaries that are derivative of, or provide economic benefits based, directly or indirectly, on the value or price of, any shares of capital stock or other voting securities of or other ownership interests in the Company (the items in clauses (i) through (iv) being referred to collectively as the "**Company Securities**").

(c) Section 4.05(c) of the Company Disclosure Letter contains a correct and complete list, as of April 20, 2017, of Company Stock Options, Company RSAs, Company RSUs, Company PSUs, Company MSPP Units, and Company Deferred Units, including the holder, date of grant, vesting schedule, number of shares of Company Stock covered by or subject to the award (including, with respect to Company PSUs, the target and maximum number of shares of Company Stock subject to the award), the company equity plan under which the award was granted and, where applicable, exercise price and term.

(d) There are no outstanding obligations of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any of the Company Securities, and neither the Company nor any of its Subsidiaries maintains an employee stock purchase plan. Neither the Company nor any of its Subsidiaries is a party to any voting trust, proxy, voting agreement or other similar agreement with respect to the voting of any Company Securities. All outstanding shares of capital stock of the Company have been, and all shares that may be issued pursuant to any equity compensation plan or arrangement will be, when issued in accordance with the respective terms thereof, duly authorized and validly issued, fully paid and nonassessable and free of preemptive rights. No Subsidiary of the Company owns any shares of capital stock of the Company or any Company Securities. As of the date of this Agreement, there are no outstanding bonds, debentures, notes or other indebtedness of the Company having the right to vote (whether on an as-converted basis or otherwise) (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which stockholders of the Company may vote.

Section 4.06 Subsidiaries.

(a) Each Subsidiary of the Company is an entity duly incorporated or otherwise duly organized, validly existing and (where applicable or recognized) in good standing under the laws of its jurisdiction of incorporation or organization, except, in the case of any such Subsidiary, where the failure to be so incorporated, organized, existing or in good standing would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Each Subsidiary of the Company has all corporate, limited liability company or comparable powers and all Governmental Authorizations required to carry on its business as now conducted, except for those powers or Governmental Authorizations the absence of which has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Each such Subsidiary is duly qualified to do business as a foreign entity and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) All of the outstanding capital stock or other voting securities of or other ownership interests in each Subsidiary of the Company, are owned by the Company, directly or indirectly, free and clear of any Lien and free of any other limitation or restriction (including any restriction on the right to vote, sell or otherwise dispose of such capital stock or other voting securities or other ownership interests), in each case other than (x) statutory or other liens for Taxes or assessments which are not yet due or delinquent or the validity of which is being contested in good faith by appropriate proceedings and for which adequate reserves are being maintained, (y) transfer and other restrictions under applicable federal and state securities Laws and (z) in the case of Subsidiaries that are immaterial to the Company and its Subsidiaries, taken as a whole, immaterial Liens. Section 4.06(b) of the Company Disclosure Letter contains a complete and accurate list for each of the Subsidiaries: (i) its name and (ii) its jurisdiction of organization. Each Subsidiary is directly or indirectly wholly owned by the Company. There are no issued, reserved for issuance or outstanding (i) securities of the Company or any of its Subsidiaries convertible into, or exchangeable for, shares of capital stock or other voting securities of or other ownership interests in any Subsidiary of the Company, (ii) warrants, calls, options or other rights to acquire from the Company or any of its Subsidiaries, or other obligations of the Company or any of its Subsidiaries to issue, any shares of capital stock or other voting securities of or other ownership interests in or any securities convertible into, or exchangeable for, any shares of capital stock or other voting securities of or other ownership interests in any Subsidiary of the Company or (iii) restricted shares, stock appreciation rights, performance units, contingent value rights, “phantom” stock or similar securities or rights issued or granted by the Company or any of its Subsidiaries that are derivative of, or provide economic benefits based, directly or indirectly, on the value or price of, any capital stock or other voting securities of or other ownership interests in any Subsidiary of the Company (the items in clauses (i) through (iii) being referred to collectively as the “**Company Subsidiary Securities**”). There are no outstanding obligations of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any of the Company Subsidiary Securities.

Section 4.07 SEC Filings and the Sarbanes-Oxley Act.

(a) The Company has filed with or furnished to the SEC (including following any extensions of time for filing provided by Rule 2b-25 promulgated under the 1934 Act) all

reports, schedules, forms, statements, prospectuses, registration statements and other documents required to be filed or furnished, as the case may be, by the Company since January 1, 2014 (collectively, together with any exhibits and schedules thereto and other information incorporated therein, the “**Company SEC Documents**”).

(b) As of its filing date (or, if amended or supplemented, as of the date of the most recent amendment or supplement filed prior to the date of this Agreement), each Company SEC Document complied in all material respects with the applicable requirements of the 1933 Act and the 1934 Act and the Sarbanes-Oxley Act, and any rules and regulations promulgated thereunder, as the case may be.

(c) As of its filing date (or, if amended or supplemented, as of the date of the most recent amendment or supplement filed prior to the date of this Agreement), each Company SEC Document filed or furnished pursuant to the 1934 Act did not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading in any material respect.

(d) Each Company SEC Document that is a registration statement, as amended or supplemented, if applicable, filed pursuant to the 1933 Act, as of the date such registration statement or amendment became effective, and as of the date of such supplement, did not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading in any material respect.

(e) The Company has heretofore furnished or made available to Parent complete and correct copies of all comment letters from the SEC since January 1, 2014 through the date of this Agreement with respect to any of the Company SEC Documents, together with all written responses of the Company thereto, to the extent that such comment letters and written responses are not publicly available on EDGAR. As of the date of this Agreement, there are no outstanding or unresolved comments in comment letters received from the SEC staff with respect to any of the Company SEC Documents, and, to the knowledge of the Company, none of the Company SEC Documents are subject to ongoing SEC review.

(f) The Company has established and maintains disclosure controls and procedures (as defined in Rule 13a-15 under the 1934 Act). Such disclosure controls and procedures are reasonably designed to ensure that material information relating to the Company, including its consolidated Subsidiaries, is made known to the Company’s principal executive officer and its principal financial officer by others within those entities, particularly during the periods in which the periodic reports required under the 1934 Act are being prepared, and such disclosure controls and procedures are reasonably designed to ensure all such information is communicated in a timely fashion to the Company’s principal executive officer and principal financial officer to allow timely decisions regarding the disclosure of such information in the Company’s periodic and current reports required under the 1934 Act. For purposes of this Agreement, “principal executive officer” and “principal financial officer” shall have the meanings given to such terms in the Sarbanes-Oxley Act.

(g) The Company and its Subsidiaries have established and maintained a system of internal controls over financial reporting (as defined in Rule 13a-15 under the 1934 Act) (“**internal controls**”). Such internal controls are sufficient to provide reasonable assurance regarding the reliability of the Company’s financial reporting and the preparation of Company financial statements for external purposes in accordance with GAAP. The Company has disclosed, based on its most recent evaluation of internal controls prior to the date of this Agreement, to the Company’s auditors and audit committee (i) any significant deficiencies and material weaknesses in the design or operation of internal controls which are reasonably likely to adversely affect the Company’s ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in internal controls.

(h) Neither the Company nor any of its Subsidiaries has extended or maintained credit, arranged for the extension of credit, or renewed an extension of credit, in the form of a personal loan to or for any executive officer (as defined in Rule 3b-7 under the 1934 Act) or director of the Company in violation of Section 402 of the Sarbanes-Oxley Act.

(i) The Company is in compliance, and has complied since January 1, 2014, in each case in all material respects, with (i) the applicable provisions of the Sarbanes-Oxley Act and (ii) the applicable listing and corporate governance rules and regulations of the NYSE.

(j) Each of the principal executive officer and principal financial officer of the Company (or each former principal executive officer and principal financial officer of the Company, as applicable) have made all certifications required by Rule 13a-14 and 15d-14 under the 1934 Act and Sections 302 and 906 of the Sarbanes-Oxley Act and any related rules and regulations promulgated by the SEC and the NYSE, and the statements contained in any such certifications are complete and correct in all material respects.

(k) Since the Company Balance Sheet Date, there has been no transaction, or series of similar transactions, agreements, arrangements or understandings, nor is there any proposed transaction as of the date of this Agreement, or series of similar transactions, agreements, arrangements or understandings to which the Company or any of its Subsidiaries was or is to be a party, that would be required to be disclosed under Item 404 of Regulation S-K promulgated under the 1933 Act that has not been disclosed in the Company SEC Documents publicly filed or furnished with the SEC following the Company Balance Sheet Date.

Section 4.08 Financial Statements. The audited consolidated financial statements and unaudited consolidated interim financial statements of the Company included or incorporated by reference in the Company SEC Documents (including all related notes and schedules thereto) (a) fairly present in all material respects, in conformity with GAAP (except, in the case of unaudited consolidated interim financial statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis (except as may be indicated therein or in the notes thereto), the consolidated financial position of the Company and its consolidated Subsidiaries as of the dates thereof and their consolidated results of operations and cash flows for the periods then ended (subject to normal year-end audit adjustments in the case of any unaudited interim financial statements), (b) comply in all material respects with the applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, and (c) have been prepared in

accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto and except, in the case of the unaudited interim statements, as may be permitted under Form 10-Q of the 1934 Act).

Section 4.09 Disclosure Documents. None of the information supplied or to be supplied by or on behalf of the Company for inclusion or incorporation by reference in (i) the registration statement on Form S-4 to be filed with the SEC by Parent in connection with the Parent Stock Issuance (including any amendments or supplements, the “**Registration Statement**”) will, at the time the Registration Statement becomes effective under the 1933 Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading or (ii) the definitive proxy statement/prospectus to be sent to the Company stockholders in connection with the Merger and the other transactions contemplated by this Agreement (including any amendments or supplements, the “**Proxy Statement/Prospectus**”) will, at the date it is first mailed to the Company stockholders or at the time of the Company Stockholder Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. Notwithstanding the foregoing provisions of this Section 4.09, no representation or warranty is made by the Company with respect to information or statements made or incorporated by reference in the Registration Statement or the Proxy Statement/Prospectus which were not supplied by or on behalf of the Company.

Section 4.10 Absence of Certain Changes.

(a) From the Company Balance Sheet Date through the date of this Agreement, (i) the business of the Company and its Subsidiaries has been conducted in the ordinary course of business consistent with past practice in all material respects and (ii) there has not been any action taken by the Company or any of its Subsidiaries that, if taken during the period from the date of this Agreement through the Effective Time without Parent’s consent, would constitute a breach of clauses (e), (f), (g) or (q) of Section 6.01 (or, with respect to the foregoing clauses, (t)).

(b) Since the Company Balance Sheet Date, there has not been any effect, change, condition, fact, development, occurrence or event that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.11 No Undisclosed Material Liabilities. There are no liabilities or obligations of the Company or any of its Subsidiaries that would be required by GAAP, as in effect on the date hereof, to be reflected on the consolidated balance sheet of the Company (including the notes thereto), other than:

(a) liabilities or obligations disclosed, reflected, reserved against or otherwise provided for in the Company Balance Sheet or in the notes thereto;

(b) liabilities or obligations incurred in the ordinary course of business since the Company Balance Sheet Date;

(c) liabilities or obligations arising out of this Agreement or the transactions contemplated hereby; and

(d) liabilities or obligations that have not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.12 Compliance with Laws and Court Orders: Governmental Authorizations

(a) Except for matters that have not had, and would not reasonably be expected to have, individually or in the aggregate, (i) a Company Material Adverse Effect or (ii) an effect that would prevent, materially delay or materially impair the ability of the Company to perform its obligations under this Agreement or to consummate the Merger, the Company and each of its Subsidiaries is and since January 1, 2014 has been in compliance with all applicable Laws and Orders, and to the knowledge of the Company, is not under investigation by a Governmental Authority with respect to any Law or Order. There is no Order of any Governmental Authority outstanding against the Company or any of its Subsidiaries that is material to the Company and its Subsidiaries, taken as a whole. This section does not relate to Tax matters, which is the subject of Section 4.16.

(b) Except as would not reasonably be expected to have, individually or in the aggregate, (x) a Company Material Adverse Effect or (y) an effect that would prevent, materially delay or materially impair the ability of the Company to perform its obligations under this Agreement or to consummate the Merger, the Company and each of its Subsidiaries has and since January 1, 2014 has had all Governmental Authorizations necessary for the ownership and operation of its businesses as presently conducted, and each such Governmental Authorization is in full force and effect. Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) the Company and each of its Subsidiaries is and since January 1, 2014, has been in compliance with the terms of all Governmental Authorizations necessary for the ownership and operation of its businesses and (ii) since January 1, 2014, neither the Company nor any of its Subsidiaries has received written notice from any Governmental Authority alleging any conflict with or breach of any such Governmental Authorization or threatening the limitation, suspension, revocation, cancellation or withdrawal of any such Governmental Authorization.

Section 4.13 Litigation. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, (x) a Company Material Adverse Effect, or (y) have an effect that would prevent, materially delay or materially impair the ability of the Company to perform its obligations under this Agreement or to consummate the Merger, there is no Proceeding or to the knowledge of the Company, investigation, pending against, or to the knowledge of the Company, threatened by or against the Company, any of its Subsidiaries, any present or former officer, director or employee of the Company or any of its Subsidiaries or any other Person for whom the Company or any of its Subsidiaries may be liable before (or, in the case of threatened Proceedings or investigations, that would be before) or by any Governmental Authority.

Section 4.14 Properties.

(a) Section 4.14(a) of the Company Disclosure Letter sets forth a list of the addresses of the material real properties owned by the Company or any of its Subsidiaries as of the date of this Agreement (the “**Owned Real Property**”) and the legal name of the respective owner(s) of each Owned Real Property.

(b) Section 4.14(b) of the Company Disclosure Letter sets forth, as of the date of this Agreement, a list of the material leases, subleases, licenses or other occupancies to which the Company or any of its Subsidiaries is a party as tenant for real property (the “**Real Property Lease**”, together with the Owned Real Property, the “**Company Real Property**”).

(c) The Company or one of its Subsidiaries owns good and marketable fee simple title or valid leasehold title (as applicable) to the Company Real Property and all property and assets reflected on the Company Balance Sheet or acquired after the Company Balance Sheet Date, in each case, free and clear of all Liens, except (i) for Permitted Liens, (ii) for the property and assets that have been disposed of since the Company Balance Sheet Date in the ordinary course of business consistent with past practice and (iii) in respects that would not reasonably be expected to be, individually or in the aggregate, material to the Company and its Subsidiaries, taken as a whole.

(d) Except as would not reasonably be expected to be, individually or in the aggregate, material to the Company and its Subsidiaries, taken as a whole, each Real Property Lease under which the Company or any of its Subsidiaries leases, subleases, licenses or otherwise occupies any real property is valid, binding and in full force and effect. Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, neither the Company nor any of its Subsidiaries, nor to the Company’s knowledge any other party to a Real Property Lease, has violated any provision of, or taken or failed to take any act which, with or without notice, lapse of time, or both, would constitute a default under the provisions of such Real Property Lease, and neither the Company nor any of its Subsidiaries has received notice that it has breached, violated or defaulted under any Real Property Lease.

Section 4.15 Intellectual Property.

(a) Except as would not reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole, the Company and its Subsidiaries own or have a valid and enforceable license to use all Intellectual Property Rights necessary to, or material and used or held for use in, the conduct of the business of the Company and its Subsidiaries as currently conducted.

(b) Since January 1, 2014, neither the Company nor any of its Subsidiaries has infringed, misappropriated or otherwise violated any Intellectual Property Right of any Person except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. There is no Proceeding or, to the knowledge of the Company, investigation, pending against or, to the knowledge of the Company, threatened against, the Company or any of its Subsidiaries (A) based upon, or challenging or seeking to deny or restrict, the rights of the Company or any of its Subsidiaries in any of the Owned Intellectual Property Rights or Licensed Intellectual Property Rights, (B) alleging that any

Owned Intellectual Property Right or Licensed Intellectual Property Right is invalid or unenforceable, or (C) alleging that the use of any of the Owned Intellectual Property Rights or Licensed Intellectual Property Rights or that the conduct of the business of the Company or any of its Subsidiaries do or may conflict with, misappropriate, infringe or otherwise violate any Intellectual Property Right of any Person, except for matters that would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(c) Since January 1, 2014, none of the material Owned Intellectual Property Rights have been adjudged invalid or unenforceable in whole or part, and to the knowledge of the Company, all issued or registered material Owned Intellectual Property Rights are valid and enforceable in all respects, except where the failure to be valid or enforceable has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Since January 1, 2015, to the knowledge of the Company, no Person has infringed, misappropriated or otherwise violated any Owned Intellectual Property Right, except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(d) The IT Assets, taken as a whole, operate and perform in a manner that permits the Company and each of its Subsidiaries to conduct its business in all material respects as currently conducted. Since January 1, 2014, except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) the Company and its Subsidiaries have taken commercially reasonable actions, consistent with current industry standards, to protect the confidentiality, integrity and security of the material IT Assets (and all information and transactions stored or contained therein or transmitted thereby) against any unauthorized use, access, interruption, modification or corruption, (ii) to the knowledge of the Company, no Person has gained unauthorized access to the IT Assets (or the information and transactions stored or contained therein or transmitted thereby) and (iii) no claims have been asserted or, to the knowledge of the Company, threatened against the Company or any of its Subsidiaries by any Person alleging a violation of such Person's privacy, personal or confidentiality rights under any Laws or Orders relating to privacy, data protection or the collection and use of personal information and user information.

(e) The Company and its Subsidiaries are not a party to any Contracts that, as a result of the transactions contemplated by this Agreement, would require Parent or its Subsidiaries as of immediately prior the Closing to assign, license, grant a non-assert or make available to any other Person any Intellectual Property Rights owned or licensed by Parent or any of its Subsidiaries, or restrict the use or license by Parent or any of its Subsidiaries of any such Intellectual Property Rights, in each case in a manner that would not reasonably be expected to be material to Parent and its Subsidiaries, taken as a whole.

(f) Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the consummation of the transactions contemplated by this Agreement will not result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other Person in respect of, the Company's and its Subsidiaries' rights to own, use, or hold for use any material Intellectual Property Rights as owned, used, or held for use in the conduct of their business.

Section 4.16 Taxes. Except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect:

(a) (i) each income and franchise Tax Return and each other material Tax Return filed or required to be filed with any Taxing Authority by the Company or any of its Subsidiaries has been filed when due (taking into account extensions) and is true and complete in all material respects;

(ii) the Company and each of its Subsidiaries has timely paid to the appropriate Taxing Authority all Taxes shown as due and payable on all Tax Returns that have been so filed;

(iii) the Company and each of its Subsidiaries has complied with all applicable laws, rules, and regulations relating to the payment and withholding of Taxes and has, within the time and in the manner prescribed by law, withheld and paid over to the proper Governmental Authority all amounts required to be so withheld and paid over, except, in each case of clauses (i) through (iii), with respect to matters for which adequate accruals or reserves have been established, in accordance with GAAP, on the Company Balance Sheet;

(iv) there is no outstanding waiver or extension of any applicable statute of limitations for the assessment or collection of Taxes from the Company or any of its Subsidiaries;

(v) there is no Proceeding or, to the Company's knowledge, investigation, pending or, to the Company's knowledge, threatened against or with respect to the Company or any of its Subsidiaries in respect of any material Tax; and

(vi) there are no Liens for material Taxes on any of the assets of the Company or any of its Subsidiaries other than Permitted Liens.

(b) During the two-year period ending on the date of this Agreement, none of the Subsidiaries of the Company was a distributing corporation or a controlled corporation in a transaction intended to be governed by Section 355 of the Code.

(c) (i) Neither the Company nor any of its Subsidiaries is, or has been, a party to any Tax Sharing Agreement (other than an agreement exclusively between or among the Company and its Subsidiaries or among the Company's Subsidiaries) pursuant to which it will have any obligation to make any payments for Taxes after the Effective Time, (ii) neither the Company nor any of its Subsidiaries has been a member of a group filing a consolidated, combined or unitary Tax Return (other than a group the common parent of which is or was the Company or any of its Subsidiaries), and (iii) neither the Company nor any of its Subsidiaries has any liability for the payment of any Tax imposed on any Person (other than the Company or any of its Subsidiaries) as a transferee or successor.

(d) Neither the Company nor any of its Subsidiaries is subject to any "closing agreements" within the meaning of Section 7121 of the Code (or corresponding or similar provision of state, local or non-U.S. Tax Law), private letter ruling or similar written agreement

or ruling entered into or issued by any Taxing Authority within the last five years, and no such agreements or rulings have been applied for by the Company or any of its Subsidiaries that are currently pending.

(e) Neither the Company nor any of its Subsidiaries has participated in a “listed transaction” within the meaning of Treasury Regulations Section 1.6011-4(b).

(f) No jurisdiction in which neither the Company nor any of its Subsidiaries files Tax Returns has made a claim in writing which has not been resolved that the Company or any of its Subsidiaries is or may be liable for Tax in that jurisdiction.

Section 4.17 Employees and Employee Benefit Plans.

(a) Section 4.17(a) of the Company Disclosure Letter contains a correct and complete list identifying each material U.S. Company Plan. For purposes of this Agreement, (i) “**Company Plan**” means each “employee benefit plan,” as defined in Section 3(3) of ERISA, each employment agreement, severance agreement or plan, and each other plan, program, fund, or agreement, whether written or unwritten, providing for compensation, bonuses, profit-sharing, equity compensation or other forms of incentive or deferred compensation, insurance (including any self-insured arrangements), health or medical benefits, or post-employment or retirement benefits (including compensation, pension, health, medical or life insurance benefits) which is maintained, administered or contributed to by the Company or any Company Subsidiary and covers any current or former employee, officer, director or other individual service provider of the Company or any Company Subsidiary, or with respect to which the Company or any of its ERISA Affiliates has any liability, other than a Multiemployer Plan (as defined below); (ii) “**Foreign Company Plan**” means each Company Plan that primarily covers current or former employees, officers, directors or other individual service provider of the Company or any Company Subsidiary based outside of the United States and/or which is governed by the laws of any jurisdiction outside of the United States (other than any plan or program that is required by statute or maintained by a Governmental Authority to which the Company or any of its Affiliates contributes pursuant to applicable Laws); and (iii) “**U.S. Company Plan**” means each Company Plan that is not a Foreign Company Plan.

(b) With respect to each material U.S. Company Plan, to the extent applicable, prior to the date of this Agreement, the Company has made available to Parent complete and accurate copies of (i) as applicable, the most recent annual report on Form 5500 filed with the Internal Revenue Service (the “**IRS**”), including all schedules thereto; (ii) the most recent determination letter, if any, from the IRS for any such Company Plan that is intended to qualify under Section 401(a) of the Code; (iii) the plan documents and summary plan descriptions, or a written description of the terms of any such Company Plan that is not written; (iv) any related trust agreements, insurance contracts and insurance policies; and (v) any notices to or from the IRS or any office or representative of the U.S. Department of Labor (the “**DOL**”) or any similar Governmental Authority in the three years preceding the date hereof relating to any compliance issues in respect of any such Company Plan.

(c) With respect to any U.S. Company Plan to which the Company, any of its Subsidiaries or any ERISA Affiliate made, or was required to make, contributions during the six

years prior to the date hereof, except as would not reasonably be expected to result in a material liability to the Company and the Company Subsidiaries, taken as a whole: (i) there does not now exist, nor do any circumstances exist that could reasonably be expected to result in, any accumulated funding deficiency within the meaning of Section 412 of the Code or Section 302 of ERISA, whether or not waived, or any liability under Section 4971 of the Code; (ii) the fair market value of the assets of any such plan equals or exceeds the actuarial present value of all accrued benefits under such plan (whether or not vested, each as determined under the assumptions and valuation method of the latest actuarial valuation of such plan); (iii) no reportable event within the meaning of Section 4043(c) of ERISA for which the reporting requirement has not been waived has occurred, and the consummation of the Merger will not result in the occurrence of any such reportable event; (iv) all premiums to the Pension Benefit Guaranty Corporation (“**PBGC**”) have been timely paid in full; (v) no liability or contingent liability (including liability pursuant to Section 4069 of ERISA) under Title IV of ERISA has been, or is reasonably expected to be, incurred by the Company, any of its Subsidiaries, or any ERISA Affiliate; (vi) the Pension Benefit Guaranty Corporation has not instituted proceedings to terminate any such plan and, to the knowledge of the Company, no condition exists that presents a risk that such proceedings will be instituted or which would constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, such plan, (vii) no U.S. Company Plan has failed to meet the minimum funding standard under Section 412 of the Code or Section 302 of ERISA, whether or not waived, (viii) the PBGC has not instituted or threatened to commence proceedings under Section 4042 of ERISA to terminate, or to cause a lien to be imposed in respect of, any Company Plan and (viii) no condition exists that presents a material risk that such proceedings will be instituted.

(d) Neither the Company nor any ERISA Affiliate maintains, contributes to, or sponsors (or has in the six years prior to the date hereof maintained, contributed to, or sponsored) a multiemployer plan as defined in Section 3(37) of ERISA (a “**Multiemployer Plan**”).

(e) With respect to each of the U.S. Company Plans, except as would not reasonably be expected to result in a material liability to the Company and the Company Subsidiaries, taken as a whole: (i) each U.S. Company Plan intended to qualify under Section 401(a) of the Code has received a determination or opinion letter from the IRS upon which it may rely regarding its qualified status under the Code and to the Company’s knowledge no event has occurred that has caused or could reasonably be expected to cause the loss of such qualification; (ii) all payments required to be paid by the Company or any of its Subsidiaries pursuant to the terms of a U.S. Company Plan or by applicable Law (including, all contributions and insurance premiums) with respect to all prior periods have been made or provided for by the Company or its Subsidiaries in accordance with the provisions of such U.S. Company Plan or applicable Law; (iii) no proceeding has been threatened, instituted or, to the knowledge of the Company, is anticipated against any of the U.S. Company Plans (other than routine claims for benefits and appeals of such claims), any trustee or fiduciaries thereof, any ERISA Affiliate, or any of the assets of any trust of any of the U.S. Company Plans; (iv) each U.S. Company Plan complies in form and has been maintained and operated in all material respects in accordance with its terms and applicable Law, including, ERISA and the Code; (v) no non-exempt “prohibited transaction,” within the meaning of Section 4975 of the Code and Section 406 of ERISA, has occurred or is reasonably expected to occur with respect to the U.S. Company Plans;

(vi) no U.S. Company Plan is under, and neither the Company nor its Subsidiaries has received any notice of, an audit or investigation by the IRS, the DOL, PBGC, or any other Governmental Authority; and (vii) no U.S. Company Plan provides any employer premium subsidies with respect to post-retirement health and welfare benefits for any current or former employee of the Company or its Subsidiaries.

(f) The consummation of the transactions contemplated by this Agreement will not (either alone or together with any other event) (i) entitle any employee, officer, or director, or other individual independent contractor of the Company or its Subsidiaries (whether current, former or retired) or their beneficiaries to severance pay under a U.S. Company Plan and, except as would not reasonably be expected to result in a material liability to the Company and the Company Subsidiaries, taken as a whole, any Foreign Company Plan; (ii) accelerate the time of payment or vesting or trigger any payment or funding (through a grantor trust or otherwise) of compensation or benefits under any U.S. Company Plan and, except as would not reasonably be expected to result in a material liability of the Company and the Company Subsidiaries, taken as a whole, any Foreign Company Plan; (iii) increase the amount payable or trigger any other financial obligation pursuant to any U.S. Company Plan, and, except as would not reasonably be expected to result in a material liability of the Company and the Company Subsidiaries, taken as a whole, any Foreign Company Plan; (iv) result in the payment of any amount that would not be deductible by reason of Section 280G or 162(m) of the Code; or (v) limit or restrict the right of the Company to merge, amend or terminate any Company Plan. Neither the Company nor any of its Subsidiaries has any obligation to gross-up, indemnify or otherwise reimburse any current or former employee, director or individual independent contractor of the Company or any of its Subsidiaries for any Tax incurred by such individual under Section 409A or 4999 of the Code.

(g) Except as would not reasonably be expected to result in a material liability to the Company and the Company Subsidiaries, taken as a whole, each Foreign Company Plan (i) if intended to qualify for special Tax treatment, meets all the requirements for such treatment, (ii) if required, to any extent, to be funded, book-reserved or secured by an insurance policy, is fully funded, book-reserved or secured by an insurance policy, as applicable, based on reasonable actuarial assumptions in accordance with applicable accounting principles, and (iii) has been maintained in compliance with all applicable Laws.

(h) Each U.S. Company Plan that is a “nonqualified deferred compensation plan” (as defined for purposes of Section 409A(d)(1) of the Code) has been in documentary and operational compliance with Section 409A of the Code and all applicable Internal Revenue Service guidance promulgated thereunder, except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(i) Section 4.17(i) of the Company Disclosure Letter contains a true and complete list identifying each Collective Bargaining Agreement.

(j) Except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) none of the Company or any of its Subsidiaries has breached or otherwise failed to comply with the provisions of any Collective Bargaining Agreement and there are no grievances or arbitrations outstanding

thereunder; (ii) there are no labor organizational campaigns, corporate campaigns, petitions, demands for recognition or, to the knowledge of the Company, other unionization activities seeking recognition of a bargaining unit at the Company or any of its Subsidiaries; (iii) there are no unfair labor practice charges, grievances, arbitrations or other complaints or union matters before the National Labor Relations Board or other labor board of Governmental Authority that would reasonably be expected to affect the employees of the Company and its Subsidiaries; (iv) there are no current or, to the knowledge of the Company, threatened strikes, slowdowns, lockouts, organized labor disputes or work stoppages, and no such strike, slowdown, lockout, organized labor dispute or work stoppage has occurred within the two years preceding the date of this Agreement; (v) the execution of this Agreement and the consummation of the transactions contemplated by this Agreement will not result in any breach or other violation of any Collective Bargaining Agreement; and (vi) the execution of this Agreement will not result in any breach or other violation of any notice, information or consultation obligations under applicable labor Law.

Section 4.18 Environmental Matters.

(a) Except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, there is no Environmental Claim pending or, to the knowledge of the Company, threatened against the Company, any of its Subsidiaries or, to the knowledge of the Company, against any Person whose liability for such Environmental Claims the Company or any of its Subsidiaries has retained or assumed either contractually or by operation of law.

(b) Except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company and its Subsidiaries are and, since January 1, 2014, have been in compliance with all Environmental Laws and all Environmental Permits.

(c) Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, there are no actions, activities, circumstances, facts, conditions, events or incidents, including the presence of any Hazardous Substance, which would be reasonably likely to form the basis of any Environmental Claim against the Company, any of its Subsidiaries, or to the knowledge of the Company, against any Person whose liability for such Environmental Claims the Company or any of its Subsidiaries has retained or assumed either contractually or by operation of law.

(d) Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the consummation of the transactions contemplated hereby requires no filings to be made or actions to be taken pursuant to the New Jersey Industrial Site Recovery Act, the Connecticut Property Transfer Law (Sections 22a-134 through 22-134e of the Connecticut General Statutes) or any other Environmental Law that is triggered by a corporate acquisition, divestiture, reorganization, merger, change in ownership, control or operation, or any other type of transaction of similar nature.

Section 4.19 Healthcare Regulatory Matters.

(a) Except as would not reasonably be expected to be, individually or in the aggregate, material to the Company and its Subsidiaries, taken as a whole, each of the Company and its Subsidiaries holds and since January 1, 2014 has held all authorizations under Healthcare Laws that are necessary for the lawful operation of the business of the Company and its Subsidiaries, including (i) all authorizations under the FDCA (including Section 510(k) and Section 515 thereof), and (ii) authorizations of any applicable Governmental Authority that are concerned with the quality, identity, safety, efficacy, development, testing, manufacturing, labeling, marketing, distribution, sale, pricing, import or export of the Company Products necessary for the lawful operation of the businesses of the Company or any of its Subsidiaries in each jurisdiction in which the Company operates (the “**Company Regulatory Permits**”). Except as would not reasonably be expected to be, individually in the aggregate, material to the Company and its Subsidiaries, taken as a whole, (i) all such Company Regulatory Permits are, and since January 1, 2014 have been, valid and in full force and effect, (ii) to the Company’s knowledge, no suspension, revocation, cancellation or withdrawal of the Company Regulatory Permits has been threatened, and (iii) the Company and its Subsidiaries are, and since January 1, 2014 have been, in compliance with the terms of all Company Regulatory Permits.

(b) Except as would not reasonably be expected to be, individually or in the aggregate, material to the Company and its Subsidiaries, taken as a whole, the businesses of each of the Company and its Subsidiaries are being and since January 1, 2014 have been conducted in compliance with (i) the FDCA (including all applicable registration and listing requirements set forth in Section 510 of the FDCA (21 U.S.C. § 360) and 21 C.F.R. Part 807); (ii) federal Medicare and Medicaid statutes; (iii) Patient Protection and Affordable Care Act; (iv) the Physician Payments Sunshine Act; (v) federal, state or provincial criminal or civil Laws (including the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7(b)), Stark Law (42 U.S.C. § 1395nn), False Claims Act (42 U.S.C. §1320a-7b(a)), the 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, and any comparable federal, state, provincial or local Laws); (vi) state or provincial device licensing, disclosure and reporting requirements; (vii) the Federal Trade Commission Act, as amended; (viii) any comparable foreign Laws for any of the foregoing; and (ix) the rules and regulations promulgated pursuant to all such applicable Laws, each as amended from time to time (collectively, “**Healthcare Laws**”). Except as would not reasonably be expected to be, individually or in the aggregate, material to the Company and its Subsidiaries, taken as a whole, there is no Proceeding pending or, to the Company’s Knowledge, threatened, against the Company for failure to comply with any Healthcare Law.

(c) Neither the Company nor any of its Subsidiaries is a party to any corporate integrity agreements, monitoring agreements, deferred prosecution agreements, consent decrees, settlement orders, or similar material agreements with or imposed by any Governmental Authority and, to the Company’s knowledge, no such action is currently pending. Except as has not had, and would not reasonably be expected to be, individually or in the aggregate, material to the Company and its Subsidiaries, taken as a whole, the Company has not received since January 1, 2014, and is not subject to any outstanding obligations arising under, any criminal, civil or regulatory action, inspection, Form 483, warning letter, notice of violation or “untitled” letter, or similar Proceeding, demand, investigation, or notice by the FDA or any similar Government Authority.

(d) Except as would not reasonably be expected to be, individually or in the aggregate, material to the Company and its Subsidiaries, taken as a whole, all pre-clinical and clinical investigations conducted or sponsored by or on behalf of the Company or any of its Subsidiaries are being and since January 1, 2014 have been conducted in compliance with all applicable Healthcare Laws including (i) FDA standards for the design, conduct, performance, monitoring, auditing, recording, analysis and reporting of clinical trials contained in Title 21 parts 50, 54, 56, 812 and 814 of the Code of Federal Regulations and any comparable foreign Laws, and (ii) federal, state and provincial Laws restricting the collection, use and disclosure of individually identifiable health information and personal information.

(e) Except as would not reasonably be expected to be, individually or in the aggregate, material to the Company and its Subsidiaries, taken as a whole, since January 1, 2014, neither the Company nor any of its Subsidiaries has been denied a clearance, approval or marketing authorization or access of any product for which the Company or any of its Subsidiaries pursued such clearance, approval or marketing authorization or access by the FDA or any other Healthcare Regulatory Authority with jurisdiction over the development, testing, marketing, labeling, storage, distribution, sale, use handling and control, pricing, import, export, safety, efficacy, reliability or manufacturing of medical devices.

(f) Except as would not reasonably be expected to be, individually or in the aggregate, material to the Company and its Subsidiaries, taken as a whole, since January 1, 2014, all reports, documents, claims, permits, adverse event reports, complaints, notices, registrations and applications required to be filed, maintained or furnished to the FDA or any other Healthcare Regulatory Authority by the Company and its Subsidiaries have been so filed, maintained or furnished. All such reports, documents, claims, permits, adverse event reports, complaints, notices, registrations and applications were complete and accurate in all material respects on the date filed (or were corrected in or supplemented by a subsequent filing). Since January 1, 2014, except as would not reasonably be expected to be, individually or in the aggregate, material to the Company and its Subsidiaries, taken as a whole, neither the Company nor any of its Subsidiaries, nor, to the knowledge of the Company, any officer, employee or agent of the Company or any of its Subsidiaries, has made an untrue statement of a material fact or a fraudulent statement to the FDA or any other Healthcare Regulatory Authority, failed to disclose a material fact required to be disclosed to the FDA or any other Healthcare Regulatory Authority, or committed an act, made a statement, or failed to make a statement, in each such case, related to the business of the Company or any of its Subsidiaries, that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA to invoke its policy respecting "**Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities**" set forth in 56 Fed. Reg. 46191 (September 10, 1991) or for the FDA or any other Healthcare Regulatory Authority to invoke any similar policy.

(g) Neither the Company nor any of its Subsidiaries, nor, since January 1, 2014, to the knowledge of the Company, any officer, employee, material agent or material distributor of the Company or any of its Subsidiaries, has been debarred or convicted of any crime or engaged in any conduct for which debarment is mandated or permitted by 21 U.S.C. § 335a(a) or any similar Law or authorized by 21 U.S.C. § 335a(b) or any similar Law applicable in jurisdictions in which material quantities of any of the Company Products are sold in connection with the business of the Company or any of its Subsidiaries. Since January 1, 2014,

neither the Company nor any of its Subsidiaries, nor, to the knowledge of the Company, any officer, employee, material agent or material distributor of the Company or any of its Subsidiaries, has been excluded from participation in any federal health care program or convicted of any crime or engaged in any conduct for which such Person could be excluded from participating in any federal health care program under Section 1128 of the Social Security Act of 1935, as amended, or any similar Law or program or has been convicted of, charged with or investigated for any violation of Law related to fraud, theft, embezzlement, breach of fiduciary duty, financial misconduct, obstruction of an investigation or controlled substances applicable in jurisdictions in which material quantities of any of the Company Products are sold in connection with the business of the Company or any of its Subsidiaries.

(h) As to each Company Product or Company Product candidate subject to the FDCA, the regulations of the FDA promulgated thereunder or similar Law in any foreign jurisdiction that is or has been developed, manufactured, tested, distributed or marketed by or on behalf of the Company or any of its Subsidiaries, except as would not reasonably be expected to be, individually or in the aggregate, material to the Company and its Subsidiaries, taken as a whole, each such Company Product or Company Product candidate is being, and has been, developed, tested, manufactured, stored, labeled, distributed, marketed, imported, exported, priced and sold in compliance with all applicable Laws, including those relating to investigational use, marketing approval, quality system regulations, current good manufacturing practices, packaging, labelling, advertising, record keeping, reporting, and security. Except as would not reasonably be expected to be, individually or in the aggregate, material to the Company and its Subsidiaries, taken as a whole, there is no investigation, action or proceeding pending or, to the knowledge of the Company, threatened, including any prosecution, injunction, seizure, civil fine, debarment, suspension or recall, in each case alleging any violation applicable to any Company Product or Company Product candidate by the Company or any of its Subsidiaries of any Law.

(i) Except as available in the public databases of any Healthcare Regulatory Authority, since January 1, 2014, neither the Company nor any of its Subsidiaries has voluntarily or involuntarily initiated, conducted or issued, caused to be initiated, conducted or issued, or received written notice of any material recall, field corrective action, market withdrawal or replacement, safety alert, warning, "dear doctor" letter, investigator notice, or other notice or action to wholesalers, distributors, retailers, healthcare professionals or patients relating to an alleged lack of safety, efficacy or regulatory compliance of any Company Product or is currently considering initiating, conducting or issuing any recall of any Company Product, other than notices and actions that are not material to the Company and its Subsidiaries, taken as a whole.

Section 4.20 Material Contracts.

(a) Section 4.20(a) of the Company Disclosure Letter sets forth, as of the date of this Agreement, a true and complete list of each of the following types of Contracts to which the Company or any of its Subsidiaries is a party or by which any of their respective properties or assets is bound:

(i) (A) contains any exclusivity or similar provision that is binding on the Company or any of its Subsidiaries or (B) otherwise limits or

restricts the Company or any of its Subsidiaries from (1) engaging or competing in any line of business in any location or with any Person (other than provisions in Intellectual Property licenses that limit the scope of field of use or territory of use subject to the license and restrict activity outside the licensed field of use or territory of use), (2) selling any products or services of or to any other Person or in any geographic region or (3) obtaining products or services from any Person, in each case of clause (A) and subclauses (1), (2) and (3) of clause (B), that is material to the Company and its Subsidiaries, taken as a whole;

(ii) includes (A) any “most favored nation” terms and conditions (including with respect to pricing) granted by the Company to a Third Party, (B) any arrangement whereby the Company grants any right of first refusal or right of first offer or similar right to a Third Party, (C) an arrangement whereby the Company or one of its Subsidiaries is obligated to lease real property that would be material to the Company and its Subsidiaries, or (D) any arrangement between the Company and a Third Party that limits or purports to limit in any respect the ability of the Company or its Subsidiaries to own, operate, sell, license, transfer, pledge or otherwise dispose of any assets or business, in each case of clauses (A), (B), (C) and (D), where such term, condition, right, limitation or obligation is material to the Company and its Subsidiaries, taken as a whole;

(iii) is a joint venture, alliance or partnership agreement that either (A) is material to the Company and its Subsidiaries, taken as a whole, or (B) would reasonably be expected to require the Company and its Subsidiaries to make expenditures in excess of \$25 million in the aggregate during the 12-month period following the date of this Agreement;

(iv) is a loan, guarantee of indebtedness or credit agreement, note, bond, mortgage, indenture or other binding commitment (other than letters of credit and those between the Company and its wholly owned Subsidiaries) relating to indebtedness for borrowed money in an amount in excess of \$100 million individually;

(v) is a Contract with respect to an interest, rate, currency or other swap or derivative transaction (other than those between the Company and its Subsidiaries) with a fair value in excess of \$25 million;

(vi) is a material Contract with respect to Licensed Intellectual Property Rights (other than commercially available software or hardware);

(vii) is an acquisition agreement, asset purchase or sale agreement, stock purchase or sale or purchase, investment agreement or other similar agreement pursuant to which (A) the Company reasonably expects that it is required to pay total consideration including assumption of debt after the date of this Agreement to be in excess of \$100 million, (B) any other Person has the right to acquire any assets of the Company or any of its Subsidiaries after the date of this Agreement with a fair market value or purchase price of more than \$100

million or (C) any other Person has the right to acquire any interests in the Company or any of its Subsidiaries, excluding, in the case of clauses (A) and (B), acquisitions or dispositions of supplies, inventory, merchandise or products in the ordinary course of business or of supplies, inventory, merchandise, products, properties or other assets that are obsolete, worn out, surplus or no longer used or useful in the conduct of business of the Company or its Subsidiaries;

(viii) is a settlement or similar agreement with any Governmental Authority (including any corporate integrity agreement, monitoring agreement or deferred prosecution agreement) or order or consent of a Governmental Authority (including any consent decree or settlement order) to which the Company or any of its Subsidiaries is subject involving future performance by the Company or any of its Subsidiaries which is material to the Company and its Subsidiaries, taken as a whole;

(ix) any Contract (or series of related Contracts) pursuant to which the Company or any Subsidiary has continuing “earn-out” or similar obligations that could result in payments in excess of \$50 million in the aggregate;

(x) any Contract that waives any material rights, grants any material release or settles any material Proceedings;

(xi) any Contract (or series of related Contracts) that obligates the Company or any of its Subsidiaries to make any capital commitment, loan or capital expenditure in an amount in excess of \$75 million in the aggregate after the date of this Agreement;

(xii) any distributor, reseller, OEM supplier, dealer, manufacturer’s representative, broker, sales agency, advertising agency, finder’s, contract manufacturing or assembly Contract that is material to the business of the Company and its Subsidiaries, taken as a whole;

(xiii) any Contract (other than a Company Plan) containing change in control provisions that would reasonably be expected to involve aggregate payments by the Company and its Subsidiaries in excess of (or a loss of revenues with an aggregate value in excess of) \$25 million in connection with the consummation of the transactions contemplated hereby; or

(xiv) any Contract (other than any Company Plan) that would be required to be filed by the Company as a “material contract” pursuant to Item 601(b)(10) of Regulation S-K under the 1933 Act or disclosed by the Company under Item 1.01 on a Current Report on Form 8-K.

Each Contract of the type described in clauses (i) through (xiv) is referred to herein as a ‘**Company Material Contract**’.

(b) Except for this Agreement or as listed in Section 4.20(a) of the Company Disclosure Letter, as of the date of this Agreement, none of the Company or any of the Company Subsidiaries is a party to or bound by any “material contract” (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC) that is to be performed after the date of this Agreement that has not been filed as an exhibit to or incorporated by reference in a Company SEC Document.

(c) Except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, each Company Material Contract is valid and binding and in full force and effect and, to the Company’s knowledge, enforceable against the other party or parties thereto in accordance with its terms. Since January 1, 2014 the Company and/or its Subsidiaries party thereto, as applicable, and, to the knowledge of the Company, each other party thereto, has performed its obligations required to be performed by it, as and when required, under each Company Material Contract, except for failures to perform that have not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Since January 1, 2014 except for breaches, violations or defaults which have not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, neither the Company nor any of its Subsidiaries, nor to the Company’s knowledge any other party to a Company Material Contract, has violated any provision of, or taken or failed to take any act which, with or without notice, lapse of time, or both, would constitute a default under the provisions of such Company Material Contract, and neither the Company nor any of its Subsidiaries has received written notice that it has breached, violated or defaulted under any Company Material Contract. True and complete copies of the Company Material Contracts and any material amendments thereto have been made available to Parent prior to the date of this Agreement.

Section 4.21 Finders’ Fees, etc. Except as set forth on Section 4.21 of the Company Disclosure Letter, there is no investment banker, broker or finder that has been retained by or is authorized to act on behalf of the Company or any of its Subsidiaries who might be entitled to any fee or commission from the Company or any of its Affiliates in connection with the transactions contemplated by this Agreement. Set forth on Section 4.21 of the Company Disclosure Letter is a good faith estimate, as of the date of this Agreement, of all financial, legal, accounting or other advisory fees and expenses incurred or payable, or to be incurred or payable, by the Company or its Subsidiaries in connection with this Agreement and the consummation of the transactions contemplated hereby.

Section 4.22 Opinion of Financial Advisor. The Company Board has received the opinion of Goldman, Sachs & Co., financial advisor to the Company, to the effect that, as of the date of such opinion, and based upon and subject to the factors and assumptions set forth therein, the Merger Consideration to be received by the holders of Company Stock pursuant to this Agreement is fair to such holders from a financial point of view, and a copy of such opinion will be delivered to Parent promptly following the date of this Agreement (and in any event, within five Business Days).

Section 4.23 Antitakeover Statutes. The Company has taken all action necessary to exempt the Merger, this Agreement and the transactions contemplated hereby from any and all “fair price,” “moratorium,” “control share acquisition,” “business combination” and other similar

Laws of the State of New Jersey or any other state or jurisdiction, including the “New Jersey Shareholders’ Protection Act” statutes set forth in Section 14A:10A-1 et seq. of the NJBCA (collectively the “**Anti-takeover Laws**”), and no such Anti-takeover Laws apply or will apply to this Agreement or any of the transactions contemplated hereby, including the Merger.

Section 4.24 Customers and Suppliers. Section 4.24 of the Company Disclosure Letter sets forth a true and complete list of the ten (10) largest group purchasing organization (GPO) customers and ten (10) largest direct suppliers (in dollar volume) of the business of the Company and its Subsidiaries during the 2016 fiscal year and the revenue attributed to such customers or spent with such suppliers.

Section 4.25 Product Warranties. Except as would not reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole, no Company Product manufactured, sold, or delivered by, or service rendered by or on behalf of, the Company is subject to any guaranty, warranty or other indemnity, express or implied, for which the Company is obligated beyond the Company’s standard terms and conditions of sale, except as required by applicable Law. Except as would not reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole, the Company has not entered into, or offered to enter into, any Contract outside the ordinary course of business pursuant to which the Company is or will be obligated to make any material rebates, discounts, promotional allowances or similar payments or arrangements to any customer.

Section 4.26 Anti-Corruption. Except as would not be material to the Company and its Subsidiaries, taken as a whole, since January 1, 2012, the Company and its Subsidiaries have been and are in compliance with all applicable anti-corruption Laws, including the U.S. Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. § 78dd-1, et seq.) and the U.K. Bribery Act 2010, and neither the Company nor any of its Subsidiaries nor, to the Company’s knowledge, any director, officer, agent or employee of the Company or any of its Subsidiaries has, directly or indirectly, given, made, offered or received or agreed to give, make, offer or receive any payment, gift, contribution, expenditure or other advantage: (i) which would violate any applicable Law; or (ii) to or for a Public Official with the intention of: (A) improperly influencing any act or decision of such Public Official; (B) inducing such Public Official to do or omit to do any act in violation of his lawful duty; or (C) securing any improper advantage, in each case in order to obtain or retain business or any business advantage. For the purposes of this Agreement, “**Public Official**” includes any Person holding, representing or acting on behalf of a Person holding a legislative, administrative or judicial office, and any Person employed by, representing or acting on behalf of a Governmental Authority or enterprise thereof, public international organization, any representative or official of a political party or any candidate for any political office or any official or employee of any state hospital, agency or health care institution. Except as would not be material to the Company and its Subsidiaries, taken as a whole, since January 1, 2012, neither the Company nor any of its Subsidiaries nor, to the Company’s knowledge, any director, officer, agent or employee of the Company or any of its Subsidiaries has, directly or indirectly, violated or operated in noncompliance with any export restrictions, anti-boycott regulations, embargo regulations, Sanctions or similar Laws of any Sanctions Authority. Neither the Company nor any of its Subsidiaries nor any of their respective officers or directors or, to the Company’s knowledge, employees, is a Sanctioned Person. Except as would not be material to the Company and its Subsidiaries, taken as a whole, there are no

pending or, to the knowledge of the Company, threatened claims against the Company or any of its Subsidiaries with respect to the Sanctions Laws. Except as would not be material to the Company and its Subsidiaries, taken as a whole, the Company and its Subsidiaries have in place controls and systems to ensure compliance by the Company, its Subsidiaries and their respective officers, directors or employees with applicable anticorruption Laws and applicable Laws pertaining to Sanctions, in each case, in each of the jurisdictions in which the Company and its Subsidiaries do business.

Section 4.27 Insurance. Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, each of the insurance policies and self-insurance programs and arrangements relating to the business, assets and operations of the Company and its Subsidiaries is in full force and effect. As of the date of this Agreement, since January 1, 2014, neither the Company nor any of its Subsidiaries has received any written notice regarding any actual or possible: (a) cancellation or invalidation of any such insurance policy, other than such cancellation or invalidation that would not constitute a Company Material Adverse Effect; or (b) written notice of refusal of any coverage or rejection of any claim under any such insurance policy that if not paid would constitute a Company Material Adverse Effect. With respect to each Proceeding that has been filed or investigation initiated against the Company or any of its Subsidiaries since January 1, 2014, no insurance carrier has issued a denial of coverage or a reservation of rights with respect to any such Proceeding or investigation, or informed any of the Company nor any of its Subsidiaries of its intent to do so, other than such denial or reservation that would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.28 No Additional Representations. Except for the representations and warranties expressly made by the Company (i) in this Article 4 and (ii) in the Company Disclosure Letter, each of Parent and Merger Corp acknowledges that neither the Company nor any other Person makes any express or implied representation or warranty whatsoever and specifically (but without limiting the foregoing), that neither the Company nor any Representative of the Company makes any representation or warranty with respect to (a) the Company or its Subsidiaries or any of their respective businesses, affairs operations, assets, liabilities, conditions (financial or otherwise), prospects or any other matter relating to the Company or its Subsidiaries or (b) any documentation, forecasts, budgets, projections, estimates or other information (including the accuracy or completeness of, or the reasonableness of the assumptions underlying, such documentation, forecasts, budgets, projections, estimates or other information) provided by the Company or any other Person, including in any “data rooms” or management presentations.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER CORP

Subject to Section 11.05, (a) other than with respect to Section 5.10(b), except as disclosed in the Parent SEC Documents (as defined below) publicly filed or furnished by Parent with the SEC between October 1, 2014 and the date that is one Business Day prior to the date of this Agreement (the “**Specified Parent SEC Documents**”); *provided*, that (i) any information contained in any part of any Specified Parent SEC Document shall only be deemed to be an

exception to, or, as applicable, disclosure for the purposes of Parent's and Merger Corp's representations and warranties set forth in this Agreement if the relevance of such item as an exception to, or, as applicable, disclosure for purposes of, such other section of this Agreement is reasonably apparent on its face and (ii) in no event shall any risk factor disclosure under the heading "Risk Factors" or disclosure set forth in any "forward looking statements" disclaimer or other general statements to the extent they are predictive or forward looking in nature that are included in any part of any Specified Parent SEC Document be deemed to be an exception to, or, as applicable, disclosure for purposes of, any representations and warranties of Parent or Merger Corp contained in this Agreement or (b) except as set forth in the Parent Disclosure Letter, Parent and Merger Corp represent and warrant to the Company that:

Section 5.01 Corporate Existence and Power. Parent is a corporation duly incorporated, validly existing and in good standing under the laws of the State of New Jersey. Merger Corp is a corporation duly incorporated, validly existing and in good standing under the laws of the State of New Jersey. Each of Parent and Merger Corp has all corporate power and authority to carry on its business as now conducted and is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where such qualification is necessary, except where any failure to have such power or authority or to be so qualified would not reasonably be expected to have, individually or in the aggregate, (i) a Parent Material Adverse Effect or (ii) an effect that would prevent, materially delay or materially impair the ability of Parent to perform its obligations under this Agreement or to consummate the Merger. Prior to the date of this Agreement, Parent has delivered or made available to the Company true and complete copies of the organizational documents of Parent and Merger Corp as in effect on the date of this Agreement. Neither Parent nor Merger Corp is in violation of, in conflict with, or in default under, its certificate of incorporation or bylaws.

Section 5.02 Corporate Authorization.

(a) The execution, delivery and performance by Parent and Merger Corp of this Agreement and the consummation by Parent and Merger Corp of the transactions contemplated hereby are within the corporate power and authority of Parent and Merger Corp and, except for the approval of Parent as the sole stockholder of Merger Corp, have been duly authorized by all necessary corporate action on the part of Parent and Merger Corp. This Agreement, assuming due authorization, execution and delivery by the Company, constitutes a valid and binding agreement of each of Parent and Merger Corp, enforceable against Parent and Merger Corp in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at Law).

(b) As of the date of this Agreement, (i) the respective board of directors of each of Parent and Merger Corp have approved and declared advisable this Agreement and the transactions contemplated hereby and (ii) Parent, as the stockholder of Merger Corp, has adopted this agreement in accordance with the NJBCA.

Section 5.03 Governmental Authorization. The execution, delivery and performance by Parent and Merger Corp of this Agreement and the consummation by Parent and Merger Corp of

the transactions contemplated hereby require no action by or in respect of, or filing with, any Governmental Authority, other than (i) the filing of the certificate of merger with respect to the Merger with the office of the Department of the Treasury of New Jersey and appropriate documents with the relevant authorities of other states in which Parent is qualified to do business, (ii) compliance with any applicable requirements of the HSR Act and any non-U.S. Competition Laws, (iii) compliance with any applicable requirements of the 1933 Act, the 1934 Act and any other applicable state or federal securities laws, (iv) compliance with any applicable requirements of the NYSE and (v) any actions or filings the absence of which would not reasonably be expected to have, individually or in the aggregate, (x) a Parent Material Adverse Effect or (y) an effect that would prevent, materially delay or materially impair the ability of Parent to perform its obligations under this Agreement or to consummate the Merger.

Section 5.04 Non-contravention. The execution, delivery and performance by Parent and Merger Corp of this Agreement and the consummation by Parent and Merger Corp of the transactions contemplated hereby do not and will not (i) assuming the authorizations, consents and approvals referred to in Section 5.03 are obtained, contravene, conflict with, or result in any violation or breach of any provision of the organizational documents of Parent and Merger Corp, (ii) assuming the authorizations, consents and approvals referred to in Section 5.03 are obtained, contravene, conflict with or result in a violation or breach of any provision of any Law or Order, (iii) assuming the authorizations, consents and approvals referred to in Section 5.03 are obtained, require any consent or other action by any Person under, constitute a default or a violation, or an event that, with or without notice or lapse of time or both, would constitute a default or a violation, under or of, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit to which Parent or any of its Subsidiaries is entitled under any provision of any agreement or other instrument binding upon Parent or any of its Subsidiaries or any license, franchise, permit, certificate, approval or other similar authorization affecting, or relating in any way to, the assets or business of Parent and its Subsidiaries or (iv) result in the creation or imposition of any Lien, other than any Permitted Lien, on any asset of Parent or any of its Subsidiaries, except, in the case of each of clauses (ii), (iii) and (iv), which have not had and would not reasonably be expected to have, individually or in the aggregate, (x) a Parent Material Adverse Effect or (y) an effect that would prevent, materially delay or materially impair the ability of Parent to perform its obligations under this Agreement or to consummate the Merger.

Section 5.05 Capitalization.

(a) As of the date of this Agreement, the authorized capital stock of Parent consists of (i) 640,000,000 shares of Parent Common Stock, par value \$1.00 per share, and (ii) 5,000,000 shares of preferred stock, par value \$1.00 per share. As of April 20, 2017, no shares of preferred stock were outstanding. As of April 20, 2017, (A) 213,325,692 shares of Parent Common Stock were issued and outstanding, (B) 386,677 shares of Parent Common Stock were subject to compensatory options to purchase shares of Parent Common Stock ("**Parent Stock Options**"), (C) 2,314,766 shares of Parent Common Stock were subject to restricted stock units with respect to Parent Common Stock ("**Parent RSUs**"), (D) 558,182 shares of Parent Common Stock were subject to performance stock units with respect to Parent Common Stock ("**Parent PSUs**") (assuming the target level of performance is achieved) and (E) 7,155,130 stock appreciation rights ("**Parent SARs**") issued and outstanding. Since April 20, 2017, Parent has not granted any Parent Stock Options, Parent RSUs, Parent PSUs or Parents SARs.

(b) Except as set forth in Section 5.05(a) or upon the exercise of Parent Stock Options and Parent SARs and the settlement of Parent RSUs and Parent PSUs, in each case, that were outstanding on April 20, 2017, there are no issued, reserved for issuance or outstanding (i) shares of capital stock or other voting securities of or other ownership interests in Parent, (ii) securities of Parent convertible into or exchangeable for shares of capital stock or other voting securities of or other ownership interests in Parent, (iii) warrants, calls, options or other rights to acquire from Parent or other obligation of Parent to issue, any shares of capital stock, voting securities or securities convertible into or exchangeable for capital stock or other voting securities of or other ownership interests in Parent or (iv) restricted shares, stock appreciation rights, performance units, contingent value rights, “phantom” stock or similar securities or rights issued or granted by Parent or any of its Subsidiaries that are derivative of, or provide economic benefits based, directly or indirectly, on the value or price of, any shares of capital stock of or other voting securities of or other ownership interests in Parent. All outstanding shares of capital stock of Parent have been, and all shares that may be issued pursuant to any equity compensation plan or arrangement will be, when issued in accordance with the respective terms thereof, duly authorized and validly issued, fully paid and nonassessable and free of preemptive rights.

(c) As of the date of this Agreement, there are no outstanding bonds, debentures, notes or other indebtedness of Parent having the right to vote (whether on an as-converted basis or otherwise) (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which stockholders of Parent may vote.

(d) The shares of Parent Common Stock to be issued as part of the Merger Consideration, when issued and delivered in accordance with the terms of this Agreement, will have been duly authorized and validly issued, fully paid and nonassessable and free of preemptive rights.

(e) With respect to Merger Corp:

(i) Since its date of incorporation, Merger Corp has not carried on any business or conducted any operations other than the execution of this Agreement, the performance of its obligations hereunder and matters ancillary thereto.

(ii) The authorized capital stock of Merger Corp consists of 1,000 shares of common stock, \$0.01 par value per share, 100 of which have been validly issued, are fully paid and nonassessable and are owned directly by Parent free and clear of any Lien.

Section 5.06 SEC Filings and the Sarbanes-Oxley Act.

(a) Parent has filed with or furnished to the SEC (including following any extensions of time for filing provided by Rule 12b-25 promulgated under the 1934 Act) all reports, schedules, forms, statements, prospectuses, registration statements and other documents required to be filed or furnished, as the case may be, by Parent since October 1, 2015 (collectively, together with any exhibits and schedules thereto and other information incorporated therein, the “**Parent SEC Documents**”).

(b) As of its filing date (or, if amended or supplemented, as of the date of the most recent amendment or supplement filed prior to the date of this Agreement), each Parent SEC Document complied in all material respects with the applicable requirements of the 1933 Act and the 1934 Act and the Sarbanes-Oxley Act, and any rules and regulations promulgated thereunder, as the case may be.

(c) As of its filing date (or, if amended or supplemented, as of the date of the most recent amendment or supplement filed prior to the date of this Agreement), each Parent SEC Document filed or furnished pursuant to the 1934 Act did not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading in any material respect.

(d) Each Parent SEC Document that is a registration statement, as amended or supplemented, if applicable, filed pursuant to the 1933 Act, as of the date such registration statement or amendment became effective, and as of the date of such supplement, did not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading in any material respect.

(e) Parent has established and maintains disclosure controls and procedures (as defined in Rule 13a-15 under the 1934 Act). Such disclosure controls and procedures are reasonably designed to ensure that material information relating to Parent, including its consolidated Subsidiaries, is made known to Parent's principal executive officer and its principal financial officer by others within those entities, particularly during the periods in which the periodic reports required under the 1934 Act are being prepared, and such disclosure controls and procedures are reasonably designed to ensure all such information is communicated in a timely fashion to Parent's principal executive officer and principal financial officer to allow timely decisions regarding the disclosure of such information in Parent's periodic and current reports required under the 1934 Act.

(f) Parent and its Subsidiaries have established and maintained a system of internal controls over financial reporting (as defined in Rule 13a-15 under the 1934 Act) sufficient to provide reasonable assurance regarding the reliability of Parent's financial reporting and the preparation of Parent financial statements for external purposes in accordance with GAAP. Parent has disclosed, based on its most recent evaluation of internal controls prior to the date of this Agreement, to Parent's auditors and audit committee (i) any significant deficiencies and material weaknesses in the design or operation of internal controls which are reasonably likely to adversely affect Parent's ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in internal controls.

(g) Neither Parent nor any of its Subsidiaries has extended or maintained credit, arranged for the extension of credit, or renewed an extension of credit, in the form of a personal loan to or for any executive officer (as defined in Rule 3b-7 under the 1934 Act) or director of Parent in violation of Section 402 of the Sarbanes-Oxley Act.

(h) Parent is in compliance, and has complied since October 1, 2015, in each case in all material respects, with (i) the applicable provisions of the Sarbanes-Oxley Act and (ii) the applicable listing and corporate governance rules and regulations of the NYSE.

(i) Each of the principal executive officer and principal financial officer of Parent (or each former principal executive officer and principal financial officer of Parent, as applicable) have made all certifications required by Rule 13a-14 and 15d-14 under the 1934 Act and Sections 302 and 906 of the Sarbanes-Oxley Act and any related rules and regulations promulgated by the SEC and the NYSE, and the statements contained in any such certifications are complete and correct in all material respects.

Section 5.07 Financial Statements. The audited consolidated financial statements and unaudited consolidated interim financial statements of Parent included or incorporated by reference in the Parent SEC Documents (including all related notes and schedules thereto) (a) fairly present in all material respects, in conformity with GAAP (except, in the case of unaudited consolidated interim financial statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis (except as may be indicated therein or in the notes thereto), the consolidated financial position of Parent and its consolidated Subsidiaries as of the dates thereof and their consolidated results of operations and cash flows for the periods then ended (subject to normal year end audit adjustments in the case of any unaudited interim financial statements), (b) comply in all material respects with the applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, and (c) have been prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto and except, in the case of the unaudited interim statements, as may be permitted under Form 10-Q of the 1934 Act).

Section 5.08 Disclosure Documents. None of the information supplied or to be supplied by or on behalf of Parent or Merger Corp for inclusion or incorporation by reference in (i) the Registration Statement will, at the time the Registration Statement becomes effective under the 1933 Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading or (ii) the Proxy Statement/Prospectus will, at the date it is first mailed to the Company stockholders or at the time of the Company Stockholder Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. Notwithstanding the foregoing provisions of this Section 5.08, no representation or warranty is made by Parent with respect to information or statements made or incorporated by reference in the Registration Statement or the Proxy Statement/Prospectus which were not supplied by or on behalf of the Parent or Merger Corp.

Section 5.09 Financing. Parent has delivered to the Company true and complete fully executed copies of (i) the commitment letter, dated as of April 23, 2017, between Parent and Citigroup Global Markets Inc. (the "**Commitment Letter**") and (ii) the fee letter, between Parent and Citigroup Global Markets Inc., dated as of April 23, 2017 (as redacted to remove the fee

amounts, pricing caps, the rates and amounts included in the “market flex” and other economic terms that could not adversely affect the conditionality, enforceability, termination or aggregate principal amount of the Financing, the “**Redacted Fee Letter**”), in each case, including all exhibits, schedules, annexes and amendments to such letters in effect as of the date of this Agreement (collectively, the “**Debt Letters**”), pursuant to which and subject to the terms and conditions thereof each of the parties thereto (other than Parent) have severally committed to lend the amounts set forth therein to Parent (the provision of such funds as set forth therein, but subject to the provisions of Section 8.03(d), the “**Financing**”) for the purposes set forth in such Debt Letters. The Debt Letters have not been amended, restated or otherwise modified or waived prior to the execution and delivery of this Agreement, and the respective commitments contained in the Debt Letters have not been withdrawn, rescinded, amended, restated or otherwise modified in any respect prior to the execution and delivery of this Agreement. As of the date of this Agreement, the Debt Letters are in full force and effect and constitute the legal, valid and binding obligation of each of Parent and, to the knowledge of Parent, the other parties thereto, subject in each case to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting generally the enforcement of creditors’ rights and subject to general principles of equity. As of the date of this Agreement, there are no conditions precedent or contingencies related to the funding of the full amount of the Financing pursuant to the Debt Letters, other than as expressly set forth in the Debt Letters and, after the date of this Agreement, such other conditions and contingencies with respect to the Financing permitted pursuant to Section 8.03(d). Subject to the terms and conditions of the Debt Letters, the net proceeds contemplated from the Financing, together with other financial resources of Parent, including contemplated cash on hand of Parent, will, in the aggregate, be sufficient for the satisfaction of all of Parent’s obligations under this Agreement, including the payment of the Merger Consideration and all fees and expenses reasonably expected to be incurred in connection therewith (including repayment of all obligations under the Company Credit Facility, redemption of the 2018 Notes and any required repurchase of, 2021 Notes and 2026 Notes, in each case pursuant to their terms). As of the date of this Agreement, no event has occurred which, with or without notice, lapse of time or both, would reasonably constitute a breach or default on the part of Parent under the Debt Letters or, to the knowledge of Parent, any other party to the Debt Letters (assuming the accuracy of the Company’s representations and warranties and undertakings under this Agreement for such purpose). As of the date of this Agreement there are no side letters or other agreements, Contracts or arrangements related to the funding of the full amount of the Financing other than as expressly set forth in the Debt Letters. Parent has fully paid all commitment fees or other fees required to be paid on or prior to the date of this Agreement in connection with the Financing. As of the date of this Agreement, assuming the representations and warranties of the Company contained in this Agreement are true and correct in all material respects and the performance of all obligations and compliance with all covenants and agreements required by this Agreement to be performed or complied with at or prior to the Closing by the Company in all material respects, Parent has no reason to believe that any of the conditions to the Financing will not be satisfied, nor does Parent have knowledge, as of the date of this Agreement, that the Financing will not be made available to Parent on the Closing Date in accordance with the terms of the Debt Letters.

Section 5.10 Absence of Certain Changes.

(a) From the Parent Balance Sheet Date through the date of this Agreement, the business of Parent and its Subsidiaries has been conducted in the ordinary course of business consistent with past practice in all material respects.

(b) Since the Parent Balance Sheet Date, there has not been any effect, change, condition, fact, event, occurrence or development that has had or would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.11 No Undisclosed Material Liabilities. There are no liabilities or obligations of Parent or any of its Subsidiaries that would be required by GAAP, as in effect on the date hereof, to be reflected on the consolidated balance sheet of the Company (including the notes thereto), other than:

(a) liabilities or obligations disclosed, reflected, reserved against or otherwise provided for in the Parent Balance Sheet or in the notes thereto;

(b) liabilities or obligations incurred in the ordinary course of business since the Parent Balance Sheet Date;

(c) liabilities or obligations arising out of this Agreement or the transactions contemplated hereby; and

(d) liabilities or obligations that have not had, and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.12 Compliance with Laws and Court Orders; Governmental Authorization

(a) Except for matters that have not had and would not reasonably be expected to have, individually or in the aggregate, (i) a Parent Material Adverse Effect or (ii) an effect that would prevent, materially delay or materially impair the ability of Parent to perform its obligations under this Agreement or to consummate the Merger, Parent and each of its Subsidiaries is and since October 1, 2015 has been in compliance with all applicable Laws (including with respect to applicable anti-corruption Laws) and Orders, and to the knowledge of Parent, is not under investigation by a Governmental Authority with respect to, any Law (including with respect to applicable anti-corruption Laws) or Order. Except as would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, there is no Order of any Governmental Authority outstanding against Parent or any of its Subsidiaries.

(b) Except as would not reasonably be expected to have, individually or in the aggregate, (x) a Parent Material Adverse Effect or (y) an effect that would prevent, materially delay or materially impair the ability of Parent to perform its obligations under this Agreement or to consummate the Merger, Parent and each of its Subsidiaries has and since October 1, 2014 has had all Governmental Authorizations necessary for the ownership and operation of its businesses as presently conducted, and each such Governmental Authorization is in full force and effect. Except as would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, (i) Parent and each of its Subsidiaries is, and since October 1, 2015 has been, in compliance with the terms of all Governmental Authorizations necessary for the

ownership and operation of its businesses and (ii) since October 1, 2015, neither Parent nor any of its Subsidiaries has received written notice from any Governmental Authority alleging any conflict with or breach of any such Governmental Authorization or threatening the limitation, suspension, revocation, cancellation or withdrawal of any such Governmental Authorization.

Section 5.13 Litigation. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, (x) a Parent Material Adverse Effect or (y) an effect that would prevent, materially delay or materially impair the ability of Parent to perform its obligations under this Agreement or to consummate the Merger, there is no Proceeding pending against, or, to the knowledge of Parent, threatened against Parent or any of its Subsidiaries or any present or former officer, director or employee of Parent or any of its Subsidiaries for whom Parent or any of its Subsidiaries may be liable before (or, in the case of threatened Proceedings, that would be before) or by any Governmental Authority.

Section 5.14 No Stockholder Vote Required. No vote of the stockholders of Parent or the holders of any other securities of Parent (equity or otherwise) is required by Law, the certificate of incorporation or bylaws of Parent or the applicable rules of the New York Stock Exchange in order for Parent to issue shares of Parent Common Stock pursuant to the terms of this Agreement or to consummate the Merger or the Parent Stock Issuance.

Section 5.15 Finders' Fees, etc. Except as set forth on Section 5.15 of the Parent Disclosure Letter, there is no investment banker, broker or finder that has been retained by or is authorized to act on behalf of Parent or any of its Subsidiaries who might be entitled to any fee or commission from Parent or any of its Affiliates in connection with the transactions contemplated by this Agreement.

Section 5.16 No Additional Representations. Except for the representations and warranties expressly made by Parent and Merger Corp in this Article 5, the Company acknowledges that none of Parent, Merger Corp or any other Person makes any express or implied representation or warranty whatsoever and specifically (but without limiting the foregoing), that none of Parent, Merger Corp or any other Person makes any representation or warranty with respect to (a) Parent or its Subsidiaries or any of their respective businesses, affairs, operations, assets, liabilities, conditions (financial or otherwise), prospects or any other matter relating to Parent or its Subsidiaries or (b) any documentation, forecasts, budgets, projections, estimates or other information (including the accuracy or completeness of, or the reasonableness of the assumptions underlying, such documentation, forecasts, budgets, projections, estimates or other information) provided by Parent or any other Person, including in any "data rooms" or management presentations.

ARTICLE 6

COVENANTS OF THE COMPANY

Section 6.01 Conduct of the Company. From the date of this Agreement until the Effective Time, except as expressly contemplated by this Agreement, as set forth in Section 6.01 of the Company Disclosure Letter, as consented to in writing by Parent (such consent not to be unreasonably withheld, conditioned or delayed), or as required by applicable Law or Order, the

Company shall, and shall cause each of its Subsidiaries to, use its commercially reasonable efforts to conduct its business in the ordinary course consistent with past practice, including by using its commercially reasonable efforts to (i) preserve intact its business organization, goodwill and reputation and (ii) maintain generally its business relationships with its customers, lenders, suppliers and others having business relationships with it and with Governmental Authorities with jurisdiction over the Company's operations and (iii) maintain its existing insurance policies or enter into replacement policies reasonably comparable in amount and scope to the insurance now carried by the Company and its Subsidiaries. Without limiting the generality of the foregoing, from the date of this Agreement until the Effective Time, except as expressly contemplated by this Agreement, as set forth in Section 6.01 of the Company Disclosure Letter, as consented to in writing by Parent (such consent not to be unreasonably withheld, conditioned or delayed) or as required by applicable Law or Order, the Company shall not, nor shall it permit any of its Subsidiaries to:

(a) amend the certificate of incorporation, bylaws or other similar organizational documents (whether by merger, consolidation or otherwise), in each case, of the Company or any material Subsidiary of the Company;

(b) split, combine or reclassify any shares of capital stock of the Company or any of its Subsidiaries or declare, set aside or pay any dividend or other distribution (whether in cash, stock or property or any combination thereof) in respect of the capital stock of the Company or its Subsidiaries, or redeem, repurchase or otherwise acquire or offer to redeem, repurchase, or otherwise acquire any Company Securities or any Company Subsidiary Securities, except for (i) regular quarterly cash dividends consistent with past practice (including with respect to declaration, record and payment dates) by the Company at a rate not in excess of \$0.26 per share of Company Stock, (ii) the declaration, setting aside or payment of any dividends or other distributions by any of its Subsidiaries or (iii) acquisitions, or deemed acquisitions, of Company Stock in connection with (A) the payment of the exercise price of Company Stock Options with Company Stock (including in connection with "net exercises") and (B) required Tax withholding in connection with the exercise of Company Stock Options and the vesting or settlement of Company RSAs, Company RSUs, Company MSPP Units and Company PLTIP Units, in each case, to the extent such Company Stock Options, Company RSAs, Company RSUs, Company MSPP Unit and Company PLTIP Units are outstanding on the date of this Agreement (and in such case, in accordance with their terms on the date of this Agreement) or, in the case of Company RSUs and Company RSAs that are granted after the date of this Agreement to the extent permitted by this Agreement;

(c) (i) issue, deliver or sell, or authorize the issuance, delivery or sale of, any shares of any Company Securities or Company Subsidiary Securities, other than (x) the issuance of any shares of the Company Stock upon the exercise of Company Stock Options or the settlement of Company RSUs, Company MSPP Units or Company PLTIP Units that are outstanding on the date of this Agreement in accordance with the applicable terms thereof on the date of this Agreement or, in the case of Company RSUs and Company RSAs, that are granted after the date of this Agreement to the extent permitted by this Agreement and (y) the issuance, delivery or sale of any shares of Company Subsidiary Securities to the Company or any of its wholly owned Subsidiaries or (ii) amend any term of any Company Security (in each case, whether by merger, consolidation or otherwise);

(d) incur or commit to any capital expenditures, except for (i) those as may be contemplated by the Company's fiscal 2017 budget and capital expenditure plan made available to Parent prior to the date of this Agreement (whether or not such capital expenditures are made during the 2017 fiscal year), (ii) any other capital expenditures not to exceed \$35 million in the aggregate or (iii) in response to any emergency caused by war, terrorism, weather events, public health events, outages or otherwise;

(e) acquire (by merger, consolidation, acquisition of stock or assets or otherwise), directly or indirectly, any assets, securities, properties, interests or businesses in excess of \$25 million individually or \$50 million in the aggregate, other than (i) supplies and materials in the ordinary course of business of the Company and its Subsidiaries in a manner that is consistent with past practice, (ii) pursuant to Contracts in effect on the date of this Agreement or (iii) assets, securities, properties, interests or businesses of the Company or any of its wholly owned Subsidiaries (or, in the case of the Company, assets, securities, properties, interests or businesses of any of its Subsidiaries);

(f) sell, license, lease or otherwise transfer, or abandon or create or incur any Lien on, directly or indirectly, any of the Company's or its Subsidiaries' assets, securities, properties, interests or businesses in excess of \$50 million in the aggregate, other than (i) sales of inventory or obsolete equipment in the ordinary course of business consistent with past practice, (ii) sales of assets, securities, properties, interests or business immaterial to the Company and its Subsidiaries, (iii) sales, leases or transfers that are pursuant to Contracts in effect on the date of this Agreement, which Contracts are set forth on Section 6.01(f) of the Company Disclosure Letter, (iv) Permitted Liens, or (v) sales, licenses, leases or other transfers to, or Liens in favor of, the Company or any of its wholly owned Subsidiaries;

(g) other than in connection with actions permitted by Section 6.01(d) or (e), make any loans, advances or capital contributions to, or investments in, any other Person, or form or acquire any Subsidiary that is not wholly owned by the Company or any of its wholly owned Subsidiaries, other than loans, advances or capital contributions to, or investments in, the Company or any of its wholly owned Subsidiaries;

(h) create, incur or assume any indebtedness for borrowed money or guarantees thereof or issue or sell any debt securities, except for (i) indebtedness under the Company's commercial paper program or under the Company Credit Facility, in each case solely to the extent required to maintain working capital requirements, (ii) indebtedness under the Company's commercial paper program or under the Company Credit Facility not solely required to maintain working capital requirements; *provided* that any indebtedness under this clause (ii) shall not exceed \$50 million in the aggregate and the proceeds of such indebtedness under this clause (ii) shall be used for acquisitions permitted by Section 6.01(d) or capital expenditures permitted by Section 6.01(e), (iii) guarantees by the Company of indebtedness of any Subsidiary of the Company (which indebtedness exists as of the date of this Agreement), (iv) guarantees of indebtedness of the Company by any Subsidiary of the Company or (v) indebtedness or guarantees between or among the Company and any of its Subsidiaries or the Company's Subsidiaries;

(i) enter into any agreement or arrangement that limits or otherwise restricts in any material respect the Company or any of its Subsidiaries from engaging or competing in any line of business, in any location or with any Person, or would purport to limit, after the Effective Time, Parent or any of its Subsidiaries in any material respect;

(j) other than (x) in the ordinary course of business (including renewals consistent with the terms thereof), (y) in a manner not material to the Company and its Subsidiaries, taken as a whole, or (z) in connection with any matter to the extent specifically permitted by any other subclause of this Section 6.01 or by Section 6.01 of the Company Disclosure Letter, (i) amend or modify in any material respect or terminate (excluding terminations or renewals upon expiration of the term thereof in accordance with the terms thereof) any Company Material Contract or waive, release or assign any material rights, claims or benefits under any Company Material Contract or (ii) enter into any Contract that would have been a Company Material Contract had it been entered into prior to the date of this Agreement (*provided* that the exceptions set forth in clauses (x) and (y) above shall not apply to any Contract described in Section 4.20(a)(viii));

(k) (i) recognize any material new labor organization, union, employee association, trade union, works council or other similar employee representative, or (ii) negotiate, enter into, amend, modify or terminate any material Collective Bargaining Agreement;

(l) grant any equity or equity-based awards;

(m) except (x) as required pursuant to a Company Plan or a Contract in effect on or prior to the date of this Agreement or (y) as otherwise required by applicable Law, (i) grant or provide any severance or termination payments or benefits to any current or former employee, officer, non-employee director, individual independent contractor or consultant of the Company or any of its Subsidiaries (including any obligation to gross-up, indemnify or otherwise reimburse any such individual for any Tax incurred by any such individual, including under Section 409A or 4999 of the Code), (ii) accelerate the time of payment or vesting of, or the lapsing of restrictions with respect to, or fund or otherwise secure the payment of, any compensation or benefits (including any equity or equity-based awards) to any current or former employee, officer, non-employee director, individual independent contractor or consultant of the Company or any of its Subsidiaries, (iii) increase the compensation payable to any current or former employee, officer, non-employee director, individual independent contractor or consultant of the Company or any of its Subsidiaries, (iv) establish, adopt, terminate or amend any Company Plan or any plan, program, arrangement, policy or agreement that would be a Company Plan if it were in existence on the date of this Agreement, other than in connection with routine, immaterial or ministerial amendments to health and welfare plans that do not materially increase benefits or result in a material increase in administrative costs, (v) hire any Person to be an officer or employee of the Company or any of its Subsidiaries or engage any other individual independent contractor to provide services to the Company or any of its Subsidiaries, other than the hiring of employees with annual base pay not in excess of \$300,000 or the engaging of individual independent contractors with annual fees not in excess of \$300,000 in the ordinary course of business consistent with past practice, (vi) terminate the employment of any current employee with a title of Vice President or above other than for cause or for performance-related reasons, (vii) promote any employee of the Company or any of its

Subsidiaries to a position that reports directly to the Chief Executive Officer of the Company or the President and Chief Operating Officer of the Company; or (viii) alter any applicable performance criteria, metrics or targets under any Company Plan that is a Company Incentive Plan or other short term cash incentive plan (including any commission, sales incentive or bonus plan);

(n) compromise, settle or agree to settle any Proceeding by or against a third party (including any Proceeding relating to this Agreement or the transactions contemplated hereby, except as contemplated by [Section 8.10](#)) other than compromises, settlements or agreements in the ordinary course of business consistent with past practice that involve only the payment of money damages not in excess of \$1 million individually or \$5 million in the aggregate, in any case without the imposition of any equitable relief on, or the admission of wrongdoing by, the Company;

(o) waive, release, limit or condition any restrictive covenant obligation of any current or former employee or individual independent contractor of the Company or any of its Subsidiaries;

(p) change the Company's methods of financial accounting, except as required by concurrent changes in GAAP or in Regulation S-X of the 1934 Act (or any interpretation thereof), any Governmental Authority or applicable Law;

(q) (i) make, change or revoke any material election with respect to Taxes, (ii) amend any material Tax Return, or (iii) agree or settle any material claim or assessment in respect of Taxes, or (iv) agree to an extension or waiver of the limitation period for any material claim or assessment in respect of Taxes, except in each case in the ordinary course of business consistent with past practice;

(r) adopt or publicly propose a plan of complete or partial liquidation or resolutions providing for or authorizing such a liquidation or a dissolution, in each case, of the Company or any material Subsidiary of the Company;

(s) enter into any material interest rate swaps, foreign exchange or other similar hedging arrangements other than for purposes of offsetting a bona fide exposure (including counterparty risk); or

(t) agree, resolve or commit to do any of the foregoing.

Section 6.02 Company Stockholder Meeting. The Company shall duly call, give notice of, convene and hold a meeting of its stockholders (the "**Company Stockholder Meeting**") as promptly as practicable after the date the Registration Statement is declared effective under the 1933 Act (except as provided in this [Section 6.02](#)) for the purpose of voting on the approval and adoption of this Agreement in accordance with NJBCA. In connection with the Company Stockholder Meeting, the Company shall (i) subject to [Section 8.03\(a\)](#), recommend approval and adoption of this Agreement and the other transactions contemplated hereby by the Company's stockholders in the Proxy Statement/Prospectus and (ii) otherwise comply with all legal requirements applicable to such meeting. Subject to [Section 8.03\(b\)](#), the Company will use its reasonable best efforts to solicit from its stockholders proxies in favor of the adoption of this

Agreement and take all other actions reasonably necessary or advisable to secure the adoption of this Agreement by the Company's stockholders. The Company shall keep Parent and Merger Corp reasonably updated with respect to proxy solicitation results as reasonably requested by Parent or Merger Corp. The Company shall not, without the prior written consent of Parent, adjourn or postpone the Company Stockholder Meeting; *provided, however*, the Company shall have the right to adjourn or postpone the Company Stockholder meeting: (i) after consultation with Parent, for a single period not to exceed ten (10) Business Days if on the date on which the Company Stockholder Meeting is originally scheduled (as set forth in the Proxy Statement/Prospectus), the Company has not received proxies representing a sufficient number of shares of Company Stock to obtain the Company Stockholder Approval; (ii) if on the date on which the Company Stockholder Meeting is originally scheduled (as set forth in the Proxy Statement/Prospectus), there are insufficient shares of Company Stock represented (either in person or by proxy) to constitute a quorum necessary to conduct the business of the Company Stockholder Meeting; or (iii) after consultation with Parent, if the failure to adjourn or postpone the Company Stockholder Meeting would reasonably be expected to be a violation of applicable Law for the distribution of any required amendment or supplement to the Proxy Statement/Prospectus to be timely provided to the holders of Company Stock. Once the Company has established a record date for the Company Stockholder Meeting, the Company shall not change such record date or establish a different record date for the Company Stockholder Meeting without the prior written consent of Parent (not to be unreasonably withheld, delayed or conditioned), unless required to do so by applicable Law or the Company's organizational documents. Without the prior written consent of Parent, the adoption of this Agreement and the transactions contemplated hereby (including the Merger) and compensation matters related to the transactions contemplated hereby shall be the only matters (other than matters of procedure and matters required by applicable Law to be voted on by the Company's stockholders in connection with the approval of this Agreement and the transactions contemplated hereby) that the Company shall propose to be acted on by the stockholders of the Company at the Company Stockholder Meeting. Regardless of whether there is a Company Adverse Recommendation Change, the Company Stockholder Meeting shall be held in accordance with the terms hereof unless this Agreement is terminated in accordance with Article 10.

ARTICLE 7

COVENANTS OF PARENT AND MERGER CORP

Section 7.01 Conduct of Parent. From the date of this Agreement until the Effective Time except as expressly contemplated by this Agreement, as set forth in Section 7.01 of the Parent Disclosure Letter, as consented to in writing by the Company (such consent not to be unreasonably withheld, conditioned or delayed) or as required by applicable Law or Order, Parent shall, and shall cause each of its Subsidiaries to use its commercially reasonable efforts to conduct its business in the ordinary course consistent with past practice, including by using its commercially reasonable efforts to (i) preserve intact its business organization and (ii) maintain generally its business relationships with its customers, lenders, suppliers and others having business relationships with it and with Governmental Authorities with jurisdiction over the Parent's operations. Without limiting the generality of the foregoing, from the date of this Agreement until the Effective Time, except as expressly contemplated by this Agreement, as set

forth in Section 7.01 of the Parent Disclosure Letter, as consented to in writing by the Company (such consent not to be unreasonably withheld, conditioned or delayed) or as required by applicable Law or Order, Parent shall not, nor shall it permit any of its Subsidiaries to:

(a) amend the certificate of incorporation or bylaws of Parent in a manner that would have a material and adverse impact on the value of Parent Common Stock; *provided*, that any amendment to its certificate of incorporation to increase the authorized number of shares of any class or series of the capital stock of Parent shall in no way be restricted by the foregoing;

(b) adopt or publicly propose a plan of complete or partial liquidation, restructuring, recapitalization or other reorganization, or resolutions providing for or authorizing such a liquidation, dissolution, restructuring, recapitalization or other reorganization of Parent;

(c) (i) enter into agreements with respect to, or consummate, any mergers or business combinations, or any acquisition of any other Person or business or (ii) make investments in any other Person, in each case that would reasonably be expected to prevent, or materially impede or materially delay, the consummation of the Merger or the transactions contemplated hereby;

(d) redeem, repurchase or otherwise acquire or offer to redeem, repurchase, or otherwise acquire any shares of capital stock or other voting securities of or other ownership interests in Parent or its Subsidiaries, except for acquisitions, or deemed acquisitions of Parent Stock in connection with the (i) the payment of the exercise price of Parent Stock Options or Parent SARs with Parent Stock (including in connection with "net exercises") and (ii) required Tax withholding in connection with the exercise of Parent Stock Options or Parent SARs and the vesting or settlement of Parent RSUs or Parent PSUs;

(e) authorize or pay any dividends on or make any distribution with respect to its outstanding shares (whether in cash, assets, stock or other securities of Parent or its Subsidiaries), except (i) regular quarterly cash dividends consistent with past practice (including with respect to declaration, record and payment dates) by Parent at a rate not in excess of \$0.73 per share of Parent Common Stock (subject to increase in a manner consistent with past practice (including with respect to the timing of any such increase) by the Parent Board not in excess of the per share amount set forth in Section 7.01(e) of the Parent Disclosure Letter), (ii) dividends and distributions paid or made on a pro rata basis by Subsidiaries of Parent or (iii) by a wholly owned Subsidiary of Parent to Parent or another wholly owned Subsidiary of Parent;

(f) except for (i) any shares of Parent Common Stock issued, delivered, sold or authorized in connection with the transactions contemplated by this Agreement (including the Merger) or (ii) any shares of Parent Common Stock or securities convertible into, or exchangeable or exercisable for, Parent Common Stock issued in a public offering for cash or any bona fide private financing (including in connection with any hedging transactions related thereto), issue, deliver or sell, or authorize the issuance, delivery or sale of a number of shares of Parent Common Stock in excess of 15% of the number of outstanding shares of Parent Common Stock as of the date of this Agreement, other than the issuance of any shares of Parent Common Stock upon the exercise of Parent Stock Options or Parent SARs or the settlement of Parent RSUs or Parent PSUs that are outstanding on the date of this Agreement in accordance with the applicable terms thereof on the date of this Agreement or that are issued or granted after the date of this Agreement; or

(g) agree, resolve or commit to do any of the foregoing.

Section 7.02 Obligations of Merger Corp. Parent shall cause Merger Corp to perform when due its obligations under this Agreement and to consummate the Merger pursuant to the terms and subject to the conditions set forth in this Agreement.

Section 7.03 Approval by Sole Stockholder of Merger Corp. Immediately following the execution and delivery of this Agreement by the Parties hereto, Parent, as sole stockholder of Merger Corp, shall adopt this Agreement and approve the Merger, in accordance with NJBCA, by written consent.

Section 7.04 Director and Officer Indemnification.

(a) From and after the Effective Time, Parent and Merger Corp agree that all rights to indemnification, advancement of expenses and exculpation of each former and present director or officer of the Company or any Company Subsidiary and each person who served as a director, officer, member, trustee or fiduciary of another corporation, partnership, joint venture, trust, pension or other employee benefit plan or enterprise if such service was at the request or for the benefit of the Company or any Company Subsidiary (each, together with such person's heirs, executors or administrators, a "**Company Indemnified Party**"), against all claims, losses, liabilities, damages, judgments, inquiries, fines and reasonable fees, costs and expenses, including attorneys' fees and disbursements, incurred in connection with any Proceeding or investigation with respect to matters existing or occurring at or prior to the Effective Time (including this Agreement and the transactions and actions contemplated hereby), arising out of or pertaining to the fact that the Company Indemnified Party is or was an officer or director of the Company or any Company Subsidiary or is or was serving at the request of the Company or any Company Subsidiary as a director or officer of another Person, whether asserted or claimed prior to, at or after the Effective Time as provided in their respective certificates of incorporation or by-laws (or comparable organizational documents) as in effect on the date of this Agreement or in any agreement, a true and complete copy of which agreement has been provided by the Company to Parent prior to the date of this Agreement, to which the Company or any of its Subsidiaries is a party, shall survive the Merger and continue in full force and effect in accordance with their terms. For a period of no less than six (6) years after the Effective Time, Parent, to the fullest extent permitted under applicable Law, shall cause to be maintained in effect the provisions in the certificates of incorporation and bylaws and comparable organizational documents of the Surviving Corporation and each Subsidiary of the Company (or in such documents of any successor to the business of the Surviving Corporation) regarding exculpation, indemnification and advancement of expenses in effect as of immediately prior to the Effective Time or in any agreement, a complete copy of which agreement has been provided by the Company to Parent prior to the date of this Agreement, to which the Company or any of its Subsidiaries is a party, in each case in effect immediately prior to the Effective Time, and shall not amend, repeal or otherwise modify any such provisions or the exculpation, indemnification or advancement of expenses provisions of the Surviving Corporation's certificate of incorporation and bylaws set forth in Exhibit A and Exhibit B or in any such

agreement in any manner that would adversely affect the rights thereunder of any individual who immediately before the Effective Time was a Company Indemnified Party; *provided, however*, that all rights to indemnification in respect of any actual or threatened claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative (each, an “**Action**”) pending or asserted or any claim made within such period shall continue until the disposition of such Action or resolution of such claim.

(b) For a period of no less than six (6) years after the Effective Time, Parent shall indemnify and hold harmless (and advance funds in respect of the foregoing) each Company Indemnified Party to the fullest extent permitted under applicable Law against any costs or expenses (including advancing attorneys’ fees and expenses in advance of the final disposition of any claim, suit, proceeding or investigation to each Company Indemnified Party), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement in connection with any actual or threatened Action arising out of or pertaining to the fact that the Company Indemnified Party is or was an officer or director of the Company or any Company Subsidiary or is or was serving at the request of the Company or any Company Subsidiary as a director or officer of another Person, whether asserted or claimed prior to, at or after the Effective Time. Parent and the Surviving Corporation shall reasonably cooperate with the Company Indemnified Party in the defense of any such Action; provided that Parent shall only be required to indemnify and hold harmless, or advance expenses to, a Company Indemnified Party if and to the same extent such Company Indemnified Party is entitled to indemnification as of the date of this Agreement by the Company or its Subsidiaries pursuant to (i) the certificate of incorporation or by-laws (or comparable organizational documents) of the Company or the applicable Subsidiary of the Company or (ii) any indemnification agreement between the Company or any of its Subsidiaries and such Company Indemnified Party. Parent and the Surviving Corporation shall reasonably cooperate with the Company Indemnified Party in the defense of such Action.

(c) Parent shall cause the Surviving Corporation, and the Surviving Corporation hereby agrees, to either (i) continue to maintain in effect for a period of no less than six (6) years after the Effective Time the Company’s directors’ and officers’ insurance policies (the “**D&O Insurance**”) in place as of the date of this Agreement or (ii) purchase comparable D&O Insurance for such six (6)-year period from a carrier with comparable or better credit ratings to the Company’s existing directors’ and officers’ insurance policies, in each case, with coverage for the persons who are covered by the Company’s existing D&O Insurance, with terms, conditions, retentions and levels of coverage at least as favorable to the insured individuals as the Company’s existing D&O Insurance with respect to matters existing or occurring at or prior to the Effective Time; *provided*, that in no event shall Parent or the Surviving Corporation be required to expend for such policies pursuant to this sentence an aggregate premium amount in excess of 300% of the amount per annum the Company paid in its last full fiscal year, which amount is set forth in Section 7.04(c) of the Company Disclosure Letter (the “**Premium Cap**”); and *provided, further*, that if the aggregate premiums of such insurance coverage exceed such amount, the Surviving Corporation shall be obligated to obtain a policy with the greatest coverage available, with respect to matters occurring prior to the Effective Time, for a cost not exceeding the Premium Cap. At the Company’s option, the Company may purchase, prior to the Effective Time, a prepaid “tail policy” for a period of no more than six (6) years after the Effective Time with coverage for the persons who are covered

by the Company's existing D&O Insurance, with terms, conditions, retentions and levels of coverage at least as favorable to the insured individuals as the Company's existing D&O Insurance with respect to matters existing or occurring at or prior to the Effective Time, in which event Parent shall cease to have any obligations under the first sentence of this Section 7.04(c); *provided*, that the aggregate premium for such policies shall not exceed the Premium Cap. In the event the Company elects to purchase such a "tail policy," the Surviving Corporation shall (and Parent shall cause the Surviving Corporation to) maintain such "tail policy" in full force and effect and continue to honor its obligations thereunder.

(d) In the event that either Parent or the Surviving Corporation or any of its successors or assigns (i) consolidates with or merges into any other Person and is not the continuing or surviving corporation or entity of such consolidation or merger, or (ii) transfers or conveys all or substantially all of its properties, rights and other assets to any Person, then, and in each such case, Parent shall use its reasonable best efforts to cause the successors and assigns of Parent or the Surviving Corporation, as the case may be, succeed to or assume the applicable obligations of such Party set forth in this Section 7.04.

(e) The provisions of this Section 7.04 shall survive consummation of the Merger, are intended to be for the benefit of, and will be enforceable by, each indemnified or insured person hereunder (including the Company Indemnified Parties), his or her heirs and his or her representatives and are in addition to, and not in substitution for, any other rights to indemnification or contribution that any such person may have by Contract, at Law or otherwise.

Section 7.05 Stock Exchange Listing. Parent shall use its reasonable best efforts to cause the shares of Parent Common Stock to be issued as part of the Merger consideration to be approved for listing on the NYSE, subject to official notice of issuance, prior to the Effective Time.

Section 7.06 Employee Matters.

(a) Parent shall provide, or shall cause to be provided, to each employee of the Company and its Subsidiaries who continues to be employed by Parent or its Subsidiaries (including, for the avoidance of doubt, the Surviving Corporation and its Subsidiaries) immediately following the Effective Time (each, a "**Continuing Employee**"), with (i) for the period commencing at the Effective Time and ending on September 30, 2018, (A) an annual base salary or wage rate that is no less favorable than that provided to each such Continuing Employee immediately prior to the Effective Time, and (B) annual cash bonus and long-term incentive opportunities that are no less favorable in the aggregate than those provided to similarly situated employees of Parent, and (ii) for the period commencing at the Effective Time and ending on December 31, 2018, (A) health and welfare benefits (other than severance benefits) that are substantially comparable in the aggregate to those provided to such Continuing Employee immediately prior to the Effective Time, (B) retirement benefits that are no less favorable than those provided to such Continuing Employee immediately prior to the Effective Time, and (C) severance benefits that are no less favorable than those applicable to the Continuing Employee immediately prior to the Effective Time under the Company Plans set forth in Section 4.17 of the Company Disclosure Letter and designated thereon as a severance plan, guideline or practice (each, a "**Company Severance Plan**"). Parent agrees to maintain

each Company Severance Plan, without any amendments other than as may be required by applicable Law (implemented in a manner that does not adversely impact the rights or benefits of any Continuing Employee thereunder), with respect to terminations of employment occurring during the period commencing at the Effective Time and ending on December 31, 2018, and for purposes of the administration of the Company Severance Plans during such period, Parent agrees that severance payments will be calculated (A) based on base salary or wage rate, as applicable, in effect immediately prior to the severance qualifying termination of employment (excluding any reduction thereto that serves as the basis for the constructive termination or resignation for good reason) and (B) taking into account service with the Company and its Subsidiaries and their respective predecessors prior to the Effective Time in accordance with Section 7.06(b) and service with Parent and its Subsidiaries (including the Company and its Subsidiaries after the Effective Time).

(b) For all purposes (including purposes of vesting, eligibility to participate and level of benefits) under any employee benefit plans of Parent and its Subsidiaries (exclusive of the Company and its Subsidiaries) solely to the extent such plans provide benefits to any Continuing Employee after the Closing Date (including the Company Plans) (the “**New Plans**”), each such Continuing Employee shall be credited with his or her years of service with the Company and its Subsidiaries and their respective predecessors before the Effective Time, to the same extent as such Continuing Employee was entitled, before the Effective Time, to credit for such service under any Company Plan in which such Continuing Employee participated or was eligible to participate immediately prior to the Closing Date; *provided* that the foregoing service credit shall not be required to apply (i) to the extent that its application would result in a duplication of benefits with respect to the same period of service, (ii) for purposes of any defined benefit pension accrual under any New Plan and (iii) for purposes of any subsidy provided for any post-employment welfare benefits under any New Plan (it being understood that such service credit will apply for purposes of determining eligibility to participate, at the Continuing Employee’s cost, in New Plans providing for post-employment welfare benefits). In addition, and without limiting the generality of the foregoing, (i) each Continuing Employee shall be immediately eligible to participate, without any waiting time, in any and all New Plans to the extent coverage under such New Plan is replacing comparable coverage under a Company Plan in which such Continuing Employee participated immediately before the Closing Date (such plans, collectively, the “**Old Plans**”), and (ii) for purposes of each New Plan providing medical, dental, pharmaceutical and/or vision benefits to any Continuing Employee, Parent shall, or shall cause its Subsidiaries to, use commercially reasonable best efforts to cause (x) all pre-existing condition exclusions and actively-at-work requirements of such New Plan to be waived for such Continuing Employee and his or her covered dependents, to the extent such conditions were inapplicable or waived under the comparable Old Plans of the Company or its Subsidiaries in which such Continuing Employee participated immediately prior to the Closing Date and (y) any eligible expenses incurred by any Continuing Employee and his or her covered dependents during the portion of the plan year of the Old Plan ending on the date such Continuing Employee’s participation in the corresponding New Plan begins to be taken into account under such New Plan for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Continuing Employee and his or her covered dependents for the applicable plan year as if such amounts had been paid in accordance with such New Plan. Except as Parent may determine in its sole discretion, Continuing Employees shall not be eligible to participate in the tax-qualified defined benefit pension plan or any supplemental or restoration defined benefit pension plan maintained by Parent.

(c) Upon the written request of Parent at least ten (10) Business Days prior to the Closing Date, effective as of immediately prior to Closing Date and contingent upon the occurrence of the Closing, the Company shall terminate or shall cause the termination of the U.S. tax-qualified defined contribution plan provided to current and former employees of the Company and its Subsidiaries (the “**Company Qualified Plan**”). In such event, prior to the Closing Date and thereafter (as applicable), the Company and Parent shall take any and all action as may be required, including amendments to the Parent 401(k) Plan (the “**Parent Qualified Plan**”), to permit each Continuing Employee to make rollover contributions of “eligible rollover distributions” (within the meaning of Section 401(a)(31) of the Code) in cash, shares of Parent Common Stock or notes (representing plan loans from the Company Qualified Plan) in an amount equal to the eligible rollover distribution portion of the account balance distributable to such Continuing Employee from such Company Qualified Plan to the corresponding Parent Qualified Plan upon receipt of a favorable IRS determination letter with respect to the termination of such Company Qualified Plan; *provided, however*, that the Parent Qualified Plan will not be required to accept rollovers of Roth contributions that were made to a Company Qualified Plan pursuant to Section 402A of the Code. If the Company Qualified Plan is terminated as described herein, the Continuing Employees shall be eligible immediately upon the Closing Date to commence participation in a Parent Qualified Plan.

(d) Incentive Compensation. In the event that the Closing occurs prior to the Company paying annual incentives in respect of its 2017 fiscal year, Parent shall pay to each participant in a Company Plan set forth in Section 4.17 of the Company Disclosure Letter and designated thereon as an annual incentive plan (each, a “**Company Incentive Plan**”) a cash bonus in respect of calendar year 2017 in an amount equal to the cash bonus amount payable under the applicable Company Incentive Plan based on the actual level of achievement of the applicable performance criteria, with such level of achievement (1) measured during the period from and including January 1, 2017 through and including the end of the calendar month immediately preceding the month in which the Closing Date occurs, (2) determined by the Compensation Committee of the Company Board in the ordinary course of business and consistent with past practice (including, without limitation, adjustments to account for non-recurring items), but subject to the Resolution Procedures (as set forth in Section 7.06(d) of the Company Disclosure Letter) and without regard to any costs and expenses associated with the transactions contemplated by the Agreement or any non-recurring events that would not reasonably be expected to have affected the Company and its Subsidiaries had the transactions contemplated by the Agreement not arose, and (3) annualized, on a straight line basis, through the end of the quarter in which the Closing occurs. Such bonus amounts shall be paid, less any required withholding Taxes, on or about the date on which the Company would normally pay annual bonuses in the first calendar quarter of 2018 and in no event later than March 15, 2018 (or, if earlier, upon a termination of employment as set forth in clause (ii) below). Following the completion of the quarter in which the Closing occurs, Parent, in its sole discretion, may choose to continue the participation of any Continuing Employee in a Company Incentive Plan or transition such employee to an incentive plan of Parent, subject to terms of Section 7.06(a). If a Continuing Employee experiences a termination of employment following the Effective Time and prior to the payment of the bonus amount provided in Section 7.06(d) (the “**2017 Bonus**”

Amount) under circumstances that entitle such Continuing Employee to receive severance under a Company Severance Plan or applicable statutory requirements, such Continuing Employee shall receive a lump sum cash bonus equal to such Continuing Employee's 2017 Bonus Amount multiplied by a fraction, the numerator of which is the number of days from and including January 1, 2017 through and including the date of such Continuing Employee's termination of employment, and the denominator of which is 365; *provided*, that the foregoing shall not apply to the extent that its application would result in a duplication of a prorated bonus amount provided to such Continuing Employee under the terms of an applicable Company Severance Plan or other Company Plan. Such bonus shall be paid, less any required withholding Taxes, as soon as reasonably practicable following the date of such Continuing Employee's termination of employment.

(e) Notwithstanding anything contained herein to the contrary, with respect to any Continuing Employees who are based outside of the United States, Parent's obligations under this Section 7.06 shall be in addition to, but not in contravention of, any obligations under the Laws of the foreign countries and political subdivisions thereof in which such Continuing Employees are based and any applicable Collective Bargaining Agreements.

(f) Nothing contained in this Section 7.06, expressed or implied, shall (i) be treated as the establishment, amendment or modification of any Company Plan or any employee benefit plan maintained by Parent or any of its Subsidiaries (each, a "**Parent Plan**") or constitute a limitation on rights to amend, modify, merge or terminate after the Effective Time any Company Plan or Parent Plan, (ii) give any current or former employee, director or other individual independent contractor of the Company and its Subsidiaries (including any beneficiary or dependent thereof), or any labor organization, union, works council, employee association, trade union, other similar employee representative body, any third-party beneficiary or other rights or (iii) obligate Parent or any of its Affiliates to (A) maintain any particular Company Plan or Parent Plan or (B) retain the employment or services of any current or former employee, director or other individual independent contractor of the Company and its Subsidiaries.

(g) The Parties acknowledge and agree that the consummation of the transactions contemplated by this Agreement shall be treated as a "change in control," "change of control," or similar term for purposes of all Company Plans. The Parties shall cooperate in good faith to mitigate the impact of Section 280G of the Code on the Company and the costs of any related gross-up payments. The Parties agree to take the actions set forth on Section 7.06(g) of the Company Disclosure Letter.

(h) No later than thirty (30) days following the execution of this Agreement, the Company shall provide Parent with copies of all material documents embodying and relating to each material Foreign Company Plan, including, but not limited to, the Foreign Company Plan document, all amendments thereto and all related trust documents, the most recent summary plan description, the most recent actuarial valuation report, and the most recent tax return filing, in each case, to the extent applicable.

ARTICLE 8

COVENANTS OF PARENT AND THE COMPANY

Section 8.01 Efforts.

(a) Subject to the terms and conditions of this Agreement, each of the Company and Parent shall use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, and assist and cooperate with the other in doing, all things necessary, proper or advisable under applicable Law or Order to consummate and make effective the Merger and the other transactions contemplated by this Agreement as promptly as reasonably practicable, including (i) preparing and filing as promptly as reasonably practicable with any Governmental Authority or other Third Party all documentation to effect all necessary, proper or advisable filings, notices, petitions, statements, registrations, submissions of information, applications and other documents and (ii) obtaining and maintaining all approvals, consents, registrations, permits, authorizations and other confirmations required to be obtained from any Governmental Authority or other Third Party that are necessary, proper or advisable to consummate and make effective the Merger and the other transactions contemplated by this Agreement (whether or not such approvals, consents, registrations, permits, authorizations and other confirmations are conditions to the consummation of the Merger pursuant to Article 9).

(b) In furtherance and not in limitation of the foregoing, each of Parent and the Company shall make, as promptly as reasonably practicable (and in any event within ten (10) Business Days of the date of this Agreement in the case of the following clause (i) (unless counsel to the Parties have previously agreed to extend such ten (10) Business Day period)), (i) an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated by this Agreement, (ii) an appropriate filing of a Form CO with the European Commission, (iii) all necessary filings to obtain consents from the state regulators that are required in connection with the Merger and (iv) all other registrations, declarations, notices and filings with Governmental Authorities that are required in connection with the Merger. Each of the Company and Parent shall use its reasonable best efforts to supply as promptly as practicable any additional information and documentary material that may be reasonably requested pursuant to the foregoing, and use its reasonable best efforts to take all other actions necessary to cause the expiration or termination of the applicable waiting periods regarding the foregoing as soon as reasonably practicable.

(c) Except as prohibited by applicable Law or Order, each of Parent and the Company shall use its reasonable best efforts to (A) cooperate with each other in connection with any filing or submission with a Governmental Authority in connection with the transactions contemplated by this Agreement and in connection with any investigation or other inquiry by or before a Governmental Authority relating to the transactions contemplated by this Agreement, including any proceeding initiated by a private party, (B) promptly inform the other Party of (and if in writing, supply to the other Party) any communication (other than any ministerial communications) received by such party from, or given by such party to, the Federal Trade Commission, the Antitrust Division of the Department of Justice, the European Commission, or any other similar Governmental Authority and of any material communication received or given in connection with any proceeding by a private party, in each case regarding any of the

transactions contemplated by this Agreement, (C) consult with each other prior to taking any material position with respect to the filings under the HSR Act or any other Competition Law in discussions with or filings to be submitted to any Governmental Authority, (D) permit the other to review and discuss in advance, and consider in good faith the views of the other in connection with, any analyses, presentations, memoranda, briefs, arguments, opinions and proposals to be submitted to any Governmental Authority with respect to filings under the HSR Act or any other Competition Law, and (E) coordinate with the other in preparing and exchanging such information and promptly provide the other (and its counsel) with copies of all filings, presentations or submissions (and a summary of any oral presentations) made by such Party with any Governmental Authority relating to this Agreement or the transactions contemplated hereby under the HSR Act or any other Competition Law. Notwithstanding anything to the contrary herein, Parent shall, on behalf of the parties, have control over and lead all communications and strategy relating to obtaining all approvals, consents, waivers, registrations, permits, authorizations and other confirmations under any Competition Law from any Governmental Authority or other Third Party in connection with consummating the Merger and the other transactions contemplated by this Agreement or to any litigation under any Competition Law arising therefrom; *provided, however*, that Parent shall consult in advance with the Company and in good faith take the Company's views into account regarding the overall strategic direction of any such approval process, as applicable, and consult with the Company prior to taking any material substantive positions, making dispositive motions or other material substantive filings or submissions or entering into any negotiations concerning such approvals, as applicable. The parties shall take reasonable efforts to share information protected from disclosure under the attorney-client privilege, work product doctrine, joint defense privilege or any other privilege pursuant to this Section in a manner so as to preserve the applicable privilege.

(d) Unless prohibited by applicable Law or Order or by the applicable Governmental Authority, each of the Company and Parent shall (i) to the extent reasonably practicable, not participate in or attend any meeting, or engage in any conversation (other than ministerial conversations) with any Governmental Authority in respect of the Merger (including with respect to any of the actions referred to in [Section 8.01\(a\)](#)) without the other, (ii) to the extent reasonably practicable, give the other reasonable prior notice of any such meeting or conversation and (iii) in the event one such Party is prohibited by applicable Law or Order or by the applicable Governmental Authority from participating or attending any such meeting or engaging in any such conversation, keep such non-participating Party reasonably apprised with respect thereto.

(e) Subject to the terms and conditions of this Agreement, including [Section 8.01\(f\)](#), each of Parent and the Company agrees to use its reasonable best efforts to take or cause to be taken, any and all steps and to make or cause to be made any and all undertakings necessary to resolve such objections, if any, that a Governmental Authority of competent jurisdiction asserts with respect to any Required Competition Approval under any applicable Competition Law with respect to the Merger and the other transactions contemplated by this Agreement, and to avoid or eliminate each and every impediment under any applicable Competition Laws asserted by any such Governmental Authority of competent jurisdiction with respect to the Merger and the other transactions contemplated by this Agreement, in each case, to the extent necessary so as to enable the Closing to occur no later than the End Date, which reasonable best efforts shall include (x) proposing, negotiating, committing to and effecting, by

consent decree, hold separate order, or otherwise, the sale, divestiture, license or disposition of any businesses, assets, equity interests, product lines or properties of Parent or the Company (or any of their respective Subsidiaries), (y) creating, terminating, or divesting relationships, ventures, contractual rights or obligations of the Company or Parent or their respective Subsidiaries and (z) otherwise taking or committing to take any action that would limit Parent's freedom of action with respect to, or its ability to retain or hold, directly or indirectly, any businesses, assets, equity interests, product lines or properties of Parent or the Company (including any of their respective Subsidiaries) (each of (x), (y) and (z), the "**Competition Actions**"), in each case as may be required in order to obtain any Required Competition Approval to the extent necessary so as to enable the Closing to occur no later than the End Date. In addition each of Parent and the Company shall take any Competition Action to the extent necessary to avoid the entry of, or to effect the dissolution of, any Order by a Governmental Authority of competent jurisdiction under any Competition Law (each, a "**Competition Law Order**") prohibiting the consummation of the Merger. To assist Parent in complying with its obligations set forth in this Section 8.01(e), if requested by Parent, the Company shall, and shall cause its Subsidiaries to, enter into one or more agreements requested by Parent to be entered into by any of them prior to the Closing with respect to any transaction to divest, hold separate or otherwise take any action that limits the Company's or its Subsidiaries' freedom of action, ownership or control with respect to, or their ability to retain or hold, directly or indirectly, any of the businesses, assets, equity interests, product lines or properties of the Company or any of its Subsidiaries (each, a "**Divestiture Action**"); *provided, however*, that the consummation of the transactions provided for in any such agreement for a Divestiture Action shall be conditioned upon the Closing or satisfaction or waiver of all of the conditions to Closing in a case where the Closing will occur immediately following such Divestiture Action. Notwithstanding anything to the contrary in this Agreement, in the event the Parties are unable to agree on which actions to take pursuant to this Section 8.01(e), Parent shall have the final determination with respect to which action to take; *provided*, that such determination shall be consistent with Parent's obligations under this Section 8.01(e).

(f) Notwithstanding anything in this Agreement to the contrary, Parent and its Subsidiaries shall not be required to, and the Company and its Subsidiaries shall not, without the prior written consent of Parent, take any action, or commit to take any action, or agree to any condition or limitation contemplated in this Section 8.01, including any step or undertaking or action contemplated in Section 8.01(e), that (i) would, or would reasonably be expected to, have a material adverse effect on the business, results of operations, or financial condition of either (x) Parent and its Subsidiaries (but not including the Company and its Subsidiaries) or (y) the Company and its Subsidiaries, in each case of (x) and (y), measured on a scale relative to the Company and its Subsidiaries, taken as a whole, or (ii) in order to avoid the entry of, or to effect the dissolution of, any Competition Law Order in a jurisdiction other than the United States or any other jurisdiction set forth on Section 9.01(e) of the Company Disclosure Letter, would require Parent to take any action with respect to any business, properties or assets of Parent and its Subsidiaries, or the Company and its Subsidiaries, located outside of the home country of the Governmental Authority of competent jurisdiction in respect of such a Competition Law Order (either of (i) or (ii) above, a "**Burdensome Condition**").

(g) In furtherance and not in limitation of the covenants of the parties contained in this Section 8.01, if any administrative or judicial action or proceeding by the

Federal Trade Commission or Department of Justice or other similar Governmental Authority of competent jurisdiction is instituted challenging the Merger or any other transaction contemplated by this Agreement as violative of any Competition Law, Parent shall use its reasonable best efforts to contest and resist any such action or proceeding and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the Merger and the other transactions contemplated by this Agreement; *provided*, that Parent shall not be required to, and the Company shall not, without the prior written consent of Parent, take any action under this Section 8.01(g) that would, or would be reasonably likely to, result in the imposition of a Burdensome Condition. To assist Parent in complying with its obligations set forth in this Section 8.01(g), the Company shall, and shall cause its Subsidiaries to, provide to Parent such cooperation as may be reasonably requested by Parent.

Section 8.02 Proxy Statement/Prospectus: Registration Statement

(a) As promptly as practicable after the execution of this Agreement, (i) the Company shall prepare (with Parent's reasonable cooperation) and file with the SEC the Proxy Statement/Prospectus to be sent to the stockholders of the Company relating to the Company Stockholder Meeting and (ii) Parent shall prepare (with the Company's reasonable cooperation) and file with the SEC the Registration Statement, in which the Proxy Statement/Prospectus will be included as a prospectus, in connection with the registration under the 1933 Act of the Parent Common Stock to be issued in the Merger. Each of the Company and Parent shall use its reasonable best efforts to ensure that the Registration Statement and the Proxy Statement/Prospectus comply as to form in all material respects with the rules and regulations promulgated by the SEC under the 1933 Act and the 1934 Act, respectively. Subject to Section 8.02(d) and Section 8.03, the Proxy Statement/Prospectus shall include (i) a statement to the effect that the Company Board has determined that this Agreement, the Merger and the other transactions contemplated hereby are (x) fair to and in the best interests of the Company's stockholders and (y) advisable and (ii) the recommendation of the Company Board in favor of approval and adoption of this Agreement. Parent shall use its reasonable best efforts to have the Registration Statement declared effective under the 1933 Act as promptly as practicable after such filing (including by responding to comments of the SEC), and, prior to the effective date of the Registration Statement, Parent shall take all action reasonably required to be taken under any all necessary state securities Laws or "blue sky" notice requirements in connection with the Parent Stock Issuance. As promptly as practicable after the Registration Statement shall have become effective, the Company shall use its reasonable best efforts to cause the Proxy Statement/Prospectus to be mailed to its stockholders.

(b) Each of the Company and Parent shall furnish all information concerning such Person and its Affiliates to the other, and provide such other assistance, as may be reasonably requested by such other Party to be included therein and shall otherwise reasonably assist and cooperate with the other in the preparation, filing and distribution of the Proxy Statement/Prospectus, the Registration Statement, and the resolution of any comments to either received from the SEC. If at any time prior to the receipt of the Company Stockholder Approval, any information relating to the Company or Parent, or any of their respective Affiliates, directors or officers, should be discovered by the Company or Parent which is required to be set forth in an amendment or supplement to either the Registration Statement or the Proxy

Statement/Prospectus, so that either such document would not include any misstatement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the Party which discovers such information shall promptly notify the other Party and an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and, with respect to the Proxy Statement/Prospectus, to the extent required by applicable Law, disseminated to the stockholders of the Company.

(c) The Parties shall notify each other promptly of the receipt of any comments, whether written or oral, from the SEC or the staff of the SEC and of any request by the SEC or the staff of the SEC for amendments or supplements to the Proxy Statement/Prospectus or the Registration Statement or for additional information and shall (A) supply each other with copies of (i) all correspondence between it or any of its Representatives, on the one hand, and the SEC or the staff of the SEC, on the other hand, with respect to the Proxy Statement/Prospectus, or the Registration Statement and (ii) all stop orders of the SEC relating to the Registration Statement and (B) provide each other with a reasonable opportunity to participate in the response to those comments and requests.

(d) No amendment or supplement to the Proxy Statement/Prospectus or the Registration Statement will be made by Parent or the Company without the approval of the other Parties hereto, which approval shall not be unreasonably withheld, conditioned or delayed; *provided*, that the Company, in connection with a Company Adverse Recommendation Change made in compliance with the terms hereof may amend or supplement the Proxy Statement/Prospectus (including by incorporation by reference) pursuant to an amendment or supplement (including by incorporation by reference) to the extent it contains (i) a Company Adverse Recommendation Change, (ii) a statement of the reason of the board for making such a Company Adverse Recommendation Change, and (iii) additional information reasonably related to the foregoing. Notwithstanding a Company Adverse Recommendation Change, the Company shall nonetheless submit this Agreement to the Company stockholders for approval and adoption, unless this Agreement is terminated in accordance with Article 10.

Section 8.03 No Solicitation.

(a) The Company shall immediately cease any discussions or negotiations with any Person that may be ongoing with respect to a Company Acquisition Proposal and, if applicable, shall use reasonable best efforts to have returned to the Company or destroyed any confidential information that has been provided to any Person in any such discussions or negotiations occurring in the six (6) months prior to the date of this Agreement. From and after the date of this Agreement until the earlier to occur of the Effective Time or the date of termination of this Agreement in accordance with Article 10, the Company shall not, nor shall it permit any of its Subsidiaries to, nor shall it authorize or permit any of its officers, directors or employees or any Affiliate, investment banker, financial advisor, attorney, accountant or other representative retained by it or any of its Subsidiaries to (and shall use reasonable best efforts to cause such Persons not to), directly or indirectly, (i) solicit, initiate or knowingly encourage (including by way of furnishing information which has not been previously publicly disseminated), or take any other action designed to facilitate, any inquiry or the making or submission of any inquiry, proposal, indication of interest or offer which constitutes, or would

reasonably be expected to lead to, a Company Acquisition Proposal, (ii) subject to Section 8.03(b), approve or recommend, or propose to approve or recommend, a Company Acquisition Proposal, (iii) subject to Section 8.03(b), approve or recommend, or propose to approve or recommend, or execute or enter into any letter of intent, memorandum of understanding, merger agreement or other agreement, arrangement or understanding relating to a Company Acquisition Proposal (other than an Acceptable Confidentiality Agreement) or a Superior Proposal (each an “**Alternative Acquisition Agreement**”), (iv) enter into, continue or otherwise participate in any discussions or negotiations regarding any Company Acquisition Proposal, or (v) agree to do any of the foregoing; *provided, however*, that if, prior to obtaining the Company Stockholder Approval, following the receipt of a bona fide written Company Acquisition Proposal that the Company Board determines in good faith, after consultation with the Company’s outside financial advisors and outside legal counsel, is or could reasonably be expected to lead to a Superior Proposal and that was unsolicited and made after the date of this Agreement in circumstances not otherwise involving a breach of this Agreement, the Company may, in response to such Company Acquisition Proposal, and subject to compliance with Section 8.03(b)(i), furnish information with respect to the Company to the Person making such Company Acquisition Proposal and engage in discussions or negotiations with such Person regarding such Company Acquisition Proposal; *provided*, that (A) prior to furnishing, or causing to be furnished, any such nonpublic information relating to the Company to such Person, the Company enters into a confidentiality agreement with the Person making such Company Acquisition Proposal (an “**Acceptable Confidentiality Agreement**”) that (x) does not contain any provision that would prevent the Company from complying with its obligation to provide any disclosure to Parent required pursuant to this Section 8.03 and (y) contains provisions that in the aggregate are no less restrictive on such Person (including with respect to any “standstill” terms *provided*, that such “standstill” terms need not restrict a Person from making proposals to the Company (including the Company Board) in respect of a Company Acquisition Proposal) than those contained in the Confidentiality Agreement as in effect immediately prior to the execution of this Agreement, and (B) promptly (but in any event within 24 hours) following furnishing any such nonpublic information to such Person, the Company furnishes such nonpublic information to Parent (to the extent such nonpublic information has not been previously so furnished to Parent or its Representatives).

(b) Except as permitted pursuant to this Section 8.03(b), the Company Board shall not (x) effect a Company Adverse Recommendation Change or (y) cause or permit the Company or any of its Subsidiaries to enter into any Alternative Acquisition Agreement. Notwithstanding anything to the contrary in this Agreement, prior to receipt of the Company Stockholder Approval, the Company Board may effect a Company Adverse Recommendation Change if (and only if): (I) (A) a written Company Acquisition Proposal that was not solicited in violation of this Agreement is made to the Company by a Third Party and such Company Acquisition Proposal is not withdrawn or (B) there has been an Intervening Event; (II) in the case of a Company Acquisition Proposal, the Company Board concludes in good faith, after consultation with the Company's outside financial advisors and outside legal counsel, that such Company Acquisition Proposal constitutes a Superior Proposal; and (III) the Company Board concludes in good faith, after consultation with the Company's outside legal counsel, that the failure to make a Company Adverse Recommendation Change would be reasonably likely to be inconsistent with its fiduciary duties under applicable Laws; *provided, however*, that, prior to making any Company Adverse Recommendation Change neither the Company Board nor any committee thereof shall:

(i) in the case of Section 8.03(b)(I)(A), make a Company Adverse Recommendation Change with respect to a Superior Proposal and/or authorize the Company to enter into any Alternative Acquisition Agreement or in the case of Section 8.03(b)(I)(B) make a Company Adverse Recommendation Change, unless (A) the Company Board provides Parent at least three (3) Business Days' prior written notice of its intention to take such action, which notice shall include, as applicable, (a) the information with respect to the Superior Proposal that is specified in Section 8.03(b)(i), as well as a copy of such Company Acquisition Proposal, or (b) the facts and circumstances in reasonable detail of the Intervening Event; (B) during the three (3) Business Days following such written notice (or such shorter period as is specified below), the Company Board and its Representatives have negotiated in good faith with Parent (to the extent Parent desires to negotiate) regarding any revisions to the terms of the transactions contemplated hereby proposed by the Parent in response to such Superior Proposal or Intervening Event, as applicable; and (C) at the end of the three (3) Business Day period described in the foregoing clause (B), the Company Board concludes in good faith, after consultation with the Company's outside legal counsel and financial advisors (and taking into account any adjustment or modification of the terms of this Agreement proposed in writing by Parent), that, as applicable (a) the Company Acquisition Proposal continues to be a Superior Proposal or (b) the Intervening Event continues to warrant a Company Adverse Recommendation Change and in each case, that the failure to make such Company Adverse Recommendation Change would be reasonably likely to be inconsistent with its fiduciary duties under applicable Laws. Any material amendment or modification to any Superior Proposal will be deemed to be a new Company Acquisition Proposal for purposes of this Section 8.03, and the Company shall promptly (but in any event within 24 hours of occurrence) notify Parent of any such new Company Acquisition Proposal and the Parties shall comply with the provisions of this Section 8.03(b) with respect thereto; *provided, however*, that the period during which the Company Board effecting the Company Adverse Recommendation Change and its Representatives are required to negotiate in good faith with Parent regarding any revisions to the terms of this Agreement proposed by Parent in response to such new Company Acquisition Proposal pursuant to clause (B) above shall expire on the later to occur of two (2) Business Days after the Company Board provides written notice of such new Company Acquisition Proposal to Parent and the end of the original three (3) Business Day period described in clause (B) above; *provided, further*, that (x) whether or not there is a Company Adverse Recommendation Change, unless this Agreement has been terminated in accordance with Section 10.01, the Company Board shall submit this Agreement for approval by the Company stockholders at the Company Stockholder Meeting and (y) in the event there is a Company Adverse Recommendation Change made in compliance with this Section 8.03(b) with respect to a Superior Proposal, the Company shall only enter into an Alternative Acquisition Agreement with respect thereto by terminating this Agreement in accordance with Section 10.01(d)(ii).

(c) In addition to the obligations of the Company and Parent set forth in Section 8.03(a) and Section 8.03(b), the Company shall promptly (and in any event within 24 hours) advise Parent orally and in writing of any inquiries, proposals or offers with respect to a Company Acquisition Proposal that are received by, or any non-public information with regard to such Company Acquisition Proposal is requested from, or any discussions or negotiations are sought to be initiated regarding such Company Acquisition Proposal with, the Company (or any of its Representatives), indicating, in connection with such notice, the identity of the Person or group of Persons making the inquiry, proposal or offer and the material terms and conditions of any such inquiries, proposals or offers (including, if applicable, copies of any written inquiries, proposals or offers, including proposed agreements) and thereafter shall keep Parent reasonably informed, on a prompt basis (and, in any event, within 24 hours) of the status of any discussions or negotiations with respect to any such inquiries, proposals or offers and the details of any material changes to the status and material terms of any such inquiries, proposals or offers (including any material amendments thereto or any change to the scope or material terms or conditions thereof, and including copies of any written inquiries, proposals or offers, including proposed agreements and modifications thereto).

(d) Nothing contained in this Section 8.03 or Section 8.05, but in all cases subject to Section 8.03(a) or Section 8.03(b)(i), as applicable, shall prohibit the Company Board from (i) taking and disclosing to their stockholders a position contemplated by Rule 14e-2(a) promulgated under the 1934 Act or making a statement contemplated by Item 1012(a) of Regulation M-A or Rule 14d-9 promulgated under the 1934 Act or (ii) making any disclosure to their stockholders if the Company Board determines in good faith, after consultation with the Company's outside counsel, that the failure to make such disclosure would reasonably be likely to be inconsistent with its fiduciary duties under applicable Law.

Section 8.04 Financing Cooperation.

(a) Parent shall, and shall cause its Affiliates to, use reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary to consummate the Financing or any Substitute Financing as promptly as possible following the date of this Agreement (and, in any event, no later than the Closing Date), including using reasonable best efforts to (i) (A) maintain in effect the Debt Letters and in all material respects comply with all of their respective obligations thereunder and (B) negotiate, enter into and deliver definitive agreements with respect to the Financing reflecting the terms contained in the Debt Letters (or with other terms agreed by Parent and the Financing Source Parties, subject to the restrictions on amendments of the Debt Letters set forth below), so that such agreements are in effect no later than the Closing, and (ii) satisfying on a timely basis all the conditions to the Financing and the definitive agreements related thereto that are in Parent's (or its Affiliates') control. In the event that all conditions set forth in Sections 9.01 and 9.02 have been satisfied or waived or, upon funding of the Financing shall be satisfied or waived, Parent and its Affiliates shall use their reasonable best efforts to cause the Persons providing the Financing (the "**Financing Parties**") to fund on the Closing Date the Financing, to the extent the proceeds thereof are required to consummate the Merger and the other transactions contemplated hereby.

Parent shall, promptly after obtaining knowledge thereof, give the Company written notice of any (A) material breach or default by a Financing Party or any party to any definitive document related to the Financing of the Debt Letters or any definitive document related to the Financing, (B) actual or threatened withdrawal, repudiation or termination in writing of the Debt Letters or the Financing by the Financing Parties or (C) material dispute or disagreement between or among any parties to the Debt Letters or any definitive document related to the Financing with respect to the obligations to fund the Financing or the amount of the Financing to be funded at Closing; *provided*, that neither Parent nor any of its Affiliates shall be under any obligation to disclose any information that is subject to attorney client or similar privilege to the extent such privilege is asserted in good faith or otherwise would violate or contravene any Law or any obligation of confidentiality. Parent may amend, modify, replace, terminate, assign or agree to any waiver under the Debt Letters without the prior written approval of the Company, *provided*, that Parent shall not, without Company's prior written consent, permit any such amendment, replacement, modification, assignment, termination or waiver to be made to, or consent to any waiver of, any provision of or remedy under the Debt Letters which would (A) reduce the aggregate amount of the Financing (including by increasing the amount of fees to be paid or original issue discount) such that the aggregate funds that would be available to Parent on the Closing Date, together with other financial resources of Parent, would not be sufficient to provide the funds required to be funded on the Closing Date to consummate the Merger and to pay all fees and expenses reasonably expected to be incurred in connection therewith (including repayment of any indebtedness under the Company Credit Agreement, redemption of the 2018 Notes and any required repurchase of, 2021 Notes and 2026 Notes, in each case pursuant to their terms), or (B) impose new or additional conditions to the Financing or otherwise expand, amend, modify or waive any of the conditions to the Financing (unless such expanded, amended or modified conditions are in the aggregate substantially equivalent to (or more favorable to the Company and Parent than) the existing conditions to the Financing), or (C) otherwise expand, amend, modify or waive any provision of the Debt Letters in a manner that in any such case would reasonably be expected to (1) materially delay or make less likely the funding of the Financing (or satisfaction of the conditions to the Financing) on the Closing Date, (2) materially adversely impact the ability of Parent to enforce its rights against the Financing Parties or any other parties to the Debt Letters or the definitive agreements with respect thereto or (3) materially adversely affect the ability of Parent to timely consummate the Merger and the other transactions contemplated hereby; *provided*, that notwithstanding the foregoing, Parent may modify, supplement or amend the Debt Letters to add lenders, lead arrangers, bookrunners, syndication agents or similar entities that have not executed the Debt Letters as of the date of this Agreement. In the event that new commitment letters and/or fee letters are entered into in accordance with any amendment, replacement, supplement or other modification of the Debt Letters permitted pursuant to this Section 8.04, such new commitment letters and/or fee letters shall be deemed to be the "Debt Letters" for all purposes of this Agreement and references to "Financing" herein shall include and mean the financing contemplated by the Debt Letters as so amended, replaced, supplemented or otherwise modified, as applicable. Parent shall promptly deliver to the Company copies of any termination, amendment, modification, waiver or replacement of the Debt Letters. If funds in the amounts set forth in the Debt Letters, or any portion thereof, become unavailable, Parent shall, and shall cause its Affiliates, as promptly as practicable following the occurrence of such event to (x) notify the Company in writing thereof, (y) use reasonable best efforts to obtain substitute financing (on terms and conditions that are not

materially less favorable to Parent, taken as a whole, than the terms and conditions as set forth in the Debt Letters, taking into account any “market flex” provisions thereof) sufficient to enable Parent to consummate the Merger and the other transactions contemplated hereby in accordance with its terms (the “**Substitute Financing**”) and (z) use reasonable best efforts to obtain a new financing commitment letter that provides for such Substitute Financing and, promptly after execution thereof, deliver to the Company true, complete and correct copies of the new commitment letter and the related fee letters (in redacted form reasonably satisfactory to the Persons providing such Substitute Financing removing only the fee amounts, pricing caps, the rates and amounts included in the “market flex” and other economic terms that could not adversely affect the conditionality, enforceability, termination or aggregate principal amount of the Financing) and related definitive financing documents with respect to such Substitute Financing. Upon obtaining any commitment for any such Substitute Financing, such financing shall be deemed to be a part of the “Financing” and any commitment letter for such Substitute Financing shall be deemed the “Debt Letters” for all purposes of this Agreement. In addition, promptly following the date hereof, Parent shall use its reasonable best efforts to obtain and maintain in effect a revolving credit facility (whether through an amendment to its existing credit facility, a refinancing or replacement thereof or otherwise) pursuant to which the lenders thereunder commit to provide Parent with funds sufficient to redeem the 2018 Notes upon or following the Closing Date in accordance with their terms, with the availability of such funds under such revolving credit facility being subject to only the satisfaction or waiver of conditions substantially identical to (or not materially worse from the perspective of the Parent or the Company than) the conditionality to funding of the Financing under the Debt Letters as in effect as of the date hereof.

(b) Parent shall pay, or cause to be paid, as the same shall become due and payable, all fees and other amounts that become due and payable under the Debt Letters.

(c) Notwithstanding anything contained in this Agreement to the contrary, Parent and Merger Corp expressly acknowledge and agree that neither Parent’s nor Merger Corp’s obligations hereunder are conditioned in any manner upon Parent or Merger Corp obtaining the Financing, any Substitute Financing or any other financing.

(d) The Company shall, and shall cause each of its Subsidiaries to, and shall use its reasonable best efforts to cause its and their Representatives to, provide to Parent such customary cooperation, as may be reasonably requested by Parent to assist Parent in causing the conditions in the Debt Letters to be satisfied and such customary cooperation as is otherwise reasonably requested by Parent solely in connection with obtaining the Financing or consummation of an offering of debt, equity or equity-linked securities of the type contemplated by the Debt Letters as in effect as of the date hereof in replacement of all or any portion of the Financing, which reasonable best efforts shall include:

(i) reasonable cooperation with customary marketing efforts of Parent for all or any portion of the Financing or an offering of debt, equity or equity-linked securities of the type contemplated by the Debt Letters as in effect as of the date hereof in replacement of all or any portion of the Financing, including providing reasonable access to documents and other information in connection with customary due diligence investigations and causing its

management team, with appropriate seniority and expertise, and external auditors to assist in preparation for and to participate in a reasonable number of meetings, presentations, road shows, due diligence sessions, drafting sessions and sessions with rating agencies, in each case, upon reasonable notice and at mutually agreeable dates and times;

(ii) providing reasonable assistance with the preparation of customary rating agency presentations, road show materials, bank information memoranda, prospectuses and bank syndication materials, offering documents, private placement memoranda and similar documents customarily required (which may incorporate, by reference, periodic and current reports filed by the Company with the SEC) in connection with the marketing and syndication of Financing or an offering of debt, equity or equity-linked securities of the type contemplated by the Debt Letters as in effect as of the date hereof in replacement of all or any portion of the Financing;

(iii) using reasonable best efforts to furnish Parent, within a reasonable amount of time following Parent's reasonable request, with information relating to the Company and its Subsidiaries to the extent required to consummate the Financing in accordance with the terms of the Debt Letters as in effect on the date of this Agreement or to consummate an offering of debt, equity or equity-linked securities of the type contemplated by the Debt Letters as in effect as of the date hereof in replacement of all or any portion of the Financing, and providing reasonable assistance to the Parent's preparation of pro forma financial information, projections, risk factor disclosure and other disclosures required to consummate the Financing in accordance with the terms of the Debt Letters as in effect on the date of this Agreement or an offering of debt, equity or equity-linked securities of the type contemplated by the Debt Letters as in effect as of the date hereof in replacement of all or any portion of the Financing, it being understood that the disclosures for any such offering of debt, equity or equity-linked securities shall be substantially consistent with the disclosures to be included in the Registration Statement and the Proxy Statement/Prospectus contained therein that are customarily included in the prospectuses or other offering documents for such an offering;

(iv) requesting, and using reasonable best efforts to cause, the Company's independent accountants to participate in drafting sessions and accounting due diligence sessions and cooperate with the Financing or an offering of debt, equity or equity-linked securities of the type contemplated by the Debt Letters as in effect as of the date hereof in replacement of all or any portion of the Financing consistent with their customary practice, including requesting that they provide and using reasonable best efforts to cause them to provide customary comfort letters (including "negative assurance" comfort) and consents for use of their reports to the extent required in connection with the marketing and syndication of Financing or as are customarily required in an underwritten offering of debt, equity or equity-linked securities; and

(v) using reasonable best efforts to arrange for a customary payoff letter to be delivered at or prior to Closing relating to the payoff and termination by Parent (substantially simultaneously with or following the Closing) of the Company Credit Facility.

In furtherance and not in limitation of the foregoing, the Company shall (1) cooperate with Parent to enable Parent to consummate an offering of equity, equity-linked and/or debt securities (of the type contemplated by the Debt Letters as in effect as of the date hereof in replacement of all or any portion of the Financing) commencing on the date that is ten (10) Business Days after the date of this Agreement (it being understood that Parent has no obligation to pursue such offering at such time), (2) timely file with the SEC its Quarterly Reports on Form 10-Q and, if applicable, its Annual Report on Form 10-K for the year ended December 31, 2017 so as to enable Parent to consummate such offerings described in the foregoing clause (1), and (3) to the extent required to satisfy a condition to the funding of the Financing on the Closing Date, furnish to Parent, on or prior to the Closing Date, unaudited financial statements of the Company for any quarterly interim period of the Company ended after December 31, 2016 and more than 40 calendar days prior to the Closing Date (other than the fourth fiscal quarter) and for the corresponding periods of the prior year (it being understood that, for purposes of the foregoing clauses (2) and (3), in the event that the Company shall not have timely filed any such report so as to enable Parent to consummate such offering or shall have failed to so furnish such unaudited financial statements, the Company shall have an opportunity to cure such failure to file or furnish for a period of 90 days following receipt from Parent of written notice of such failure to so file or furnish as long as the Company is using reasonable best efforts to cure such failure).

(e) Notwithstanding anything to the contrary contained in this Agreement: (i) nothing in this Agreement shall require the Company to take any action or otherwise cooperate with Parent or any of its Subsidiaries as contemplated in this [Section 8.04](#) or [Section 8.11](#) to the extent that it would (A) require the Company to pay any commitment or other fees prior to the Closing, incur or reimburse any expenses prior to the Closing (except to the extent Parent promptly reimburses or (at the Company's request) provides the funding to the Company therefor) or otherwise incur any liabilities or give any indemnities prior to the Closing, (B) unreasonably interfere with the ongoing business or operations of the Company and/or its Subsidiaries, (C) require the Company or any of its Subsidiaries to enter into or approve any agreement or other documentation effective prior to the Closing (other than opinions of counsel and officers' certificates contemplated by [Section 8.11](#)) or agree to any change or modification of any existing agreement or other documentation that would be effective prior to the Closing or (D) require the Company, any of its Subsidiaries or any of their respective boards of directors (or equivalent bodies) to approve or authorize the Financing or an offering of debt, equity or equity-linked securities of the type contemplated by the Debt Letters as in effect as of the date hereof in replacement of all or any portion of the Financing, any Company Note Offer and Consent Solicitation (other than approval of entry into a supplemental indenture in connection therewith subject to the terms and conditions set forth in [Section 8.11\(a\)](#)), the Redemption (other than approval of delivery of a notice of redemption in connection therewith subject to the terms and conditions set forth in [Section 8.11\(b\)](#)) or any action taken in connection therewith and (ii) no liability or obligation (including any obligation to pay any commitment or other fees or reimburse any expenses) of the Company, its Subsidiaries, or any of their respective Representatives under any certificate, agreement, arrangement, document or instrument relating

to the Financing, any equity, equity-linked or debt securities of the type contemplated by the Debt Letters as in effect as of the date hereof issued in replacement of all or any portion of the Financing, any Company Note Offer and Consent Solicitation or the Redemption shall be effective until the Closing.

(f) Parent shall (i) promptly upon request by the Company, pay or reimburse the Company for all reasonable and documented out-of-pocket fees and expenses (including reasonable and documented out-of-pocket attorneys' fees) incurred by the Company, any of its Subsidiaries or any of its or their Representatives in connection with any cooperation or any other action of the Company, its Subsidiaries or any of its or their Representatives, in each case, contemplated by this Section 8.04 or Section 8.11 and (ii) indemnify and hold harmless the Company, its Subsidiaries and its and their Representatives against any claim, loss, damage, injury, liability, judgment, award, penalty, fine, Tax, cost (including cost of investigation), expense (including reasonable and documented out-of-pocket attorneys' fees) or settlement payment incurred as a result of, or in connection with (A) the Financing or any offering of debt, equity or equity-linked securities consummated in replacement of all or any portion of the Financing or any cooperation or any other action taken in connection therewith (including pursuant to Section 8.04 or Section 8.11), except (x) to the extent arising out of gross negligence, bad faith, material breach or willful misconduct of the Company or any of its Subsidiaries in fulfilling its obligations pursuant to this Section 8.04 or (y) with respect to any information provided in writing by the Company or any of its Subsidiaries or (B) any Company Note Offer and Consent Solicitation, the Redemption or any cooperation or other action taken in connection therewith, except to the extent arising out of gross negligence, bad faith, material breach or willful misconduct of the Company or any of its Subsidiaries in fulfilling its obligations pursuant to Section 8.11.

(g) The Company hereby consents to the use of its trademarks and logos in connection with the Financing *provided*, that such trademarks and logos are used solely in a manner that is not intended to or reasonably likely to harm or disparage the Company or any of its Subsidiaries or the reputation or goodwill of the Company or any of its Subsidiaries.

Section 8.05 Public Announcements. The initial press release with respect to the execution of this Agreement and the transactions contemplated hereby shall be a joint press release in a form reasonably acceptable to Parent and the Company. Thereafter, Parent and the Company (unless the Company Board has made a Company Adverse Recommendation Change) will use their respective reasonable best efforts to consult with the other Party before (a) participating in any media interviews, (b) engaging in meetings or calls with analysts, institutional investors or other similar Persons and (c) providing any statements (including press releases) which are public or are reasonably likely to become public, in any such case to the extent relating to the transactions contemplated hereby (a "**Public Statement**"). In addition, Parent and the Company (unless the Company Board has made a Company Adverse Recommendation Change) agree to cause their respective directors and executives officers to refrain from taking any position in any such Public Statement that is, without limiting the obligations set forth in Section 8.03, (x) contrary to the positions previously taken by Parent and the Company with respect to this Agreement and the transactions contemplated hereby, including the Merger, or (y) reasonably likely to have a significant, adverse impact on the ability of the Parties to consummate the transactions contemplated hereby. None of the limitations set forth in

this Section 8.05 shall apply to any disclosure of any information concerning this Agreement or the transactions contemplated by this Agreement (i) which Parent or the Company deems appropriate in its reasonable judgment, in light of its status as a publicly owned company, including to securities analysts and institutional investors and in press interviews; and (ii) in connection with any dispute between the Parties regarding this Agreement or the transactions contemplated by this Agreement.

Section 8.06 Notices of Certain Events.

(a) Each of the Company and Parent shall promptly notify and provide copies to the other of:

(i) any material written notice from any Person alleging that the approval or consent of such Person is or may be required in connection with the Merger or the other transactions contemplated by this Agreement;

(ii) any written notice or other communication from any Governmental Authority or securities exchange in connection with the Merger or the other transactions contemplated by this Agreement;

(iii) any Proceeding, or to the knowledge of the Company, investigation, commenced or, to its knowledge, threatened against, relating to or involving or otherwise affecting the Company or any of its Subsidiaries or Parent or any of its Subsidiaries, as the case may be, that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to any of such Party's representations or warranties, as the case may be, or that relate to the consummation of the Merger or the other transactions contemplated by this Agreement; and

(iv) the occurrence of any event which would or would be reasonably likely to (A) prevent or materially delay the consummation of the Merger or the other transactions contemplated hereby or (B) result in the failure of any condition to the Merger set forth in Article 9 to be satisfied; *provided*, that the delivery of any notice pursuant to this Section 8.06 shall not (i) affect or be deemed to modify any representation, warranty, covenant, right, remedy, or condition to any obligation of any Party hereunder or (ii) update any section of the Company Disclosure Letter or the Parent Disclosure Letter.

(b) During the period from the date of this Agreement until the earlier of the Effective Time and the date, if any, on which the Agreement is terminated pursuant to Article 10 hereof, the Company shall use its reasonable best efforts to promptly provide Parent with a copy of any material written correspondence to or from the FDA or any other Healthcare Regulatory Authority and inform Parent of any material oral communications with the FDA or any other Healthcare Regulatory Authority that would be provided to the Regulatory Compliance Committee of the Company Board pursuant to the Company's existing policies and procedures with respect to (i) any allegations of violations or infractions involving the Company Products, (ii) the recall, removal or market withdrawal of any Company Products sold in the U.S. by the

Company or its Subsidiaries or (iii) any warning letter issued to the Company or any of its Subsidiaries by the FDA with respect to the Company Products, in each case of clauses (i) and (ii) and (iii) if the applicable Company Products are material to the Company and its Subsidiaries, taken as a whole.

Notwithstanding the foregoing, except with respect to any Willful Breach, the failure to comply with this Section 8.06 shall not constitute a breach or noncompliance of a covenant by such Party for determining the satisfaction of the conditions set forth in Section 9.02(a)(i) or Section 9.03(a)(i).

Section 8.07 Access to Information.

(a) Upon reasonable notice, and subject to applicable Law, the Company shall (and shall cause its Subsidiaries to) afford to Parent, its Affiliates and its officers, agents, control persons, employees, consultants, professional advisers (including attorneys, accountants and financial advisors) and Financing Parties (“**Representatives**”) reasonable access during normal business hours, under supervision (which, at the Company’s discretion, may be direct supervision) of a designated employee or other Representative of the Company, and upon reasonable prior notice to the Company during the period prior to the Effective Time, to all of its and its Subsidiaries’ properties, books, Contracts, commitments, records, officers and employees and, during such period as Parent may from time to time reasonably request, and during such period the Company shall (and shall cause its Subsidiaries to) furnish promptly to Parent all other information concerning it, its Subsidiaries and each of their respective businesses, properties and personnel as Parent may reasonably request, including with respect to the Company’s compliance program; *provided, however*, that the Company may restrict the foregoing access and the disclosure of information to the extent that, in the good faith judgment of the Company, (i) any Law applicable to the Company or its Subsidiaries requires the Company or its Subsidiaries to restrict or prohibit access to any such properties or information, (ii) the information is subject to confidentiality obligations to a Third Party, (iii) such disclosure would result in disclosure of any trade secrets of Third Parties, (iv) disclosure of any such information or document could result in the loss of attorney-client privilege (*provided*, that the Company and/or its counsel shall use their reasonable best efforts to enter into such joint defense agreements or other arrangements, as appropriate, so as to allow for such disclosure in a manner that does not result in the loss of attorney client privilege) or (v) such access would unreasonably disrupt the operations of the Company or any of its Subsidiaries; *provided, however*, that with respect to clauses (i) through (iv) of this Section 8.07(a), the Company shall use its commercially reasonable best efforts to (A) obtain the required consent of such third party to provide such access or disclosure or (B) develop an alternative to providing such information so as to address such matters that is reasonably acceptable to Parent and the Company.

(b) With respect to the information disclosed pursuant to Section 8.07(a), each of Parent and the Company shall comply with, and shall cause such party’s Representatives to comply with, all of its obligations under the Confidentiality Agreement, which agreement shall remain in full force and effect in accordance with its terms.

Section 8.08 Section 16 Matters. Prior to the Effective Time, Parent and the Company shall use reasonable best efforts to take all such steps as may be required to cause any

dispositions of Company Stock (including derivative securities with respect to Company Stock) or acquisitions of Parent Common Stock (including derivative securities with respect to Parent Common Stock) resulting from the transactions contemplated by this Agreement by each individual who is subject to the reporting requirements of Section 16(a) of the 1934 Act with respect to the Company or will become subject to such reporting requirements with respect to Parent to be exempt under Rule 16b-3 promulgated under the 1934 Act, to the extent permitted by applicable Law.

Section 8.09 Stock Exchange De-listing; 1934 Act Deregistration. Prior to the Effective Time, the Company shall cooperate with Parent and shall take, or cause to be taken, all actions, and do or cause to be done all things, necessary, proper or advisable on its part under applicable Laws and rules and policies of the NYSE to enable the de-listing by the Surviving Corporation of the Company Stock from the NYSE and the deregistration of the Company Stock and other securities of the Company under the 1934 Act as promptly as practicable after the Effective Time, and in any event no more than ten days after the Closing Date.

Section 8.10 Stockholder Litigation. Each Party hereto shall promptly notify the other Parties hereto in writing of any litigation related to this Agreement, the Merger or the other transactions contemplated by this Agreement that is brought, or, to the knowledge of such Party, threatened in writing, against such Party and/or its directors (any such litigation relating to the Company and/or directors of the Company, a “**Company Transaction Litigation**”) and shall keep such other Party reasonably informed on a current basis with respect to the status thereof. Other than with respect to any Company Transaction Litigation where Parent is adverse to the Company, the Company shall give Parent the opportunity to participate, subject to a customary joint defense agreement, in the defense or settlement of any Company Transaction Litigation, and the Company shall not settle, agree to any undertakings or approve or otherwise agree to any waiver that may be sought in connection with such Company Transaction Litigation, without the prior written consent of Parent (not to be unreasonably withheld, conditioned or delayed). Prior to the consummation of the Merger, without the prior written consent of the Company, Parent shall not settle any litigation related to this Agreement, the Merger or the other transactions contemplated by this Agreement unless such settlement provides a full and unconditional release for each officer and director of the Company party to such litigation. Without limiting in any way the Parties’ obligations under Section 8.01, each of the Company and Parent shall, and shall cause their respective Subsidiaries to, cooperate in the defense or settlement of any litigation contemplated by this Section 8.10.

Section 8.11 Cooperation as to Certain Indebtedness

(a) Parent or one of its Subsidiaries may (i) commence any of the following: (A) one or more offers to purchase any or all of the outstanding Company Notes for cash (the “**Offers to Purchase**”); or (B) one or more offers to exchange any or all of the outstanding Company Notes for securities issued by Parent (or its Affiliates) (the “**Offers to Exchange**”); and (ii) solicit the consent of the holders of Company Notes regarding certain proposed amendments to the applicable indenture governing such Company Notes (the “**Consent Solicitations**” and, together with the Offers to Purchase and Offers to Exchange, if any, the “**Company Note Offers and Consent Solicitations**”); *provided* that the closing of any such transaction shall not be consummated until the Closing and any such transaction shall be funded

using consideration provided by Parent. Any Company Note Offers and Consent Solicitations shall be made on such terms and conditions (including price to be paid and conditionality) as are proposed by Parent and which are permitted by the terms of such Company Notes, the applicable indenture governing such Company Notes (each, an “**Indenture**”) and applicable Laws, including SEC rules and regulations. Parent shall consult with the Company regarding the material terms and conditions of any Company Note Offers and Consent Solicitations, including the timing and commencement of any Company Note Offers and Consent Solicitations and any tender deadlines. Parent shall not be permitted to commence any Company Note Offers and Consent Solicitations until Parent shall have provided the Company with the necessary offer to purchase, offer to exchange, consent solicitation statement, letter of transmittal, press release, if any, in connection therewith, and each other document relevant to the transaction that will be distributed by the Parent to holders of the Company Notes in the applicable Company Note Offers and Consent Solicitations (collectively, the “**Debt Offer Documents**”) a reasonable period of time in advance of commencing the applicable Company Note Offers and Consent Solicitations to allow the Company and its counsel to review and comment on such Debt Offer Documents. The closing of the Company Note Offers and Consent Solicitations shall be expressly conditioned on the occurrence of the Closing. Subject to the receipt of the requisite consents, in connection with any or all of the Consent Solicitations, the Company shall execute a supplemental indenture to the applicable Indenture in accordance with the terms thereof amending the terms and provisions of such Indenture as described in the applicable Debt Offer Documents in a form as reasonably requested by Parent, which supplemental indenture shall not become effective until Closing; *provided*, however, that in no event shall the Company or any of its Subsidiaries have any obligation to authorize, adopt or execute any amendments or other agreement that would become effective prior to Closing. Subject to Section 8.04(e) and Section 8.04(f), at Parent’s expense, the Company shall, and shall cause each of its Subsidiaries to, and shall use its reasonable best efforts to cause its and their Representatives to, use reasonable best efforts to provide all reasonable cooperation as may be reasonably requested by Parent to assist Parent in connection with any Company Note Offers and Consent Solicitations (including but not limited to requesting, and using reasonable best efforts to cause, the Company’s independent accountants to provide customary consents for use of their reports to the extent required in connection with any Company Note Offers and Consent Solicitations); *provided* that prior to the Closing, neither the Company nor counsel for the Company shall be required to furnish any certificates, legal opinions or negative assurance letters in connection with any Company Note Offers and Consent Solicitations (other than, in connection with the execution of the supplemental indentures relating to the Consent Solicitations, the Company delivering and using reasonable best efforts to cause counsel for the Company to deliver, customary officer’s certificates and customary legal opinions, respectively, to the trustee under the applicable Indenture, to the extent such certificates and opinions would not conflict with applicable Laws and would be accurate in light of the facts and circumstances at the time delivered) or execute any other instruments or agreements in connection therewith other than the supplemental indenture described in the immediately preceding sentence. The dealer manager, solicitation agent, information agent, depository or other agent retained in connection with any Company Note Offers and Consent Solicitations will be selected by Parent after consultation with the Company and their fees and out-of-pocket expenses will be paid directly by Parent. The consummation of any or all of the Company Note Offers and Consent Solicitations shall not be a condition to Closing.

(b) Subject to Section 8.04(e) and Section 8.04(f), if requested by Parent in writing, the Company shall, to the extent permitted by the applicable Company Notes and the related Indenture, issue on the Closing Date a notice of optional redemption for all of the outstanding aggregate principal amount of any or all of the Company Notes (other than the 1996 Notes), pursuant to the redemption provisions of the Indenture (the redemption of any or all series of Company Notes (other than the 1996 Notes), the “**Redemption**”); *provided* that the Company shall not be obligated to issue a notice of optional redemption pursuant to this Section 8.11(b) until (i) all of the conditions set forth in Section 9.01, Section 9.02 and Section 9.03 have been satisfied or waived by the applicable Persons and (ii) the Closing will occur immediately following the delivery of such notice; and *provided* further that in connection with the delivery of any such notice of Redemption, the Company shall deliver and shall use reasonable best efforts to cause counsel for the Company to deliver, customary officer’s certificates and customary legal opinions, respectively, to the trustee under the applicable Indenture, to the extent such certificates and opinions are required thereby, would not conflict with applicable Laws and would be accurate in light of the facts and circumstances at the time delivered.

Section 8.12 Board Representation. The Parties shall take all actions necessary to provide that at the Closing, the Parent Board shall have appointed two (2) members of the Company Board, one of whom shall be the Chairman of the Company prior to the Closing and the other shall be an independent member of the Company Board to be mutually agreed between Parent and the Company (each, a “**Company Designee**”), to serve on the Parent Board until the expiration such Company Designee’s term. The Company and Parent agree that in the event that a Company Designee is unable to serve, for any reason, as a director of Parent at the Effective Time, the Company shall have the right to designate another individual serving on the Company Board as of immediately prior to the Effective Time to serve as a director of Parent, and to become a Company Designee, in place of such Company Designee originally designated (“**Substitute Designee**”); provided that such Substitute Designee shall be acceptable to the Corporate Governance and Nominating Committee of the Parent Board.

Section 8.13 Dividend Coordination. After the date of this Agreement, each of Parent and the Company shall coordinate with the other with respect to the declaration of any dividend in respect of Parent Common Stock or Company Stock and the record dates and payment dates relating thereto, it being the intention of the Parties that the holders of Company Stock shall not receive two dividends, or fail to receive one dividend, in any quarter with respect to their Company Stock and any Parent Common Stock that any such holder receives in exchange therefor in the Merger.

ARTICLE 9

CONDITIONS TO THE MERGER

Section 9.01 Conditions to Obligations of Each Party. The obligations of Parent, Merger Corp and the Company to consummate the Merger are subject to the satisfaction, at or prior to the Closing, of the following conditions (which may be waived, in whole or in part, to the extent permitted by Law, by the mutual consent of Parent and the Company):

(a) Stockholder Approval. The Company shall have obtained the Company Stockholder Approval.

(b) NYSE Listing. The Parent Stock Issuance shall have been approved for listing on the NYSE, subject to official notice of issuance.

(c) Statutes and Injunctions. No Law or Order (whether temporary, preliminary or permanent) shall have been promulgated, entered, enforced, enacted or issued or be applicable to the Merger or the Parent Stock Issuance by any Governmental Authority that prohibits, restrains, or makes illegal the consummation of either of the Merger or the Parent Stock Issuance.

(d) Registration Statement. The Registration Statement shall have become effective under the 1933 Act and shall not be the subject of any stop order that is in effect, or pending Proceedings seeking a stop order.

(e) Governmental Consents. (i) The waiting period under the HSR Act relating to the transactions contemplated by this Agreement shall have expired or been terminated and (ii) all applicable filings, registrations, waiting periods (or extensions thereof) and approvals under each other applicable Competition Law relating to the transactions contemplated by this Agreement and set forth on Section 9.01(e) of the Company Disclosure Letter shall have been made, expired, terminated or obtained, as the case may be (the waiting periods, filings, registrations and approvals referenced in clauses (each of (i) and (ii), a “**Required Competition Approval**”).

Section 9.02 Conditions to the Obligations of Parent and Merger Corp. The obligations of Parent and Merger Corp to consummate the Merger are subject to the satisfaction on or prior to the Closing Date of the following conditions (which may be waived in whole or in part by Parent):

(a) (i) the Company shall have performed in all material respects all of its covenants and obligations hereunder required to be performed by it at or prior to the Closing, (ii) (A) the representations and warranties of the Company contained in the first sentence of Section 4.01 (Corporate Existence and Power), Section 4.02(a) (Corporate Authorization), Section 4.05 (Capitalization) (other than the second sentence Section 4.05(a)), the first sentence of Section 4.21 (Finders’ Fees), Section 4.22 (Opinion of Financial Advisor) and Section 4.23 (Antitakeover Statutes) shall be true and correct in all material respects, in each case at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing (other than any such representations and warranties that by their terms address matters only at and as of another specified time, which shall be true and correct in all material respects only at and as of such time), (B) the representations and warranties of the Company contained in the second sentence of Section 4.05(a) (Capitalization) shall be true and correct, other than any *de minimis* inaccuracy, (C) the representations and warranties of the Company contained in Section 4.10(b) (Absence of Certain Changes) shall be true and correct in all respects, in each case at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing and (D) all other representations and warranties of the Company contained in this Agreement or in any certificate or other writing delivered by the Company pursuant hereto shall be true and

correct in all respects (disregarding all materiality and Company Material Adverse Effect qualifiers contained therein), in each case at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing (other than any such representations and warranties that by their terms address matters only as of another specified time, which shall be true and correct in all respects (disregarding all materiality and Company Material Adverse Effect qualifiers contained therein) only at and as of such time), except, in the case of this clause (D), where the failure of such representations and warranties to be so true and correct has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect; and

(b) Parent and Merger Corp shall have received a certificate signed by an executive officer of the Company certifying that the condition set forth in Section 9.02(a) has been satisfied.

Section 9.03 Conditions to the Obligations of the Company. The obligation of the Company to consummate the Merger is subject to the satisfaction on or prior to the Closing Date of the following conditions (which may be waived in whole or in part by the Company):

(a) (i) each of Parent and Merger Corp shall have performed in all material respects all of its covenants and obligations hereunder required to be performed by it at or prior to the Closing, (ii) (A) the representations and warranties of Parent and Merger Corp contained in the first sentence of Section 5.01 (Corporate Existence and Power), Section 5.02 (Corporate Authorization), Section 5.05(a) (Capitalization) and Section 5.15 (Finders' Fees) shall be true and correct in all material respects, in each case at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing (other than any such representations and warranties that by their terms address matters only at and as of another specified time, which shall be true and correct in all material respects only at and as of such time), (B) the representations and warranties of Parent and Merger Corp contained in Section 5.10(b) (Absence of Certain Changes) shall be true and correct in all respects, in each case at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing and (C) all other representations and warranties of Parent and Merger Corp contained in this Agreement or in any certificate or other writing delivered by Parent and Merger Corp pursuant hereto shall be true and correct in all respects (disregarding all materiality and Parent Material Adverse Effect qualifiers contained therein), in each case at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing (other than any such representations and warranties that by their terms address matters only as of another specified time, which shall be true and correct in all respects (disregarding all materiality and Parent Material Adverse Effect qualifiers contained therein) only at and as of such time), except, in the case of this clause (C), where the failure of such representations and warranties to be so true and correct has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect; and

(b) the Company shall have received a certificate signed by an executive officer of Parent certifying that the condition set forth in Section 9.03(a) has been satisfied.

ARTICLE 10

TERMINATION

Section 10.01 Termination. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, whether before or after the Company Stockholder Approval has been obtained (except as otherwise stated below):

(a) by mutual written consent of the Company and Parent;

(b) by either the Company or Parent:

(i) if the Merger is not consummated on or before January 23, 2018 (the "**End Date**"); *provided, however*, that if on the End Date the conditions to Closing set forth in Section 9.01(e) shall not have been satisfied but all other conditions to Closing set forth in Article 9 shall have been satisfied or waived (other than those conditions that by their nature can only be satisfied at the Closing; *provided*, that such conditions are reasonably capable of being satisfied), then the End Date shall be extended, if Parent or the Company notifies the other party in writing on prior to the End Date, to April 23, 2018; *provided, however*, that the right to terminate this Agreement under this Section 10.01(b)(i) shall not be available to a party if such failure of the condition set forth in Section 9.01(e) to have been satisfied was due to the failure of such party to perform any of its obligations under this Agreement;

(ii) if any Governmental Authority of competent jurisdiction shall have issued an Order permanently restraining, enjoining or otherwise prohibiting the Merger or the Parent Stock Issuance and such Order shall have become final and non-appealable; *provided, however*, that the right to terminate this Agreement under this Section 10.01(b)(ii) shall not be available to a party if such Order was due to the failure of such party to perform any of its obligations under this Agreement;

(iii) if any Law shall have been promulgated, entered, enacted or issued or be applicable to the Merger or the Parent Stock Issuance by any Governmental Authority that prohibits, prevents, or makes illegal the consummation of the Merger or the Parent Stock Issuance; or

(iv) if the Company Stockholder Approval shall not have been obtained upon a vote taken thereon at the Company Stockholder Meeting duly convened therefor or at any adjournment or postponement thereof;

(c) by Parent:

(i) if, prior to the receipt of the Company Stockholder Approval, a Company Adverse Recommendation Change shall have occurred; or

(ii) if the Company shall have materially breached or failed to perform any of its (A) representations or warranties or (B) covenants or agreements set forth in this Agreement, which breach or failure to perform (i) would give rise to the failure of a condition set forth in Section 9.02(a) and (ii) is incapable of being cured by the Company by the End Date, or, if capable of being cured, shall not have been cured by the Company within thirty (30) calendar days following receipt from Parent of written notice of such breach or failure to perform; *provided*, that (other than in the case of breaches of clauses (ii) or (iii) of Section 8.04(d), which breaches shall be subject to the cure period provided therein) if such breach or failure to perform is capable of being cured by the Company by the End Date, such thirty (30) calendar day period shall be extended until the second Business Day prior to the End Date solely to the extent during such period the Company is using its reasonable best efforts to cure such breach or failure to perform; *provided, further*, that Parent shall not have the right to terminate this Agreement pursuant to this Section 10.01(c)(ii) if Parent is then in material breach of any of its representations, warranties, covenants or agreements under this Agreement;

(d) by the Company:

(i) if Parent shall have materially breached or failed to perform any of its representations, warranties, covenants or agreements set forth in this Agreement, which breach or failure to perform (A) would give rise to the failure of a condition set forth in Section 9.03(a) and (B) is incapable of being cured by Parent by the End Date, or, if capable of being cured, shall not have been cured by Parent within thirty (30) calendar days following receipt from the Company of written notice of such breach or failure to perform; *provided*, that if such breach or failure to perform is capable of being cured by Parent by the End Date, such thirty (30) calendar day period shall be extended until the second Business Day prior to the End Date solely to the extent during such period the Parent is using its reasonable best efforts to cure such breach or failure to perform; *provided, further*, that the Company shall not have the right to terminate this Agreement pursuant to this Section 10.01(d)(i) if the Company is then in material breach of any of its representations, warranties, covenants or agreements under this Agreement; or

(ii) prior to the Company Stockholder Approval, if (A) the Company Board authorizes the Company, to enter into an Alternative Acquisition Agreement with respect to a Company Superior Proposal in accordance with the terms of Section 8.03 that did not result from a material breach of this Agreement, (B) substantially concurrently with the termination of this Agreement, the Company enters into an Alternative Acquisition Agreement providing for a Company Superior Proposal that did not result from a breach of this Agreement and (C) prior to or concurrently with such termination, the Company pays to Parent in immediately available funds any fees required to be paid pursuant to Section 10.03.

The Party desiring to terminate this Agreement pursuant to this Section 10.01 (other than pursuant to Section 10.01(a)) shall give written notice of such termination to the other Party specifying the provision of this Agreement pursuant to which such termination is being effected.

Section 10.02 Effect of Termination. In the event of the termination of this Agreement by either Parent or the Company as provided in Section 10.01, written notice thereof shall forthwith be given by the terminating Party to the other Party specifying the provision hereof pursuant to which such termination is made. In the event of the termination of this Agreement in compliance with Section 10.01, this Agreement shall be terminated and this Agreement shall forthwith become void and have no effect, without any liability or obligation on the part of any Party (or any stockholder, director, officer, employee, agent, consultant or representative of such Party), other than Section 8.04(f), this Section 10.02, Section 10.03, and Article 11, which provisions shall survive such termination; *provided, however*, that, subject to the limitations set forth in Section 10.03(e), nothing in this Section 10.02 shall relieve any Party from liability for any fraud, Willful Breach of a representation or warranty or Willful Breach of any covenant or other agreement contained in this Agreement (including any Willful Breach of Section 8.03 hereof), in which case the aggrieved Party shall be entitled to all rights and remedies available at law or in equity. No termination of this Agreement shall affect the obligations of the Parties contained in the Confidentiality Agreement.

Section 10.03 Termination Fees: Expenses.

(a) In the event that this Agreement is terminated, or at the time of termination, could have been terminated, by Parent pursuant to Section 10.01(c)(i) or in the event that this Agreement is terminated by the Company pursuant to Section 10.01(d)(ii), then, in each case, the Company shall pay, by wire transfer of immediately available funds, to Parent a fee in the amount of \$750,000,000 (the "**Company Termination Fee**") (less any payment made by the Company pursuant to Section 10.03(c)) at or prior to the termination of this Agreement in the case of a termination pursuant to Section 10.01(d)(ii) or as promptly as practicable (and, in any event, within two Business Days following such termination) in the case of a termination pursuant to Section 10.01(c)(i).

(b) In the event that this Agreement is terminated, or at the time of termination, could have been terminated by the Company or Parent pursuant to Section 10.01(b)(iv), or in the event that this Agreement is terminated by Parent pursuant to Section 10.01(c)(ii)(B) or by the Company or Parent pursuant to Section 10.01(b)(i) (and at such time Parent could have terminated this Agreement pursuant to Section 10.01(c)(ii)(B)), and (I) at any time after the date of this Agreement and (A) in the case of a termination pursuant to Section 10.01(c)(ii)(B) or Section 10.01(b)(i), prior to the applicable Company breach, a Company Acquisition Proposal shall have been made or communicated to the Company Board (whether or not publicly announced or publicly made known) and shall not have been withdrawn, or (B) in the case of a termination pursuant to Section 10.01(b)(iv), prior to the taking of a vote to adopt this Agreement at the Company Stockholder Meeting or at any adjournment or postponement thereof, a Company Acquisition Proposal shall have been publicly announced or publicly made known and shall not have been withdrawn, and (II) within nine months after such termination, the Company shall have entered into an agreement with respect to any Company Acquisition

Proposal, or any Company Acquisition Proposal shall have been consummated (in each case, whether or not such Company Acquisition Proposal is the same as the original Company Acquisition Proposal made, communicated, publicly made known or publicly announced), then, in any such event, the Company shall pay, by wire transfer of immediately available funds, to Parent the Company Termination Fee (less any payment made by the Company pursuant to Section 10.03(c)) on the earlier to occur of the Company entering into an agreement with respect to such Company Acquisition Proposal or the consummation of such Company Acquisition Proposal; *provided, however*, that for purposes of the definition of “**Company Acquisition Proposal**” in this Section 10.03(b), references to “15%” shall be replaced by “50%.”

(c) In the event this Agreement is terminated, or at the time of termination, could have been terminated, by Parent or the Company pursuant to Section 10.01(b) (iv) at a time when the Company Termination Fee is not otherwise payable, then the Company shall pay, by wire transfer of immediately available funds, to Parent an amount equal to 50% of the documented, out of pocket expenses incurred by Parent and its Subsidiaries in connection with the Financing (but in no event shall such payment to Parent exceed \$130 million), as promptly as practicable (and in any event, within two Business Days) following receipt of an invoice therefor.

(d) The Parties acknowledge that the agreements contained in this Section 10.03 are an integral part of the transactions contemplated by this Agreement and that, without these agreements, the Parties would not enter into this Agreement; accordingly, if the Company fails promptly to pay any amount due pursuant to this Section 10.03, and, in order to obtain such payment, Parent commences a suit that results in a judgment against the Company for any amount due pursuant to this Section 10.03, the Company shall pay Parent its costs and expenses (including reasonable attorneys’ fees and expenses) in connection with such suit, together with interest on the amount due pursuant to this Section 10.03 from the date such payment was required to be made until the date of payment at the prime lending rate as published in The Wall Street Journal in effect on the date such payment was required to be made. All payments under this Section 10.03 shall be made by wire transfer of immediately available funds to an account designated in writing by Parent. In no event shall a Company Termination Fee be payable more than once.

(e) Each Party agrees that notwithstanding anything in this Agreement to the contrary (other than with respect to claims for, or arising out of or in connection with fraud, or a Willful Breach of Section 8.03 by the Company) (A) in the event that this Agreement is terminated under circumstances where the Company Termination Fee would be payable pursuant to this Section 10.03, the payment of the Company Termination Fee shall be the sole and exclusive remedy of Parent, its Subsidiaries, stockholders, Affiliates, officers, directors, employees and Representatives against the Company or any of its Representatives or Affiliates for, (B) in no event will Parent or any other such person being paid the Company Termination Fee seek to recover any other money damages or seek any other remedy (including any remedy for specific performance, except solely in compliance with Section 11.12 hereof) based on a claim in law or equity with respect to, (1) any loss suffered, directly or indirectly, as a result of the failure of the Merger to be consummated, (2) the termination of this Agreement, (3) any liabilities or obligations arising under this Agreement or (4) any claims or actions arising out of

or relating to any breach, termination or failure of or under this Agreement and (C) upon payment of any Company Termination Fee in accordance with this Section 10.03, none of the Company or any Affiliates or Representatives of the Company shall have any further liability or obligation to another Party relating to or arising out of this Agreement.

ARTICLE 11

MISCELLANEOUS

Section 11.01 No Survival of Representations and Warranties. None of the representations and warranties in this Agreement or in any schedule, certificate, instrument or other document delivered pursuant to this Agreement shall survive the Effective Time. This Section 11.01 shall not limit Section 10.02, Section 10.03 or any covenant or agreement of the Parties which by its terms contemplates performance after the Effective Time.

Section 11.02 Amendment and Modification. Subject to applicable Law, this Agreement may be amended, modified and supplemented in any and all respects, whether before or after any vote of the stockholders of the Company or Parent contemplated hereby, by written agreement of the Parties hereto at any time prior to the Closing Date with respect to any of the terms contained herein; *provided, however*, that after the Company Stockholder Approval has been obtained there shall be no amendment or waiver that would require the further approval of the stockholders of the Company under applicable Law without such approval having first been obtained; *provided further* that, no amendments to or waivers of any DFS Provision that directly and adversely affect the Financing Source Parties shall be effective without the written consent of the Financing Parties. A termination of this Agreement pursuant to Section 10.01 or an amendment or waiver of this Agreement pursuant to Section 11.02 or Section 11.03 shall, in order to be effective, require, in the case of Parent, Merger Corp and the Company, action by their respective board of directors (or a committee thereof) or sole member, as applicable.

Section 11.03 Extension; Waiver. At any time prior to the Effective Time, the Parties may (a) extend the time for the performance of any of the obligations or other acts of the other Parties, (b) waive any inaccuracies in the representations and warranties contained in this Agreement or in any document delivered pursuant to this Agreement or (c) subject to the first proviso of Section 11.02, waive compliance with any of the agreements or conditions contained in this Agreement. Except as required by applicable Law, no waiver of this Agreement shall require the approval of the stockholders of either Parent or the Company. Any agreement on the part of a Party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such Party. The failure of any Party to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights, nor shall any single or partial exercise by any Party of any of its rights under this Agreement preclude any other or further exercise of such rights or any other rights under this Agreement.

Section 11.04 Expenses. Except as otherwise provided herein, all costs and expenses incurred in connection with this Agreement shall be paid by the Party incurring such cost or expense. Notwithstanding the foregoing, Parent and the Company each shall pay 50% of any and all filing fees and printing and mailing costs for the Proxy Statement/Prospectus and the Registration Statement. All transfer, documentary, sales, use, stamp, registration, value added

and other such Taxes and fees (including any penalties and interest) incurred by the Company or any of its Subsidiaries in connection with the Merger (including any real property transfer tax and any similar Tax) shall be borne and paid by the Company (or the applicable Subsidiary) when due, and the Company (or the applicable Subsidiary) shall, at its own expense, file all necessary Tax Returns and other documentation with respect to all such Taxes and fees, and, if required by applicable Law, the Company (or the applicable Subsidiary) shall, and shall cause its Affiliates to, join in the execution of any such Tax Returns and other documentation.

Section 11.05 Disclosure Letter References. Each Disclosure Letter shall, for all purposes in this Agreement, be arranged in numbered and lettered parts and subparts corresponding to the numbered and lettered sections and subsections contained in this Agreement. Each item disclosed in a Party's Disclosure Letter shall constitute an exception to, or as applicable, disclosure for the purposes of, the representations and warranties (or covenants, as applicable) to which it makes express reference and shall also be deemed to be disclosed or set forth for the purposes of every other part in such Party's Disclosure Letter relating to such Party's representations and warranties (or covenants, as applicable) set forth in this Agreement to the extent a cross-reference within such Disclosure Letter is expressly made to such other part in such Disclosure Letter, as well as to the extent that the relevance of such item as an exception to, or as applicable, disclosure for purposes of, such other section of this Agreement is reasonably apparent from the face of such disclosure.

Section 11.06 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, by facsimile (with confirmation of transmission) or sent by a nationally recognized overnight courier service, such as Federal Express, to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice made pursuant to this Section 11.06):

if to Parent or Merger Corp, to:

Becton, Dickinson and Company
1 Becton Drive
Franklin Lakes, NJ 07417
Attention: Jeffrey S. Sherman, SVP and General Counsel
Facsimile: 201-847-5361

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

Skadden, Arps, Slate, Meagher & Flom LLP
4 Times Square
New York, New York 10036
Attention: Paul T. Schnell
Michael Chitwood
Facsimile: (212) 735-2000

if to the Company, to:

C. R. Bard, Inc.
730 Central Avenue
New Providence, NJ 07974
Attention: Samrat S. Khichi, Senior Vice President, General Counsel
and Secretary
Richard Rosenzweig, Vice President, Law and Assistant Secretary
Facsimile: (908) 277-8025

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

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Attention: Edward D. Herlihy
David K. Lam
Facsimile: (212) 403-2000

Section 11.07 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, it being understood that each Party need not sign the same counterpart. This Agreement shall become effective when each Party hereto shall have received a counterpart hereof signed by all of the other Parties hereto. Signatures delivered electronically or by facsimile shall be deemed to be original signatures.

Section 11.08 Entire Agreement; Third Party Beneficiaries. This Agreement (including the Exhibits hereto and the documents and the instruments referred to herein), the Confidentiality Agreement and any agreements entered into contemporaneously herewith (a) constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof and thereof (*provided*, that (x) any provisions of the Confidentiality Agreement conflicting with this Agreement shall be superseded by this Agreement and (y) all standstill or similar provisions set forth in the Confidentiality Agreement shall terminate and no longer be in effect upon execution and delivery hereof) and (b) are not intended to confer any rights, benefits, remedies, obligations or liabilities upon any Person other than the Parties hereto and their respective successors and permitted assigns; *provided*, that notwithstanding the foregoing clause (b), following the Effective Time, (i) the provisions of Article 2 with respect to the holders of Company Stock to receive the Merger Consideration shall be enforceable by such holders and (ii) the provisions of Section 7.04 shall be enforceable by each Party entitled to indemnification hereunder and his or her heirs and his or her representatives; *provided*, further that the Financing Parties and each of their respective Affiliates and their respective current, former and future direct or indirect equity holders, controlling persons, stockholders, agents, Affiliates, members, managers, general or limited partners, assignees or representatives (each, a “**Financing Source Party**”, collectively, the “**Financing Source Parties**”) shall be express third party beneficiaries with respect to Section 11.02, this Section 11.08, Section 11.11, Section 11.12(c), Section 11.13 and Section 11.14 (collectively, the “**DFS Provisions**”).

Section 11.09 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated, so long as the economic and legal substance of the transactions contemplated hereby, taken as a whole, are not affected in a manner materially adverse to any Party hereto. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 11.10 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties hereto in whole or in part (whether by operation of Law or otherwise) without the prior written consent of the other Parties, and any such assignment without such consent shall be null and void; *provided*, that Parent may designate, prior to the Effective Time, by written notice to the Company, another wholly owned direct or indirect Subsidiary to be a party to the Merger in lieu of Merger Corp, in which event all references herein to Merger Corp shall be deemed references to such other Subsidiary (except with respect to representations and warranties made herein with respect to Merger Corp as of the date of this Agreement) and all representations and warranties made herein with respect to Merger Corp as of the date of this Agreement shall also be made with respect to such other Subsidiary as of the date of such designation; *provided*, that such assignment shall not relieve Parent of its obligations hereunder or otherwise enlarge, alter or change any obligation of any other party hereto or due to Parent or such other Subsidiary. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns.

Section 11.11 Governing Law. This Agreement shall be governed and construed in accordance with the Laws of the State of Delaware without giving effect to the principles of conflicts of law thereof or of any other jurisdiction, except that, notwithstanding the foregoing (a) all matters relating to the fiduciary duties of the Company Board shall be subject to the laws of the State of New Jersey, (b) all matters which are within the scope of the NJBCA shall be governed by and construed in accordance with the NJBCA, and (c) except as otherwise set forth in the Debt Letters as in effect as of the date of this Agreement, all matters relating to the interpretation, construction, validity and enforcement (whether at law, in equity, in contract, in tort, or otherwise) against any of the Financing Source Parties in any way relating to the Debt Letters or the performance thereof or the Financing, shall be exclusively governed by, and construed in accordance with, the domestic Law of the State of New York without giving effect to any choice or conflict of law provision or rule whether of the State of New York or any other jurisdiction that would cause the application of Law of any jurisdiction other than the State of New York.

Section 11.12 Enforcement; Exclusive Jurisdiction.

(a) The Parties agree that irreparable damage would occur and that the Parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that, subject to the limitations in Section 10.03(e) and in this Section 11.12, the Parties shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in the Court of Chancery of the State of Delaware or, if under applicable Law exclusive jurisdiction over such matter is vested in the federal courts, any federal court located in the State of Delaware without proof of actual damages or otherwise (and each Party hereby waives any requirement for the securing or posting of any bond in connection with such remedy), this being in addition to any other remedy to which they are entitled at law or in equity.

(b) In addition, each of the Parties hereto (i) consents to submit itself, and hereby submits itself, to the personal jurisdiction of the Court of Chancery of the State of Delaware and any federal court located in the State of Delaware, or, if neither of such courts has subject matter jurisdiction, any state court of the State of Delaware having subject matter jurisdiction, in the event any dispute arises out of this Agreement or any of the transactions contemplated by this Agreement, (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and agrees not to plead or claim any objection to the laying of venue in any such court or that any judicial proceeding in any such court has been brought in an inconvenient forum, (iii) agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the Court of Chancery of the State of Delaware and any federal court located in the State of Delaware, or, if neither of such courts has subject matter jurisdiction, any state court of the State of Delaware having subject matter jurisdiction, and (iv) consents to service of process being made through the notice procedures set forth in Section 11.06.

(c) Notwithstanding anything to the contrary in this Agreement, each Party agrees that it will not bring or support any action, cause of action, claim, cross-claim or third-party claim of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, against the Financing Source Parties in any way relating to this Agreement, including any dispute arising out of the Debt Letters or the performance thereof or the Financing, in any forum other than the Supreme Court of the State of New York, County of New York, or, if under applicable law exclusive jurisdiction is vested in the Federal courts, the United States District Court for the Southern District of New York (and of the appropriate appellate courts therefrom).

Section 11.13 No Recourse; Waiver of Claims. Notwithstanding anything herein to the contrary, each of the Company and its Subsidiaries, stockholders, Affiliates, officers, directors, employees and Representatives hereby waives any rights or claims against any Financing Source Party in connection with this Agreement, the Debt Letters or the Financing, whether at law or equity, in contract, in tort or otherwise, and each of the Company and its Subsidiaries, stockholders, Affiliates, officers, directors, employees and Representatives agrees not to commence a Proceeding against any Financing Source Party in connection with this Agreement or the transactions contemplated hereunder (including any Proceeding relating to the Financing or the Debt Letters). In furtherance and not in limitation of the foregoing waiver, it is agreed that

no Financing Source Party shall have any liability for any claims, losses, settlements, liabilities, damages, costs, expenses, fines or penalties to the Company or any of its Subsidiaries, stockholders, Affiliates, officers, directors, employees and Representatives in connection with this Agreement or the transactions contemplated hereunder. Nothing in this Section 11.13 shall in any way (a) expand the circumstances in which Parent may be liable under this Agreement or as a result of the transactions contemplated hereby (including as a result of the Financing) or (b) limit or qualify the obligations and liabilities of the parties to the Debt Letters to each other thereunder or in connection therewith.

Section 11.14 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (INCLUDING ANY LEGAL PROCEEDING AGAINST THE FINANCING SOURCE PARTIES ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED HEREBY, THE DEBT LETTERS, THE FINANCING OR THE PERFORMANCE OF SERVICES WITH RESPECT THERETO).

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date set forth on the cover page of this Agreement.

C. R. BARD, INC.

By: /s/ John H. Weiland
Name: John H. Weiland
Title: Vice Chairman, President and Chief Operating Officer

BECTON, DICKINSON AND COMPANY

By: /s/ Vincent Forlenza
Name: Vincent Forlenza
Title: Chairman and Chief Executive Officer

LAMBDA CORP.

By: /s/ Christopher Reidy
Name: Christopher Reidy
Title: Chief Financial Officer

[Signature Page to Merger Agreement]

BY-LAWS
of
BECTON, DICKINSON AND COMPANY
A New Jersey Corporation
as Amended as of April 23, 2017

ARTICLE I
Offices

The registered office of Becton, Dickinson and Company (the "Company") shall be in the Borough of Franklin Lakes, County of Bergen, State of New Jersey or such other place within or without the State of New Jersey as the Board of Directors may designate. The Company may also establish and have such other offices within or without the State of New Jersey, as the Board of Directors may designate or its business may require.

ARTICLE II
Meetings of Shareholders

SECTION 1. PLACE OF MEETINGS. Meetings of the shareholders shall be held at the registered office of the Company in New Jersey, or at such other place, within or without the State of New Jersey, as may be designated by the Board of Directors and stated in the notice of the meeting.

SECTION 2.A. ANNUAL MEETINGS. The annual meeting of shareholders for the election of Directors and the transaction of such other business as may be related to the purposes set forth in the notice of the meeting shall be held at such time as may be fixed by the Board of Directors.

B. SPECIAL MEETING FOR ELECTION OF DIRECTORS. If the annual meeting of shareholders is not held on the date designated, the Board of Directors may call a special meeting of the shareholders for the election of Directors and the transaction of other business.

C. SPECIAL MEETINGS. (a) Special meetings of the shareholders may be called by the Board of Directors or by the Chairman of the Board or by the Chief Executive Officer or by the President, and shall be called by the Chairman of the Board or by the Chief Executive Officer or by the President upon written request of a majority of the Directors then in office, which request shall state the time, place and purpose of the meeting. Subject to the other provisions of this Section 2.C, a special meeting of shareholders shall be called by the Secretary at the written request (a "Special Meeting Request") of holders of record of at least 25% of the voting power of the outstanding capital stock of the Company entitled to vote on the matter or matters to be brought before the proposed special meeting. Such Special Meeting Request must be made in proper written form as specified in subsection (b) of this Section 2.C. This Section 2.C is the exclusive means by which a shareholder may nominate persons for election to the Board of Directors and/or present other business at a special meeting of shareholders.

(b) A Special Meeting Request to the Secretary must be delivered to or mailed and received by the Secretary at the principal executive offices of the Company, and shall be signed by each shareholder, or a duly authorized agent of such shareholder, requesting the special meeting. To be in proper written form, a Special Meeting Request must set forth (i) all the information required under subsection (c)(i) and/or (ii) of Article II, Section 2.D of these By-Laws, as applicable, with respect to the nominations or other business proposed to be brought before such special meeting; (ii) all of the information required to be set forth in a shareholder's notice under subsections (c)(iii) through (ix) of Article II, Section 2.D of these By-Laws with respect to each shareholder requesting such meeting; (iii) all information relating to each such shareholder that would be required to be disclosed in connection with the shareholder's solicitation of proxies for the election of directors in an election contest (even if an election contest is not involved), and all information, whether or not relating to such shareholder, that would otherwise be required in connection with the shareholder's solicitation of proxies with respect to the matters proposed to be acted upon at the meeting, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"); and (iv) an acknowledgment by such shareholder that any disposition of shares of common stock of the Company held of record by such shareholder as of the date of delivery of the Special Meeting Request and prior to the record date for the special meeting of shareholders requested by such shareholder shall constitute a revocation of such request with respect to such shares.

(c) The Secretary shall (as promptly as practicable but in no event more than ten days following delivery of a Special Meeting Request that complies with subsection (b) of this Section 2.C) determine whether the request has been made by shareholders owning and holding, in the aggregate, the number of shares necessary to request a special meeting pursuant to this Section 2.C. Upon the Secretary's finding that holders of the requisite number of shares have made the request, the Board shall determine (as promptly as practicable but in no event more than ten days following the date of the Secretary's finding), with the advice of counsel, whether the request is valid under the criteria set forth in subsection (d) of this Section 2.C, and, if the request is determined to be valid, shall proceed to fix a date, time and place for the meeting, which date shall be not more than 90 days after the receipt of the Special Meeting Request. Subject to the preceding sentence, in fixing a date and time for a special meeting pursuant to a Special Meeting Request, the Board of Directors may consider such factors as it deems relevant within the good faith exercise of business judgment, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for meeting and any plan of the Board of Directors to call an annual meeting or a special meeting, and nothing herein will limit the power of the Board of Directors or the chair appointed for any annual or special meeting in respect of the conduct of any such meeting.

(d) Notwithstanding the foregoing provisions of this Section 2.C, a special meeting requested by shareholders shall not be held if: (i) an annual or special meeting of shareholders that included an identical or substantially similar item of business ("Similar Business") (as determined in good faith by the Board of Directors) was held not more than 120 days before the Special Meeting Request was received by the Secretary; (ii) the Board of Directors has called or calls for an annual or special meeting of shareholders to be held within 90 days after the Special Meeting Request is received by the Secretary and the Board of Directors determines in good faith that the business to be conducted at such

meeting includes the Similar Business. For purposes of this Section 2.C, the election of directors shall be deemed to be Similar Business with respect to all items of business involving the election or removal of directors, changing the size of the Board of Directors and filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors; or (iii) the Special Meeting Request relates to an item of business that is not a proper subject for shareholder action under applicable law.

(e) A shareholder may revoke a Special Meeting Request at any time by written revocation delivered to the Secretary, and if, following such revocation, there are outstanding un-revoked requests from shareholders holding less than the requisite number of shares of common stock entitling such shareholders to request the calling of a special meeting in accordance with this Section 2.C, the Board of Directors may, in its discretion, cancel the special meeting. If none of the shareholders who submitted the Special Meeting Request appears or sends a duly authorized agent to present the business to be presented for consideration that was specified in the Special Meeting Request, the Company need not present such business for a vote at such special meeting.

(f) Business conducted at a special meeting requested by shareholders shall be limited to the matters described in the applicable Special Meeting Request and set forth in the applicable notice of meeting, provided that nothing herein shall prohibit the Board of Directors from submitting additional matters to the shareholders at any such special meeting requested by shareholders.

D. (a) **ADVANCE NOTICE OF NOMINATIONS AND BUSINESS TO BE TRANSACTED AT ANNUAL MEETINGS OF SHAREHOLDERS.** No business may be transacted and no nominations of persons for election to the Board of Directors may be made at an annual meeting of shareholders, other than business and nominations that are either: (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof); (ii) otherwise properly brought before the annual meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof); (iii) otherwise properly brought before the annual meeting by any shareholder of the Company (1) who is a shareholder of record on the date of the giving of the notice provided for in this Section 2.D and on the record date for the determination of shareholders entitled to vote at such annual meeting, and (2) who complies with the notice procedures set forth in this Section 2.D; or (iv) who (1) fulfills the eligibility requirements of a Nominating Shareholder (as defined below) set forth in Section 2.E and (2) complies with the notice procedures set forth in Section 2.E.

(b) *Notice.* In addition to any other applicable requirements, for any business or nominations of persons for election to the Board of Directors to be properly brought before an annual meeting by a shareholder under subsection 2.D(a)(iii) above, such shareholder must have given timely notice thereof in proper written form to the Secretary of the Company. To be timely, a shareholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Company not less than 90 days nor more than 120 days prior to the anniversary date of the immediately preceding annual meeting of shareholders; provided, however, that in the event that the annual meeting is called for on a date that is not within 30 days before or after such anniversary date, notice by the shareholder in order to be timely must be so received not earlier than the 120th day

prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting, or the tenth day following the day on which notice of the date of the annual meeting was mailed or public disclosure of the date of the annual meeting was made, whichever first occurs. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a shareholder's notice as described above.

Notwithstanding anything in the first sentence of the preceding paragraph to the contrary, in the event that the number of Directors to be elected to the Board of Directors is increased and there is no notice or public disclosure by the Company naming all of the nominees for Director or specifying the size of the increased Board of Directors at least 70 days prior to the anniversary date of the immediately preceding annual meeting of shareholders, a shareholder's notice required by this Section 2.D. shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Company not later than the close of business on the tenth day following the day on which such notice or public disclosure of such increase was made.

(c) *Required contents of notice.* To be in proper written form, a shareholder's notice under subsection 2.D(a)(iii)(2) to the Secretary must set forth the following (for the avoidance of doubt and unless the context otherwise requires, the requirements in this section 2.D(c) with respect to the shareholder providing such notice shall also include and apply to the beneficial owner, if any, on whose behalf a proposal is made):

(i) as to each person whom the shareholder proposes to nominate for election or reelection as a Director (1) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act, including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected, and (2) a reasonably detailed description of any compensatory, payment or other financial agreement, arrangement or understanding that such person has with any other person or entity other than the Company, including the amount of any payment or payments received or receivable thereunder, in each case in connection with candidacy or service as a director of the Company;

(ii) as to each other matter such shareholder proposes to bring before the annual meeting, (1) a brief description of the business desired to be brought before the annual meeting (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these By-laws, the text of the proposed amendment to the extent possible), (2) the reasons for conducting such business at the annual meeting, and (3) any material interest of such shareholder in such business;

(iii) the name and record address of such shareholder (as they appear on the Company's books);

(iv) the class or series and number of shares of capital stock of the Company that are owned beneficially or of record by such shareholder, together with proof of ownership, if requested by the Company;

(v) a description of any agreement, arrangement or understanding between or among such shareholder and any other person or persons (including their names) in connection with such proposal of such business or nomination by such shareholder;

(vi) a description of any agreement, arrangement or understanding (including, regardless of the form of settlement, any derivative or short positions, profit interests, forwards, futures, swaps, options, warrants, convertible securities, stock appreciation or similar rights, hedging or similar transactions, and borrowed or loaned shares) that has been entered into as of the date of the shareholder's notice by, or on behalf of, such shareholder, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such shareholder or any such nominee with respect to shares of stock of the Company;

(vii) a representation that the shareholder will notify the Company in writing of any such agreement, arrangement or understanding referenced in clauses (i), (v) and (vi) above (including any amendment or modification thereto) in effect as of the record date for the annual meeting promptly following the later of the record date or the date notice of the record date is first publicly disclosed;

(viii) a representation that such shareholder is a holder of record of capital stock of the Company and is entitled to vote at the annual meeting and intends to appear in person or by proxy at the annual meeting to bring such business or nomination before the meeting; and

(ix) a representation whether the shareholder intends, or is part of a group which intends, (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Company's outstanding capital stock required to approve or adopt the proposal or elect the nominee, and/or (2) otherwise to solicit proxies from shareholders in support of such proposal or nomination. In addition, a shareholder seeking to submit such business at an annual meeting shall promptly provide any other information reasonably requested by the Company.

(d) (i) No business or nomination for director shall be conducted at the annual meeting of shareholders except business or nominations brought before the annual meeting in accordance with the procedures set forth in this Section 2.D or Section 2.E (other than as provided in subsection (e) below); provided, however, that once such business or nomination has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 2.D or Section 2.E shall be deemed to preclude discussion by any shareholder of any such business or nomination. In addition, only such persons who are nominated in accordance with the procedures set forth in this Section 2.D or Section 2.E shall be eligible to be elected at an annual meeting of the Company. If the chairman of an annual meeting determines that such business or nomination was not properly brought before the annual meeting in accordance with the foregoing procedures, the chairman shall declare to the meeting that such business or nomination was not properly brought before the meeting, and such business shall not be transacted or such defective nomination shall be disregarded, as applicable, notwithstanding that proxies in respect of such vote may have been received by the Company and counted for purposes of determining a quorum.

(ii) In addition to complying with the provisions of this Section 2.D, a shareholder shall also comply with all applicable requirements of the Exchange Act, with respect to the matters set forth in this Section 2.D.

(e) The provisions of this Section 2.D or Section 2.E shall not be applicable to any shareholder proposal submitted for inclusion in the Company's proxy statement pursuant to Rule 14a-8 under Regulation 14A of the Exchange Act.

E. (a) INCLUSION OF SHAREHOLDER NOMINEES IN PROXY STATEMENT. Subject to the provisions of this Section 2.E, if expressly requested in the relevant Nomination Notice (as defined below), the Company shall include in its proxy statement for any annual meeting of shareholders (but not at any special meeting of shareholders): (i) the names of any person or persons nominated for election (each, a "Shareholder Nominee"), which shall also be included on the Company's form of proxy and ballot, by any Eligible Shareholder (as defined below) or group of up to 20 Eligible Shareholders that, as determined by the Board of Directors, has (individually and collectively, in the case of a group) satisfied all applicable conditions and complied with all applicable procedures set forth in this Section 2.E (such Eligible Shareholder or group of Eligible Shareholders being a "Nominating Shareholder"); (ii) disclosure about each Shareholder Nominee and the Nominating Shareholder required under the rules of the Securities and Exchange Commission or other applicable law to be included in the proxy statement; (iii) any statement included by the Nominating Shareholder in the Nomination Notice for inclusion in the proxy statement in support of each Shareholder Nominee's election to the Board of Directors (subject, without limitation, to Section 2.E(e)(ii), and provided that such statement does not exceed 500 words and fully complies with Section 14 of the Exchange Act and the rules and regulations thereunder, including Rule 14a-9 (the "Supporting Statement"); and (iv) any other information that the Company or the Board of Directors determines, in its discretion, to include in the proxy statement relating to the nomination of each Shareholder Nominee, including, without limitation, any statement in opposition to the nomination, any of the information provided pursuant to this Section 2.E and any solicitation materials or related information with respect to a Shareholder Nominee.

For purposes of this Section 2.E, any determination to be made by the Board of Directors may be made by the Board of Directors, a committee of the Board of Directors or any corporate officer designated by the Board of Directors or a committee of the Board of Directors, and any such determination shall be final and binding on the Company, any Eligible Shareholder, any Nominating Shareholder, any Shareholder Nominee and any other person so long as it is made in good faith (without any further requirements). The chairman of any annual meeting of shareholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall have the power and duty to determine whether a Shareholder Nominee has been nominated in accordance with the requirements of this Section 2.E and, if not so nominated, shall direct and declare at the meeting that such Shareholder Nominee shall not be considered.

(b) Maximum Number of Shareholder Nominees.

(i) The Company shall not be required to include in the proxy statement for an annual meeting of shareholders more Shareholder Nominees than that number of Directors constituting the greater of (i) two or (ii) 20% of the total number of Directors of the Company on the last day on which a Nomination Notice may be submitted pursuant to this Section 2.E (rounded down to the nearest whole number) (the "Maximum Number").

(ii) The Maximum Number for a particular annual meeting shall be reduced by: (1) Shareholder Nominees whose nominations are withdrawn by the Nominating Shareholder or who become unwilling to serve on the Board of Directors; (2) Shareholder Nominees who the Board of Directors itself decides to nominate for election at such annual meeting; and (3) the number of incumbent Directors who had been Shareholder Nominees at any of the preceding two annual meetings of shareholders and whose reelection at the upcoming annual meeting of shareholders is being recommended by the Board of Directors. In the event that one or more vacancies for any reason occurs on the Board of Directors after the deadline for submitting a Nomination Notice as set forth in Section 2.E(d) but before the date of the annual meeting of shareholders and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the Maximum Number shall be calculated based on the number of Directors in office as so reduced.

(iii) If the number of Shareholder Nominees pursuant to this Section 2.E for any annual meeting of shareholders exceeds the Maximum Number, then, promptly upon notice from the Company, each Nominating Shareholder will select one Shareholder Nominee for inclusion in the proxy statement until the Maximum Number is reached, going in order of the amount (largest to smallest) of shares of the Company's common stock that each Nominating Shareholder disclosed as owned in its Nomination Notice, with the process repeated if the Maximum Number is not reached after each Nominating Shareholder has selected one Shareholder Nominee. If, after the deadline for submitting a Nomination Notice as set forth in Section 2.E(d), a Nominating Shareholder or a Shareholder Nominee ceases to satisfy the eligibility requirements in this Section 2.E, as determined by the Board of Directors, a Nominating Shareholder withdraws its nomination or a Shareholder Nominee becomes unwilling to serve on the Board of Directors, whether before or after the mailing or other distribution of the definitive proxy statement, then the Company: (1) shall not be required to include in its proxy statement or on any ballot or form of proxy the Shareholder Nominee or any successor or replacement Shareholder Nominee proposed by the Nominating Shareholder or by any other Nominating Shareholder and (2) may otherwise communicate to its shareholders, including without limitation by amending or supplementing its proxy statement or ballot or form of proxy, that the Shareholder Nominee will not be included as a Shareholder Nominee in the proxy statement or on any ballot or form of proxy and will not be voted on at the annual meeting of shareholders.

(c) Eligibility of Nominating Shareholder.

(i) An "Eligible Shareholder" is a person who has either (1) been a record holder of the shares of common stock of the Company used to satisfy the eligibility requirements in this Section 2.E(c) continuously for the three-year period specified in

subsection (c)(ii) of this Section 2.E below or (2) provides to the Secretary of the Company, within the time period referred to in Section 2.E(d), evidence of continuous ownership of such shares for such three-year period from one or more securities intermediaries in a form that the Board of Directors determines acceptable.

(ii) An Eligible Shareholder or group of up to 20 Eligible Shareholders may submit a nomination in accordance with this Section 2.E only if the person or group (in the aggregate) has continuously owned at least the Minimum Number (as defined below) (as adjusted for any stock splits, reverse stock splits, stock dividends or similar events) of shares of the Company's common stock throughout the three-year period preceding and including the date of submission of the Nomination Notice, and continues to own at least the Minimum Number of shares through the date of the annual meeting of shareholders. The following shall be treated as one Eligible Shareholder if such Eligible Shareholder shall provide together with the Nomination Notice documentation satisfactory to the Board of Directors that demonstrates compliance with the following criteria: (1) funds under common management and investment control; (2) funds under common management and funded primarily by the same employer; or (3) a "group of investment companies" (as defined in the Investment Company Act of 1940, as amended). For the avoidance of doubt, in the event of a nomination by a Nominating Shareholder that includes more than one Eligible Shareholder, any and all requirements and obligations for a given Eligible Shareholder or, except as the context otherwise makes clear, the Nominating Shareholder that are set forth in this Section 2.E, including the minimum holding period, shall apply to each member of such group; provided, however, that the Minimum Number shall apply to the aggregate ownership of the group of Eligible Shareholders constituting the Nominating Shareholder. Should any Eligible Shareholder cease to satisfy the eligibility requirements in this Section 2.E, as determined by the Board of Directors, or withdraw from a group of Eligible Shareholders constituting a Nominating Shareholder at any time prior to the annual meeting of shareholders, the Nominating Shareholder shall be deemed to own only the shares held by the remaining Eligible Shareholders. As used in this Section 2.E, any reference to a "group" or "group of Eligible Shareholders" refers to any Nominating Shareholder that consists of more than one Eligible Shareholder and to all the Eligible Shareholders that make up such Nominating Shareholder.

(iii) The "Minimum Number" of shares of the Company's common stock means 3% of the number of outstanding shares of common stock of the Company as of the most recent date for which such amount is given in any filing by the Company with the Securities and Exchange Commission prior to the submission of the Nomination Notice.

(iv) For purposes of this Section 2.E, an Eligible Shareholder "owns" only those outstanding shares of the Company's common stock as to which such Eligible Shareholder possesses both: (1) the full voting and investment rights pertaining to such shares and (2) the full economic interest in (including the opportunity for profit from and the risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (1) and (2) shall not include any shares: (w) purchased or sold by such Eligible Shareholder or any of its affiliates in any transaction that has not been settled or closed, (x) sold short by such Eligible Shareholder, (y) borrowed by such Eligible Shareholder or any of its affiliates for any purpose or purchased by such Eligible Shareholder or any of its affiliates pursuant to an agreement to resell or subject to any other obligation to resell to another

person, or (z) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Eligible Shareholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding capital stock of the Company, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of: (a) reducing in any manner, to any extent or at any time in the future, such Eligible Shareholder's or any of its affiliates' full right to vote or direct the voting of any such shares, and/or (b) hedging, offsetting, or altering to any degree any gain or loss arising from the full economic ownership of such shares by such Eligible Shareholder or any of its affiliates. An Eligible Shareholder "owns" shares held in the name of a nominee or other intermediary so long as the Eligible Shareholder retains the right to instruct how the shares are voted with respect to the election of Directors and possesses the full economic interest in the shares. An Eligible Shareholder's ownership of shares shall be deemed to continue during any period in which the Eligible Shareholder has delegated any voting power by means of a proxy, power of attorney, or other similar instrument or arrangement that is revocable at any time by the Eligible Shareholder. An Eligible Shareholder's ownership of shares shall be deemed to continue during any period in which the Eligible Shareholder has loaned such shares; provided that the Eligible Shareholder has the power to recall such loaned shares on not more than five business days' notice. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of the Company are "owned" for these purposes shall be determined by the Board of Directors. For purposes of this Section 2.E(c)(iv), the term "affiliate" or "affiliates" shall have the meaning ascribed thereto under the General Rules and Regulations under the Exchange Act.

(v) No Eligible Shareholder shall be permitted to be in more than one group constituting a Nominating Shareholder, and if any Eligible Shareholder appears as a member of more than one group, such Eligible Shareholder shall be deemed to be a member of only the group that has the largest ownership position as reflected in the Nomination Notice.

(d) *Nomination Notice.* To nominate a Shareholder Nominee pursuant to this Section 2.E, the Nominating Shareholder (including, for the avoidance of doubt, each group member in the case of a Nominating Shareholder consisting of a group of Eligible Shareholders) must have delivered to the Secretary of the Company, and the Secretary must have received, all of the following information and documents in a form that the Board of Directors determines acceptable (collectively, the "Nomination Notice"), not less than 120 days nor more than 150 days prior to the anniversary of the date that the Company mailed its proxy statement for the prior year's annual meeting of shareholders; provided, however, that if (and only if) the annual meeting of shareholders is not scheduled to be held within a period that commences 30 days before the first anniversary date of the preceding year's annual meeting of shareholders and ends 30 days after the first anniversary date of the preceding year's annual meeting of shareholders (an annual meeting date outside such period being referred to herein as an ("Other Meeting Date")), the Nomination Notice shall be given in the manner provided herein by the later of the close of business on the date that is 180 days prior to such Other Meeting Date or the tenth day following the date such Other Meeting Date is first publicly announced or disclosed (in no event shall the adjournment or postponement of an annual meeting, or the public announcement thereof, commence a new time period (or extend any time period) for the giving of the Nomination Notice):

(i) one or more written statements from the record holder of the shares (and from each intermediary through which the shares are or have been held during the requisite three-year holding period) verifying that, as of a date within seven (7) calendar days prior to the date of the Nomination Notice, the Nominating Shareholder owns, and has continuously owned for the preceding three (3) years, the Minimum Number of shares, and the Nominating Shareholder's agreement to provide, within five (5) business days after the record date for the annual meeting, written statements from the record holder and intermediaries verifying the Nominating Shareholder's continuous ownership of the Minimum Number of shares through the record date;

(ii) an agreement to provide immediate notice if the Nominating Shareholder ceases to own the Minimum Number of shares at any time prior to the date of the annual meeting;

(iii) a Schedule 14N (or any successor form) relating to each Shareholder Nominee, completed and filed with the Securities and Exchange Commission by the Nominating Shareholder, as applicable, in accordance with Securities and Exchange Commission rules;

(iv) the written consent of each Shareholder Nominee to being named in the Company's proxy statement, form of proxy and ballot as a Shareholder Nominee and to serving as a Director if elected;

(v) a written notice, in a form deemed satisfactory by the Board of Directors, of the nomination of each Shareholder Nominee that includes the following additional information, agreements, representations and warranties by the Nominating Shareholder: (1) the information that would be required to be set forth in a shareholder's notice of nomination pursuant to Section 2.D; (2) the details of any relationship that existed within the past three years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of the Schedule 14N; (3) a representation and warranty that the Nominating Shareholder acquired the securities of the Company in the ordinary course of business and did not acquire, and is not holding, securities of the Company for the purpose or with the effect of influencing or changing control of the Company; (4) a representation and warranty that the Nominating Shareholder has not nominated and will not nominate for election to the Board of Directors at the annual meeting any person other than such Nominating Shareholder's Shareholder Nominee(s); (5) a representation and warranty that the Nominating Shareholder has not engaged in and will not engage in a "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act (without reference to the exception in Section 14a-1(l)(2)(iv)) with respect to the annual meeting, other than with respect to such Nominating Shareholder's Shareholder Nominee(s) or any nominee of the Board of Directors; (6) a representation and warranty that the Nominating Shareholder will not use any proxy card other than the Company's proxy card in soliciting shareholders in connection with the election of a Shareholder Nominee at the annual meeting; (7) a representation and warranty that each Shareholder Nominee's candidacy or, if elected, membership on the

Board of Directors would not violate applicable state or federal law or the rules of any stock exchange on which the Company's securities are traded; (8) a representation and warranty that each Shareholder Nominee: (A) does not have any direct or indirect relationship with the Company that would cause the Shareholder Nominee to be deemed not independent, and otherwise qualifies as independent, pursuant to the Company's Statement of Corporate Governance Principles (as amended from time to time or any successor policy) and the rules of the primary stock exchange on which the Company's shares of common stock are traded; (B) meets the audit committee and compensation committee independence requirements under the rules of the primary stock exchange on which the Company's shares of common stock are traded; (C) is a "non-employee director" for the purposes of Rule 16b-3 under the Exchange Act (or any successor rule); (D) is an "outside director" for the purposes of Section 162(m) of the Internal Revenue Code (or any successor provision); (E) is not and has not been subject to any event specified in Rule 506(d)(1) of Regulation D (or any successor rule) under the Securities Act of 1933 or Item 401(f) of Regulation S-K (or any successor rule) under the Exchange Act, without reference to whether the event is material to an evaluation of the ability or integrity of such Shareholder Nominee; and (F) meets the director qualifications set forth in the Company's By-laws and the Statement of Corporate Governance Policy, if any; (9) a representation and warranty that the Nominating Shareholder satisfies the eligibility requirements set forth in Section 2.E(c); (10) a representation and warranty that the Nominating Shareholder intends to continue to satisfy the eligibility requirements described in Section 2.E(c) through the date of the annual meeting; (11) details of any position of a Shareholder Nominee as a corporate officer or director of any competitor (that is, any entity that produces products or provides services that compete with or are alternatives to the principal products produced or services provided by the Company or its affiliates) of the Company, within the three years preceding the submission of the Nomination Notice; (12) if desired, a Supporting Statement; and (13) in the case of a nomination by a Nominating Shareholder comprised of a group, the designation by all Eligible Shareholders in such group of one Eligible Shareholder who is authorized to act on behalf of the Nominating Shareholder with respect to matters relating to the nomination, including withdrawal of the nomination;

(vi) an executed agreement, in a form deemed satisfactory by the Board of Directors, pursuant to which the Nominating Shareholder (including, in the case of a group, each Eligible Shareholder in that group) agrees: (1) to comply with all applicable laws, rules and regulations in connection with the nomination, solicitation and election; (2) to file any written solicitation or other communication with the Company's shareholders relating to one or more of the Company's Directors or nominees for Director or any Shareholder Nominee with the Securities and Exchange Commission, regardless of whether any such filing is required under any rule or regulation or whether any exemption from filing is available for such materials under any rule or regulation; (3) to assume all liability stemming from an action, suit or proceeding concerning any actual or alleged legal or regulatory violation arising out of any communication by the Nominating Shareholder or any of its Shareholder Nominees with the Company, its shareholders or any other person in connection with the nomination or election of Directors, including, without limitation, the Nomination Notice; (4) to indemnify and hold harmless (jointly with all other Eligible Shareholders, in the case of a group of Eligible Shareholders) the Company and each of its Directors, corporate officers and employees individually against any liability, loss,

damages, expenses or other costs (including attorneys' fees) incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Company or any of its Directors, corporate officers or employees arising out of or relating to a failure or alleged failure of the Nominating Shareholder or any of its Shareholder Nominees to comply with, or any breach or alleged breach of, its or their obligations, agreements or representations under this Section 2.E; (5) in the event that any information included in the Nomination Notice or any other communication by the Nominating Shareholder (including with respect to any Eligible Shareholder included in a group) with the Company, its shareholders or any other person in connection with the nomination or election ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), to promptly (and in any event within 48 hours of discovering such misstatement or omission) notify the Company and any other recipient of such communication of the misstatement or omission in such previously provided information and of the information that is required to correct the misstatement or omission; and (6) in the event that the Nominating Shareholder (including any Eligible Shareholder in a group) has failed to continue to satisfy the eligibility requirements described in Section 2.E(c), to promptly notify the Company; and

(vii) an executed agreement, in a form deemed satisfactory by the Board of Directors, by each Shareholder Nominee: (1) to provide to the Company such other information and certifications, including completion of the Company's director nominee questionnaire, as the Board of Directors may reasonably request; (2) at the reasonable request of the the Board of Directors or any committee, to discuss matters relating to the nomination of such Shareholder Nominee to the Board of Directors or any committee, including the information provided by such Shareholder Nominee to the Company in connection with his or her nomination and such Shareholder Nominee's eligibility to serve as a member of the Board of Directors; (3) that such Shareholder Nominee has read and agrees, if elected, to serve as a member of the Board of Directors, to adhere to the Company's Statement of Corporate Governance Principles, Code of Ethics and any other Company policies and guidelines applicable to Directors; and (4) that such Shareholder Nominee is not and will not become a party to (A) any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity in connection with his or her nomination, candidacy, service or action as a Director of the Company that has not been fully disclosed to the Company prior to or concurrently with the Nominating Shareholder's submission of the Nomination Notice, (B) any agreement, arrangement or understanding with any person or entity as to how such Shareholder Nominee would vote or act on any issue or question as a Director (a "Voting Commitment") that has not been fully disclosed to the Company prior to or concurrently with the Nominating Shareholder's submission of the Nomination Notice or (C) any Voting Commitment that could limit or interfere with such Shareholder Nominee's ability to comply, if elected as a Director of the Company, with his or her fiduciary duties under applicable law.

The information and documents required by this Section 2.E(d) to be provided by the Nominating Shareholder shall be: (i) provided with respect to and executed by each Eligible Shareholder in the group in the case of a Nominating Shareholder comprised of a group of Eligible Shareholders; and (ii) provided with respect to the persons specified in Instructions 1 and 2 to Items 6(c) and (d) of Schedule 14N (or any successor item) (x) in the case of a Nominating Shareholder that is an entity and (y) in the case of a Nominating

Shareholder that is a group that includes one or more Eligible Shareholders that are entities. The Nomination Notice shall be deemed submitted on the date on which all of the information and documents referred to in this Section 2.E(d) (other than such information and documents contemplated to be provided after the date the Nomination Notice is provided) have been delivered to and received by the Secretary of the Company.

(c) *Exceptions.*

(i) Notwithstanding anything to the contrary contained in this Section 2.E, the Company may omit from its proxy statement any Shareholder Nominee and any information concerning such Shareholder Nominee (including a Nominating Shareholder's Supporting Statement) and no vote on such Shareholder Nominee will occur (notwithstanding that proxies in respect of such vote may have been received by the Company), and the Nominating Shareholder may not, after the last day on which a Nomination Notice would be timely, cure in any way any defect preventing the nomination of such Shareholder Nominee, if: (1) the Company receives a notice pursuant to the advance notice requirements set forth in Section 2.D that a shareholder intends to nominate a candidate for Director at the annual meeting, whether or not such notice is subsequently withdrawn or made the subject of a settlement with the Company; (2) the Nominating Shareholder (or, in the case of a Nominating Shareholder consisting of a group of Eligible Shareholders, the Eligible Shareholder that is authorized to act on behalf of the Nominating Shareholder), or any qualified representative thereof, does not appear at the annual meeting to present the nomination submitted pursuant to this Section 2.E, the Nominating Shareholder withdraws its nomination or the chairman of the annual meeting declares that such nomination was not made in accordance with the procedures prescribed by this Section 2.E and shall therefore be disregarded; (3) the Board of Directors determines that such Shareholder Nominee's nomination or election to the Board of Directors would result in the Company violating or failing to be in compliance with these By-laws or the Certificate of Incorporation or any applicable law, rule or regulation to which the Company is subject, including any rules or regulations of any stock exchange on which the Corporation's securities are traded; (4) such Shareholder Nominee was nominated for election to the Board of Directors pursuant to this Section 2.E at one of the Company's two preceding annual meetings of shareholders and either withdrew from or became ineligible or unavailable for election at such annual meeting or received a vote of less than 25% of the shares of common stock entitled to vote for such Shareholder Nominee; (5) such Shareholder Nominee has been, within the past three years, an officer or director of a competitor, as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914, as amended; or (6) the Company is notified, or the Board of Directors determines, that the Nominating Shareholder or such Shareholder Nominee has failed to continue to satisfy the eligibility requirements, any of the representations and warranties made in the Nomination Notice ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), such Shareholder Nominee becomes unwilling or unable to serve on the Board of Directors or any material violation or breach occurs of any of the obligations, agreements, representations or warranties of the Nominating Shareholder or such Shareholder Nominee under this Section 2.E.

(ii) Notwithstanding anything to the contrary contained in this Section 2.E, the Company may omit from its proxy statement, or may supplement or correct, any

information, including all or any portion of the Supporting Statement or any other statement in support of a Shareholder Nominee included in the Nomination Notice, if the Board of Directors determines that: (1) such information is not true in all material respects or omits a material statement necessary to make the statements made not misleading; (2) such information directly or indirectly impugns the character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any individual, corporation, partnership, association or other entity, organization or governmental authority; (3) the inclusion of such information in the proxy statement would otherwise violate the Securities and Exchange Commission proxy rules or any other applicable law, rule or regulation; or (4) the inclusion of such information in the proxy statement would impose a material risk of liability upon the Company.

The Company may solicit against, and include in the proxy statement its own statement relating to, any Shareholder Nominee.

SECTION 3. QUORUM; ADJOURNMENT. The presence, in person or by proxy, of the holders of shares representing a majority of the votes entitled to be cast at a meeting shall constitute a quorum. If a quorum is not present at any meeting, the chairman of the meeting may adjourn the meeting from time to time without notice, other than announcement at the meeting, until a quorum is present; provided, that if after adjournment the Board of Directors fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record on the new record date entitled to vote. The shareholders present in person or by proxy at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum. The chairman of the meeting or a majority of the shareholders present in person, or by proxy, shall have power to adjourn the meeting without notice. At such adjourned meeting, any business may be transacted that might have been transacted at the meeting as originally notified.

SECTION 4. NOTICE OF MEETINGS. A written notice of each annual or special meeting of the shareholders of the Company, signed by the Chairman of the Board or the Chief Executive Officer or the President or the Secretary, which shall state the time, place and purpose of such meeting, shall be given not less than 10 days nor more than 60 days before the date of any such meeting, to each shareholder of record entitled to vote at such meeting. If mailed, the notice shall be directed to the shareholder at his or her address as it appears on the records of the stock transfer agent. Any shareholder, in person or by proxy, may at any time by a duly signed statement in writing to that effect, waive any statutory or other notice of any meeting, whether such statement be signed before or after such meeting.

SECTION 5. VOTING. (a) *General*. At all meetings of the shareholders, each holder of common stock having the right to vote, and present at the meeting in person or by proxy, shall be entitled to one vote for each full share of common stock of the Company entitled to vote and registered in his or her name. Each holder of preferred stock of any series shall have such voting powers, if any, as the Board of Directors shall have fixed by resolution prior to the issuance of any shares of such series. Whenever any action is to be taken by vote of the shareholders, other than the election of Directors, it shall be authorized

by a majority of the votes cast at a meeting of the shareholders by the holders of shares entitled to vote, unless a greater plurality is required by law or the Certificate of Incorporation.

(b) *Election of Directors.* Except as otherwise required by law, a nominee for director shall be elected at a meeting for the election of directors at which a quorum is present if the number of votes cast, in person or by proxy by the holders of shares entitled to vote thereon, “for” such nominee’s election exceeds the number of votes cast “against” such nominee’s election; provided, that if the number of director nominees exceeds the number of directors to be elected, a nominee shall be elected by a plurality of the votes cast, in person or by proxy, by the holders of shares entitled to vote thereon at any such meeting. Any incumbent director who is not elected at such meeting shall offer to tender his or her resignation to the Board of Directors. The Corporate Governance and Nominating Committee will make a recommendation to the Board of Directors as to whether to accept or reject the offer to resign, or whether other action should be taken. The Board of Directors will act on such recommendation and publicly disclose its decision and the rationale behind it within 90 days from the date of the certification of the election results.

SECTION 6. PROXIES. Any shareholder of record entitled to vote may be represented at any annual or special meeting of the shareholders by a duly appointed proxy. All proxies shall be filed with the Secretary of the meeting before being voted.

SECTION 7. ORGANIZATION. The Chairman of the Board, or in the absence or disability of the Chairman of the Board or if a vacancy exists in the office of Chairman of the Board, a director or officer designated by the Board of Directors shall act as chairman of the meeting at all meetings of the shareholders. The Secretary, or in his or her absence or disability, one of the Assistant Secretaries, shall act as secretary of the meeting. In case none of the officers above designated to act as secretary of the meeting shall be present, a secretary of the meeting shall be chosen by the Board of Directors.

SECTION 8. ORDER OF BUSINESS. The order of business at all meetings of the shareholders shall be as determined by the chairman of the meeting, but the order of business to be followed at any meeting at which a quorum is present may be changed by a vote of the shareholders.

SECTION 9. RECORD DATE FOR ACTION BY WRITTEN CONSENT. In order that the Company may determine the shareholders entitled to consent to corporate action in writing without a meeting in accordance with law, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than 60 days before the date fixed by the Board of Directors for tabulation of the consents or, if no date has been fixed for tabulation, more than 60 days before the last day on which consents received may be counted. When no prior action by the Board of Directors is required by applicable law, any shareholder of record seeking to have the shareholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within 30 days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of

Directors within 30 days after the date on which such a request is received, the record date for determining shareholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Company by delivery to its registered office in New Jersey, its principal place of business or to any officer or agent of the Company having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to the Company's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by applicable law, the record date for determining shareholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the date on which the Board of Directors adopts the resolution taking such prior action.

Nothing in this Article II, Section 9 shall require the Board of Directors to take any action with respect to any proposed action or other proposal for which consent is sought other than to fix a record date as provided for herein; and the fixing of any such record date shall not be deemed to be an action taken by the Board of Directors with respect to any such proposed action or other proposal for which consent is sought for any other purpose.

SECTION 10. INSPECTORS OF WRITTEN CONSENT. In the event of the delivery, in the manner provided by Article II, Section 9, to the Company of the requisite written consent or consents to take corporate action and/or any related revocation or revocations, the Company shall engage nationally recognized independent inspectors of elections for the purpose of promptly performing a ministerial review of the validity of the consents and revocations. For the purpose of permitting the inspectors to perform such review, no action by written consent without a meeting shall be effective until such date as the independent inspectors certify to the Company that the consents delivered to the Company in accordance with Article II, Section 9 represent at least the minimum number of votes that would be necessary to take the corporate action. Nothing contained in this paragraph shall in any way be construed to suggest or imply that the Board of Directors or any shareholder shall not be entitled to contest the validity of any consent or revocation thereof, whether before or after such certification by the independent inspectors, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

SECTION 11. EFFECTIVENESS OF WRITTEN CONSENT. Every written consent shall bear the date of signature of each shareholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, on or before the date fixed by the Board of Directors for tabulation of the consents or, if no such date has been fixed, within 60 days of the earliest dated written consent received in accordance with Article II, Section 9, a written consent or consents signed by a sufficient number of holders to take such action are delivered to the Company in the manner prescribed in Article II, Section 9 and are not thereafter revoked in accordance with the New Jersey Business Corporation Act.

ARTICLE III
Directors

SECTION 1. QUALIFICATIONS. Each Director shall be at least 21 years of age and shall be elected in the manner provided by the Certificate of Incorporation and these By-laws.

SECTION 2. DUTIES AND POWERS. The Board of Directors shall manage the business and affairs of the Company, and shall exercise all powers of the Company and perform all acts which are not required to be exercised or performed by the shareholders. The Board of Directors may adopt such rules and regulations for the conduct of its meetings and the management of the Company as it may deem proper.

SECTION 3. PLACE OF MEETINGS. Meetings of the Board of Directors shall be held at the principal office of the Company or at such other place within or without the State of New Jersey, as the Chairman of the Board or the Board of Directors may designate.

SECTION 4. TELEPHONE MEETINGS. Any or all Directors may participate in a meeting of the Board of Directors or a committee thereof by means of conference telephone or any means of communication by which all persons participating in the meeting are able to hear each other.

SECTION 5. NOTICE OF MEETINGS. There shall be an annual meeting of the Board of Directors held without notice on the date of the annual meeting of shareholders, or as soon thereafter as convenient, at the same place as the annual meeting of shareholders unless some other location is designated by the Chairman of the Board or by the President. Regular meetings, without notice, may be held at such time and place as the Board of Directors may designate. The Chairman of the Board or the Chief Executive Officer may call any special meeting of the Board of Directors, and shall do so whenever requested in writing by a majority of the Directors. Notice of each special meeting shall be mailed to each Director at least four days before the date on which the meeting is to be held, or be telephoned or sent to each Director by fax, e-mail or similar means of electronic communication, or be delivered in person, not later than the day before the date on which such meeting is to be held. The Board of Directors may meet to transact business at any time and place without notice, provided that each Director shall be present, or that any Director or Directors not present shall waive notice in writing, either before or after such meeting. The attendance of any Director at a meeting without protesting prior to the conclusion of the meeting the lack of notice of such meeting shall constitute a waiver of notice by him or her. Neither the business to be transacted at, nor the purpose of, any meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting. Notice of an adjourned meeting need not be given if the time and place are fixed at the meeting adjourning, and if the period of adjournment does not exceed 10 days in any one adjournment.

SECTION 6. QUORUM. A majority of the Directors then in office shall constitute a quorum for the transaction of business, but the Director or Directors present, if less than a quorum, may adjourn any meeting from time-to-time until such quorum shall be present. All questions coming before the Board of Directors shall be determined and decided by a majority vote of the Directors present, unless the vote of a greater number is required by law, the Certificate of Incorporation or these By-laws.

SECTION 7. ACTION WITHOUT A MEETING. The Board of Directors may act without a meeting if, prior or subsequent to such action, each Director shall consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors.

SECTION 8. COMPENSATION OF DIRECTORS. The Board of Directors may, by the affirmative vote of a majority of the Directors then in office, fix reasonable fees or compensation of the Directors for services to the Company, including attendance at meetings of the Board of Directors or committees thereof. Nothing herein contained shall be construed to preclude any Director from serving the Company in any other capacity and receiving compensation therefor. Each Director shall be entitled to receive reimbursement for reasonable expenses incurred in the performance of his or her duties.

ARTICLE IV Committees

SECTION 1. HOW CONSTITUTED AND POWERS. The Board of Directors, by resolution of a majority of the Directors then in office, shall appoint from among its members (i) Audit, (ii) Compensation and Management Development, (iii) Science, Marketing, Innovation and Technology, (iv) Corporate Governance and Nominating, and (v) Executive Committees, and may appoint one or more other committees. The Board of Directors shall designate one member of each committee as its chair. If the chair of a committee is unavailable to attend or participate in a committee meeting, the committee members attending or participating in the meeting shall designate one member to serve as the committee's acting chair for the meeting.

Each committee's purpose, membership, and authority and responsibilities shall be set forth in its charter established by the Board of Directors, which shall be posted on the Company's website, *www.bd.com*. To the extent provided in these By-laws, in each committee's charter, or by any resolution conferring or limiting its powers, each committee shall have and may exercise all the authority of the Board of Directors, except that no committee shall:

- (a) make, alter, or repeal any By-law of the Company;
- (b) elect, appoint or remove any Director, or elect, appoint or remove any corporate officer;
- (c) submit to shareholders any action that requires approval of shareholders;
- (d) amend or repeal any resolution adopted by the Board of Directors;
- (e) act on matters assigned to other committees appointed by the Board of Directors; or
- (f) create, dissolve or fill any vacancy on any committee appointed by the Board of Directors.

The Board of Directors, by resolution of a majority of the Directors then in office, may fill any vacancy in any committee; appoint one or more alternate members of any committee to act in the absence or disability of members of such committees with all the powers of such absent or disabled members; or remove any Director from membership on any committee.

SECTION 2. MEETINGS AND PROCEDURES. Each committee may make its own rules of procedure and shall meet as provided by such rules or by resolution of the Board of Directors, and shall also meet at the call of the chair of the committee, the Chairman of the Board, the Chief Executive Officer, or a majority of the members of the committee.

A majority of the members of a committee shall constitute a quorum. The affirmative vote of a majority of all of the members of a committee shall be necessary for the adoption of a resolution or to approve any matter within the scope of the authority of a committee. Minutes of the proceedings of a committee shall be recorded in a book provided for that purpose and filed with the Secretary of the Company. A committee may act without a meeting if, prior or subsequent to such action, each member shall consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the committee.

Action taken by a committee, with or without a meeting, shall be reported to the Board of Directors at its next regular meeting following such committee action; except that, when the meeting of the Board of Directors is held within two days after the committee action, such report, if not made at the first meeting, shall be made to the Board of Directors at its second meeting following such action.

ARTICLE V

Officers

SECTION 1. ENUMERATION, APPOINTMENT AND REMOVAL. The corporate officers of the Company shall be a Chairman of the Board, a Chief Executive Officer, a President, a Treasurer, a Secretary, and such other corporate officers (including assistant corporate officers) as the Board of Directors may deem necessary or desirable for the transaction of the business of the Company. In its discretion, the Board of Directors may leave unfilled any office except those of the President, Treasurer, and Secretary, and should any vacancy occur among said officers by death, resignation or otherwise, the same shall be filled at the next regular meeting of the Board of Directors or at a special meeting. Any two or more offices may be held by the same person. The Board of Directors, by resolution adopted by a majority of the Directors then in office, shall designate the Chairman of the Board or the President to serve as the Chief Executive Officer of the Company.

The corporate officers shall be elected by the Board of Directors and shall hold office until the next annual meeting of the Board of Directors, subject to the power of the Board of Directors to remove any corporate officer at its pleasure by an affirmative vote of the majority of the Directors then in office.

Every corporate officer shall have such authority and perform such duties in the management of the Company as may be provided in these By-laws, or such duties consistent with these By-laws as may be assigned by the Board of Directors, the Chief Executive Officer or the officer to whom such person reports.

The appropriate officers shall have the authority to appoint persons to the position of Senior Vice President, Vice President or another Vice President designation with respect to any business unit or function within the Company. Such persons shall not be deemed to be corporate officers solely by virtue of such appointment.

SECTION 2. CHAIRMAN OF THE BOARD. The Chairman of the Board shall preside at all meetings of the Board of Directors and of the shareholders, and shall perform such other duties as these By-laws or the Board of Directors may prescribe. In the absence or disability of the Chairman of the Board or if a vacancy exists in the office of Chairman of the Board, the Board of Directors shall designate a director who shall have all the powers and perform all the duties of the Chairman of the Board.

SECTION 3. CHIEF EXECUTIVE OFFICER. The Chief Executive Officer shall have general charge and supervision over and responsibility for the business and affairs of the Company. He or she shall keep the Board of Directors fully informed concerning those areas in his or her charge, and shall perform such other duties as may be assigned to him or her by the Board of Directors.

SECTION 4. PRESIDENT. The President shall have such powers and perform such duties as may be provided by statute or these By-laws, and as may be assigned by the Board of Directors or the Chief Executive Officer.

SECTION 5. TREASURER. The Treasurer shall have the care and custody of the Company funds and securities, maintain banking relationships and execute credit and collection policies. He or she shall perform such other duties and possess such other powers as are incident to his or her office.

SECTION 6. SECRETARY. The Secretary shall attend all meetings of the Board of Directors and of the shareholders, and shall record all proceedings of such meetings in books to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the shareholders and the Board of Directors. He or she shall have the custody of the seal of the Company and shall affix the same to all instruments requiring it, and attest the same. He or she shall perform such other duties and possess such other powers as are incident to his or her office.

ARTICLE VI
Certificate of Capital Stock

SECTION 1. FORM AND TRANSFERS. Subject to the following sentence, the interest of each shareholder of the Company shall be evidenced by certificates for shares of

capital stock, certifying the number of shares represented thereby. However, the board of directors may provide that some or all of the shares of any class or series of stock of the Company shall be represented by uncertificated shares.

Transfers of shares of the capital stock of the Company shall be made only on the books of the Company, which shall include the books of the stock transfer agent, by the registered holder thereof, or by his or her attorney authorized by power of attorney duly executed and filed with the Secretary of the Company, or a transfer agent appointed as provided in Section 4 of this Article, and, except in the case of uncertificated shares, on surrender of the certificate or certificates for such shares properly endorsed and the payment of all taxes thereon. The person in whose name shares of capital stock stand on the books of the Company shall be deemed the owner thereof for all purposes. The Board of Directors may, from time-to-time, make such additional rules and regulations as it may deem expedient concerning the issue, transfer, and registration of certificates for shares of the capital stock of the Company. Certificates shall be signed by, or in the name of the Company by, the Chairman, the President or a Vice President who is a corporate officer, and may be countersigned by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Company and may be sealed with the seal of the Company or a facsimile thereof. Any or all signatures upon a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon such certificate, shall have ceased to be such corporate officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Company with the same effect as if he were such corporate officer, transfer agent or registrar at the date of its issue.

SECTION 2. FIXING RECORD DATE. Except as provided in Article II, Section 9 with respect to the setting a record date for action by written consent of shareholders, for the purpose of determining the shareholders entitled to notice of or to vote at any meeting of shareholders or an adjournment thereof, or for the purpose of determining the shareholders entitled to receive payment of any dividend or allotment of any right, or for the purpose of any other action, the Board of Directors shall fix a date not more than 60 days nor less than 10 days before the date of any such meeting, nor more than 60 days prior to any other action, as the record date for any such determination of shareholders.

SECTION 3. LOST, STOLEN, DESTROYED OR MUTILATED CERTIFICATES. No certificate for shares of capital stock in the Company shall be issued in place of any certificate alleged to have been lost, destroyed or stolen, except on production of evidence of such loss, destruction or theft and on delivery to the Company, if the Board of Directors shall so require, of a bond of indemnity upon such terms and secured by such surety as the Board of Directors may in its discretion require. A new certificate may be issued without requiring any bond when, in the judgment of the Board of Directors, it is proper to do so.

SECTION 4. TRANSFER AGENT AND REGISTRAR. The Board of Directors may appoint one or more transfer agents and one or more registrars, and may require all certificates of capital stock to bear the signature or signatures of any of them. One corporation may serve as both transfer agent and registrar.

SECTION 5. EXAMINATION OF BOOKS BY SHAREHOLDERS. So far as it is not inconsistent with law, the Board of Directors shall have power to determine, from time-to-time, whether, to what extent, at what times and places, and under what conditions and regulations the books and records of account, minutes of the proceedings of the shareholders, the Board of Directors and any committee of the Board, and other documents of the Company, or any of them, shall be open to inspection of the shareholders.

SECTION 6. VOTING SHARES OF OTHER CORPORATIONS. Unless otherwise ordered by the Board of Directors, the Chairman of the Board and the President, or either of them, or their respective designees, shall have full power and authority on behalf of the Company to attend and to act and to vote at any meeting of shareholders of any corporation in which the Company may hold stock, and at any such meeting shall possess and may exercise any and all rights and powers incident to the ownership of such stock, and which, as the owner thereof, the Company might have possessed and exercised if present. The Board of Directors, by resolution, from time-to-time, may confer like powers upon any other person or persons.

ARTICLE VII
Dividends

Dividends may be declared and paid at such times and in such amounts as the Board of Directors may in its absolute discretion determine and designate, subject to the restrictions and limitations imposed by law.

ARTICLE VIII
Signatures

Unless otherwise required or permitted by law, by the Certificate of Incorporation, by these By-laws, or by resolution of the Board of Directors, any corporate officer may execute in the name of the Company, contracts or other instruments and filings in the ordinary course of business, or contracts or other instruments and filings not in the ordinary course of business which are authorized, either generally or specifically, by the Board of Directors, and the Secretary or an Assistant Secretary shall affix the Company seal thereto and attest the same, if required.

ARTICLE IX
Fiscal Year

The fiscal year of the Company shall begin on the 1st day of October in each year and end on the September 30th next succeeding.

ARTICLE X
Directors May Contract With Company

Any Director or corporate officer may be a party to or may be interested in any agreement or transaction of the Company by which he or she may personally benefit, with the same force and effect as if he or she were either an entire stranger to the Company or to the Board of Directors, provided the fact that he or she is so interested or may personally

benefit shall be disclosed or shall have been known to the majority of the Board of Directors; and further provided that such agreement or transaction shall be approved or ratified by the affirmative vote of a majority of the Directors, or a committee thereof, not so interested or benefited.

ARTICLE XI
Indemnification

The Company shall indemnify to the full extent authorized or permitted by the New Jersey Business Corporation Act (the "New Jersey Act"), any corporate agent (as defined in the New Jersey Act) involved in any proceeding (as defined in the New Jersey Act) by reason of the fact that he or she is, or was, a corporate agent of the Company.

The reasonable expenses incurred by a director or officer in defending or investigating a proceeding shall be paid by the Corporation in advance of the final disposition of such proceeding upon receipt of an undertaking (reasonably satisfactory to the Company) by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Company as authorized in this Article XI.

Any indemnification under this Article XI shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the corporate agent is proper in the circumstances, because such person has met the applicable standard of conduct set forth in the New Jersey Act. With respect to directors or officers of the Company, such determination shall be made (i) by a majority vote of the directors who are not parties to such proceeding, even though less than a quorum, or (ii) if there are no such directors, or if such directors so direct, in a written opinion by independent legal counsel designated by the Board of Directors, or (iii) by the shareholders. With respect to all other corporate agents and unless otherwise directed by the Board of Directors, such determination may be made by the General Counsel of the Company.

No elimination of or amendment to this Article XI shall deprive any person of any rights hereunder arising out of alleged or actual acts or omissions occurring prior to such elimination or amendment.

ARTICLE XII
Amendments

By-laws may be adopted, amended, or repealed by the shareholders or by a majority vote of the Directors then in office. Any By-law adopted or amended by the shareholders may be amended or repealed by a majority vote of the Directors then in office unless such By-law expressly reserves to the shareholders the right to amend or repeal it.

ARTICLE XIII
Force and Effect of By-Laws

These By-laws are subject to the provisions of the New Jersey Business Corporation Act and the Company's Certificate of Incorporation, as they may be amended

from time-to-time. If any provision in these By-laws is inconsistent with a provision in that Act or the Certificate of Incorporation, the provision of that Act or the Certificate of Incorporation, as the case may be, shall govern to the extent of such inconsistency.

CITIGROUP GLOBAL MARKETS INC.
388 Greenwich Street
New York, New York 10013

PERSONAL AND CONFIDENTIAL

April 23, 2017

Becton, Dickinson and Company
1 Becton Drive
Franklin Lakes, NJ 07417

Attention: Christopher Reidy
Executive Vice President, Chief Financial Officer
and Chief Administrative Officer

Project Lambda
Bridge Facility Commitment Letter

Ladies and Gentlemen:

Citigroup Global Markets Inc. (“CGMI”), on behalf of Citi (as defined below) (together with each Lender (as defined in Annex B) that becomes a party to this Commitment Letter as an additional “Commitment Party” pursuant to Section 3 hereof, collectively, the “Commitment Parties,” “we” or “us”) is pleased to confirm the arrangements under which (i) Citi is authorized by Becton, Dickinson and Company (the “Borrower”) to act as sole lead arranger and sole bookrunner in connection with, (ii) Citi is exclusively authorized by the Borrower to act as administrative agent in connection with, and (iii) each Commitment Party commits to provide the financing for, certain transactions described herein, in each case on the terms set forth in this letter and the attached Annexes A, B and C hereto (collectively, this “Commitment Letter”).

You have informed us that the Borrower, through a wholly-owned subsidiary (“Merger Sub”), intends to acquire all of the outstanding equity interests (the “Acquisition”) of an entity previously identified to us and codenamed “Lambda” (the “Target”, and together with its subsidiaries, the “Acquired Business”) from the Target’s shareholders pursuant to an agreement and plan of merger, dated as of April 23, 2017 (including the exhibits, schedules and all related documents, collectively the “Acquisition Agreement”) to be entered into by the Borrower, Merger Sub and the Target. You have also informed us that the Acquisition and related transaction fees and expenses (including the refinancing of the existing unsecured revolving credit facility of the Target (the “Target Refinancing”)) will be financed from a combination of the following: (i) the issuance of common stock of the Borrower to the Target’s shareholders (the “Equity Consideration Issuance”), (ii) available cash of the Borrower, and (iii) aggregate gross proceeds of \$15.7 billion (the “Gross Proceeds”) from (a) the issuance of (1) common stock of the Borrower in one or more public registered and/or private offerings and/or (2) mandatory convertible preferred stock of the Borrower in one or more public registered and/or private offerings (the issuances contemplated by the foregoing sub-clauses (iii)(a)(1) and (iii)(a)(2), the “Market Equity Issuances”, and, together with the Equity Consideration Issuance, the “Equity Issuances”), (b) the issuance by the Borrower of senior unsecured notes (the “Notes”) pursuant to one or more registered public offerings or

Rule 144A and/or Regulation S under the Securities Act of 1933, as amended (the “**Securities Act**”) or other private placements (collectively, the “**Notes Offering**”), and (c) borrowings under a senior unsecured term loan facility (the “**Term Facility**”), and/or (iv) in the event that all or any portion of the Gross Proceeds is not available on or before the time the Acquisition is consummated, borrowings by the Borrower of loans (the “**Bridge Loans**”) under a senior unsecured 364-day bridge loan facility having the terms set forth on Annex B (the “**Bridge Facility**”) in an aggregate principal amount of up to \$15.7 billion. In addition, you have advised us that you intend to either (A) establish a senior unsecured revolving credit facility (the “**New Revolving Facility**”), which will amend and restate, refinance or replace the Borrower’s Five Year Credit Agreement, dated as of January 29, 2016 (as may be further amended, restated, amended and restated, supplemented or modified prior to the date hereof, the “**Existing Credit Agreement**”), among you, as borrower, the lenders and issuing banks party thereto and Citibank, N.A., as administrative agent or (B) amend (the “**Amendment**”) the Existing Credit Agreement (the New Revolving Facility or the Existing Credit Agreement, as amended by the Amendment, the “**Revolving Facility**”, and the Revolving Facility together with the Term Facility, the “**Bank Facilities**”).

The Acquisition, the Equity Issuances, the Notes Offering, the borrowing of the Term Facility, the Amendment and/or the incurrence of the New Revolving Facility, the Target Refinancing and the payment of fees and expenses incurred in connection with the foregoing and the transactions contemplated by or related to the foregoing are collectively referred to herein as the “**Transactions**”.

1. Commitments; Titles and Roles.

Citi is pleased to confirm its agreement to act, and you hereby appoint Citi to act, as sole lead arranger and sole bookrunner (the “**Arranger**”) in connection with the Bridge Facility. Citi is pleased to confirm its agreement to act, and you hereby appoint Citi to act, as administrative agent (the “**Administrative Agent**”) for the Bridge Facility. Citi shall retain “left” and highest placement on all marketing materials prepared in connection with the Bridge Facility. CGMI, on behalf of Citi, is pleased to confirm Citi’s commitment to provide the Borrower 100% of the aggregate amount of the Bridge Facility on the terms set forth in this Commitment Letter and the Fee Letter referred to below and subject only to the satisfaction or waiver of the conditions expressly set forth in Section 2 below and Annex C; *provided* that, the aggregate commitment of the Commitment Parties hereunder for the Bridge Facility shall be automatically reduced on a *pro rata* basis at any time on or after the date hereof and prior to the Closing Date as set forth in the section titled “Mandatory Prepayments/Commitment Reductions” in Annex B hereto. Notwithstanding the foregoing, you may appoint additional co-agents and co-arrangers (“**Additional Agents**”) reasonably acceptable to Citi having such titles and economics (commensurate with the commitments provided by each such Additional Agent in accordance with Section 3 below), in each case, in accordance with the syndication plan for the Bridge Facility agreed to by the Borrower and Citi prior to the date hereof (the “**Syndication Plan**”). Our fees for our commitment and for services related to the Bridge Facility are set forth in a separate fee letter (the “**Fee Letter**”) entered into by the Borrower and Citi on the date hereof.

For the purposes of this Commitment Letter, “**Citi**” shall mean CGMI, Citibank, N.A., Citibank, N.A., London Branch, Citicorp USA, Inc., Citicorp North America, Inc. and/or any of their affiliates as Citi shall determine to be appropriate to provide the services contemplated herein and such affiliates shall be entitled to the benefits afforded to Citi hereunder.

The Borrower acknowledges that this Commitment Letter shall not constitute or give rise to any obligation on the part of Citi or any of its affiliates to provide or commit to provide any portion of the commitments for the Bank Facilities; any such commitment or obligation will arise, if at all, only to the extent in a separate commitment letter or agreement with respect thereto and setting forth the terms and conditions thereof.

2. Conditions Precedent.

The Commitment Parties' respective commitments and agreements are subject only to (i) the execution and delivery of appropriate definitive loan documents relating to the Bridge Facility including, without limitation, a bridge loan agreement (the "**Bridge Loan Agreement**") and other related definitive documents (collectively, the "**Loan Documents**") that are substantially consistent with the terms set forth in this Commitment Letter and (ii) the conditions set forth in Annex C hereto. Notwithstanding anything in this Commitment Letter, the Fee Letter, the Loan Documents or any other letter agreement or other undertaking concerning the financing of the transactions contemplated hereby to the contrary, the only conditions to availability of the Bridge Facility on the Closing Date are set forth in this Section 2 and in Annex C (collectively, the "**Funding Conditions**"); it being understood that there are no conditions (implied or otherwise) to the commitments hereunder (including compliance with the terms of the Commitment Letter, the Fee Letter, the Loan Documents or otherwise) other than the Funding Conditions (and upon satisfaction or waiver of the Funding Conditions, the funding duly requested by the Borrower under the Bridge Facility on the Closing Date shall occur).

Notwithstanding anything to the contrary contained in this Commitment Letter, the Fee Letter or the Loan Documents, (a) the only representations the accuracy of which will be a condition to the availability of the Bridge Facility on the Closing Date will be (i) the representations made by or with respect to the Acquired Business in the Acquisition Agreement as are material to the interests of the Lenders and the Commitment Parties (but only to the extent that the Borrower or Merger Sub has the right not to consummate the Acquisition, or to terminate their obligations (or otherwise do not have an obligation to close), under the Acquisition Agreement (in each case, in accordance with the terms of the Acquisition Agreement) as a result of a failure of such representations in the Acquisition Agreement to be true and correct) (the "**Acquisition Representations**") and (ii) the Specified Representations (as defined below), and (b) the terms of the documentation for the Bridge Facility will be such that they do not impair the availability of the Bridge Facility on the Closing Date if the conditions set forth in this Section 2 and in Annex C hereto are satisfied (it being understood that nothing in the preceding clause (a) will be construed to limit the applicability of the individual conditions set forth in this Section 2 or in Annex C). As used herein, "**Specified Representations**" means representations made by the Borrower referred to in Annex B relating to incorporation or formation; organizational power and authority to enter into the Loan Documents; due execution, delivery and enforceability of the Loan Documents; solvency as of the Closing Date of the Borrower and its subsidiaries on a consolidated basis after giving effect to the Transactions (solvency to be defined in a manner consistent with Schedule I); no conflicts of the Loan Documents with charter documents; Federal Reserve margin regulations; the Investment Company Act; and the use of loan proceeds not violating OFAC, the PATRIOT Act, FCPA and other anti-terrorism laws.

3. Syndication.

Citi intends and reserves the right to syndicate the Bridge Facility to the Lenders (as defined in Annex B), and you acknowledge and agree that the commencement of syndication shall occur in the discretion of Citi. The selection of the Lenders (a) from the date hereof until 25 days following the date hereof (the "**Initial Syndication Period**") shall be made jointly by Citi and the Borrower in accordance with the Syndication Plan and (b) following the Initial Syndication Period, if and for so long as a Successful Syndication (as defined in the Fee Letter) has not been achieved, shall be made by Citi in consultation with the Borrower. Citi will lead the syndication, including determining the timing of all offers to potential Lenders, any title of agent or similar designations or roles awarded to any Lender (including any

Additional Agent) and the acceptance of commitments, the amounts offered, the final commitment allocations and the compensation provided to each Lender from the amounts to be paid to the Commitment Parties pursuant to the terms of this Commitment Letter and the Fee Letter; *provided* that, (x) during the Initial Syndication Period, all such determinations shall be made jointly by Citi and the Borrower in accordance with the Syndication Plan and (y) following the Initial Syndication Period, such determinations shall be made by Citi in consultation with the Borrower. The commitments of Citi hereunder with respect to the Bridge Facility shall be reduced on a *pro rata* basis dollar-for-dollar as and when commitments for the Bridge Facility are received from Lenders which have been selected pursuant to the syndication process set forth above (including the Additional Agents) to the extent that each such Lender becomes (i) party to this Commitment Letter as an additional "Commitment Party" pursuant to a joinder agreement or other documentation in form and substance reasonably satisfactory to Citi and you or (ii) party to the Bridge Loan Agreement as a "Lender" thereunder; *provided, further, however,* with respect to any syndication of any portion of the commitments hereunder to a Lender to which either the Borrower has not consented (such consent not to be unreasonably withheld, delayed or conditioned) or otherwise is not a commercial or investment bank whose senior, unsecured, long-term indebtedness has "investment grade" ratings by S&P and Moody's (each as defined below), the Commitment Parties shall not be relieved, released or novated from their respective obligations hereunder with respect to such portion of the commitments until the funding on the Closing Date has occurred. The Borrower agrees to use commercially reasonable efforts to ensure that Citi's syndication efforts benefit from the existing lending relationships of the Borrower and its subsidiaries and, to the extent practical and appropriate (but in all instances subject to, and not in contravention of, the Acquisition Agreement), of the Acquired Business. To facilitate an orderly and successful syndication of the Bridge Facility, you agree that, until the earliest of (x) the termination of the syndication by Citi, (y) the date a Successful Syndication (as defined in the Fee Letter) is achieved and (z) 60 days following the Closing Date (such earliest date, the "**Syndication Date**"), the Borrower will not, and the Borrower will use commercially reasonable efforts (but in all instances subject to, and not in contravention of, the Acquisition Agreement) to ensure that the Acquired Business will not, syndicate or issue, attempt to syndicate or issue, announce or authorize the announcement of the syndication or issuance of any debt facility or any debt security of the Borrower or any of its subsidiaries or of the Acquired Business that would reasonably be expected to materially impair the syndication of the Bridge Facility as determined by the Arranger, including any renewals or refinancings of any existing debt facility or debt security (other than (a) the Bridge Facility, (b) the Notes Offering, (c) the Bank Facilities (*provided* that the syndication thereof shall be coordinated and managed by Citi in consultation with the Borrower on mutually agreeable terms), (d) any indebtedness permitted to remain outstanding or to be incurred by the Acquired Business after the date hereof but prior to the Closing Date under the Acquisition Agreement (and extensions, refinancings and renewals thereof prior to the Closing Date to the extent permitted under the Acquisition Agreement; *provided* that the aggregate commitments thereunder shall not be increased), (e) extensions, refinancings and renewals of other existing credit facilities (*provided* that (x) the aggregate commitments thereunder shall not be increased and (y) any such extension, refinancing or renewal shall be coordinated and managed by Citi on mutually agreeable terms), (f) commercial paper issuances and (g) ordinary course bilateral working capital facilities and ordinary course capital leases, letters of credit and purchase money and equipment financings), without the prior written consent of Citi (such consent not to be unreasonably withheld, delayed or conditioned).

Until the Syndication Date, the Borrower agrees to cooperate with Citi and agrees to use commercially reasonable efforts to cause the Acquired Business to cooperate with Citi (but in all instances subject to, and not in contravention of, the terms of the Acquisition Agreement), in connection with (i) the preparation of one or more customary information packages for the Bridge Facility regarding the business, operations, financial projections and prospects of the Borrower and the Acquired Business (collectively, the "**Confidential Information Memorandum**") including, without limitation, all information relating to the transactions contemplated hereunder prepared by or on behalf of the Borrower

deemed reasonably necessary by Citi to complete the syndication of the Bridge Facility, (ii) using commercially reasonable efforts to obtain, prior to the launch of general syndication, updated ratings of the Borrower's senior unsecured indebtedness from Moody's Investor Services, Inc. ("**Moody's**") and Standard & Poor's Ratings Group, a division of The McGraw Hill Corporation ("**S&P**"), in each case taking into account the transactions contemplated hereby, (iii) the presentation of one or more customary information packages for the Bridge Facility acceptable in format and content reasonably acceptable to Citi and the Borrower (collectively, the "**Lender Presentation**") for use in meetings and other communications with prospective Lenders or agents in connection with the syndication of the Bridge Facility and (iv) arranging for direct contact between senior management and representatives, with appropriate seniority and expertise, of the Borrower with prospective Lenders (and the use of commercially reasonable efforts to ensure direct contact between senior management and representatives, with appropriate seniority and expertise, of the Acquired Business with prospective Lenders (but in all instances subject to, and consistent with, the terms of the Acquisition Agreement)) and participation of such persons in a reasonable number of in-person and/or telephonic meetings at reasonable times and (in the case of in-person meetings) locations mutually agreed upon and upon reasonable advance notice. Without limiting your obligations to assist with syndication efforts as set forth herein, it is understood that each Commitment Party's commitments hereunder are not subject to or conditioned upon syndication of, or receipt of commitments in respect of the Bridge Facility, and notwithstanding anything to the contrary contained in this Commitment Letter, the Fee Letter or the Loan Documents, neither the commencement or the completion of the syndication of the Bridge Facility nor the obtaining of ratings shall constitute a condition to the availability of the Bridge Facility on the Closing Date or at any time thereafter. It is also understood that the Borrower will not be required to provide any information to the extent that the provision thereof would violate (i) any attorney-client privilege or (ii) law, rule or regulation applicable to the Borrower, the Acquired Business or you and their respective affiliates or (iii) any obligation of confidentiality from a third party binding on you (so long as such confidentiality obligation was not entered into in contemplation of the Transactions), the Acquired Business or your or their respective affiliates; provided that you shall use commercially reasonable efforts to obtain the relevant consents under such third party obligations of confidentiality to allow for the provision of such information to the extent reasonably requested by Citi; provided further that in the event you do not provide information that could reasonably be considered material to the Lenders because the disclosure thereof would violate a confidentiality agreement binding on you or waive attorney-client privilege as contemplated in the paragraph above, you will promptly provide notice to the Commitment Parties that such information is being withheld. The Borrower will be solely responsible for the contents of any such Confidential Information Memorandum and Lender Presentation (other than, in each case, any information contained therein that has been provided for inclusion therein by the Commitment Parties solely to the extent such information relates to the Commitment Parties) and all other information, documentation or materials delivered to the Commitment Parties in connection therewith (collectively, the "**Information**") and acknowledges that the Commitment Parties will be using and relying upon the Information without independent verification thereof. The Borrower agrees that Information regarding the Bridge Facility and Information provided by the Borrower, the Acquired Business or their respective representatives to any Commitment Party in connection with the Bridge Facility (including, without limitation, draft and execution versions of the Loan Documents, the Confidential Information Memorandum, the Lender Presentation, publicly filed financial statements, and draft or final offering materials relating to contemporaneous or prior securities issuances by the Borrower or the Acquired Business) may be disseminated to potential Lenders and other persons through one or more internet sites (including an IntraLinks, SyndTrak or other electronic workspace (the "**Platform**")) created for purposes of syndicating the Bridge Facility or otherwise, in accordance with Citi's standard syndication practices, and you acknowledge that neither the Commitment Parties nor any of their affiliates will be responsible or liable to you or any other person or entity for damages arising from the use by others of any Information or other materials obtained on the Platform (except to the extent arising out of the gross negligence, bad faith or willful misconduct of a Commitment Party or the gross negligence, bad faith or willful

misconduct of such Commitment Party's controlled affiliates or any of its or their directors, officers, employees or partners, as determined in a final non-appealable decision of a court of competent jurisdiction; provided, however, that in no event will any party hereto or the Acquired Business or any of their respective affiliates have any liability for indirect, consequential, special or punitive damages other than as set forth in Annex A).

The Borrower acknowledges that certain of the Lenders may be "public side" Lenders (i.e. Lenders that do not wish to receive material non-public information with respect to the Borrower, the Acquired Business or their respective affiliates or any of their respective securities) (each, a "**Public Lender**"). At the request of Citi, the Borrower agrees to prepare an additional version of the Confidential Information Memorandum and the Lender Presentation to be used by Public Lenders that does not contain material non-public information concerning the Borrower, the Acquired Business, or their respective affiliates or securities. The information to be included in the additional version of the Confidential Information Memorandum will be substantially consistent with the information included in any offering memorandum for the offering for the Notes. It is understood that, in connection with your assistance described above, you will provide a customary authorization letter to Citi authorizing the distribution of the Information to prospective Lenders and containing a representation to the Commitment Parties, in the case of the public-side version, that such Information does not include material non-public information about the Borrower, the Acquired Business, or their respective affiliates or their respective securities (with respect to information about the Acquired Business and its affiliates, to the best of the Borrower's knowledge), and the Confidential Information Memorandum will exculpate (x) us and our affiliates and (y) (without limiting the other provisions of this Commitment Letter or any provision of the Loan Documents) you, the Acquired Business and your and their affiliates, with respect to any liability related to the use or misuse of the contents of such Confidential Information Memorandum or any related marketing material by the recipients thereof. In addition, the Borrower will use commercially reasonable efforts to designate as such all Information provided to any Commitment Party by or on behalf of the Borrower or the Acquired Business which is suitable to make available to Public Lenders. The Borrower acknowledges and agrees that the following documents may be distributed to all Lenders (including Public Lenders) (unless the Borrower promptly notifies Citi in writing (including by email) within a reasonable time prior to their intended distribution (after you have been given a reasonable opportunity to review such documents) that any such document should only be distributed to prospective private Lenders): (a) drafts and final versions of the Bridge Loan Agreement and notes (if any); (b) administrative materials prepared by Citi for prospective Lenders (such as a lender meeting invitation, allocations and funding and closing memoranda); and (c) term sheets and notification of changes in the terms of the Bridge Facility.

If requested by the Arranger or you, the parties hereto agree to negotiate in good faith and to use reasonable efforts to finalize, execute and deliver the Bridge Loan Agreement (initial drafts of which shall be prepared by counsel to the Borrower) as soon as practical following the date hereof.

4. Information.

The Borrower represents and warrants that (i) all written or formally presented Information (other than projections and other forward-looking materials and information of a general economic or industry specific nature) provided directly or indirectly by the Acquired Business or the Borrower to the Commitment Parties or the Lenders in connection with the Transactions is and will be when furnished, when taken as a whole, complete and correct in all material respects and does not and will not contain when furnished, when taken as a whole, any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made (in each case after giving effect to all supplements and updates provided thereto); provided that such representation and covenant with respect to the Acquired Business and its representatives is made to the best of the Borrower's knowledge; and (ii) the

projections and other forward-looking information that have been or will be made available to the Commitment Parties or the Lenders by or on behalf of the Acquired Business or the Borrower in connection with the Transactions have been and will be prepared in good faith based upon assumptions that are believed by the preparer thereof to be reasonable at the time such financial projections are furnished to the Commitment Parties or the Lenders, it being understood and agreed that projections and other forward-looking information are as to future events and are not to be viewed as facts, are subject to significant uncertainties and contingencies, many of which are out of the Borrower or Acquired Business' control, that no assurance can be given that any particular projections will be realized and that actual results during the period or periods covered by such projections may differ significantly from the projected results and such differences may be material. You agree that if at any time prior to the later of (i) the Closing Date and (ii) the Syndication Date, any of the representations in the preceding sentence would be incorrect in any material respect (to the best of your knowledge insofar as it applies to the information concerning the Acquired Business) if the Information and projections were being furnished, and such representations were being made, at such time, then you will promptly supplement, or cause to be supplemented (and with respect to the Acquired Business, use commercially reasonable efforts to cause the Acquired Business to supplement), the Information and projections so that such representations will be correct in all material respects in light of the circumstances under which such statements are made (to the best of your knowledge insofar as it applies to information regarding the Acquired Business). In arranging and syndicating the Bridge Facility, we will be entitled to use and rely on the Information and the projections without responsibility for independent verification thereof. We have no obligation to conduct any independent evaluation or appraisal of the assets or liabilities of you, the Acquired Business or any other party or to advise or opine on any related solvency issues. Notwithstanding the foregoing, it is understood that each Commitment Party's commitments hereunder are not subject to or conditioned upon the accuracy of the representations set forth in this [Section 4](#), and notwithstanding anything to the contrary contained in this Commitment Letter or the Fee Letter, the accuracy of such representations shall not constitute a condition to the availability of the Bridge Facility on the Closing Date or at any time thereafter.

5. [Indemnification and Related Matters](#).

In connection with arrangements such as this, it is our firm's policy to receive indemnification. The Borrower agrees to the provisions with respect to our indemnity and other matters set forth in [Annex A](#), which is incorporated by reference into this Commitment Letter.

6. [Assignments](#).

This Commitment Letter may not be assigned by you without the prior written consent of the Commitment Parties (and any purported assignment without such consent will be null and void), is intended to be solely for the benefit of the Commitment Parties and the other parties hereto and, except as set forth in [Annex A](#) hereto, is not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto. Each Commitment Party may only assign its commitments and agreements hereunder, in whole or in part (i) to any of its affiliates (*provided* that such assigning Commitment Party shall not be released from its portion of its commitment so assigned to the extent that such affiliate fails to fund the portion of the commitment so assigned to it on the Closing Date) and (ii) in the case of Citi, to any additional "Commitment Parties" who become party to this Commitment Letter pursuant to a joinder agreement or other documentation reasonably satisfactory to Citi and the Borrower as provided for in [Section 3](#) above, and upon any such assignment, to the extent provided in [Section 3](#) above, Citi will be released from that portion of its commitments and agreements that has been so assigned. Neither this Commitment Letter nor the Fee Letter may be amended or any term or provision hereof or thereof waived or otherwise modified except by an instrument in writing signed by each of the parties hereto or thereto, as applicable, and any term or provision hereof or thereof may be amended or waived only by a written agreement executed and delivered by all parties hereto or thereto.

7. Confidentiality.

Please note that this Commitment Letter, the Fee Letter and any written communications provided by the Commitment Parties in connection with this arrangement are exclusively for the information of the Borrower and may not be disclosed by you to any other person without our prior written consent except, after providing written notice to the Commitment Parties, pursuant to a subpoena or order issued by a court of competent jurisdiction or by a judicial, administrative or legislative body or committee; *provided* that we hereby consent to your disclosure of (i) this Commitment Letter, the Fee Letter and such communications and discussions to the Borrower's and its affiliates' respective officers, directors, employees, agents and advisors (including legal counsel, independent auditors and other experts or agents) who are directly involved in the consideration of the Transactions (including in connection with providing accounting and tax advice to the Borrower and its affiliates) on a confidential basis, (ii) this Commitment Letter, the Fee Letter or the information contained herein and therein to the Acquired Business and its officers, directors, employees, agents and advisors (including legal counsel, independent auditors and other experts or agents) in connection with the Transactions, who are directly involved in the consideration of the Transactions to the extent you notify such persons of their obligations to keep such material confidential (*provided* that any disclosure of the Fee Letter or its terms or substance to the Acquired Business or its officers, directors, employees, agents and advisors shall be redacted in a manner reasonably satisfactory to the Commitment Parties), (iii) this Commitment Letter and the Fee Letter as required by applicable law or compulsory legal process (in which case you agree to inform us promptly thereof to the extent practicable and not prohibited by applicable law), (iv) following your acceptance of the provisions hereof and return of an executed counterpart of this Commitment Letter to the Commitment Parties as provided below, you may file a copy of any portion of this Commitment Letter (but not the Fee Letter other than the existence thereof) in any public record in which you are required by law or regulation on the advice of your counsel to file it, (v) you may disclose the aggregate fee amounts contained in the Fee Letter as part of projections, *pro forma* information or a generic disclosure of aggregate sources and uses related to aggregate compensation amounts related to the Transactions to the extent customary or required in offering and marketing materials for the Bridge Facility, Notes or in any public filing relating to the Transactions, in each case in a manner which does not disclose the fees payable pursuant to the Fee Letter (except in the aggregate), (vi) this Commitment Letter and the information contained herein and the Fee Letter in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Commitment Letter, Fee Letter or the transactions contemplated thereby or enforcement thereof or hereof, (vii) the information contained in Annex B, in any prospectus or other offering memorandum relating to the Notes, and (viii) the information contained in Annex B to Moody's and S&P; *provided* that such information is supplied to Moody's and S&P only on a confidential basis after consultation with Citi. The confidentiality provisions set forth in this paragraph shall survive the termination of this Commitment Letter and expire and shall be of no further effect after the second anniversary of the date hereof.

Each Commitment Party will treat as confidential all information provided to it by or on behalf of the Borrower or the Acquired Business or any of your or its respective subsidiaries or affiliates, and shall not disclose such information to any third party or circulate or refer to publicly such information without the Borrower's prior written consent; *provided, however*, that nothing herein will prevent each Commitment Party from disclosing any such information (a) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, or otherwise as required by applicable law or compulsory legal process (in which case such person agrees to inform you promptly thereof to the extent not prohibited by law), (b) upon the request or demand of any regulatory authority purporting to have jurisdiction over such person or any of its affiliates, (c) to the extent that such information is publicly

available or becomes publicly available other than by reason of improper disclosure by such person, (d) to such person's affiliates and their respective officers, directors, partners, members, employees, legal counsel, independent auditors and other experts or agents who need to know such information and on a confidential basis and who have agreed to treat such information confidentially, (e) to potential and prospective Lenders, participants and any direct or indirect contractual counterparties to any swap or derivative transaction relating to the borrower or its obligations under the Bridge Facility, in each case, who have agreed to keep such information confidential on terms not less favorable than the provisions hereof in accordance with the standard syndication processes of Citi or customary market standards for the dissemination of such type of information, (f) to Moody's and S&P and other rating agencies or to market data collectors as reasonably determined by the Commitment Parties; *provided* that such information is limited to Annex B and is supplied only on a confidential basis, (g) to market data collectors, similar services providers to the lending industry, and service providers to the Commitment Parties and the Lenders in connection with the administration and management of the Bridge Facility; *provided* that such information is limited to the existence of this Commitment Letter and information about the Bridge Facility, (h) received by such person on a non-confidential basis from a source (other than you, the Acquired Business or any of your or their affiliates, advisors, members, directors, employees, agents or other representatives) not known by such person to be prohibited from disclosing such information to such person by a legal, contractual or fiduciary obligation, (i) to the extent that such information was already in the Commitment Parties' possession or is independently developed by the Commitment Parties or (j) for purposes of establishing a "due diligence" defense. The Commitment Parties' obligation under this provision shall remain in effect until the earlier of (i) two years from the date hereof and (ii) the execution and delivery of the Bridge Loan Agreement by the parties thereto, at which time any confidentiality undertaking in the Bridge Loan Agreement shall supersede the provisions in this paragraph.

8. Absence of Fiduciary Relationship: Affiliates; Etc.

As you know, the Commitment Parties (together with their respective affiliates, the "**Affiliated Parties**") are full service financial institutions engaged, either directly or through their respective affiliates, in a broad array of activities, including commercial and investment banking, financial advisory, market making and trading, investment management (both public and private investing), investment research, principal investment, financial planning, benefits counseling, risk management, hedging, financing, brokerage and other financial and non-financial activities and services globally. In the ordinary course of their various business activities, the Affiliated Parties and funds or other entities in which the Affiliated Parties invest or with which they co-invest, may at any time purchase, sell, hold or vote long or short positions and investments in securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers. In addition, the Affiliated Parties may at any time communicate independent recommendations and/or publish or express independent research views in respect of such assets, securities or instruments. Any of the aforementioned activities may involve or relate to assets, securities and/or instruments of the Borrower, the Acquired Business and/or other entities and persons which may (i) be involved in transactions arising from or relating to the arrangement contemplated by this Commitment Letter or (ii) have other relationships with the Borrower or its affiliates. In addition, the Affiliated Parties may provide investment banking, commercial banking, underwriting and financial advisory services to such other entities and persons. The arrangement contemplated by this Commitment Letter may have a direct or indirect impact on the investments, securities or instruments referred to in this paragraph, and employees working on the financing contemplated hereby may have been involved in originating certain of such investments and those employees may receive credit internally therefor. Although the Affiliated Parties in the course of such other activities and relationships may acquire information about the transaction contemplated by this Commitment Letter or other entities and persons which may be the subject of the financing contemplated by this Commitment Letter, the Affiliated Parties shall have no obligation to disclose such information, or the fact that the Affiliated Parties are in possession of such information, to the Borrower or to use such information on the Borrower's behalf.

Consistent with the Affiliated Parties' policies to hold in confidence the affairs of their customers, the Affiliated Parties will not furnish confidential information obtained from you by virtue of the transactions contemplated by this Commitment Letter to any of their other customers. Furthermore, you acknowledge that neither Affiliated Party nor any of their respective affiliates has an obligation to use in connection with the transactions contemplated by this Commitment Letter, or to furnish to you, confidential information obtained or that may be obtained by them from any other person.

The Affiliated Parties may have economic interests that conflict with those of the Borrower, its equity holders and/or its affiliates. You agree that each Affiliated Party will act under this Commitment Letter as an independent contractor and that nothing in this Commitment Letter or the Fee Letter or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Affiliated Party and the Borrower, its equity holders or its affiliates. You acknowledge and agree that the transactions contemplated by this Commitment Letter and the Fee Letter (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Affiliated Parties, on the one hand, and the Borrower, on the other, and in connection therewith and with the process leading thereto, (i) the Affiliated Parties have not assumed an advisory or fiduciary responsibility in favor of the Borrower, its equity holders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Affiliated Party has advised, is currently advising or will advise the Borrower, its equity holders or its affiliates on other matters) or any other obligation to the Borrower except the obligations expressly set forth in this Commitment Letter and the Fee Letter and (ii) each Affiliated Party is acting solely as a principal and not as the agent or fiduciary of the Borrower, its management, equity holders, affiliates, creditors or any other person. The Borrower acknowledges and agrees that the Borrower has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. The Borrower agrees that it will not claim that any Affiliated Party has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Borrower, in connection with such transactions or the process leading thereto. As you know, Citigroup Global Markets Inc. has been retained by the Borrower (or one of its affiliates) as financial advisor (in such capacity, the "**Financial Advisor**") in connection with the Acquisition. Each of the parties hereto agree to such retention, and further agree not to assert any claim it might allege based on any actual or potential conflicts of interest that might be asserted to arise or result from, on the one hand, the engagement of the Financial Advisor and, on the other hand, our and our affiliates' relationships with you as described and referred to herein. In addition, Citi may employ the services of its affiliates in providing services and/or performing its or their obligations hereunder and may exchange with such affiliates information concerning the Borrower, the Acquired Business and other companies that may be the subject of this arrangement, and such affiliates will be entitled to the benefits afforded to Citi hereunder. Citi or its affiliates are, or may at any time be a lender one or more existing credit facilities of the Borrower and/or the Target (and/or of their respective subsidiaries) (in such capacity, an "**Existing Lender**"). The Borrower further acknowledges and agrees for itself and its subsidiaries that any such Existing Lender (a) will be acting for its own account as principal in connection with such existing credit facilities, (b) will be under no obligation or duty as a result of Citi's role in connection with the transactions contemplated by this Commitment Letter or otherwise to take any action or refrain from taking any action (including with respect to voting for or against any requested amendments), or exercising any rights or remedies, that each Existing Lender may be entitled to take or exercise in respect of such existing credit facilities and (c) may manage its exposure to such existing credit facilities without regard to Citi's role hereunder.

In addition, please note that the Affiliated Parties do not provide accounting, tax or legal advice. Notwithstanding anything herein to the contrary, the Borrower (and each employee, representative or other agent of the Borrower) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Bridge Facility and all materials of any kind (including opinions or other tax analyses) that are provided to the Borrower relating to such tax treatment and tax structure. However, any information relating to the tax treatment or tax structure will remain subject to the confidentiality provisions hereof (and the foregoing sentence will not apply) to the extent reasonably necessary to enable the parties hereto, their respective affiliates, and their respective affiliates' directors and employees to comply with applicable securities laws. For this purpose, "tax treatment" means U.S. federal or state income tax treatment, and "tax structure" is limited to any facts relevant to the U.S. federal income tax treatment of the transactions contemplated by this Commitment Letter but does not include information relating to the identity of the parties hereto or any of their respective affiliates.

9. Miscellaneous.

The Commitment Parties' commitments and agreements hereunder will terminate upon the first to occur of (i) the consummation of the Acquisition, (ii) the termination of the Acquisition Agreement in accordance with its terms, (iii) the date on which the Bridge Loan Agreement has been executed and delivered by each of the parties thereto and all conditions precedent to the effectiveness thereof have been satisfied, and (iv) 11:59 p.m. (New York City time) on January 23, 2018 (the "**Commitment Termination Date**") (*provided* that, to the extent that the End Date (as defined in the Acquisition Agreement) is extended to April 23, 2018 in accordance with the terms of Section 10.01(b)(i) of the Acquisition Agreement (in accordance with the terms thereof as in effect on the date hereof), the Commitment Termination Date shall, upon notice of such extension to the Arranger from the Borrower, be automatically extended to 11:59 p.m. (New York City time) on April 23, 2018).

The provisions set forth under Sections 3, 4, 5 (including Annex A), 7 and 8 hereof (other than any provision herein that expressly terminates upon execution of the Bridge Loan Agreement) and this Section 9 hereof and the provisions of the Fee Letter will remain in full force and effect regardless of whether definitive Loan Documents are executed and delivered. The provisions set forth in the Fee Letter and under Sections 5 (including Annex A) and 7 and 8 hereof and this Section 9 will remain in full force and effect notwithstanding the expiration or termination of this Commitment Letter or the Commitment Parties' respective commitments and agreements hereunder.

Each party hereto agrees that any suit or proceeding arising in respect of this Commitment Letter or the Commitment Parties' commitments or agreements hereunder or the Fee Letter will be tried exclusively in any Federal court of the United States of America sitting in the Borough of Manhattan or, if that court does not have subject matter jurisdiction, in any state court located in the City and County of New York, and each party hereby submits to the exclusive jurisdiction of, and to venue in, such court. Any right to trial by jury with respect to any action or proceeding arising in connection with or as a result of either the Commitment Parties' commitments or agreements or any matter referred to in this Commitment Letter or the Fee Letter is hereby waived by the parties hereto. Each party hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Service of any process, summons, notice or document by registered mail or overnight courier addressed to any of the parties hereto at the addresses above shall be effective service of process against such party for any suit, action or proceeding brought in any such court. This Commitment Letter and the Fee Letter will be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of laws; *provided, however,* that (a) the interpretation of the definition of Target Material Adverse Effect (as defined in Annex C) and whether there shall have occurred an Target Material Adverse Effect,

(b) whether the Acquisition has been consummated as contemplated by the Acquisition Agreement and (c) the determination of whether the representations made by the Acquired Business or any of its affiliates are accurate and whether as a result of any inaccuracy of any such representations a party to the Acquisition Agreement (or its applicable affiliates) has the right to terminate its (or their) obligations, or has the right not to consummate the Acquisition, under the Acquisition Agreement, shall be determined in accordance with the laws of the State of Delaware without giving effect to the principals of conflicts of law.

Each of the Commitment Parties hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Patriot Act”) each Commitment Party and each Lender may be required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow each Commitment Party and such Lender to identify the Borrower in accordance with the Patriot Act. This notice is given in accordance with the requirements of the Patriot Act and is effective for each Commitment Party and each Lender.

This Commitment Letter may be executed in any number of counterparts, each of which when executed will be an original, and all of which, when taken together, will constitute one agreement. Delivery of an executed counterpart of a signature page of this Commitment Letter by facsimile transmission or electronic transmission (in pdf format) will be effective as delivery of a manually executed counterpart hereof. This Commitment Letter and the Fee Letter are the only agreements that have been entered into among the parties hereto with respect to the Bridge Facility and set forth the entire understanding of the parties with respect thereto and supersede any prior written or oral agreements among the parties hereto with respect to the Bridge Facility.

Each of the parties hereto agree that this Commitment Letter is a binding and enforceable agreement with respect to subject matter contained herein, including an agreement to negotiate in good faith the Loan Documents by the parties hereto in a manner consistent with this Commitment Letter, it being acknowledged and agreed that the commitments provided hereunder by the Commitment Parties are only subject to the conditions precedent set forth in Section 2 hereof and Annex C.

Please confirm that the foregoing is in accordance with your understanding by signing and returning to the Commitment Parties the enclosed copy of this Commitment Letter, together with the Fee Letter executed by you and a copy of the Acquisition Agreement executed by each of the parties thereto, prior to 11:59 p.m. (New York City time) on April 23, 2017, whereupon this Commitment Letter and the Fee Letter will become binding agreements between us. If this Commitment Letter and the Fee Letter have not been signed and returned together with a copy of the executed Acquisition Agreement as described in the preceding sentence by such earlier time, this offer will terminate at such time. We look forward to working with you on this transaction.

[Remainder of page intentionally left blank]

Very truly yours,

CITIGROUP GLOBAL MARKETS INC.

By: /s/ Carolyn Kee
Name: Carolyn Kee
Title: Managing Director

ACCEPTED AND AGREED
AS OF THE DATE FIRST WRITTEN ABOVE:

BECTON, DICKINSON AND COMPANY

By: /s/ John E. Gallagher
Name: John E. Gallagher
Title: Senior Vice President, Corporate Finance, Controller and
Treasurer

Signature Page to Bridge Facility Commitment Letter

ANNEX A

Project Lambda

In the event that any Commitment Party becomes involved in any capacity in any action, proceeding or investigation brought by or against any person, including shareholders, partners, members or other equity holders of the Borrower or the Acquired Business in connection with or as a result of either this arrangement or any matter referred to in this Commitment Letter or the Fee Letter (together, the “**Letters**”), the Borrower agrees to periodically reimburse such Commitment Party upon written demand (together with customary documentation in reasonable detail) for its reasonable and documented out-of-pocket legal and other out-of-pocket expenses (including the cost of any investigation and preparation) incurred in connection therewith (*provided* that any legal expenses shall be limited to one counsel for all Commitment Parties taken as a whole and if reasonably necessary, a single local counsel for all Commitment Parties taken as a whole in each relevant jurisdiction (which may be a single local counsel acting in multiple jurisdictions) and, solely in the case of an actual or perceived conflict of interest between Commitment Parties where the Commitment Parties affected by such conflict inform you of such conflict, one additional counsel in each relevant jurisdiction to each group of affected Commitment Party similarly situated taken as a whole). The Borrower also agrees to indemnify and hold such Commitment Party harmless against any and all losses, claims, damages or liabilities to any such person in connection with or as a result of either this arrangement or any matter referred to in the Letters (whether or not such investigation, litigation, claim or proceeding is brought by you, your equity holders or creditors or an indemnified person and whether or not any such indemnified person is otherwise a party thereto), except to the extent (a) that such loss, claim, damage or liability has been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from (x) the gross negligence, bad faith or willful misconduct of such Commitment Party or its Related Commitment Party in performing the services that are the subject of the Letters or (y) a material breach of the obligations of such Commitment Party or its Related Commitment Party under this Commitment Letter, Fee Letter or the Loan Documents or (b) arising from any dispute among Commitment Parties or any Related Commitment Parties of the foregoing other than any claims against Citi in its capacity or in fulfilling its role as an agent or arranger role with respect to the Bridge Facility and other than any claims arising out of any act or omission on the part of the Borrower or its affiliates or the Acquired Business. If for any reason the foregoing indemnification is unavailable to such Commitment Party or insufficient to hold it harmless, then the Borrower will contribute to the amount paid or payable by such Commitment Party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative economic interests of (i) the Borrower and the Acquired Business and their respective affiliates, shareholders, partners, members or other equity holders on the one hand and (ii) such Commitment Party on the other hand in the matters contemplated by the Letters as well as the relative fault of (i) the Borrower and the Acquired Business and their respective affiliates, shareholders, partners, members or other equity holders on the one hand and (ii) such Commitment Party with respect to such loss, claim, damage or liability and any other relevant equitable considerations. The reimbursement, indemnity and contribution obligations of the Borrower under this paragraph will be in addition to any liability which the Borrower may otherwise have, will extend upon the same terms and conditions to any affiliate of such Commitment Party and the partners, members, directors, agents, employees and controlling persons (if any), as the case may be, of such Commitment Party and any such affiliate, and will be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Borrower, such Commitment Party, any such affiliate and any such person. The Borrower also agrees that neither any indemnified party nor any of such affiliates, partners, members, directors, agents, employees or controlling persons will have any liability to the Borrower or any person asserting claims on behalf of or in right of the Borrower or any other person in connection with or as a result of either this arrangement or any matter referred to in the Letters, except in the case of the Borrower to the extent that any losses, claims, damages, liabilities or

expenses incurred by the Borrower or its affiliates, shareholders, partners or other equity holders have been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of such indemnified party in performing the services that are the subject of the Letters; *provided, however*, that in no event will such indemnified party or such other parties have any liability for any indirect, consequential, special or punitive damages in connection with or as a result of such indemnified party's or such other parties' activities related to the Letters. Neither the Borrower nor any of its affiliates will be responsible or liable to the Commitment Parties or any other person or entity for any indirect, special, punitive or consequential damages that may be alleged as a result of the Acquisition, this Commitment Letter, the Fee Letter, the Bridge Facility, the Transactions or any related transaction contemplated hereby or thereby or any use or intended use of the proceeds of the Bridge Facility; *provided* that nothing in this sentence shall limit your indemnity and reimbursement obligations set forth in this Annex A. **The provisions of this Annex A will survive any termination or completion of the arrangement provided by the Letters.**

For purposes hereof, a "**Related Commitment Party**" of a Commitment Party means (a) any controlling person or controlled affiliate of such Commitment Party, (b) the respective directors, officers, or employees of such Commitment Party or any of its controlling persons or controlled affiliates and (c) the respective agents of such Commitment Party or any of its controlling persons or controlled affiliates, in the case of this clause (c), acting at the instructions of such Commitment Party, controlling person or such controlled affiliate; provided that each reference to a controlled affiliate or controlling person in this sentence pertains to a controlled affiliate or controlling person involved in the negotiation or syndication of this Commitment Letter and the Bridge Facility.

Annex A-2

ANNEX B

Project Lambda
Summary of the Bridge Facility

Certain capitalized terms used herein and not defined herein have the respective meanings given to them in the Commitment Letter.

<u>Borrower:</u>	Becton, Dickinson and Company (the “ Borrower ”).
<u>Guarantors:</u>	None.
<u>Purpose/Use of Proceeds:</u>	The proceeds of the Bridge Facility will be used (i) to fund, in part, the Acquisition and (ii) to pay fees and expenses related to the Transactions.
<u>Sole Lead Arranger and Sole Bookrunner:</u>	CGMI (in its capacities as sole Lead Arranger and sole Bookrunner, the “ Arranger ”).
<u>Administrative Agent:</u>	Citi (in its capacity as Administrative Agent, the “ Administrative Agent ”).
<u>Lenders:</u>	Citi and/or other financial institutions selected in accordance with <u>Section 3</u> of the Commitment Letter (each, a “ Lender ” and, collectively, the “ Lenders ”).
<u>Amount of Bridge Loans:</u>	\$15.7 billion in aggregate principal amount of senior unsecured bridge loans, less the amount of any reduction to the commitments (the “ Commitments ”) under the Bridge Facility on or prior to the Closing Date as set forth under the heading “Mandatory Prepayments/ Commitment Reductions” below (the “ Bridge Loans ”).
<u>Availability:</u>	One drawing may be made under the Bridge Facility on the Closing Date.
<u>Maturity:</u>	The Bridge Loans will mature and be payable in full on the date that is 364 days after the Closing Date. No amortization will be required with respect to the Bridge Facility.
<u>Closing Date:</u>	The date on or before the Commitment Termination Date on which the borrowing under the Bridge Facility is made and the Acquisition is consummated (the “ Closing Date ”).
<u>Interest Rate:</u>	All amounts outstanding under the Bridge Facility will bear interest, at the Borrower’s option, as follows: (a) at the Base Rate plus the Applicable Margin; or

(b) at the reserve adjusted Eurodollar Rate plus the Applicable Margin.

As used herein, the terms “**Base Rate**” and “**reserve adjusted Eurodollar Rate**” will have meanings customary and appropriate for financings of this type, and the basis for calculating accrued interest and the interest periods for loans bearing interest at the reserve adjusted Eurodollar Rate will be customary and appropriate for financings of this type. In no event shall the Base Rate be less than the sum of (i) the one-month reserve adjusted Eurodollar Rate (after giving effect to any reserve adjusted Eurodollar Rate “floor”) plus (ii) the difference between the applicable stated margin for reserve adjusted Eurodollar Rate loans and the applicable stated margin for Base Rate loans.

“**Applicable Margin**” means a percentage *per annum* determined in accordance with the pricing grid attached hereto as Schedule I (the “**Pricing Grid**”).

Notwithstanding the foregoing, if any principal, interest, fee or other amount payable by the Borrower under the Bridge Facility is not paid when due, then such overdue amount shall accrue interest at a rate equal to the rate then applicable thereto, or otherwise at a rate equal to the rate then applicable to loans bearing interest at the rate determined by reference to the Base Rate, in each case plus an additional two percentage points (2.00%) *per annum*. Such interest will be payable on demand.

Interest Payments:

Quarterly for loans bearing interest with reference to the Base Rate; except as set forth below, on the last day of selected interest periods (which will be one, two, three and six months) for loans bearing interest with reference to the reserve adjusted Eurodollar Rate (and at the end of every three months, in the case of interest periods of longer than three months); and upon prepayment, in each case payable in arrears and computed on the basis of a 360-day year (365/366-day year with respect to loans bearing interest with reference to the Base Rate).

Commitment Fees:

Commitment fees equal to a rate *per annum* equal to 0.20% (the “**Commitment Fee Rate**”) times the daily average undrawn Commitments will accrue during the period commencing on the later of (i) the date of execution of the Bridge Loan Agreement and (ii) the date that is 60 days following the date of the Commitment Letter, and ending on the date of termination of the Commitments, payable to the Lenders quarterly in arrears and upon the termination of the Commitments.

Duration Fees:

Duration Fees in amounts equal to the percentage, as determined in accordance with the grid below based upon the rating then in effect from Moody’s and S&P with respect to the Rated Securities (as defined in Schedule I hereto), of the principal amount of the Bridge

Loan of each Lender outstanding at the close of business, New York City time, on each date set forth in the grid below, payable to the Lenders on each such date:

	Duration Fees		
	90 days after the Closing Date	180 days after the Closing Date	270 days after the Closing Date
either (i) Baa3 or better by Moody's and BB+ or better by S&P or (ii) Ba1 or better by Moody's and BBB- or better by S&P:	0.50%	0.75%	1.00%
in all other cases:	1.00%	1.50%	2.00%

Voluntary Prepayments/ Commitment Reductions:

The Bridge Facility may be voluntarily prepaid and the Commitments thereunder may be reduced by the Borrower, in whole or in part without premium or penalty; *provided* that loans bearing interest with reference to the reserve adjusted Eurodollar Rate will be prepayable only on the last day of the related interest period unless the Borrower pays any related breakage costs. Voluntary prepayments of the Bridge Loans may not be reborrowed.

Mandatory Prepayments/ Commitment Reductions:

The following amounts shall be applied to prepay the Bridge Loans (or, prior to the Closing Date, the Commitments of the Lenders, pursuant to the Commitment Letter and the Bridge Loan Agreement, shall be automatically and permanently reduced by such amounts) as set forth below:

- (a) 100% of the net cash proceeds (including into escrow (but only to the extent that the conditions to release thereof are no more restrictive than the conditions to availability of the Bridge Facility)) of any sale or issuance of debt securities or any incurrence or borrowing (except as described in clause (b) below) of other indebtedness for borrowed money (other than Excluded Debt (as defined below)), or issuance of any equity securities or equity-linked securities (other than the Equity Consideration Issuance and any such issuances pursuant to (i) bond hedging programs and (ii) employee stock plans or other benefit or employee incentive arrangements), in each case on or after the date of the Commitment Letter by the Borrower or any of its subsidiaries;

(b) (i) 100% of the committed amount or (without duplication) (ii) 100% of the net cash proceeds of loans under the Term Facility or any similar term loan facility (each a “Qualifying Term Facility”) received by the Borrower in connection with financing the Transactions (but in the case of clause (i) only to the extent that the conditions to availability thereunder are no more restrictive than the conditions to availability of the Bridge Facility); and

(c) 100% of the net cash proceeds (including cash equivalents) actually received of any sale or other disposition (including as a result of casualty or condemnation) of any assets outside the ordinary course of business on or after the date of the Commitment Letter by the Borrower or any of its subsidiaries (excluding the Acquired Business prior to the Acquisition), except for (i) sales or other dispositions between or among the Borrower and its subsidiaries and (ii) sales or other dispositions, the net cash proceeds of which do not exceed \$75.0 million in any single transaction or related series of transactions or \$350.0 million in the aggregate, in each case, to the extent not reinvested in the business or committed to be reinvested in the business within 6 months of receipt (provided if so committed, such reinvestment shall in any event occur within 227 days of receipt).

For the purposes hereof, “**Excluded Debt**” means (i) intercompany indebtedness among the Borrower and/or its subsidiaries, (ii) credit extensions under the Existing Credit Agreement and other existing credit facilities of the Borrower and its subsidiaries, in each case up to the existing commitments thereunder as in effect on the date of the Commitment Letter, and any refinancings thereof (including the New Revolving Facility); provided, except in the case of the New Revolving Facility, that the aggregate commitments thereunder shall not be increased; provided further, that the Revolving Facility commitments may not exceed \$2.75 billion, (iii) any indebtedness permitted to be incurred by the Acquired Business after the date hereof but prior to the Closing Date under the Acquisition Agreement, (iv) commercial paper issuances, (v) bilateral working capital or overdraft facilities and capital leases, letters of credit and purchase money and equipment financings, in each case, in the ordinary course, and (vi) other indebtedness (except for the purpose of financing the Acquisition) in an aggregate principal amount up to \$750.0 million.

The Borrower shall notify the Administrative Agent within three business days of any receipt by the Borrower or its subsidiaries of the proceeds described in paragraphs (a) through (c) above, or of having entered into a Qualifying Term Facility.

Mandatory prepayments of the Bridge Loans may not be reborrowed.

All voluntary and mandatory prepayments of Bridge Loans and reductions of Commitments with respect to the Bridge Facility as set forth above shall be allocated among the Lenders on a *pro rata* basis (or, as between Lenders that are affiliated with each other, allocated between them as they and the Arranger may otherwise determine).

Documentation Principles:

The Loan Documents will be based upon the Existing Credit Agreement and only with modifications consistent with this Annex B (including this paragraph) (as may be modified in accordance with the flex provisions of the Fee Letter) or that are otherwise mutually and reasonably agreed by the Borrower and the Arranger. The Loan Documents will contain only those representations and warranties, affirmative, negative and financial covenants, mandatory prepayments and commitment reductions and events of default expressly set forth in the Commitment Letter, including this Annex B. For purposes hereof, the words “based upon” the Existing Credit Agreement and words of similar import mean substantially the same as the Existing Credit Agreement with modifications only (a) as are necessary to reflect the other terms specifically set forth in this Commitment Letter (including the nature of the Bridge Facility as a bridge facility), (b) to reflect any changes in law or accounting standards (or in the interpretation thereof) since the date of the Existing Credit Agreement as reasonably agreed by the Borrower and the Administrative Agent, (c) to reflect the operational or administrative requirements of the Administrative Agent, as reasonably agreed between the Borrower and the Administrative Agent, (d) as may be reasonably requested by the Arranger in light of the Borrower’s credit ratings and leverage after giving effect to the Transactions; *provided* that the representations and warranties, covenants and events of default will not (i) be more restrictive in any material respect than those contained in the Existing Credit Agreement except as otherwise set forth herein, or as reasonably and mutually agreed to by the Arranger and the Borrower or (ii) impose any additional conditions on the availability of the Bridge Facility and (e) if there is any refinancing, restatement or other amendment to the Existing Credit Agreement (an “**Amended Credit Agreement**”), to include (i) any representation and warranty, covenant or event of default in such Amended Credit Agreement that is more restrictive than the corresponding provisions in the Existing Credit Agreement or (ii) any additional provision included in such Amended Credit Agreement.

Representations and Warranties:

The Bridge Loan Agreement will include only the following representations and warranties with respect to the Borrower and its subsidiaries, which (except as set forth below) shall be based upon the representations and warranties set forth in the Existing Credit Agreement taking into account the Documentation Principles, to be made on the date of the Bridge Loan Agreement and the Closing Date: organization powers; authorization; enforceability; governmental approvals; no conflicts; financial condition; no material adverse change; litigation; accuracy of information; investment company status; margin stock; taxes; ERISA and anti-corruption laws and sanctions; *provided* that the Bridge Loan Agreement will also include the following representations and warranties which are not contained

in the Existing Credit Agreement: solvency; and compliance with laws; and compliance with the PATRIOT Act and other anti-terrorism laws.

Covenants:

The Bridge Loan Agreement will include only the following financial, affirmative and negative covenants with respect to the Borrower and its subsidiaries, which (except as set forth below) shall be based upon to the financial, affirmative and negative covenants set forth in the Existing Credit Agreement taking into account the Documentation Principles:

- financial covenants:

(i) ratio of the Borrower's consolidated EBITDA to Interest Expense as of the last day of each fiscal quarter of not less than 4.00:1.00 (with EBITDA and Interest Expense as defined in the Existing Credit Agreement; *provided* that the Bridge Loan Agreement will expressly permit the following add backs in the definition of EBITDA: (a) cash fees, expenses and charges, including related integration costs of the Borrower and its subsidiaries in connection with the Transactions and other acquisitions, and (b) severance and retention costs); and

(ii) ratio of (a) the Borrower's indebtedness for borrowed money, capital lease obligations and purchase money obligations to (b) EBITDA as of the last day of each fiscal quarter following the Closing Date not to exceed 6.00:1.00 (with the same EBITDA and Interest Expense definitions as described above) (*provided* that the Leverage Ratio will be calculated on *pro forma* basis giving effect to the Acquisition and any other material transactions).

In the event that the financial covenants under the Bank Facilities (including any amendment thereto or refinancing thereof with other bank facilities) are more restrictive than the foregoing financial covenants as of the Closing Date, then the foregoing financial covenants under the Bridge Facility shall automatically be modified to match such financial covenants under the Bank Facilities.

-affirmative covenants:

financial statements; notices of material events; existence; payment of obligations; maintenance of properties; insurance; books and records; inspection rights; compliance with laws; and use of proceeds; *provided* that the Bridge Loan Agreement will require that audited financial statements be delivered with an auditor's report and opinion prepared in accordance with the standards of the Public Company Accounting Oversight Board and not subject to any going concern or like qualification or exception or any qualification or exception as to the scope of such audit; and

-negative covenants:

liens; transactions with affiliates; consolidation, merger or other fundamental changes; and change in nature of business; *provided* that the Bridge Loan Agreement will include a limitation on the incurrence by the Borrower's subsidiaries of indebtedness (which shall be subject to baskets, exceptions and materiality qualifiers to be agreed).

Events of Default:

The Bridge Loan Agreement will include only the following events of default (and, as appropriate, grace periods) with respect to the Borrower and its subsidiaries, which shall be similar to the events of default (and grace periods) set forth in the Existing Credit Agreement taking into account the Documentation Principles: failure to make payments when due; breach of representations and warranties; breach of covenants; failure to make payments when due with respect to other material indebtedness; cross default with respect to indebtedness in excess of \$250 million in the aggregate; cross-acceleration as to other material indebtedness; involuntary bankruptcy, appointment of receiver, voluntary bankruptcy, etc.; inability or failure to pay debts as they become due; judgments; ERISA liabilities; and change of control; *provided* that the Bridge Loan Agreement will include the following event of default which is not contained in the Existing Credit Agreement: invalidity of loan documents.

In the event that the cross default threshold under the Bank Facilities (including any amendment thereto or refinancing thereof with other bank facilities) is more restrictive than the foregoing cross default threshold as of the Closing Date, then the foregoing cross default threshold under the Bridge Facility shall automatically be modified to match such cross default threshold under the Bank Facilities.

Conditions Precedent to Closing and Borrowing:

The several obligations of the Lenders to make, or cause one of their respective affiliates to make, the Bridge Loans will be subject only to the conditions precedent referred to in Section 2 of the Commitment Letter and in Annex C attached to the Commitment Letter.

Actions Between Effective Date and Closing Date:

During the period from and including the effectiveness of the Bridge Loan Agreement (the “**Effective Date**”) and to and including the earlier of the Commitment Termination Date and the funding of the Bridge Loans under the Bridge Loan Agreement on the Closing Date, and notwithstanding (i) that any representation given as a condition to the Effective Date (excluding the Specified Representations and Acquisition Representations constituting Funding Conditions) was incorrect, (ii) any failure by the Borrower to comply with the affirmative covenants, negative covenants and financial covenants (excluding compliance on the Closing Date with certain affirmative and negative covenants constituting Funding Conditions), (iii) any provision to the contrary in the Bridge Loan Agreement or (iv) that any condition to the Effective Date may subsequently be determined not to have been satisfied, neither the Administrative Agent nor any Lender shall be entitled to (unless an event of default under the Bridge Loan Agreement shall have occurred and is continuing with respect to nonpayment of fees thereunder or bankruptcy or insolvency of the Borrower) (a) cancel any of its Commitments in respect of the Bridge Facility (except as set forth in “Mandatory Prepayments/Commitment Reductions” above), (b) rescind, terminate or cancel the Bridge Loan Agreement or any of its Commitments thereunder or exercise any

right or remedy under the Bridge Loan Agreement, to the extent to do so would prevent, limit or delay the making of its Bridge Loan, (c) refuse to participate in making its Bridge Loan or (d) exercise any right of set-off or counterclaim in respect of its Bridge Loan to the extent to do so would prevent, limit or delay the making of its Bridge Loan; *provided* that the Funding Conditions are satisfied. Furthermore, (a) the rights and remedies of the Lenders and the Administrative Agent shall not be limited in the event that any Funding Condition is not satisfied on the Closing Date and (b) from the Closing Date after giving effect to the funding of the Bridge Loans on such date, all of the rights, remedies and entitlements of the Administrative Agent and the Lenders shall be available notwithstanding that such rights were not available prior to such time as a result of the foregoing.

Assignments and Participations:

The Lenders may assign all or, in an amount of not less than \$5.0 million, any part of, their respective shares of the Bridge Facility to their affiliates (other than natural persons) or one or more banks, financial institutions or other entities that are eligible assignees (to be defined in the Loan Documents) which are reasonably acceptable to (a) the Administrative Agent and (b) except (i) where such consent is not required pursuant to the syndication provisions of the Commitment Letter or (ii) when a payment or bankruptcy event of default has occurred and is continuing, the Borrower, each such consent not to be unreasonably withheld or delayed; *provided* that assignments made to a Lender, an affiliate or approved fund thereof will not be subject to the above consent requirements. The Borrower's consent shall be deemed to have been given if the Borrower has not responded within ten business days of an assignment request. Upon such assignment, such affiliate, bank, financial institution or entity will become a Lender for all purposes under the Loan Documents; *provided* that assignments made to affiliates and other Lenders will not be subject to the above described consent or minimum assignment amount requirements. A \$3,500 processing fee will be required in connection with any such assignment, with exceptions to be agreed. The Lenders will also have the right to sell participations without restriction (other than natural persons), subject to customary limitations on voting rights, in their respective shares of the Bridge Facility.

Requisite Lenders:

Amendments and waivers will require the approval of Lenders holding more than 50% of total Commitments or Bridge Loans ("**Requisite Lenders**"); *provided* that, in addition to the approval of Requisite Lenders, the consent of each Lender directly and adversely affected thereby will be required with respect to matters relating to (a) increases in the Commitment of such Lender, (b) reductions of principal, interest, fees or premium, (c) extensions of final maturity or the due date of any principal, interest, or fee payment, (d) certain *pro rata* sharing provisions, (e) the definition of Requisite Lenders or any other provision specifying the number or percentage of Lenders required to waive, amend or modify, or grant consents under, the Bridge Loan Agreement, (f) the amendment provisions included in the Bridge Loan Agreement or (g) the release of the Guaranty, if any.

Yield Protection:

The Bridge Facility will contain customary provisions (a) protecting the Lenders against increased costs or loss of yield resulting from changes in reserve, capital adequacy and capital requirements (or their interpretation), illegality, unavailability and other requirements of law and from the imposition of or changes in certain withholding or other taxes and (b) indemnifying the Lenders for “breakage costs” incurred in connection with, among other things, any prepayment of a Eurodollar Rate loan on a day other than the last day of an interest period with respect thereto. For all purposes of the Loan Documents, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines and directives promulgated thereunder and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case, pursuant to Basel III, shall be deemed introduced or adopted after the date of the Loan Documents. The Bridge Facility will provide that all payments are to be made free and clear of any taxes (other than franchise taxes and taxes on overall net income), imposts, assessments, withholdings or other deductions whatsoever. Lenders will furnish to the Administrative Agent appropriate certificates or other evidence of exemption from U.S. federal tax withholding.

Indemnity:

The Administrative Agent, the Arranger and the Lenders (and their affiliates and their respective officers, directors, employees, advisors, agents and representatives) will have no liability for, and will be indemnified and held harmless against, any loss, liability, cost or expense incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds of the Bridge Facility (except to the extent found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from (a) (x) the gross negligence, bad faith or willful misconduct of such indemnified party, or material breach of the Loan Documents by such indemnified party or (b) arising from disputes among such indemnified parties other than any claims against the Administrative Agent in its capacity or in fulfilling its role as agent with respect to the Bridge Facility and other than any claims arising out of any act or omission on the part of the Borrower or its affiliates) (*provided* that any legal expenses shall be limited to one counsel for all indemnified parties taken as a whole and if reasonably necessary, a single local counsel for all indemnified parties taken as a whole in each relevant jurisdiction (which may be a single local counsel acting in multiple jurisdictions) and, solely in the case of an actual or perceived conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected indemnified parties similarly situated taken as a whole).

Governing Law and Jurisdiction:

The Bridge Facility will provide that the Borrower will submit to the exclusive jurisdiction and venue of the federal and state courts of the State of New York and will waive any right to trial by jury. New York law will govern the Loan Documents; provided that the laws of the State of Delaware will govern (i) whether a Target Material Adverse Effect has occurred, (ii) compliance with any Acquisition Representations and (iii) whether the Acquisition has been consummated in accordance with the terms of the Acquisition Agreement.

EU Bail-in:

The Loan Documents will contain customary EUBail-in provisions.

Counsel to the Arranger and Administrative Agent:

Weil, Gotshal & Manges LLP

Schedule I

Pricing Grid

Borrower's Rating Level Period (Moody's or S&P)	Applicable Margin							
	Closing Date through 89 days after Closing Date		90 days after Closing Date through 179 days after Closing Date		180 days after Closing Date through 269 days after Closing Date		270 days after Closing Date and thereafter	
	Base Rate Loans	Eurodollar Rate Loans	Base Rate Loans	Eurodollar Rate Loans	Base Rate Loans	Eurodollar Rate Loans	Base Rate Loans	Eurodollar Rate Loans
Level 1 Period	12.5 bps	112.5 bps	37.5 bps	137.5 bps	62.5 bps	162.5 bps	87.5 bps	187.5 bps
Level 2 Period	25.0 bps	125.0 bps	50.0 bps	150.0 bps	75.0 bps	175.0 bps	100.0 bps	200.0 bps
Level 3 Period	50.0 bps	150.0 bps	75.0 bps	175.0 bps	100.0 bps	200.0 bps	125.0 bps	225.0 bps
Level 4 Period	75.0 bps	175.0 bps	125.0 bps	225.0 bps	175.0 bps	275.0 bps	225.0 bps	325.0 bps
Level 5 Period	100.0 bps	200.0 bps	150.0 bps	250.0 bps	200.0 bps	300.0 bps	250.0 bps	350.0 bps

For purposes of the forgoing, (a) if only one of Moody's and S&P shall have in effect a rating for the Rated Securities, the Rating Level Period shall be determined by reference to the available rating and (b) if the Rated Securities are rated by Moody's and S&P with ratings that would otherwise fall within different Rating Level Periods, the applicable Rating Level Period shall be determined by the rating that results in the higher Rating Level Period except that if the lower of such ratings would result in a Rating Level Period that is more than one level below the higher of such Rating Level Periods, the Rating Level Period shall be determined by reference to the rating that is one level above the lower of such ratings.

As used herein:

"Rated Securities" means, at any time, the long-term senior unsecured, unguaranteed debt securities of the Borrower outstanding at such time.

"Rating Level Change" means a change in the rating of the Rated Securities by either or both of Moody's or S&P (other than as a result of a change in the rating system of such rating agency) that results in the change from one Rating Level Period to another, which Rating Level Change shall be effective on the date on which the relevant change in the rating of the Rated Securities is first announced by Moody's or S&P, as the case may be.

“Rating Level Period” means, as of any period, the level set forth below as then in effect, as determined in accordance with the following provisions of this definition:

“Level 1 Period” means a period during which the Rated Securities are rated better than or equal to Baa1 by Moody’s or better than or equal to BBB+ by S&P.

“Level 2 Period” means a period that is not a Level 1 Period during which the Rated Securities are rated better than or equal to Baa2 by Moody’s or better than or equal to BBB by S&P.

“Level 3 Period” means a period that is not a Level 1 Period or a Level 2 Period during which the Rated Securities are rated better than or equal to Baa3 by Moody’s or better than or equal to BBB- by S&P.

“Level 4 Period” means a period that is not a Level 1 Period, a Level 2 Period or a Level 3 Period during which the Rated Securities are rated better than or equal to Ba1 by Moody’s or better than or equal to BB+ by S&P.

“Level 5 Period” means each period other than a Level 1 Period, a Level 2 Period, a Level 3 Period or a Level 4 Period, and shall include each period during which both Moody’s and S&P shall not have in effect a rating for the Rated Securities (other than because either such rating agency shall no longer be in the business of rating corporate debt obligations).

Schedule I-2

ANNEX C

Project Lambda
Summary of Conditions Precedent to the Bridge Facility

This Summary of Conditions Precedent outlines certain of the conditions precedent to the Bridge Facility referred to in the Commitment Letter, of which this Annex C is a part. Capitalized terms used herein without definition has the respective meanings ascribed to them in the Commitment Letter.

1. **Concurrent Transactions.** The Acquisition shall have been (or, substantially contemporaneously with the borrowing under the Bridge Facility, shall be) consummated pursuant to the Acquisition Agreement without giving effect to any modifications, consents, amendments or waivers thereto agreed to by the Borrower or Merger Sub that in each case are materially adverse to the interests of the Lenders, the Commitment Parties or the Arranger, unless the Arranger shall have provided its written consent thereto (it being understood that any change in the purchase consideration of less than 10% in respect of the Acquisition will be deemed not to be materially adverse to the Lenders, the Commitment Parties and the Arranger; *provided* that any reduction of the purchase consideration shall be allocated to *pro rata* reduction in any amounts to be funded under the Bridge Facility and the Equity Consideration (such *pro rata* reduction to be determined based on the relative percentages of the Bridge Facility and the Equity Consideration Issuance on the date hereof)).
2. **No Material Adverse Effect.** Except (a) as disclosed in the Company SEC Documents publicly filed or furnished by the Target with the SEC between January 1, 2014 and the date that is one Business Day prior to the date hereof (the “**Specified Company SEC Documents**”); *provided* that (i) any information contained in any part of any Specified Company SEC Document shall only be deemed to be an exception for the purposes hereof if the relevance of such item as an exception is reasonably apparent on its face and (ii) in no event shall any risk factor disclosure under the heading “Risk Factors” or disclosure set forth in any “forward looking statements” disclaimer or other general statements to the extent they are predictive or forward looking in nature that are included in any part of any Specified Company SEC Document be deemed to be an exception to, or, as applicable, disclosure for purposes of, this paragraph or (b) as set forth in the Target Disclosure Letter (as provided to the Arranger prior to its execution hereof), since December 31, 2016, there has not been any effect, change, condition, fact, development, occurrence or event that has had, or would reasonably be expected to have, individually or in the aggregate, a Target Material Adverse Effect (as defined below). “**Target Material Adverse Effect**” means any effect, change, condition, fact, development, occurrence or event that, individually or in the aggregate with all other effects, changes, conditions, facts, developments, occurrences or events, has had or would reasonably be expected to have a material adverse effect on the business, results of operations or financial condition of the Target and its subsidiaries, taken as a whole, excluding any effect, change, condition, fact, development, occurrence or event resulting from or arising out of (A) changes in the financial, securities or credit markets or general economic, regulatory or political conditions in the United States or any foreign jurisdiction, except to the extent any such effect, change, condition, fact, development, occurrence or event has a materially disproportionate effect on the Target and its subsidiaries, taken as a whole, relative to other participants in the industries in which the Target operates, (B) changes or conditions generally affecting the industries, markets or geographical areas in which the Target operates except to the extent any such effect, change, condition, fact, development, occurrence or event has a materially disproportionate effect on the Target and its subsidiaries, taken as a whole, relative to other participants in the industries in which the Target operates, (C) geopolitical conditions, the outbreak or escalation of hostilities, civil disobedience, acts of war,

sabotage or terrorism or any escalation or worsening of the foregoing or any natural disasters (including hurricanes, tornadoes, floods or earthquakes) except to the extent any such effect, change, condition, fact, development, occurrence or event has a materially disproportionate effect on the Target and its subsidiaries, taken as a whole, relative to other participants in the industries in which the Target operates, (D) any failure by the Target and its subsidiaries to meet any internal or published projections, forecasts or predictions in respect of financial or operating performance for any future period (it being understood that this clause (D) shall not prevent a party to the Acquisition Agreement from asserting that any effect, change, condition, fact, development, occurrence or event that may have contributed to such failure and that is not otherwise excluded from the definition of Target Material Adverse Effect may be taken into account in determining whether there has been a Target Material Adverse Effect), (E) changes or proposed changes in law or authoritative interpretation thereof, except to the extent any such effect, change, condition, fact, development, occurrence or event has a materially disproportionate effect on the Target and its subsidiaries, taken as a whole, relative to other participants in the industries in which the Target operates, (F) changes in GAAP or authoritative interpretation thereof, (G) the taking of any specific action expressly required or expressly permitted by, or the failure to take any specific action expressly prohibited by the Acquisition Agreement (*provided* that the exception in this clause (G) shall not apply to any representation or warranty contained in Section 4.04 of the Acquisition Agreement), (H) any change in the market price or trading volume of the Target's securities or in its credit ratings (it being understood that this clause (H) shall not prevent a party to the Acquisition Agreement from asserting that any effect, change, condition, fact, development, occurrence or event that may have contributed to such failure and that are not otherwise excluded from the definition of Target Material Adverse Effect may be taken into account in determining whether there has been a Target Material Adverse Effect), (I) the execution, announcement or performance of the Acquisition Agreement or the transactions contemplated thereby, including the impact thereof on the relationships, contractual or otherwise, of the Target or any of its subsidiaries with employees, labor unions, customers, suppliers or partners (*provided* that the exception in this clause (I) shall not apply to any representation or warranty contained in Section 4.04), (J) any public disclosure by Borrower regarding its plans with respect to the conduct of the Target's business following the Closing Date and any action or communication by the Borrower with respect to or to the Target's employees and (K) the matters listed on Section 1.01(a)(i) of the Target Disclosure Letter only to the extent set forth on Section 1.01(a)(i) of the Target Disclosure Letter. In this paragraph 2, (i) each reference to the "Acquisition Agreement" shall mean the Acquisition Agreement as in effect on the date hereof and (ii) each capitalized term which is not defined in any other provision of the Commitment Letter shall have the meaning given to such term in the Acquisition Agreement.

3. Financial Statements. The Arranger shall have received (i) audited financial statements of each of the Borrower and the Acquired Business for each of their respective three most recent fiscal years ended at least 60 days prior to the Closing Date; (ii) unaudited financial statements of each of the Borrower and the Acquired Business for any quarterly (other than the fourth fiscal quarter) interim period or periods ended after the date of their respective most recently audited financial statements (and corresponding periods of any prior year), and more than 40 calendar days prior to the Closing Date; (iii) customary pro forma financial statements, in each case meeting the requirements of Regulations S-X under the Securities Act but in each case only to the extent the Borrower will be required to file such financial statements pursuant to Item 9.01(a) of Form 8-K and Rule 3-05 and Article 11, as applicable, of Regulation S-X. The Arranger hereby acknowledges that the Borrower's or the Acquired Business's public filing with the Securities and Exchange Commission of any required audited financial statements on Form 10-K or required unaudited financial statements on Form 10-Q, in each case, will satisfy the requirements under clauses (i) or (ii) as applicable, of this paragraph. The Arranger acknowledges that the financial statements referred to in clause (i) related to each such fiscal year ended prior to the date of the Commitment Letter have been received.

4. Payment of Fees and Expenses. All costs, fees, expenses (including, without limitation, legal fees and expenses) to the extent invoiced at least two business days prior to the Closing Date and the fees contemplated by the Fee Letter payable to the Arranger, the Administrative Agent or the Lenders shall have been paid on or prior to the Closing Date, in each case, to the extent required by the Fee Letter or the Loan Documents to be paid on or prior to the Closing Date.
5. Customary Closing Documents. The Borrower shall have complied with the following customary closing conditions: (i) the delivery of customary legal opinions from Skadden, Arps, Slate, Meagher & Flom LLP or other counsel reasonably acceptable to the Arranger, customary corporate records and documents from public officials, customary officer's certificates, customary evidence of authority and a customary borrowing notice, in each case in form and substance reasonably satisfactory to the Arranger, and (ii) delivery of a solvency certificate from the chief financial officer of the Borrower in the form attached hereto as Schedule I demonstrating pro forma solvency (on a consolidated basis) of the Borrower and its subsidiaries as of the Closing Date. The Arranger will have received at least 3 business days prior to the Closing Date all documentation and other information regarding the Borrower required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the Patriot Act to the extent reasonably requested at least 10 business days prior to the Closing Date.
6. Accuracy of Representations/No Default. At the time of and upon giving effect to the borrowing of the Bridge Loans on the Closing Date, (i) the Acquisition Representations and the Specified Representations shall be true and correct, in all material respects (except to the extent already qualified by materiality or material adverse effect) and (ii) there shall not exist any default or event of default, in each case, relating to (a) a breach of the affirmative covenants with respect to existence of the Borrower or use of proceeds, (b) a breach of the negative covenants with respect to liens or consolidation, merger or other fundamental changes, (c) bankruptcy or insolvency of the Borrower, (d) nonpayment of principal, interest or fees, or (e) cross-payment default with respect to indebtedness in excess of \$250.0 million in the aggregate.

SCHEDULE I

Project Lambda
Form of Solvency Certificate

SOLVENCY CERTIFICATE
of
BECTON, DICKINSON AND COMPANY
AND ITS SUBSIDIARIES

Pursuant to Section [●] of the Credit Agreement, the undersigned hereby certifies, solely in such undersigned's capacity as chief financial officer of Becton, Dickinson and Company (the "**Company**"), and not individually, as follows:

As of the date hereof, after giving effect to the consummation of the Transactions, including the making of the Loans under the Credit Agreement, and after giving effect to the application of the proceeds of such indebtedness:

- a. the fair value of the assets of the Company and its subsidiaries, on a consolidated basis, exceeds, on a consolidated basis, their debts and liabilities, subordinated, contingent or otherwise;
- b. the present fair saleable value of the property of the Company and its subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured;
- c. the Company and its subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured; and
- d. the Company and its subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital.

For purposes of this Certificate, the amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this Certificate in such undersigned's capacity as chief financial officer of the Company, on behalf of the Company, and not individually, as of the date first stated above.

BECTON, DICKINSON AND COMPANY

By: _____
Name:
Title:

Schedule I-2



Press Release

BD To Acquire Bard For \$24 Billion

Will Create Highly Differentiated Medical Technology Company Focused on Delivering Innovative Healthcare Solutions to Improve Clinical and Economic Outcomes

Will Build on BD's Leadership Position in Medication Management and Infection Prevention; Will Increase Opportunities in Innovative Fast-Growing Clinical Areas Financially Compelling Transaction; Immediately Accretive and Expected to Generate High Single-Digit Accretion to Adjusted EPS in Fiscal Year 2019 Tom Polen Named BD President

FRANKLIN LAKES, N.J. and MURRAY HILL, N.J., April 23, 2017 /PRNewswire/ — BD (Becton, Dickinson and Company) (NYSE: BDX), a leading global medical technology company, and C. R. Bard, Inc. (NYSE: BCR), a medical technology leader in the fields of vascular, urology, oncology and surgical specialty products, announced today a definitive agreement under which BD will acquire Bard for \$317.00 per Bard common share in cash and stock, for a total consideration of \$24 billion. The agreement has been unanimously approved by the Boards of Directors of both companies.

The combination will create a highly differentiated medical technology company uniquely positioned to improve both the process of care and the treatment of disease for patients and healthcare providers. The transaction will build on BD's leadership position in medication management and infection prevention with an expanded offering of solutions across the care continuum. Additionally, Bard's strong product portfolio and innovation pipeline will increase BD's opportunities in fast-growing clinical areas, and the combination will enhance growth opportunities for the combined company in non-U.S. markets.

This financially compelling transaction will be immediately accretive and is expected to generate high-single digit accretion to adjusted earnings per share (EPS) in fiscal year 2019. Approximately \$300 million of estimated annual, pre-tax, run-rate cost synergies are expected by fiscal year 2020. Separately, BD also expects to benefit from revenue synergies beginning in fiscal year 2019. The transaction is expected to improve BD's gross margins by approximately 300 basis points in fiscal year 2018, increase BD's earnings per share growth trajectory to the mid-teens, and generate strong cash flow.

Vince Forlenza, BD's chairman and chief executive officer, said, "Combining with Bard will accelerate our ability to offer more comprehensive, clinically relevant solutions to customers and patients around the globe, creating a strong partner for healthcare providers who are increasingly focused on delivering better outcomes at a lower total cost. Our two purpose-driven organizations are well-aligned strategically, sharing a strong track record of performance and a deep commitment to addressing unmet needs in today's challenging healthcare environment. We expect the transaction to contribute meaningfully to BD's plans for revenue growth and margin expansion, and generate outstanding value both near- and long-term for shareholders. I am excited to welcome Bard's talented employees to our strong and dedicated team as we bring together two companies with such complementary capabilities, values and strong reputations for delivering superior results."

Tim Ring, Bard's chairman and chief executive officer, said, "We are confident that this combination will deliver meaningful benefits for customers and patients as we see opportunities to leverage BD's leadership, especially in medication management and infection prevention. We also believe that we can expand our access to customers and patients through BD's strategic selling capabilities, and that our fast-growing portfolio in emerging markets can significantly benefit from their well-established international commercial infrastructure. Our two companies share the conviction that a product leadership strategy focused on unmet needs and improved outcomes that provide economic value to the global healthcare system will provide long-term shareholder returns."

John Weiland, Bard's vice-chairman, president and chief operating officer, added, "BD and Bard share a common purpose with highly compatible organizations. We are very proud of the business and culture we have built over 110 years, focused on quality, integrity, innovation and service. We have long had great respect for BD and find in them a similarly strong, results-oriented culture that prioritizes execution and long-term value creation. In addition to significant benefits for our customers, patients, and shareholders, we believe this combination will provide our employees with new and exciting opportunities as part of a highly competent, dynamic global organization. We look forward to this next chapter in our company's great history."

Strategic Highlights

Will create new opportunities to build on BD's leadership position in medication management and infection prevention with an expanded offering of solutions across the care continuum.

- Will bring together highly complementary product sets to create unmatched solutions for customers, enhancing growth opportunities for the combined company.
- By combining Bard's strong leadership position and innovation pipeline in fast-growing vascular access segments – PICCs (peripherally inserted central catheters), midlines and drug delivery ports – with BD's leadership and innovation in IV drug preparation, dispensing, delivery and administration, the new company will be better positioned to provide end-to-end medication management solutions across the care continuum.
- Will further expand BD's leadership in infection prevention, with offerings positioned to address 75 percent of the most costly and frequent healthcare associated infections (HAIs). Through the combined solutions set, the new company will have a more comprehensive, clinically relevant offering to address Surgical Site Infections (SSIs) and Catheter-Related Blood Stream Infections (CRBSIs).

Bard's strong product portfolio and innovation pipeline will increase BD's opportunities in fast growing clinical areas, including peripheral vascular therapy, oncology and bio-surgery.

- Bard's clinically differentiated offerings create more meaningful scale and relevance for BD in high-growth categories of oncology and surgery.
- Bard will expand BD's focus on the treatment of disease states beyond diabetes to include peripheral vascular disease, urology, hernia and cancer.

BD's leading global capabilities and infrastructure will further accelerate the combined company's growth outside of the U.S., creating more opportunities for patients and clinicians around the world to benefit from BD's and Bard's product technology.

- Together, BD and Bard will bring to market an expanded portfolio of clinically relevant products, with opportunities to drive near-term revenue synergies outside of the U.S.
 - Bard, which registered approximately 500 products internationally in 2016, has made significant progress expanding outside of the U.S. in recent years, particularly in emerging markets, where Bard is among the fastest growing medical technology companies.
- Bard's strong presence in vascular access and surgery will also help drive sales of the highly complementary CareFusion portfolio outside of the U.S.
- The combined company will have a large and growing presence in emerging markets, including \$1 billion in annual revenue in China.

Transaction Highlights

Under the terms of the transaction, Bard common shareholders will be entitled to receive approximately \$222.93 in cash and 0.5077 shares of BD stock per Bard share, or a total of value of \$317.00 per Bard common share based on BD's closing price on April 21, 2017. At closing, Bard shareholders will own approximately 15 percent of the combined company.

BD expects to contribute approximately \$1.7 billion of available cash to fund the transaction, along with, subject to market conditions, approximately \$10 billion of new debt and approximately \$4.5 billion of equity and equity linked securities issued to the market. Bard shareholders will also receive \$8 billion of BD common stock. BD has also obtained fully committed bridge financing. At closing, BD estimates the combined company will have pro forma leverage of approximately 4.7x and is committed to deleveraging to below 3.0x leverage within three years of closing. BD expects to continue the suspension of its share repurchase program. BD is also committed to annual dividend increases while reinvesting in the business to continue to drive long-term growth.

The transaction is subject to regulatory and Bard shareholder approvals and customary closing conditions, and is expected to close in the fall of 2017.

Integration Plans

BD has a successful integration track record, as demonstrated by its 2015 acquisition and integration of CareFusion. BD has put in place a plan to ensure a seamless integration with Bard. A designated integration team, comprised of senior members of both organizations, will be led by Bill Tozzi, a seasoned BD executive who most recently served as worldwide president of the Medication and Procedural Solutions business and earlier was corporate controller for BD. At the closing of the transaction, Tim Ring, chairman and chief executive of Bard, and an additional Bard director, are expected to join the BD Board of Directors, which will be expanded by two directors. BD is confident in its ability to achieve synergies as it brings together two world class companies and expects to offer opportunities for talented employees to become part of an even more dynamic global leader.

BD Organizational Update

BD expects to create a third segment within the company – BD Interventional — where the Bard businesses will report both operationally and financially. BD is separately announcing today the appointment of Tom Polen, 43, currently executive vice president and president of the BD Medical Segment, as president of BD, effective immediately. In his new role, Mr. Polen will oversee BD’s Medical and Life Sciences segments, as well as the new Interventional segment.

Transaction Conference Call and Webcast Information

BD and Bard will conduct a live conference call and webcast on April 24, 2017 at 8:00 a.m. (ET). The webcast of the conference call, along with related slides, will be accessible through BD’s and Bard’s websites. The conference call will also be available for replay through BD’s and Bard’s websites, or at (800) 585-8367 (domestic) and (404) 537-3406 (international) through the close of business on May 1, 2017, confirmation number 13011331.

BD Earnings Update

BD’s earnings conference call, previously scheduled for Thursday, May 4, 2017, has been rescheduled for Tuesday, May 2, 2017, at 8:00 a.m. (ET). BD will issue a press release detailing the quarter’s earnings earlier that morning. The webcast of the conference call, along with related slides, will be accessible through BD’s website at www.BD.com/investors and will be available for replay through Thursday, May 9, 2017.

Bard Earnings Update

Bard separately today announced first quarter 2017 financial results, which are available on Bard’s corporate website, and is canceling the previously scheduled earnings conference call on April 26, 2017.

Advisors

Perella Weinberg Partners LP is acting as lead financial advisor to BD. Citi is also serving as a financial advisor to BD and will be providing fully committed financing. Skadden, Arps, Slate, Meagher & Flom LLP provided legal counsel to BD. Goldman, Sachs & Co. served as financial advisor to Bard. Wachtell, Lipton, Rosen & Katz served as legal advisor to Bard.

About BD

BD is a global medical technology company that is advancing the world of health by improving medical discovery, diagnostics and the delivery of care. BD leads in patient and health care worker safety and the technologies that enable medical research and clinical laboratories. The company provides innovative solutions that help advance medical research and genomics, enhance the diagnosis of infectious disease and cancer, improve medication management, promote infection prevention, equip surgical and interventional procedures, and support the management of diabetes. The company partners with organizations around the world to address some of the most challenging global health issues. BD has nearly 50,000 associates across 50 countries who work in close collaboration with customers and partners to help enhance outcomes, lower health care delivery costs, increase efficiencies, improve health care safety and expand access to health. For more information on BD, please visit bd.com.

About C. R. Bard, Inc.

C. R. Bard, Inc. (www.crbard.com), headquartered in Murray Hill, NJ, is a leading multinational developer, manufacturer and marketer of innovative, life-enhancing medical technologies in the fields of vascular, urology, oncology and surgical specialty products.

FORWARD-LOOKING STATEMENTS

This press release contains certain estimates and other “forward-looking statements” within the meaning of the federal securities laws, including Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward looking statements generally are accompanied by words such as “will”, “expect”, “outlook” “anticipate,”

“intend,” “plan,” “believe,” “seek,” “see,” “will,” “would,” “target,” or other similar words, phrases or expressions and variations or negatives of these words. Forward-looking statements by their nature address matters that are, to different degrees, uncertain, such as statements regarding the estimated or anticipated future results of BD, and of the combined company following BD’s proposed acquisition of Bard, the anticipated benefits of the proposed combination, including estimated synergies, the expected timing of completion of the transaction and other statements that are not historical facts. These statements are based on the current expectations of BD and Bard management and are not predictions of actual performance.

These statements are subject to a number of risks and uncertainties regarding BD and Bard’s respective businesses and the proposed acquisition, and actual results may differ materially. These risks and uncertainties include, but are not limited to, (i) the ability of the parties to successfully complete the proposed acquisition on anticipated terms and timing, including obtaining required shareholder and regulatory approvals, anticipated tax treatment, unforeseen liabilities, future capital expenditures, revenues, expenses, earnings, synergies, economic performance, indebtedness, financial condition, losses, future prospects, business and management strategies for the management, expansion and growth of the new combined company’s operations and other conditions to the completion of the acquisition, (ii) risks relating to the integration of Bard’s operations, products and employees into BD and the possibility that the anticipated synergies and other benefits of the proposed acquisition will not be realized or will not be realized within the expected timeframe, (iii) the outcome of any legal proceedings related to the proposed acquisition, (iv) access to available financing including for the refinancing of BD’s or Bard’s debt on a timely basis and reasonable terms, (v) the ability to market and sell Bard’s products in new markets, including the ability to obtain necessary regulatory product registrations and clearances, (vi) the loss of key senior management or other associates; the anticipated demand for BD’s and Bard’s products, including the risk of future reductions in government healthcare funding, changes in reimbursement rates or changes in healthcare practices that could result in lower utilization rates or pricing pressures, (vii) the impact of competition in the medical device industry, (viii) the risks of fluctuations in interest or foreign currency exchange rates, (ix) product liability claims, (x) difficulties inherent in product development, including the timing or outcome of product development efforts, the ability to obtain regulatory approvals and clearances and the timing and market success of product launches, (xi) risks relating to fluctuations in the cost and availability of raw materials and other sourced products and the ability to maintain favorable supplier arrangements and relationships, (xii) successful compliance with governmental regulations applicable to BD, Bard and the combined company, (xiii) changes in regional, national or foreign economic conditions, (xiv) uncertainties of litigation, and (xv) other factors discussed in BD’s and Bard’s respective filings with the Securities and Exchange Commission.

The forward-looking statements in this document speak only as of date of this document. BD and Bard undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date hereof, except as required by applicable laws or regulations.

IMPORTANT INFORMATION FOR INVESTORS

In connection with the proposed transaction, BD will file with the SEC a registration statement on FormS-4 that will constitute a prospectus of BD and include a proxy statement of Bard. BD and Bard also plan to file other relevant documents with the SEC regarding the proposed transaction. INVESTORS ARE URGED TO READ THE PROXY STATEMENT/PROSPECTUS AND OTHER RELEVANT DOCUMENTS FILED WITH THE SEC IF AND WHEN THEY BECOME AVAILABLE, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION. You may obtain a free copy of the proxy statement/prospectus (if and when it becomes available) and other relevant documents filed by BD and Bard with the SEC at the SEC’s website at www.sec.gov. In addition, you will be able to obtain free copies of these documents by phone, e-mail or written request by contacting the investor relations department of BD or Bard at the following:

Becton, Dickinson and Company
1 Becton Drive
Franklin Lakes, New Jersey 07417
Attn: Investor Relations
1-(800)-284-6845

C.R. Bard, Inc.
730 Central Avenue
Murray Hill, New Jersey 07974
Attn: Investor Relations
1-908-277-8065

PARTICIPANTS IN THE SOLICITATION

BD and Bard and their respective directors and executive officers and other members of management and employees may be deemed to be participants in the solicitation of proxies in respect of the proposed transaction. Information about BD’s directors and executive officers is available in BD’s proxy statement dated December 15, 2016, for its 2017 Annual Meeting of Shareholders. Information about Bard’s directors and executive officers is available in Bard’s proxy statement dated March 15, 2017, for its 2017 Annual Meeting of Stockholders. Other information regarding the participants in the proxy solicitation and a description of their

4/23/2017

direct and indirect interests, by security holdings or otherwise, will be contained in the proxy statement/prospectus and other relevant materials to be filed with the SEC regarding the acquisition when they become available. Investors should read the proxy statement/prospectus carefully when it becomes available before making any voting or investment decisions. You may obtain free copies of these documents from BD or Bard as indicated above.

NO OFFER OR SOLICITATION

This press release shall not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the U.S. Securities Act of 1933, as amended.

BD

Monique Dolecki, Investor Relations – (201) 847-5378
Kristen Cardillo, Corporate Communications – (201) 847-5657

Bard

Todd W. Garner, Investor Relations – (908) 277-8065
Scott T. Lowry, Media Relations – (908) 277-8365

To view the original version on PR Newswire, visit:<http://www.prnewswire.com/news-releases/bd-to-acquire-bard-for-24-billion-300443955.html>

WE BELIEVE

We have a **POWERFUL OPPORTUNITY**
to make healthcare **BETTER TOGETHER.**



April 24, 2017



IMPORTANT INFORMATION FOR INVESTORS

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Franklin Lakes, New Jersey 07417
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1-(800)-284-6845

C.R. Bard, Inc.
730 Central Avenue
Murray Hill, New Jersey 07974
Attn: Investor Relations
1-(800)-367-2273

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This slide presentation contains certain estimates and other "forward-looking statements" within the meaning of the federal securities laws, including Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward looking statements generally are accompanied by words such as "will", "expect", "outlook", "anticipate," "intend," "plan," "believe," "seek," "see," "will," "would," "target," or other similar words, phrases or expressions and variations or negatives of these words. Forward-looking statements by their nature address matters that are, to different degrees, uncertain, such as statements regarding the estimated or anticipated future results of BD, and of the combined company following BD's proposed acquisition of Bard, the anticipated benefits of the proposed combination, including estimated synergies, the expected timing of completion of the transaction and other statements that are not historical facts. These statements are based on the current expectations of BD and Bard management and are not predictions of actual performance. These statements are subject to a number of risks and uncertainties regarding BD and Bard's respective businesses and the proposed acquisition, and actual results may differ materially. These risks and uncertainties include, but are not limited to, (i) the ability of the parties to successfully complete the proposed acquisition on anticipated terms and timing, including obtaining required shareholder and regulatory approvals, anticipated tax treatment, unforeseen liabilities, future capital expenditures, revenues, expenses, earnings, synergies, economic performance, indebtedness, financial condition, losses, future prospects, business and management strategies for the management, expansion and growth of the new combined company's operations and other conditions to the completion of the acquisition, (ii) risks relating to the integration of Bard's operations, products and employees into BD and the possibility that the anticipated synergies and other benefits of the proposed acquisition will not be realized or will not be realized within the expected timeframe, (iii) the outcome of any legal proceedings related to the proposed acquisition, (iv) access to available financing for the refinancing of BD's or Bard's debt on a timely basis and reasonable terms, (v) the ability to market and sell Bard's products in new markets, including the ability to obtain necessary regulatory product registrations and clearances, (vi) the loss of key senior management or other associates; the anticipated demand for BD's and Bard's products, including the risk of future reductions in government healthcare funding, changes in reimbursement rates or changes in healthcare practices that could result in lower utilization rates or pricing pressures, (vii) the impact of competition in the medical device industry, (viii) the risks of fluctuations in interest or foreign currency exchange rates, (ix) product liability claims, (x) difficulties inherent in product development, including the timing or outcome of product development efforts, the ability to obtain regulatory approvals and clearances and the timing and market success of product launches, (xi) risks relating to fluctuations in the cost and availability of raw materials and other sourced products and the ability to maintain favorable supplier arrangements and relationships, (xii) successful compliance with governmental regulations applicable to BD, Bard and the combined company, (xiii) changes in regional, national or foreign economic conditions, (xiv) uncertainties of litigation, and (xv) other factors discussed in BD's and Bard's respective filings with the Securities Exchange Commission. The forward-looking statements in this document speak only as of date of this document. BD and Bard undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date hereof, except as required by applicable laws or regulations.



Speakers on today's call



Vince Forlenza
Chairman & CEO
Becton, Dickinson & Co.



Tim Ring
Chairman & CEO
C.R. Bard, Inc.



Christopher Reidy
EVP, CFO and CAO
Becton, Dickinson & Co.



Accelerating and broadening BD's strategy

There are clear strategic benefits of a combination:

- 1** **Advances the strategies** of both companies and accelerates end-to-end medication management and infection prevention
- 2** **Creates new growth opportunities** across a range of clinically impactful segments
- 3** **Leverages BD's leading global capabilities** and creates new opportunities around the world to benefit from the combined company's product technology



**Better Together:
A Dynamic and
Differentiated Company**

- ~\$16 billion in combined annualized revenues
- Increases BD's addressable opportunity by \$20B
- 65,000 employees worldwide
- Presence in almost every country around the world



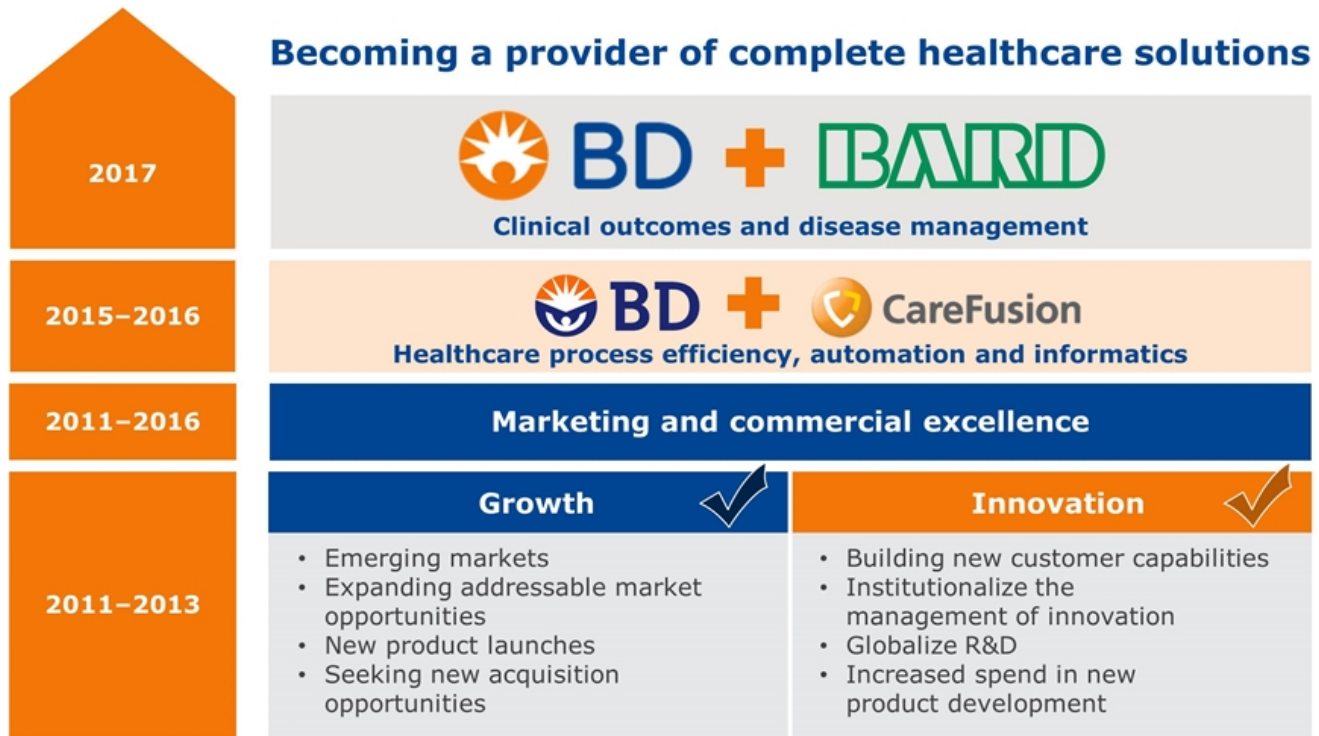
Key highlights from Bard's perspective

- 1**... **BD is a Company with a compelling mission, strong values and a track record of success**
- 2**... **Our strategy has been focused on specific clinical improvements and therapy innovations**
- 3**... **Combination offers:**
 - Unmatched solutions for customers and their patients
 - Leading portfolio of solutions across continuum of care
 - New growth opportunities
- 4**... **Unique value creation for shareholders**
- 5**... **We would like to recognize the hard work of all Bard employees, which created a world-class company**



Accelerating our strategy

Built on an already strong foundation



Our journey has been focused on four strategic pillars

1 	2 	3 	4 
Re-invent the medication management process across the care continuum	Prevent infections and improve safety for healthcare workers	Advance the treatment of diabetes and other disease categories	Expand globally
BAIRD	BAIRD	BAIRD	BAIRD
Further enhances the medication management continuum	Accelerates infection prevention strategy	Further advances the treatment of disease	Further leverages BD's leading global capabilities



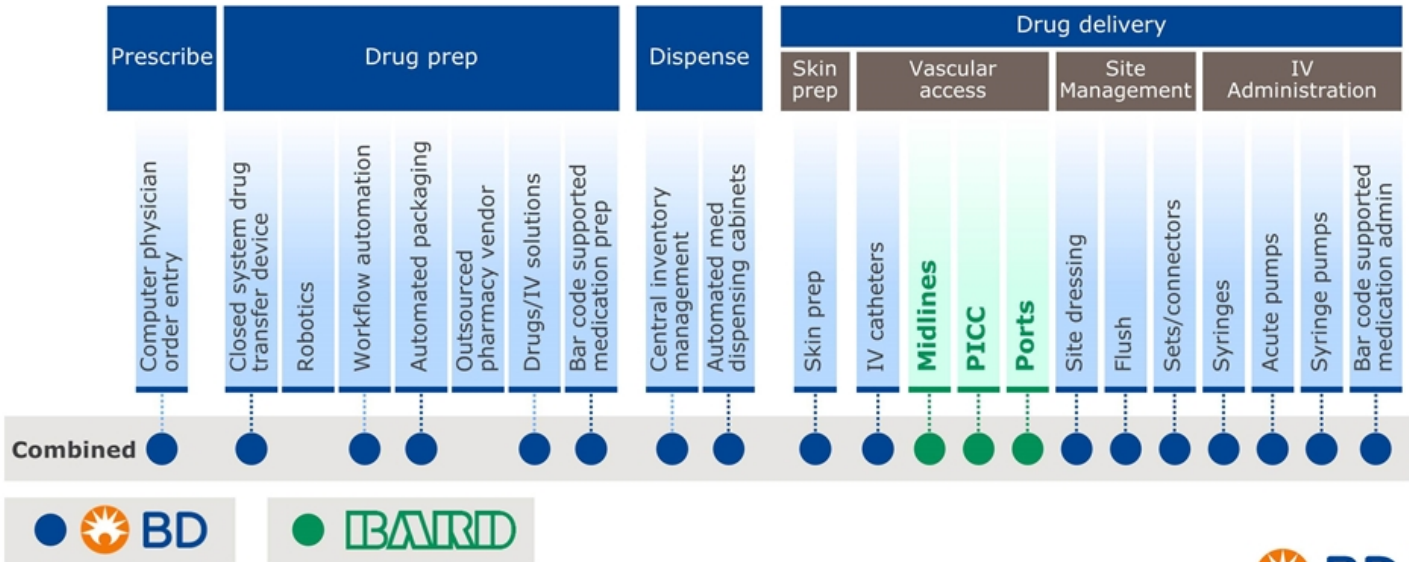
Expands leadership in medication management



Increases BD's access to a \$20B addressable opportunity



Completes Vascular Access offering in a fast growing segment of drug delivery



Creates the leader in solutions to address HAI's

Major healthcare need	Most costly and relevant HAIs	Technology portfolio
<div data-bbox="203 451 446 682"> </div> <p data-bbox="146 745 503 808">U.S. cost of healthcare-associated infections</p> <div data-bbox="138 840 511 924" style="background-color: orange; color: white; padding: 5px; text-align: center;"> <p>1 in 15 patients acquire infection during care</p> </div>	<p data-bbox="609 388 901 451">Surgical Site Infection (SSI)</p> <p data-bbox="609 493 901 535">\$3.3B in cost burden</p>	<div data-bbox="990 378 1071 451"> </div> <p data-bbox="1096 399 1209 430">ChloroPrep</p> <div data-bbox="1266 378 1331 451"> </div> <p data-bbox="1339 399 1429 430">Clippers</p> <div data-bbox="982 472 1079 546"> </div> <div data-bbox="1088 472 1169 546"> </div> <p data-bbox="1177 472 1412 535">Surgical drapes, wipes (pipeline)</p>
	<p data-bbox="609 651 901 745">Central line associated blood stream infection (CLABSI)</p> <p data-bbox="609 766 901 808">\$1.8B in cost burden</p>	<div data-bbox="974 619 1055 724"> </div> <p data-bbox="950 724 1047 756">Site prep</p> <div data-bbox="1071 609 1169 724"> </div> <p data-bbox="1169 609 1226 640">PICC</p> <div data-bbox="1226 640 1307 724"> </div> <p data-bbox="1153 682 1209 714">Ports</p> <div data-bbox="1364 609 1412 693"> </div> <p data-bbox="1323 682 1445 714">Connectors</p> <div data-bbox="1079 756 1193 829"> </div> <p data-bbox="1006 819 1063 850">PIVC</p> <div data-bbox="1282 756 1339 808"> </div> <p data-bbox="1226 819 1412 850">Disinfectant caps</p>
	<p data-bbox="609 903 901 997">Catheter associated urinary tract infection (CAUTI)</p> <p data-bbox="609 1008 901 1050">\$1.0B in cost burden</p>	<div data-bbox="982 903 1088 997"> </div> <p data-bbox="1104 913 1315 987">Infection control Foley catheters and standardized kits</p> <div data-bbox="1339 903 1453 997"> </div>

(1) Includes C.Diff and VAP, in addition to SSI, CLABSI, CAUTI as depicted above.



Expanding to new high-growth clinical therapy areas with differentiated solutions

Healthcare challenges

Massive costs

Solutions (current and pipeline)



Diabetes

- 29 million patients (U.S.); 400+ million (global)

\$175B

Direct medical costs From **diabetes**



Pen needles



Dose Data Capture



T2 Patch Pump



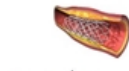
Peripheral Vascular Disease

- 19 million patients (U.S.)
- Drives 10% of all hospitalizations

\$200B

Cost burden of **peripheral vascular disease**

DCB (Drug Coated Balloon)



Stent



Graft



PTA (Peripheral angioplasty balloons)



Chronic Kidney Disease

- 26 million lives at risk (U.S)
- Projected 60% increase in kidney failure incidence by 2020

\$32B

Treatment costs of **chronic kidney disease**



Dialysis catheters

AV Fistula DCB



Scales and accelerates oncology and surgical offerings



Oncology



Fine
Needle
Biopsy



PleurX
Denver
Shunt



EnCor Vacuum
Assisted
Breast Biopsy
(VAB)



Core
Needle
Biopsy



~\$0.5B oncology business

- Strengthens BD's offering globally
- Improves position in biopsy

Surgery



ChlorPrep



V. Mueller



Hernia
Mesh



Hernia
Fixation



Biosurgery



~\$1.0B surgery business

- Establishes BD as a strong player in general surgery with clinically preferred mesh, infection prevention, and biosurgery offerings



Strengthens our global Med-Tech position

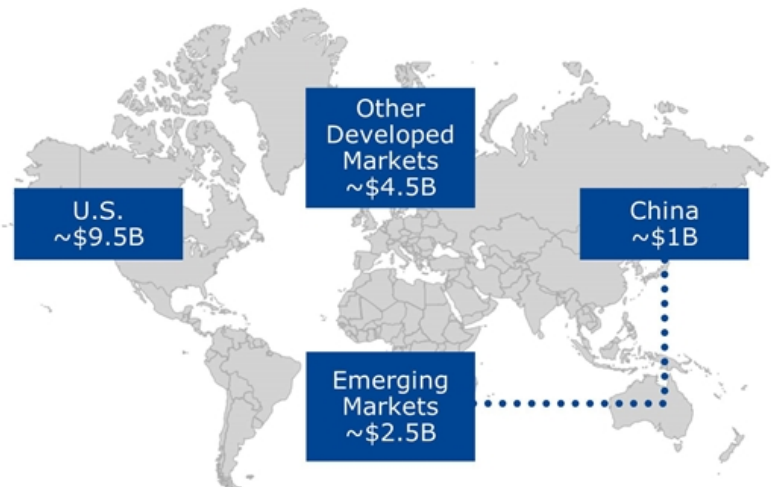


- Strong international presence (45% x-U.S. / 55% U.S.)
- Advanced market development, governmental affairs and regional innovation capabilities
- Substantial local manufacturing



- Channel expansion outside the U.S.
- Strong regional commercial teams
- Innovation pipeline with highly relevant product solutions for international markets

Global Base for Sustained Growth FY 2016 combined revenues ~\$16B



Note: Totals may not add due to rounding.

Combination strengthens our growth profile

FY 2017 to FY 2019

BD Analyst Day
November 2016

Revenue
Growth

5%+

Operating
Margin
Expansion

~100
bps per year

Earnings
Growth

10%+

FY 2018 to FY 2020

Bard Announcement
April 2017

Revenue
Growth

5-6%

Operating
Margin
Expansion

~200
bps per year

Earnings
Growth

**mid-
teens**



Transaction overview

Transaction Terms

- **Total consideration of \$24 billion in cash and BD stock**
 - \$222.93 in cash per share and \$94.07 stock per share
 - Bard shareholders to own ~15% of combined company, ~\$8B
 - BD to assume \$1.6B of Bard debt and \$1.1B of cash

Financing Overview

- Committed bridge financing covering the cash component of the transaction is in place
- Permanent financing expected to consist of a combination of cash on hand, new debt, and new equity and equity-linked securities:
 - ~\$1.7B of available cash on hand
 - ~\$10B of new debt
 - ~\$4.5B of new equity and equity-linked securities to be issued to the market (100% equity credit)

Balance Sheet Implications

- **Commitment to deleveraging to below 3x over 3 years**
 - Pro forma leverage ratio of ~4.7x LTM adjusted EBITDA
 - Expect credit ratings of BBB (S&P) & Ba1 (Moody's)

Timing

- Transaction expected to close in the fall of 2017, subject to regulatory and Bard shareholder approvals



Creates meaningful value for shareholders

Accelerating Revenue Growth

- **Accelerates top-line and expands addressable markets**
 - Enhances BD's growth strategy
 - Targeted top-line growth expected to increase from 5%+ to 5-6%
 - Increases BD's addressable market opportunity from approximately \$47 billion to \$70 billion

Synergies

- **Approximately \$300 million of estimated run-rate cost synergies**
 - Expected to be fully realized by fiscal year 2020
- **Revenue and tax synergies are expected but not included in the model**

Earnings Impact and Returns

- **Expands gross margins by ~300 bps in FY 2018**
- **Earnings growth accelerates to mid-teens**
 - Immediately accretive in fiscal year 2018 and high single digit accretion in fiscal year 2019
- **Attractive return profile and strong cash flow generation**
 - Delivers strong ROIC

Capital Allocation

- **Commitment to continue growing the dividend**



A new interventional segment



BD Medical remains focused on solutions that address significant healthcare challenges

A new Interventional Segment will be created with a focus on disease management

BD Life Sciences segment remains focused on improving outcomes from discovery to diagnosis



Accelerating and broadening BD's strategy

There are clear strategic benefits of a combination:

- 1** Advances the strategies of both companies and accelerates end-to-end medication management and infection prevention
- 2** Creates new growth opportunities across a range of clinically impactful segments
- 3** Leverages BD's leading global capabilities and creates new opportunities around the world to benefit from the combined company's product technology



**Better Together:
A Dynamic and
Differentiated Company**

- ~\$16 billion in combined annualized revenues
- Increases BD's addressable opportunity by \$20B
- 65,000 employees worldwide
- Presence in almost every country around the world



Questions



BD

April 23, 2017

Vince Forlenza
Chairman and CEO

This message has been sent to all associates

BD Announces Agreement to Acquire Bard

I am delighted to announce that we have signed an agreement to acquire Bard, a global industry leader highly regarded for their innovative, life-enhancing medical technologies. The combined company will be uniquely positioned to improve both the integrated process of care and the treatment of disease, allowing us to offer more comprehensive, clinically relevant solutions to customers and patients around the world.

Based nearby our Franklin Lakes headquarters in Murray Hill, New Jersey, Bard has about \$3.7 billion in annual revenue with nearly 16,000 employees worldwide across 38 countries. Many of you may be familiar with Bard and their leading products in vascular access segments (PICCs, midlines and drug delivery ports), urology, oncology and surgery.

The combination of BD and Bard will create new opportunities to build on our leadership position in medication management and infection prevention with an expanded offering of solutions across the care continuum, while increasing our opportunities in fast growing clinical areas, including peripheral vascular therapy, oncology, and bio-surgery. We believe Bard, already one of the fastest growing medical technology companies in emerging markets, will benefit from BD's leading global capabilities and infrastructure to further accelerate growth outside of the U.S., creating more opportunities for patients and clinicians around the world to benefit from Bard's product technology.

What makes the combination so compelling is not just WHAT Bard offers in their portfolio, but HOW they bring their products to market – through a uniquely agile innovation system and a deep focus on clinical and economic evidence to support Bard's products. We are confident that by joining Bard's expertise in improving clinical outcomes with BD's capabilities in strategic selling, informatics and solutions delivery, the combined organization will be an even stronger partner for healthcare providers, who are increasingly focused on delivering better outcomes at a lower total cost.

BD and Bard are a strong fit both strategically and culturally. In fact, you don't have to look further than each company's mission – our purpose of *Advancing the World of Health*, and Bard's vision of *Advancing Lives and the Delivery of Health Care* – to see how well-aligned we are. For more than a century, both companies have earned strong reputations for delivering superior results and evolving with the healthcare industry to address customers' unmet needs. I look forward to welcoming Bard's talented employees as we plan to bring our two companies together.

This agreement is only possible because of your hard work and dedication to BD's transformation over the past two years and the tireless efforts you made to integrate CareFusion, improve efficiency and strengthen our systems and processes. We'll be drawing on all of our integration experience and leveraging the significant investments we've already made as we work with Bard to develop a comprehensive integration plan. I'm also very pleased to share that Bill Tozzi will lead the integration of Bard, working with senior members of both BD and Bard. We will name a new WW President for Medication and Procedural Solutions in the coming weeks.

We expect the transaction to close in the fall of 2017, at which time we will create a new, third segment for BD – Interventional — where the Bard businesses will report both operationally and financially. Until then, it is important to remember that it is business as usual, and both BD and Bard will continue to operate as separate companies. I ask that you remain focused on doing the jobs you do so well and on delivering the highest quality products and services our customers and partners have come to expect from us.

We look forward to discussing this exciting news with you in more detail during a special **Town Hall meeting tomorrow, Monday, April 24**, at 10:30 a.m. ET. We will share the meeting details in a separate calendar invite.

Once again, thank you for all of your continued hard work. We are thrilled with today's news and look forward to embarking on BD's next chapter together.

FORWARD-LOOKING STATEMENTS

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Franklin Lakes, New Jersey 07417
Attn: Investor Relations
1-(800)-284-6845

C.R. Bard, Inc.
730 Central Avenue
Murray Hill, New Jersey 07974
Attn: Investor Relations
1-(908)-277-8065

PARTICIPANTS IN THE SOLICITATION

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NO OFFER OR SOLICITATION

This letter shall not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the U.S. Securities Act of 1933, as amended.

Maxwell Story

Homepage headline - BD Announces Agreement to Acquire Bard

Homepage subhead – Creates a highly differentiated medical technology company uniquely positioned to deliver innovative offerings and unmatched solutions for healthcare providers and patients.

Article copy:

Today, BD announced an agreement to acquire C. R. Bard, Inc., a medical technology leader in the fields of vascular, urology, oncology and surgical specialty products.

The combination of BD and Bard creates a highly differentiated medical technology company focused on delivering innovative healthcare solutions to improve clinical and economic outcomes. Through this combination, we expect to improve both the process of care and the treatment of disease.

Together, we will create new opportunities to build on BD's leadership position in medication management and infection prevention with an expanded offering of solutions across the care continuum. Bard's strong product portfolio and innovation pipeline will also increase BD's opportunities in fast growing clinical areas, including peripheral vascular therapy, oncology and bio-surgery. And, BD's leading global capabilities and infrastructure will further accelerate the combined company's growth outside of the U.S., creating more opportunities for patients and clinicians around the world to benefit from BD's and Bard's product technology.

Our two purpose-driven organizations are a solid strategic fit and well-aligned culturally. In fact, you don't have to look further than each company's mission – our purpose of *Advancing the World of Health*, and Bard's vision of *Advancing Lives and the Delivery of Health Care* – to see how well-aligned we are. For more than a century, both companies have earned strong reputations for delivering superior results and evolving with the healthcare industry to address customers' unmet needs.

Check out this video of company leaders talking about the benefits of this combination for customers, patients, associates and shareholders:

(Video goes here)

We look forward to welcoming Bard's talented employees as we plan to bring our two companies together. We are very excited about this transaction and believe our customers will benefit significantly.

The transaction is expected to close in the fall of 2017, following regulatory and Bard shareholder approvals and customary closing conditions. Until then, it is business as usual, and both BD and Bard will continue to operate as separate companies. **We encourage all BD employees to remain focused on delivering the highest quality products and services our customers and partners have come to expect from us.**

Learn more on the BD and Bard website [[here](#)] or on the Fact Sheet [[clickable image below](#)]

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Becton, Dickinson and Company

1 Becton Drive
Franklin Lakes, New Jersey 07417
Attn: Investor Relations
1-(800)-284-6845

C.R. Bard, Inc.

730 Central Avenue
Murray Hill, New Jersey 07974
Attn: Investor Relations
1-(800)-367-2273

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E-mail to Customers/Distributors

Dear Valued [BD Customer/Healthcare Provider]:

I am very pleased to share with you the exciting news that today we announced that we have signed an agreement to acquire Bard, a global industry leader highly regarded for their innovative, life-enhancing medical technologies. The combined company will be uniquely positioned to improve both the process of care and the treatment of disease, allowing us to offer more comprehensive, clinically relevant solutions to customers and patients around the world. A copy of the press release announcing the transaction is attached.

Based nearby our Franklin Lakes headquarters in Murray Hill, New Jersey, about \$3.7 billion in annual revenue with nearly 16,000 employees worldwide across 38 countries. Many of you may be familiar with Bard and their leading products in vascular access segments (PICCs, midlines and drug delivery ports), oncology and surgery. Outside of the U.S., Bard is among the fastest growing medical technology companies in emerging markets.

We believe customers of both BD and Bard will benefit significantly from this transaction. The combination will create new opportunities to build on our leadership position in medication management and infection prevention with an expanded offering of solutions across the care continuum, while increasing our opportunities in fast growing clinical areas, including peripheral vascular therapy, oncology and bio-surgery.

What makes the combination so compelling is not just WHAT Bard offers in their portfolio, but HOW they bring their products to market – through a uniquely agile innovation system and a deep focus on clinical and economic evidence to support Bard’s products. We are confident that by joining Bard’s expertise in improving clinical outcomes with BD’s capabilities in strategic selling, informatics and solutions delivery, the combined organization will be an even stronger partner for healthcare providers, who are increasingly focused on delivering better outcomes at a lower total cost.

The transaction is expected to close in the fall of 2017 following regulatory and other required approvals. Please keep in mind that we are just at the beginning of a long process. Until the transaction closes, it is business as usual, and both BD and Bard will continue to operate as separate companies. Your contacts at BD will remain the same.

I also cannot emphasize enough that this will not change our focus on delivering the highest quality products and service that you have come to expect from us. Your satisfaction remains our top priority. We will keep you informed as we move toward completing this transaction, and should you have any questions, please do not hesitate to reach out to [NAME].

Sincerely,
[NAME]

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E-mail to BD Suppliers/Vendors

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What makes the combination so compelling is not just WHAT Bard offers in their portfolio, but HOW they bring their products to market – through a uniquely agile innovation system and a deep focus on clinical and economic evidence to support Bard's products. We are confident that by joining Bard's expertise in improving clinical outcomes with BD's capabilities in strategic selling, informatics and solutions delivery, the combined organization will be an even stronger partner for healthcare providers, who are increasingly focused on delivering better outcomes at a lower total cost.

Our relationship with you is critical to our future success, and our focus on delivering the highest quality products and service to our customers and maintaining strong partnerships will not change.

The transaction is expected to close in the fall of 2017 following regulatory and other required approvals. Please keep in mind that we are just at the beginning of a long process and, until the transaction closes, it is business as usual. Both BD and Bard will continue to operate as separate companies, and your contacts at BD will remain the same through the closing of the transaction.

We will keep you informed as we move toward completing this transaction. We deeply value our relationship and look forward to continuing a strong partnership in the years ahead. Should you have any questions, please do not hesitate to reach out to [NAME].

Sincerely,
[NAME]

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Attn: Investor Relations
1-(800)-284-6845

C.R. Bard, Inc.
730 Central Avenue
Murray Hill, New Jersey 07974
Attn: Investor Relations
1-(908)-277-8065

PARTICIPANTS IN THE SOLICITATION

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Leading global medical technology company with strong capabilities in strategic selling, informatics and solutions delivery


\$41B
 MARKET CAP


\$12.4B
 TTM REVENUE


~50K
 EMPLOYEES


 Advancing the
 World of Health

Medical technology leader in the fields of vascular, urology, oncology and surgical specialty products


\$19B
 MARKET CAP


\$3.7B
 TTM REVENUE


~16K
 EMPLOYEES


 Advancing Lives
 and the Delivery of
 Health Care

COMBINATION ACCELERATES BD'S GROWTH STRATEGY BY BRINGING MORE COMPREHENSIVE, CLINICALLY RELEVANT SOLUTIONS TO CUSTOMERS & PATIENTS AROUND THE GLOBE STRATEGICALLY WELL-ALIGNED WITH HIGHLY COMPATIBLE CULTURES

Builds on BD's leadership position in medication management and infection prevention

- Brings together highly complementary product sets to create unmatched solutions for customers.
- Better positioned to provide end-to-end medication management solutions across the care continuum.
- Further expands BD's leadership in infection prevention, with offerings positioned to address 75% of the most costly and frequent healthcare associated infections (HAIs).

Bard's strong product portfolio and innovation pipeline increases BD's opportunities in fast growing clinical areas

- Bard's clinically differentiated offerings create more meaningful scale and relevance for BD in high growth categories of oncology and surgery.
- Expands BD's focus on the treatment of disease states beyond diabetes to include peripheral vascular disease, urology, hernia and cancer.

Accelerated growth outside of the U.S.

- More opportunities for patients and clinicians around the world to benefit from BD's and Bard's product technology.
- Expanded portfolio of clinically relevant products, with clearly identified opportunities to drive near-term revenue synergies outside of the U.S.
- Large and growing presence in emerging markets, including \$1 billion in annual revenue in China.

Financially compelling combination with meaningful long-term value for shareholders

- Accelerates BD's progress towards long-term target of revenue growth of 5+ percent.
- Approximately \$300 million of estimated annual, pre-tax, run-rate cost synergies are expected in FY 2020.
- Revenue synergies identified beginning in FY 2019.
- Expected to improve BD's gross margins and increase BD's EPS growth trajectory.

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SLATE: B.D. BARD

VINCE FORLENZA:

Today, we're announcing the exciting combination of B.D. and Bard to build a leading healthcare company. A company that's gonna be really impactful in advancing the world of health.

TIM RING:

This provides one of the largest medical device companies in the world that probably has the broadest array of products to take care of patients.

VINCE FORLENZA:

The combination of B.D. and Bard creates the best partner for healthcare providers, not just in the U.S. but around the globe. Bar none.

TIM RING

We're very closely aligned. The value system, the integrity, the innovation, and the commitment to healthcare delivery and improving lives of patients.

TOM POLEN:

We both improve fundamental processes in the healthcare system, lowering costs and improving quality of things like the medication management process, the infection prevention process, while at the same time making a substantial impact in specific disease states, be that diabetes peripheral vascular disease or renal disease.

VINCE FORLENZA:

We have other programs going on, you know, in diabetes care for example. And when we step back and look at what other conditions those patients have, it falls right on your product line. You know, all those things that are going on in terms of, you know, vascular disease.

TOM POLEN:

Being able to bring skill sets to improve the process of care while also bringing the depth of knowledge and clinical expertise to improve the outcome of specific diseases, no other company will be able to do what we can do.

TIM RING:

GRAPHIC #1: "About CR Bard" – 1/2 SCREEN

- 110 years old
- ~ 16,000 employees
- Diversified revenue stream
- Strong in emerging markets

C.R. Bard's been around for a long time, much like B.D., 110 years. We now have 16,000 employees around the world. We're pretty evenly distributed in terms of our revenue base, especially in emerging markets.

JOHN WEILAND:

Our pipeline as an organization has never been as robust as it is today. And I think that, with the combination around the globe, with the power both organizations have will be really phenomenal for patients.

VINCE FORLENZA:

GRAPHIC #2: "About BD" – 1/2 SCREEN

- 120 years old
- \$12 bn in sales
- ~50,000 employees

B.D. is a medical device and life science company, with about two thirds on the medical side and about a third on life sciences before this transaction. And it's a company that's passionate about advancing the world of health. We're about \$12 billion in sales. And we're now a solutions company, both on the medical side and on the life science side.

TOM POLEN:

We often describe B.D. as really being focused on discovery, diagnosis and treatment.

TIM RING:

One of the other exciting opportunities I think is this whole focus on infection control. Because when you do drive from the hospital to the home, that's actually where the incidence of infections occurs with the maintenance of the P.I.C.C.s and the other catheters. And I think with a lotta your capability, we can help solve those problems together and really— take care of an unmet need.

JOHN WEILAND:

In fact, the combined technology can handle over 75% of the infections that are acquired in hospitals today.

VINCE FORLENZA:

We will become a really important partner for healthcare systems around the globe. Think about this. We're gonna have a billion-dollar business in China.

TOM POLEN:

We have over three manufacturing facilities in China now for the combined organization, substantial R&D capabilities to innovate and develop local solutions for that marketplace.

JOHN WEILAND:

You're a powerful organization in the United States and around the world, and so are we. When you put these two organizations together, that power at the customer interfacing side of things is really gonna be remarkable.

VINCE FORLENZA:

GRAPHIC #3: "Value for Shareholders" – 1/2 SCREEN

- Accretive
- Strong cash flow
- Accelerates growth
- Improves margins

I think this deal is tremendous for shareholders. It's accretive from day one. It's gonna have strong cash flow. It's gonna have a company that's growing faster than it was. Improving margins. You put all of that together, that's very positive for shareholders, but shareholders of both companies.

TIM RING:

When you look at the performance of both of our companies over the last several years, we've been at the top tier of the medical technology sector. We're big believers in driving revenue growth. Clearly you are as well.

TOM POLEN:

We also both have a number of shareholders who are very focused on societal impact that the companies that they're investing in are making. Our combination is only gonna raise up the bar.

JOHN WEILAND:

These are companies historically that have taken great revenue growth and turned it into superb earnings per share growth. This combination will do exactly the same.

TOM POLEN:

And you think about now three different segments. The geographic diversity of the company, the career opportunities now in the new B.D. are hard to match within this industry.

JOHN WEILAND:

And if you're from the Bard side, think about it. You just are entering an organization that has four times the amount of opportunity in terms of positions around the world. Very exciting for our people, I believe.

TOM POLEN:

Something that we take a lotta pride in is rotating talent across businesses. I've worked in or had responsibility for every business in the company today.

TIM RING:

I'll tell you what I'm most impressed with. We've known each other more than 15 years. Every time I've interacted with you guys, I felt the culture and we've seen it with our people interacting through this process, it's a really similar fit.

VINCE FORLENZA:

And John, I remember when you were talking about the Bard values and putting humility at the top of the list. And that really struck a chord with us. You know, it's about what we're doing for patients, right?

JOHN WEILAND:

You're darn right.

VINCE FORLENZA:

It's going to be a real honor for me to be CEO of this combined company of BD. And I'm really looking forward to having you on the board and working with you. Working with John in the consulting capacity to make sure all of this goes well, with your, you know, knowledge of the company, your relationships across the company.

And of course, with Tom in his new role as president of B.D. I'm really looking forward to working with you in your new capacity, with so much opportunity for all of us and for everybody in the company.

TIM RING:

GRAPHIC #4: "BD + BARD" TEXT OVER Video

- Will create highly differentiated medical technology company
- Focused on delivering innovative healthcare solutions
- Positioned to improve clinical and economic outcomes

So when in total you look at the combined company—and our market and product leadership positions, our investment philosophy and continued innovation and product leadership, and then on top of that, you look at the financial profile of the combined company, it's an extremely powerful entity in healthcare. The fastest growth company in med tech. And that's what gets us jazzed.

VINCE FORLENZA:

You know, I'm jazzed. I'm thinking about going out on a customer visit and representing this company to the customer. And the capabilities that this company is going to have, and the impact that it can have on the patients, I mean, this is gonna be a wonderful experience.

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BD ACQUISITION OF BARD

Welcome
 BD and Bard announced on April 23, 2017 that they have entered into a definitive agreement under which BD will acquire Bard for \$17.00 per Bard common share in cash and stock, for a total consideration of \$24 billion, creating a highly differentiated medical technology company focused on delivering innovative healthcare solutions to improve clinical and economic outcomes.

Investor Call
 Listen to the investor call April 24, 2017 8:00 AM ET
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Fact Sheet
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Press Release
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Becton, Dickinson and Company

On April 23, 2017, the following communications were made available by Becton, Dickinson and Company on Twitter, Facebook and LinkedIn:

Twitter

BD announces proposed acquisition of Bard to create highly differentiated medical technology company
 bdandbard.transactionannouncement.com

Facebook

Exciting news: BD is thrilled to announce the proposed acquisition of C.R. Bard, Inc.

We believe the combination will create a highly differentiated medical technology company uniquely focused on delivering innovative healthcare solutions to improve clinical and economic outcomes. We look forward to welcoming Bard's talented employees to our strong and dedicated team.

For more information, please click here: <http://bddy.me/2q4qAJS>

LinkedIn

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