

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended: December 31, 2022

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 0-11412



**AMTECH SYSTEMS, INC.**

(Exact name of registrant as specified in its charter)

Arizona  
(State or other jurisdiction of  
incorporation or organization)

131 South Clark Drive, Tempe, Arizona  
(Address of principal executive offices)

86-0411215  
(I.R.S. Employer  
Identification No.)

85288  
(Zip Code)

Registrant's telephone number, including area code: 480-967-5146

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	ASYS	NASDAQ Global Select Market

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).  Yes  No

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

Large Accelerated Filer	<input type="checkbox"/>	Accelerated Filer	<input type="checkbox"/>
Non-Accelerated Filer	<input checked="" type="checkbox"/>	Smaller Reporting Company	<input checked="" type="checkbox"/>
		Emerging Growth Company	<input type="checkbox"/>

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

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

At February 3, 2023, there were outstanding 14,023,534 shares of Common Stock.

**AMTECH SYSTEMS, INC. AND SUBSIDIARIES**  
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## Cautionary Statement Regarding Forward-Looking Statements

Our discussion and analysis in this Quarterly Report on Form 10-Q ("Quarterly Report"), our Annual Report on Form 10-K for the fiscal year ended September 30, 2022 (the "2022 Form 10-K"), our other reports that we file with the Securities and Exchange Commission (the "SEC"), our press releases and in public statements of our officers and corporate spokespersons contain "forward-looking" statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the Private Securities Litigation Reform Act of 1995. Forward-looking statements give our or our officers' current expectations or forecasts of future events. You can identify these statements by the fact that they do not relate strictly to historical or current events. You can also identify forward-looking statements by discussions of strategy, plans or intentions of management. We have tried, wherever possible, to identify such statements by using words such as "may," "plan," "anticipate," "seek," "will," "expect," "intend," "estimate," "believe," "continue," "predict," "potential," "project," "should," "would," "could," "likely," "future," "target," "forecast," "goal," "observe," and "strategy" or the negative thereof or variations thereon or similar terminology relating to the uncertainty of future events or outcomes. Any expectations based on these forward-looking statements are subject to risks and uncertainties and other important factors. Some factors that could cause actual results to differ materially from those anticipated include, among others, future economic conditions, including changes in the markets in which we operate; changes in demand for our services and products; our revenue and operating performance; difficulties in successfully executing our growth initiatives; difficulties in executing on our strategic initiatives with respect to our material and substrate business segment; our ability to effectively integrate our acquisition of Entrepix, Inc., which we acquired in January 2023; the effects of competition in the markets in which we operate, including the adverse impact of competitive product announcements or new entrants into our markets and transfers of resources by competitors into our markets; the cyclical nature of the semiconductor industry; pricing and gross profit pressures; control of costs and expenses; risks associated with new technologies and the impact on our business; legislative, regulatory, and competitive developments in markets in which we operate; possible future claims, litigation or enforcement actions and the results of any such claim, litigation proceeding, or enforcement action; business interruptions, including those related to the COVID-19 pandemic, the potential impacts of the COVID-19 pandemic, including ongoing logistical and supply chain challenges, and any future pandemic on our business operations, financial results and financial position; the severity, magnitude and duration of the COVID-19 pandemic, including impacts of the pandemic and of businesses' and governments' responses to the pandemic on our operations and personnel, including any future Chinese government mandated shutdown in Shanghai; risks of future cybersecurity incidents; and other circumstances and risks identified in this Quarterly Report or referenced from time to time in our filings with the SEC. The occurrence of the events described, and the achievement of expected results, depend on many events, some or all of which are not predictable or within our control. These and many other factors could affect Amtech's future operating results and financial condition and could cause actual results to differ materially from expectations based on forward-looking statements made in this document or elsewhere by Amtech or on its behalf.

You should not place undue reliance on these forward-looking statements. We cannot guarantee that any forward-looking statement will be realized, although we believe that the expectations reflected in the forward-looking statements are reasonable as of the date of this Quarterly Report. Achievement of future results is subject to events out of our control, risks, uncertainties and potentially inaccurate assumptions. The 2022 Form 10-K listed various important factors that could affect Amtech's future operating results and financial condition and could cause actual results to differ materially from historical results and expectations based on forward-looking statements made in this document or elsewhere by Amtech or on its behalf. These factors can be found under the heading "Item 1A. Risk Factors" in our 2022 Form 10-K and investors should refer to them as well as the additional risk factors identified in this Quarterly Report. Because it is not possible to predict or identify all such factors, any such list cannot be considered a complete set of all potential risks or uncertainties.

The Company undertakes no obligation to update or publicly revise any forward-looking statement whether as a result of new information, future developments or otherwise. All subsequent written or oral forward-looking statements attributable to the Company or persons acting on its behalf are expressly qualified in their entirety by this paragraph. You are advised, however, to consult any further disclosures we make on related subjects in our subsequently filed Form 10-Q and Form 8-K reports and our other filings with the SEC. As noted above, we provide a cautionary discussion of risks, uncertainties and possibly inaccurate assumptions relevant to our business under "Item 1A. Risk Factors" of our 2022 Form 10-K. We note these factors for investors as permitted by the Private Securities Litigation Reform Act of 1995. You should understand it is not possible to predict or identify all such factors.

Unless the context indicates otherwise, the terms "Amtech," the "Company," "we," "us" and "our" refer to Amtech Systems, Inc., an Arizona corporation, together with its subsidiaries.

**PART I. FINANCIAL INFORMATION**

**Item 1. Condensed Consolidated Financial Statements**

**AMTECH SYSTEMS, INC. AND SUBSIDIARIES**

**Condensed Consolidated Balance Sheets**

(in thousands, except share data)

	December 31, 2022 (Unaudited)	September 30, 2022
<b>Assets</b>		
<b>Current Assets</b>		
Cash and cash equivalents	\$ 44,534	\$ 46,874
Accounts receivable (less allowance for doubtful accounts of \$147 and \$114 at December 31, 2022 and September 30, 2022, respectively)	21,785	25,013
Inventories	28,236	25,488
Other current assets	4,890	5,561
Total current assets	99,445	102,936
Property, Plant and Equipment - Net	6,451	6,552
Right-of-Use Assets - Net	10,832	11,258
Intangible Assets - Net	733	758
Goodwill	11,168	11,168
Deferred Income Taxes - Net	114	79
Other Assets	794	783
<b>Total Assets</b>	<b>\$ 129,537</b>	<b>\$ 133,534</b>
<b>Liabilities and Shareholders' Equity</b>		
<b>Current Liabilities</b>		
Accounts payable	\$ 6,835	\$ 7,301
Accrued compensation and related taxes	2,923	4,109
Other accrued liabilities	2,722	1,771
Current maturities of finance lease liabilities and long-term debt	71	107
Current portion of long-term operating lease liabilities	2,134	2,101
Contract liabilities	6,955	7,231
Income taxes payable	19	6
Total current liabilities	21,659	22,626
Finance Lease Liabilities and Long-Term Debt	59	220
Long-Term Operating Lease Liabilities	8,937	9,395
Income Taxes Payable	2,551	2,849
Other Long-Term Liabilities	93	76
<b>Total Liabilities</b>	<b>33,299</b>	<b>35,166</b>
Commitments and Contingencies (Note 7)		
<b>Shareholders' Equity</b>		
Preferred stock; 100,000,000 shares authorized; none issued	—	—
Common stock; \$0.01 par value; 100,000,000 shares authorized; shares issued and outstanding: 14,003,029 and 13,994,154 at December 31, 2022 and September 30, 2022, respectively	140	140
Additional paid-in capital	124,656	124,458
Accumulated other comprehensive loss	(1,351)	(1,767)
Retained deficit	(27,207)	(24,463)
Total Shareholders' Equity	96,238	98,368
<b>Total Liabilities and Shareholders' Equity</b>	<b>\$ 129,537</b>	<b>\$ 133,534</b>

The accompanying notes are an integral part of these condensed consolidated financial statements.

AMTECH SYSTEMS, INC. AND SUBSIDIARIES  
Condensed Consolidated Statements of Operations  
(Unaudited)  
(in thousands, except per share data)

	Three Months Ended December 31,	
	2022	2021
Revenues, net	\$ 21,558	\$ 26,463
Cost of sales	13,255	16,565
Gross profit	8,303	9,898
Selling, general and administrative	9,190	7,086
Research, development and engineering	1,393	1,572
Severance expense	400	—
Operating (loss) income	(2,680)	1,240
Interest expense and other, net	(68)	(83)
(Loss) income before income tax provision	(2,748)	1,157
Income tax (benefit) provision	(4)	160
<b>Net (loss) income</b>	<b>\$ (2,744)</b>	<b>\$ 997</b>
<b>(Loss) Income Per Share:</b>		
Net (loss) income per basic share	\$ (0.20)	\$ 0.07
Net (loss) income per diluted share	\$ (0.20)	\$ 0.07
<b>Weighted average shares outstanding:</b>		
Basic	14,008	14,254
Diluted	14,008	14,485

The accompanying notes are an integral part of these condensed consolidated financial statements.

**AMTECH SYSTEMS, INC. AND SUBSIDIARIES**  
**Condensed Consolidated Statements of Comprehensive Income (Loss)**  
**(Unaudited)**  
**(in thousands)**

	<b>Three Months Ended December 31,</b>	
	<b>2022</b>	<b>2021</b>
Net (loss) income	\$ (2,744 )	\$ 997
Foreign currency translation adjustment	416	237
Comprehensive (loss) income	<u>\$ (2,328 )</u>	<u>\$ 1,234</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

**AMTECH SYSTEMS, INC. AND SUBSIDIARIES**  
**Condensed Consolidated Statements of Shareholders' Equity**  
**(Unaudited)**  
**(in thousands)**

	Common Stock		Treasury Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Retained Deficit	Total Shareholders' Equity
	Shares	Par Value	Shares	Cost				
<b>Balance at September 30, 2021</b>	14,304	\$ 143	—	\$ —	\$ 126,380	\$ 14	\$ (40,903)	\$ 85,634
Net income	—	—	—	—	—	—	997	997
Translation adjustment	—	—	—	—	—	237	—	237
Stock compensation expense	—	—	—	—	103	—	—	103
Repurchase of treasury stock	—	—	(291)	(2,713)	—	—	—	(2,713)
Retirement of treasury stock	(291)	(3)	291	2,713	(2,122)	—	(588)	—
Stock options exercised	12	—	—	—	69	—	—	69
<b>Balance at December 31, 2021</b>	<u>14,025</u>	<u>\$ 140</u>	<u>—</u>	<u>\$ —</u>	<u>\$ 124,430</u>	<u>\$ 251</u>	<u>\$ (40,494)</u>	<u>\$ 84,327</u>
<b>Balance at September 30, 2022</b>	13,994	\$ 140	—	\$ —	\$ 124,458	\$ (1,767)	\$ (24,463)	\$ 98,368
Net loss	—	—	—	—	—	—	(2,744)	(2,744)
Translation adjustment	—	—	—	—	—	416	—	416
Stock compensation expense	—	—	—	—	164	—	—	164
Stock options exercised	9	—	—	—	34	—	—	34
<b>Balance at December 31, 2022</b>	<u>14,003</u>	<u>\$ 140</u>	<u>—</u>	<u>\$ —</u>	<u>\$ 124,656</u>	<u>\$ (1,351)</u>	<u>\$ (27,207)</u>	<u>\$ 96,238</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

**AMTECH SYSTEMS, INC. AND SUBSIDIARIES**  
**Condensed Consolidated Statements of Cash Flows**  
**(Unaudited)**  
**(in thousands)**

	<b>Three Months Ended December 31,</b>	
	<b>2022</b>	<b>2021</b>
<b>Operating Activities</b>		
Net (loss) income	\$ (2,744 )	\$ 997
Adjustments to reconcile net income to net cash (used in) provided by operating activities:		
Depreciation and amortization	388	430
Write-down of inventory	48	120
Deferred income taxes	(35 )	—
Non-cash stock compensation expense	164	103
Provision for (reversal of) allowance for doubtful accounts	35	(19 )
Changes in operating assets and liabilities:		
Accounts receivable	3,194	(2,683 )
Inventories	(2,796 )	(2,161 )
Other assets	1,106	(207 )
Accounts payable	(643 )	1,979
Accrued income taxes	(284 )	968
Accrued and other liabilities	(665 )	140
Contract liabilities	(276 )	2,822
Net cash (used in) provided by operating activities	(2,508 )	2,489
<b>Investing Activities</b>		
Purchases of property, plant and equipment	(224 )	(45 )
Net cash used in investing activities	(224 )	(45 )
<b>Financing Activities</b>		
Proceeds from the exercise of stock options	34	69
Repurchase of common stock	—	(2,713 )
Payments on long-term debt	(14 )	(97 )
Net cash provided by (used in) financing activities	20	(2,741 )
<b>Effect of Exchange Rate Changes on Cash, Cash Equivalents and Restricted Cash</b>	372	175
<b>Net Decrease in Cash, Cash Equivalents and Restricted Cash</b>	(2,340 )	(122 )
<b>Cash and Cash Equivalents, Beginning of Period</b>	46,874	32,836
<b>Cash, Cash Equivalents and Restricted Cash, End of Period</b>	<u>\$ 44,534</u>	<u>\$ 32,714</u>
<b>Supplemental Cash Flow Information:</b>		
Income tax payments, net	\$ 378	\$ 629
Interest paid	\$ 2	\$ 75

The accompanying notes are an integral part of these condensed consolidated financial statements.



**AMTECH SYSTEMS, INC. AND SUBSIDIARIES**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**THREE MONTHS ENDED DECEMBER 31, 2022 AND 2021**  
**(UNAUDITED)**

**1. Basis of Presentation and Significant Accounting Policies**

**Nature of Operations and Basis of Presentation** – Amtech Systems, Inc. (the “Company,” “Amtech,” “we,” “our” or “us”) is a leading, global manufacturer of capital equipment, including thermal processing and wafer polishing, and related consumables used in fabricating semiconductor devices, such as silicon carbide (“SiC”) and silicon power devices, analog and discrete devices, electronic assemblies and light-emitting diodes (“LEDs”). We sell these products to semiconductor device and module manufacturers worldwide, particularly in Asia, North America and Europe.

We serve niche markets in industries that are experiencing technological advances, and which historically have been very cyclical. Therefore, our future profitability and growth depend on our ability to develop or acquire and market profitable new products and on our ability to adapt to cyclical trends.

The accompanying unaudited condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the U.S. Securities and Exchange Commission (the “SEC”), and consequently do not include all disclosures normally required by accounting principles generally accepted in the United States of America (“GAAP”). In the opinion of management, the accompanying unaudited interim condensed consolidated financial statements contain all adjustments necessary, all of which are of a normal and recurring nature, to present fairly our financial position, results of operations and cash flows. Certain information and note disclosures normally included in financial statements have been condensed or omitted pursuant to the rules and regulations of the SEC. The condensed consolidated balance sheet at September 30, 2022, has been derived from the audited consolidated financial statements at that date but does not include all of the information and footnotes required by GAAP for complete financial statements. These unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto included in our Annual Report on Form 10-K for the fiscal year ended September 30, 2022.

Our fiscal year is from October 1 to September 30. Unless otherwise stated, references to particular years, quarters, months or periods refer to our fiscal years ending or ended September 30, and the associated quarters, months, and periods of those fiscal years.

The consolidated results of operations for the three months ended December 31, 2022, are not necessarily indicative of the results to be expected for the full fiscal year.

In March 2020, the outbreak of COVID-19 was recognized as a pandemic by the World Health Organization, and the outbreak became increasingly widespread, including in all of the markets in which we operate. We continue to monitor the impact of COVID-19 on all aspects of our business. We are a company operating in a critical infrastructure industry, as defined by the U.S. Department of Homeland Security. Consistent with federal guidelines and with foreign government, state and local orders to date, we have continued to operate across our footprint throughout the COVID-19 pandemic. There remain many unknowns and we continue to monitor the expected trends and related demand for our products and services and have and will continue to adjust our operations accordingly.

On March 28, 2022, the Chinese government issued a mandatory shutdown in Shanghai, the location of one of our manufacturing facilities. The factory was allowed to partially reopen in May 2022 and was fully reopened on June 1, 2022. Upon reopening on June 1, 2022, the factory was able to operate at near full capacity for the entire month of June. We were able to make up the shipments missed in the fourth quarter of fiscal 2022 and are now operating at normal capacity levels. Additionally, given the uncertainty surrounding the COVID-19 pandemic and the emergence of variations thereof, there can be no assurance that this facility will be allowed to remain open on a consistent basis in the future.

**Principles of Consolidation** – The consolidated financial statements include the accounts of the Company and our wholly-owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

**Use of Estimates** – The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

**Contract Liabilities** – Contract liabilities are reflected in current liabilities on the Condensed Consolidated Balance Sheets as all performance obligations are expected to be satisfied within the next 12 months. Contract liabilities relate to payments invoiced or received in advance of completion of performance obligations under a contract. Contract liabilities are recognized as revenue upon the fulfillment of performance obligations. Contract liabilities consist of customer deposits as of December 31, 2022 and September 30, 2022. Of the \$7.2 million contract liabilities recorded at September 30, 2022, \$0.6 million was recorded as revenue for the three months ended December 31, 2022.

**Warranty** – A limited warranty is provided free of charge, generally for periods of 12 to 36 months to all purchasers of our new products and systems. Accruals are recorded for estimated warranty costs at the time revenue is recognized, generally upon shipment or acceptance, as determined under the revenue recognition policy above. On occasion, we have been required and may be required in the future to provide additional warranty coverage to ensure that the systems are ultimately accepted or to maintain customer goodwill. While our warranty costs have historically been within our expectations and we believe that the amounts accrued for warranty expenditures are sufficient for all systems sold through December 31, 2022, we cannot guarantee that we will continue to experience a similar level of predictability with regard to warranty costs. In addition, technological changes or previously unknown defects in raw materials or components may result in more extensive and frequent warranty service than anticipated, which could result in an increase in our warranty expense. Our accrued warranty expense is less than \$1.0 million in all periods presented and is included in other accrued liabilities on the Condensed Consolidated Balance Sheets.

**Shipping Expense** – Shipping and handling fees associated with outbound freight are expensed as incurred and included in selling, general and administrative expenses. Shipping expense was \$0.6 million and \$1.2 million for the three months ended December 31, 2022 and 2021, respectively.

**Concentrations of Credit Risk** – Our customers consist of semiconductor manufacturers worldwide, as well as the lapping and polishing marketplace. Financial instruments that potentially subject us to significant concentrations of credit risk consist principally of cash and trade accounts receivable. Credit risk is managed by performing ongoing credit evaluations of the customers' financial condition, by requiring significant deposits where appropriate, and by actively monitoring collections. Letters of credit are required of certain customers depending on the size of the order, type of customer or its creditworthiness, and country of domicile.

As of December 31, 2022, one Semiconductor segment customer individually represented 14% of accounts receivable. As of September 30, 2022, one Semiconductor segment customer individually represented 12% of accounts receivable.

We maintain our cash and cash equivalents in multiple financial institutions. Balances in the United States, which account for approximately 83% and 84% of total cash balances as of December 31, 2022 and September 30, 2022, respectively, are primarily invested in AAA-rated U.S Treasury and U.S. Government Agency repo money market mutual funds, which have a constant net asset value and consist of direct U.S. Treasuries and/or U.S. Government Agencies with repurchase agreements backed by U.S. Treasury or U.S. Government Agency collateral only, or are in financial institutions insured by the FDIC. The remainder of our cash is maintained with financial institutions with reputable credit in China, the United Kingdom and Malaysia. We maintain cash in bank accounts in amounts which at times may exceed federally insured limits. We have not experienced any losses on such accounts.

Refer to Note 9 to Condensed Consolidated Financial Statements for information regarding major customers, foreign sales and revenue in other countries subject to fluctuation in foreign currency exchange rates.

## Impact of Recently Issued Accounting Pronouncements

There were no new accounting pronouncements issued or effective as of December 31, 2022 that had or are expected to have a material impact on our consolidated financial statements.

## Correction of Immaterial Misstatements

During the preparation of the condensed consolidated financial statements for the period ended June 30, 2022, the Company identified certain immaterial misstatements related to the classification of sales discounts to distributors within our semiconductor reportable segment. The Company previously presented these sales discounts as part of selling, general and administrative expenses instead of as a reduction of revenues in its unaudited condensed consolidated statements of operations for the three-month period ended December 31, 2021, and the three and six-month periods ended March 31, 2022, which resulted in overstatements of revenue and selling, general and administrative expenses for those periods.

In accordance with Staff Accounting Bulletin No. 99, "Materiality," the Company evaluated the misstatements and determined that the related impact was not material to the Company's financial statements for any interim period. Accordingly, the Company revised the unaudited condensed consolidated statements of operations for the periods ended December 31, 2021 and March 31, 2022, including the related notes presented herein, as applicable. The misstatements did not impact operating income or net income in the condensed consolidated statements of operations, or the condensed consolidated balance sheets or the condensed consolidated statements of cash flows for any of those periods.

A summary of the corrections to previously reported condensed consolidated statements of operations is as follows:

	As Reported	Six Months Ended March 31, 2022		As Corrected
		Adjustment		
Revenues, net	\$ 55,908	\$ (1,889 )	\$	54,019
Gross profit	\$ 22,947	\$ (1,889 )	\$	21,058
Selling, general and administrative	\$ 15,740	\$ (1,889 )	\$	13,851

	As Reported	Three Months Ended March 31, 2022		As Corrected
		Adjustment		
Revenues, net	\$ 28,579	\$ (1,023 )	\$	27,556
Gross profit	\$ 12,183	\$ (1,023 )	\$	11,160
Selling, general and administrative	\$ 7,788	\$ (1,023 )	\$	6,765

	As Reported	Three Months Ended December 31, 2021		As Corrected
		Adjustment		
Revenues, net	\$ 27,329	\$ (866 )	\$	26,463
Gross profit	\$ 10,764	\$ (866 )	\$	9,898
Selling, general and administrative	\$ 7,952	\$ (866 )	\$	7,086

## 2. Earnings Per Share

Basic earnings per share ("EPS") is computed by dividing net income by the weighted average number of common shares outstanding for the period. Diluted EPS is computed similarly to basic EPS except that the denominator is increased to include the number of additional common shares that would have been outstanding if potentially dilutive common shares had been issued. In the case of a net loss, diluted earnings per share is calculated in the same manner as basic EPS.

For the three months ended December 31, 2022 and 2021, options for 259,000 and 47,000 weighted average shares, respectively, were excluded from the diluted EPS calculations because they were anti-dilutive. These shares could become dilutive in the future.

A reconciliation of the components of the basic and diluted EPS calculations follows, in thousands, except per share amounts:

	Three Months Ended December 31,	
	2022	2021
<b>Numerator:</b>		
Net (loss) income	\$ (2,744 )	\$ 997
<b>Denominator:</b>		
Weighted-average shares used to compute basic EPS	14,008	14,254
Common stock equivalents (1)	—	231
Weighted-average shares used to compute diluted EPS	14,008	14,485
<b>(Loss) income per share:</b>		
Net (loss) income per basic share	\$ (0.20 )	\$ 0.07
Net (loss) income per diluted share	\$ (0.20 )	\$ 0.07

(1)The number of common stock equivalents is calculated using the treasury method and the average market price during the period.

### 3. Inventories

The components of inventories are as follows, in thousands:

	December 31, 2022	September 30, 2022
Purchased parts and raw materials	\$ 15,918	\$ 15,377
Work-in-process	8,065	6,146
Finished goods	4,253	3,965
	<u>\$ 28,236</u>	<u>\$ 25,488</u>

### 4. Leases

The following table provides information about the financial statement classification of our lease balances reported within the Condensed Consolidated Balance Sheets, in thousands:

	December 31, 2022	September 30, 2022
<b>Assets</b>		
Right-of-use assets - operating	\$ 10,832	\$ 11,258
Right-of-use assets - finance	131	149
Total right-of-use assets	<u>\$ 10,963</u>	<u>\$ 11,407</u>
<b>Liabilities</b>		
<b>Current</b>		
Operating lease liabilities	\$ 2,134	\$ 2,101
Finance lease liabilities	71	71
Total current portion of long-term lease liabilities	2,205	2,172
<b>Long-term</b>		
Operating lease liabilities	8,937	9,395
Finance lease liabilities	59	76
Total long-term lease liabilities	8,996	9,471
Total lease liabilities	<u>\$ 11,201</u>	<u>\$ 11,643</u>

The following table provides information about the financial statement classification of our lease expenses reported in the Condensed Consolidated Statements of Operations, in thousands:

Lease cost	Classification	Three Months Ended December 31,	
		2022	2021
Operating lease cost	Cost of sales	\$ 461	\$ 197
Operating lease cost	Selling, general and administrative	177	84
Operating lease cost	Research, development and engineering	3	—
Finance lease cost	Cost of sales	1	1
Finance lease cost	Selling, general and administrative	18	16
Short-term lease cost	Cost of sales	8	—
Total lease cost		<u>\$ 668</u>	<u>\$ 298</u>

Future minimum lease payments under non-cancelable leases as of December 31, 2022, are as follows, in thousands:

	Operating Leases	Finance Leases	Total
Remainder of 2023	\$ 1,917	\$ 57	\$ 1,974
2024	2,158	57	2,215
2025	997	9	1,006
2026	871	9	880
2027	782	3	785
Thereafter	7,892	—	7,892
Total lease payments	14,617	135	14,752
Less: Interest	3,546	5	3,551
Present value of lease liabilities	<u>\$ 11,071</u>	<u>\$ 130</u>	<u>\$ 11,201</u>

Operating lease payments include \$6.3 million related to optional lease extension periods for multiple leases that are not yet exercisable but are reasonably certain of being exercised.

The following table provides information about the remaining lease terms and discount rates applied:

	December 31, 2022	September 30, 2022
Weighted average remaining lease term		
Operating leases	12.77 years	12.65 years
Finance leases	2.25 years	2.45 years
Weighted average discount rate		
Operating leases	4.17 %	4.17 %
Finance leases	4.17 %	4.17 %

## 5. Income Taxes

### *Income Tax (Benefit) Provision*

Our effective tax rate was 0.1% and 13.8% for the three months ended December 31, 2022 and 2021, respectively. The effective tax rate for the three months ended December 31, 2022 differs from the U.S. statutory tax rate of 21% primarily due to higher state taxes partially offset by lower taxes in foreign jurisdictions. For the three months ended December 31, 2022 and 2021, we recorded an income tax benefit of \$4,000 and income tax expense of \$0.2 million, respectively. The quarterly income tax provision is calculated using an estimated annual effective tax rate, based upon expected annual income, permanent items, statutory rates and planned tax strategies in the various jurisdictions in which we operate. However, losses in certain jurisdictions and discrete items are excluded from the determination of the estimated annual effective tax rate.

## Deferred Income Taxes and Valuation Allowance

GAAP requires that a valuation allowance be established when it is “more likely than not” that all or a portion of deferred tax assets will not be realized. A review of all available positive and negative evidence needs to be considered, including a company’s performance, the market environment in which the company operates and the length of carryback and carryforward periods. According to those principles, it is difficult to conclude that a valuation allowance is not needed when the negative evidence includes cumulative losses in recent years. Based on the considerations of all available evidence, we have concluded that we will maintain a full valuation allowance for all net deferred tax assets related to the carryforwards of U.S. net operating losses and foreign tax credits. We will continue to monitor our cumulative income and loss positions in the U.S. and foreign jurisdictions to determine whether full valuation allowances on net deferred tax assets are appropriate. We expect to pay minimal U.S federal cash taxes for the foreseeable future as a result of our U.S. net operating losses that are carried forward.

## 6. Equity and Stock-Based Compensation

Stock-based compensation expense was \$0.2 million and \$0.1 million in the three months ended December 31, 2022 and 2021, respectively. Stock-based compensation expense is included in selling, general and administrative expenses.

The following table summarizes our stock option activity during the three months ended December 31, 2022:

	Options		Weighted Average Exercise Price
Outstanding at beginning of period	589,341	\$	8.06
Granted	111,500		9.27
Exercised	(8,875 )		3.80
Forfeited	(2,000 )		9.27
Outstanding at end of period	689,966	\$	8.31
Exercisable at end of period	451,221	\$	7.41
Weighted average fair value of options granted during the period	\$	4.81	

The fair value of options was estimated at the applicable grant date using the Black-Scholes option pricing model with the following assumptions:

	Three Months Ended December 31, 2022	Three Months Ended December 31, 2021
Risk free interest rate	4 %	1 %
Expected term	5 years	5 years
Dividend rate	— %	— %
Volatility	56 %	57 %

## 2022 Stock Repurchase Plan

On February 10, 2022, our Board of Directors (the “Board”) approved a new stock repurchase program, pursuant to which we may repurchase up to \$5 million of our outstanding Common Stock over a one-year period, commencing on February 16, 2022. Repurchases under the program will be made in open market transactions at prevailing market prices, in privately negotiated transactions, or by other means in compliance with the rules and regulations of the SEC; however, we have no obligation to repurchase shares and the timing, actual number, and value of shares to be repurchased is subject to management’s discretion and will depend on our stock price and other market conditions. We may, in the sole discretion of the Board, terminate the repurchase program at any time while it is in effect. Repurchased shares may be retired or kept in treasury for further issuance. During the quarter ended March 31, 2022, we repurchased 143,430 shares of our Common Stock on the open market at a total cost of approximately \$1.4 million (an average price of \$9.78 per share). All repurchased shares have been retired. There were no repurchases during the quarter ended December 31, 2022, and \$3.6 million remains available for repurchases.

## 2021 Stock Repurchase Plan

On February 9, 2021, the Board approved a stock repurchase program, pursuant to which we may repurchase up to \$4 million of our outstanding Common Stock over a one-year period, commencing on February 16, 2021. Repurchases under the program were to be made in open market transactions at prevailing market prices, in privately negotiated transactions, or by other means in compliance with the rules and regulations of the SEC; however, we had no obligation to repurchase shares and the timing, actual number, and value of shares to be repurchased was subject to management's discretion and depended on our stock price and other market conditions. We could have, in the sole discretion of the Board, terminated the repurchase program at any time while it was in effect. Repurchased shares were to be retired or kept in treasury for further issuance. During the quarter ended December 31, 2021, we repurchased 291,383 shares of our Common Stock on the open market at a total cost of approximately \$2.7 million (an average price of \$9.31 per share). All repurchased shares have been retired. The term of this repurchase program expired during the quarter ended March 31, 2022.

## 7. Commitments and Contingencies

**Purchase Obligations** – As of December 31, 2022, we had unrecorded purchase obligations in the amount of \$19.5 million. These purchase obligations consist of outstanding purchase orders for goods and services. While the amount represents purchase agreements, the actual amounts to be paid may be less in the event that any agreements are renegotiated, canceled or terminated.

**Legal Proceedings and Other Claims** – From time to time, we are a party to claims and actions for matters arising out of our business operations. We regularly evaluate the status of the legal proceedings and other claims in which we are involved to assess whether a loss is probable or there is a reasonable possibility that a loss, or an additional loss, may have been incurred and determine if accruals are appropriate. If accruals are not appropriate, we further evaluate each legal proceeding to assess whether an estimate of possible loss or range of possible loss can be made for disclosure. Although the outcome of claims and litigation is inherently unpredictable, we believe that we have adequate provisions for any probable and estimable losses. It is possible, nevertheless, that our consolidated financial position, results of operations or liquidity could be materially and adversely affected in any particular period by the resolution of a claim or legal proceeding. Legal expenses related to defense, negotiations, settlements, rulings and advice of outside legal counsel are expensed as incurred.

**Employment Contracts** – We have employment contracts and change in control agreements with, and severance plans covering, certain officers and management employees under which severance payments would become payable in the event of specified terminations without cause or terminations under certain circumstances after a change in control. If severance payments under the current employment contracts or severance plans were to become payable, the severance payments would generally range from six to twelve months of salary.

## 8. Reportable Segments

Amtech has two operating segments that are structured around the types of product offerings provided to our customers. In addition, the operating segments may be further distinguished by the Company's respective brands. These two operating segments comprise our two reportable segments discussed below. Our two reportable segments are as follows:

**Semiconductor** – We design, manufacture, sell and service thermal processing equipment and related controls for use by leading semiconductor manufacturers, and in electronics, automotive and other industries.

**Material and Substrate** – We produce consumables and machinery for lapping (fine abrading) and polishing of materials, such as sapphire substrates, optical components, silicon wafers, numerous types of crystal materials, ceramics and metal components.

Information concerning our reportable segments is as follows, in thousands:

	Three Months Ended December 31,	
	2022	2021
<b>Net Revenues:</b>		
Semiconductor	\$ 16,887	\$ 22,765
Material and Substrate	4,671	3,698
	<u>\$ 21,558</u>	<u>\$ 26,463</u>
<b>Operating income (loss):</b>		
Semiconductor	\$ 869	\$ 2,357
Material and Substrate	633	181
Non-segment related	(4,182)	(1,298)
	<u>\$ (2,680)</u>	<u>\$ 1,240</u>
	<b>December 31,</b>	<b>September 30,</b>
	<b>2022</b>	<b>2022</b>
<b>Identifiable Assets:</b>		
Semiconductor	\$ 73,517	\$ 75,622
Material and Substrate	21,606	22,032
Non-segment related*	34,414	35,880
	<u>\$ 129,537</u>	<u>\$ 133,534</u>

\* Non-segment related assets include cash, property, and other assets.

#### Goodwill and other long-lived assets

We review our long-lived assets, including goodwill, for impairment at least annually in our fourth quarter or whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Additional information on impairment testing of long-lived assets, intangible assets and goodwill can be found in Notes 1 and 11 of our Annual Report on Form 10-K for the year ended September 30, 2022.

#### 9. Major Customers and Foreign Sales

During the three months ended December 31, 2022, one Semiconductor segment customer individually represented 11% of our net revenues. During the three months ended December 31, 2021, one Semiconductor segment customer individually represented 20% of our net revenues.

Our net revenues were from customers in the following geographic regions:

	Three Months Ended December 31,	
	2022	2021
United States	26 %	18 %
Canada	8 %	5 %
Mexico	6 %	1 %
Other	4 %	3 %
<b>Total Americas</b>	<b>44 %</b>	<b>27 %</b>
China	17 %	20 %
Malaysia	4 %	9 %
Taiwan	6 %	9 %
Other	4 %	9 %
<b>Total Asia</b>	<b>31 %</b>	<b>47 %</b>
Germany	4 %	10 %
Austria	11 %	8 %
Other	10 %	8 %
<b>Total Europe</b>	<b>25 %</b>	<b>26 %</b>
	<u><b>100 %</b></u>	<u><b>100 %</b></u>



## 10. Subsequent Events

### *Merger Agreement*

On January 17, 2023, we acquired 100% of the issued and outstanding shares of capital stock of Entrepix, Inc., an Arizona corporation (“Entrepix”), which primarily manufactures chemical mechanical polishing (“CMP”) technology, through a reverse triangular merger resulting in Entrepix becoming a wholly owned subsidiary of Amtech. Entrepix’s CMP technology portfolio and water cleaning equipment will complement our existing substrate polishing and wet process chemical offerings. The acquisition was consummated pursuant to the terms of an Agreement and Plan of Merger (the “Merger Agreement”), dated January 17, 2023, by and among Amtech, Emerald Merger Sub, Inc., an Arizona corporation and wholly owned subsidiary of Amtech (“Merger Sub”), Entrepix, Timothy P. Tobin, solely in his capacity as the shareholders’ representative, and the Key Shareholders (as defined in the Merger Agreement). Upon the terms and subject to the conditions set forth in the Merger Agreement, Merger Sub merged with and into Entrepix (the “Merger”), with Entrepix surviving the Merger as a direct, wholly owned subsidiary of Amtech. At the closing of the Merger on January 17, 2023 (the “Closing”), we paid a purchase price of \$35.0 million, subject to certain customary purchase price adjustments. We used cash on hand and the net proceeds from the Term Loan (as described below) to pay the purchase price at the Closing. The purchase accounting is not yet finalized.

The Merger Agreement includes representations, warranties and covenants of the parties that are customary for a transaction of this nature. The Merger Agreement also contains certain indemnification obligations with respect to breaches of representations and warranties and certain other specified matters. To provide for losses for which we would not otherwise be able to seek indemnification from Entrepix under the Merger Agreement, we purchased a buyer-side representations and warranties insurance policy (the “R&W Policy”), which R&W Policy was issued as of the Closing, and which will be our primary recourse with respect to any breaches of Entrepix’s representations and warranties. The R&W Policy is subject to coverage limitations and certain customary terms, exclusions and deductibles, which limit our ability to make recoveries under the R&W Policy.

### *Loan and Security Agreement*

On January 17, 2023, we entered into a Loan and Security Agreement (the “LSA”) by and among Amtech, its U.S. based wholly owned subsidiaries Bruce Technologies, Inc., a Massachusetts corporation, BTU International, Inc., a Delaware corporation, Intersurface Dynamics, Incorporated, a Connecticut corporation, P.R. Hoffman Machine Products, Inc., an Arizona corporation, and Entrepix, Inc., (collectively the “Borrowers”) and UMB Bank, N.A., national banking association (the “Lender”). The LSA provides for (i) a term loan (the “Term Loan”) in the amount of \$12.0 million maturing January 17, 2028, and (ii) a revolving loan facility (the “Revolver”) with an availability of \$8.0 million maturing January 17, 2024. As of the date of this filing, no amounts have been borrowed against the Revolver, and the full amount of the Term Loan is outstanding.

The Term Loan and Revolver are secured by a first priority lien on substantially all of the Borrowers’ assets (other than certain customary excluded assets) and the LSA contains customary events of default, representations and warranties, and covenants that restrict the Borrowers’ ability to, among other things, incur additional indebtedness, other than permitted indebtedness, enter into mergers or acquisitions, sell or otherwise dispose of assets, or pay dividends, subject to customary exceptions.

The LSA additionally contains financial covenants such that, as of the end of each of its fiscal quarters, beginning March 31, 2023, the Borrowers must maintain (i) a ratio of consolidated debt owed to Lender to consolidated EBITDA (as defined in the LSA) for such fiscal quarter, of not greater than 1.50 to 1.00, through December 31, 2024, based on a building 4 quarters (as described in the LSA), and then 1.00 to 1.00 each fiscal quarter thereafter, (ii) a ratio of (a) the total for such fiscal quarter of EBITDAR (as defined in the LSA) minus the sum of all income taxes paid in cash plus cash dividends/distributions plus maintenance Capital Expenditures (as defined in the LSA) plus management fees paid in cash, to (b) the sum for such fiscal quarter of (1) Interest Charges (as defined in the LSA) plus (2) required payments of principal on Debt (as defined in the LSA) (including the Term Loan, but excluding the Revolver) plus (3) operating lease/rent expense, of not less than 1.30 to 1.00 based on a building 4 quarters (as described in the LSA), and (iii) a consolidated working capital of current assets (excluding related party receivables and prepaid expenses) minus current liabilities of at least \$35.0 million.

*Stock Repurchase Program*

On February 7, 2023, the Board approved a stock repurchase program, pursuant to which we may repurchase up to \$5 million of our outstanding Common Stock over a one-year period, commencing on February 10, 2023. Repurchases under the program will be made in open market transactions at prevailing market prices, in privately negotiated transactions, or by other means in compliance with the rules and regulations of the Securities and Exchange Commission; however, we have no obligation to repurchase shares and the timing, actual number, and value of shares to be repurchased is subject to management's discretion and will depend on our stock price and other market conditions. We may, in the sole discretion of the Board, terminate the repurchase program at any time while it is in effect.

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our "Condensed Consolidated Financial Statements" in Item 1 of this Quarterly Report on Form 10-Q ("Quarterly Report") and our consolidated financial statements and related notes included in "Item 8. Financial Statements and Supplementary Data" in our Annual Report on Form 10-K for the fiscal year ended September 30, 2022 (the "2022 Form 10-K").

### Overview

We are a leading, global manufacturer of capital equipment, including thermal processing and wafer polishing, and related consumables used in fabricating semiconductor devices, such as silicon carbide ("SiC") and silicon power, analog and discrete devices, and electronic assemblies and modules focusing on enabling technologies for electric vehicles (EV) and clean technology (CleanTech) applications. We sell these products to semiconductor device and module manufacturers worldwide, particularly in Asia, North America and Europe.

We operate in two reportable segments, based primarily on the industry they serve: (i) Semiconductor and (ii) Material and Substrate. In our Semiconductor segment, we supply thermal processing equipment, including solder reflow ovens, horizontal diffusion furnaces and custom high-temp belt furnaces for use by semiconductor, electronics and electro/mechanical assembly manufacturers. Our semiconductor customers are primarily manufacturers of integrated circuits and optoelectronic sensors and discrete ("O-S-D") components used in analog, power and radio frequency ("RF"). In our Material and Substrate segment, we produce substrate consumables, chemicals and machinery for lapping (fine abrading) and polishing of materials, such as silicon wafers for semiconductor products, sapphire wafers for LED applications, and compound substrates, like silicon carbide wafers, for power device applications.

The semiconductor industry is cyclical, but not seasonal, and historically has experienced fluctuations. Our revenue is impacted by these broad industry trends.

### Strategy

We continue to focus on our plans to profitably grow our business and have developed a strategic growth plan and a capital allocation plan that we believe will support our growth objectives. Our power semiconductor strategic growth plan leverages our experience, products and capabilities in pursuit of growth, profitability and sustainability. Our core focus areas are:

- Emerging opportunities in the SiC industry – We believe we are well-positioned to take part in this significant growth area, specifically as it relates to silicon carbide wafer capacity expansion. We are working closely with our customers to understand their SiC growth plans, needs and opportunities. We are investing in our capacity, next generation product development, and in our people. During 2021, we completed the acquisition of Intersurface Dynamics, Inc. ("Intersurface Dynamics"), which added numerous coolants and chemical products to our existing consumable and machine product lines. We believe these investments will help fuel our growth in the emerging growth SiC industry.
- 300mm Horizontal Diffusion Furnace – We have a highly successful and proven 300mm horizontal diffusion furnace solution used for power semiconductor device manufacturing applications. We have a strong foundation with the leading 300mm power chip manufacturer. We believe we have a strong opportunity to continue expanding our customer base and grow revenue with our 300mm solution.
- As the largest revenue contributor to our organization, we expect our subsidiary, BTU International, Inc. ("BTU"), will continue to track semiconductor industry growth cycles for our advanced semi-packaging and surface-mount technology products, in addition to specialized custom belt furnaces used in automotive and other specialized industrial applications. We believe that our investments in product innovation will provide BTU with opportunities to grow further, especially in high growth applications of consumer and industrial electronics, Internet of Things, electric vehicles and 5G communications.

We anticipate future investments will be required to meet the expected demand from the growing markets we serve to achieve our revenue growth targets, including investments in research and development as well as capital expenditures, which also includes additional investments in capacity expansion, talent, and management information systems. In June 2022, we completed the sale of the real property where our manufacturing facility in Massachusetts is located. In connection with this sale, we entered into a two-year leaseback of the facility. This sale-leaseback transaction resulted in a net cash inflow of approximately \$14.9 million, after repayment of the existing mortgage and settlement of related sale expenses. During the two-year leaseback period, we will conduct a search for a new manufacturing facility more in line with the needs of our Semiconductor product lines. In the fourth quarter of 2021, we completed the move of our Shanghai facility to a new location. This new location increases our capacity and allows us to streamline our manufacturing processes, thus reducing our lead times. In addition, we are evaluating our management information systems and needs in order to allow for greater efficiencies and to ensure our infrastructure can support our future growth plans. As a capital equipment manufacturer, we will continue to invest in our business to drive future growth.

In addition to investments in our organic growth, another key aspect of our capital allocation policy is our plan to grow through acquisitions. We have the expertise and track record to identify complimentary and synergistic acquisition targets in the Semiconductor and SiC growth environments and to execute transactions and integrations to provide for value creating, profitable growth in both the short-term and long-term. On March 3, 2021, we acquired Intersurface Dynamics, a Connecticut-based manufacturer of substrate process chemicals used in various manufacturing processes, including semiconductors, silicon and compound semiconductor wafers, and optics. On January 17, 2023, we acquired Entrepix, an Arizona-based expert in chemical mechanical polishing (CMP) and wafer cleaning. As of the date of the filing of this Quarterly Report, we do not have an agreement to acquire any additional acquisition target.

#### **COVID-19 Update**

On March 28, 2022, the Chinese government issued a mandatory shutdown in Shanghai, the location of one of our manufacturing facilities. The factory was allowed to partially reopen in May 2022 and fully reopened on June 1, 2022. After such reopening, the factory was able to operate near full capacity for the entire month of June. We were able to make up the shipments missed in the fourth quarter of fiscal 2022 and are now operating at normal capacity levels. Given the uncertainty surrounding the COVID-19 pandemic, there can be no assurance that our Shanghai facility will be allowed to remain open on a consistent basis.

#### **Cybersecurity Incident**

On April 12, 2021, we detected a data incident in which attackers acquired data and disabled some of the technology systems used by one of our subsidiaries. Upon learning of the incident, we immediately engaged external counsel and retained a team of third-party forensic, incident response, and security professionals to investigate and determine the full scope of this incident. We also notified law enforcement officials and confirmed that the incident is covered by our insurance. We have completed the investigation of the data incident with assistance from our outside professionals, and indications were that the unauthorized third-party gained access to certain personal information relating to employees and their beneficiaries for some of our operations. There was no indication of any misuse of this information.

Despite this disruption, production continued in our facilities. Our previously disabled subsidiary network is now back up and running securely. Working alongside our security professionals, we were able to bring our subsidiary's systems online with enhanced security controls. We have deployed an advanced next generation anti-virus and endpoint detection and response tool, as well as Managed Detection & Response services. We remain committed to protecting the security of the personal information entrusted to us and providing high-quality products and service to our customers.

We recorded approximately \$1.1 million of expense related to this incident, which is included in selling, general and administrative expenses, during the third quarter of fiscal 2021. The expense is primarily related to third-party service providers, including security professionals as well as legal and response teams. We may make additional investments in the future to further strengthen our cybersecurity. We filed an insurance claim during the fourth quarter of fiscal

2021 related to the incident. During the second quarter of 2022, we signed a final settlement agreement with our insurer resulting in total reimbursement of approximately \$0.6 million, which included \$0.4 million received during the quarter ended December 31, 2021 and \$0.2 million received during the quarter ended March 31, 2022. No portion of the reimbursement remains outstanding as of December 31, 2022.

## Results of Operations

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

	Three Months Ended December 31,	
	2022	2021
Net revenue	100 %	100 %
Cost of sales	61 %	63 %
Gross margin	39 %	37 %
Selling, general and administrative	43 %	26 %
Research, development and engineering	6 %	6 %
Severance expense	2 %	— %
Operating (loss) income	(12)%	5 %
Interest expense and other, net	— %	— %
(Loss) income before income taxes	(12)%	5 %
Income tax provision	— %	1 %
Net (loss) income	(12)%	4 %

## Net Revenue

Net revenue consists of revenue recognized upon shipment or delivery of equipment. Spare parts sales are recognized upon shipment and service revenue is recognized upon completion of the service activity, which is generally ratable over the term of the service contract. Since the majority of our revenue is generated from large system sales, revenue, gross profit and operating income can be significantly impacted by the timing of system shipments.

Our net revenue by reportable segment was as follows, dollars in thousands:

Segment	Three Months Ended December 31,		Change	% Change
	2022	2021		
Semiconductor	\$ 16,887	\$ 22,765	\$ (5,878 )	(26)%
Material and Substrate	4,671	3,698	973	26 %
Total net revenue	\$ 21,558	\$ 26,463	\$ (4,905 )	(19)%

Total net revenue for the three months ended December 31, 2022 and 2021 was \$21.6 million and \$26.5 million, respectively, a decrease of approximately \$4.9 million or 19%. Our Semiconductor results for the first quarter of fiscal 2023 reflect a decrease in production from our Shanghai facility as well as lower shipments of our diffusion furnaces. Material and Substrate revenue increased due to increased shipments of consumables resulting from capacity expansion and production increases by our customers.

## Orders and Backlog

New orders booked in the three months ended December 31, 2022 and 2021 were as follows, dollars in thousands:

Segment	Three Months Ended December 31,		Change	% Change
	2022	2021		
Semiconductor	\$ 21,084	\$ 27,809	\$ (6,725 )	(24)%
Material and Substrate	4,145	3,828	317	8 %
Total new orders	\$ 25,229	\$ 31,637	\$ (6,408 )	(20)%

Our backlog as of December 31, 2022 and 2021 was as follows, dollars in thousands:

Segment	December 31,		Change	% Change
	2022	2021		
Semiconductor	\$ 52,209	\$ 46,921	\$ 5,288	11 %
Material and Substrate	2,243	1,531	712	47 %
Total backlog	<u>\$ 54,452</u>	<u>\$ 48,452</u>	<u>\$ 6,000</u>	12 %

As of December 31, 2022, three Semiconductor segment customers individually accounted for 28%, 15% and 11% of our backlog. No other customer accounted for more than 10% of our backlog as of December 31, 2022. The orders included in our backlog are generally credit approved customer purchase orders believed to be firm and are generally expected to ship within the next twelve months. Because our orders are typically subject to cancellation or delay by the customer, our backlog at any particular point in time is not necessarily representative of actual sales for future periods, nor is backlog any assurance that we will realize profit from completing these orders.

#### **Gross Profit and Gross Margin**

Gross profit is the difference between net revenue and cost of goods sold. Cost of goods sold consists of purchased material, labor and overhead to manufacture equipment and spare parts and the cost of service and support to customers for installation, warranty and paid service calls. Gross margin is gross profit as a percent of net revenue. Our gross profit and gross margin by business segment were as follows, dollars in thousands:

Segment	2022	Gross Margin	Three Months Ended December 31,		Gross Margin	Change
			2021			
Semiconductor	\$ 6,172	37 %	\$ 8,662	38 %	\$ (2,490)	
Material and Substrate	2,131	46 %	1,236	33 %	895	
Total gross profit	<u>\$ 8,303</u>	39 %	<u>\$ 9,898</u>	37 %	<u>\$ (1,595)</u>	

Gross profit for the three months ended December 31, 2022 and 2021 was \$8.3 million (39% of net revenue) and \$9.9 million (37% of net revenue), respectively, a decrease of \$1.6 million. Our gross margins can be affected by capacity utilization and the type and volume of machines and consumables sold each quarter. Gross margin on products from our Semiconductor segment was consistent between periods. Gross margin on products from our Material and Substrate segment increased compared to the three months ended December 31, 2021, due to higher consumables sales, which have higher margins than our equipment, and increased capacity utilization. We are experiencing increased material costs across all of our segments and expect this trend to continue through at least the first half of fiscal 2023. In response to such increased costs, we continually review our pricing plans and supplier agreements, with the objective of passing these increased costs to our customers where possible; however, we continue to experience pricing pressure from our customers. Additionally, we have experienced rising labor costs across our divisions, and we expect this trend to continue, as the labor markets in which we operate remain competitive.

#### **Selling, General and Administrative**

Selling, general and administrative expenses ("SG&A") consists of the cost of employees, consultants and contractors, facility costs, sales commissions, shipping costs, promotional marketing expenses, legal and accounting expenses and bad debt expense.

SG&A expenses for the three months ended December 31, 2022 and 2021 were \$9.2 million and \$7.1 million, respectively. SG&A increased compared to the prior year quarter due primarily to \$1.4 million of transaction expenses related to the acquisition of Entrepix, Inc., which was completed in the second quarter of fiscal 2023.

### ***Research, Development and Engineering***

Research, development and engineering ("RD&E") expenses consist of the cost of employees, consultants and contractors who design, engineer and develop new products and processes as well as materials and supplies used in producing prototypes. RD&E expenses may vary from period to period depending on the engineering projects in process. Expenses related to engineers working on strategic projects or sustaining engineering projects are recorded in RD&E. However, from time to time we add functionality to our products or develop new products during engineering and manufacturing to fulfill specifications in a customer's order, in which case the cost of development, along with other costs of the order, are charged to cost of goods sold. Occasionally, we receive reimbursements through governmental research and development grants which are netted against these expenses when certain conditions have been met.

RD&E expense, net of grants earned, for the three months ended December 31, 2022 and 2021 were \$1.4 million and \$1.6 million, respectively. The decrease in RD&E is due to the timing of purchases related to specific strategic-development projects at our Semiconductor segment. Grants earned are immaterial in all periods presented.

### ***Severance Expenses***

We recorded severance expense of \$0.4 million in the three months ended December 31, 2022. This one-time charge relates to the retirement of our founder, Mr. J.S. Whang. There was no severance expense recorded in the three months ended December 31, 2021.

### ***Income Taxes***

Our effective tax rate was 0.1% and 13.8% for the three months ended December 31, 2022 and 2021, respectively. The effective tax rate for the three months ended December 31, 2022 differs from the U.S. statutory tax rate of 21% primarily due to higher state taxes partially offset by lower taxes in foreign jurisdictions. For the three months ended December 31, 2022 and 2021, we recorded an income tax benefit of \$4,000 and income tax expense of \$0.2 million, respectively. The quarterly income tax provision is calculated using an estimated annual effective tax rate, based upon expected annual income, permanent items, statutory rates and planned tax strategies in the various jurisdictions in which we operate. However, losses in certain jurisdictions and discrete items are excluded from the determination of the estimated annual effective tax rate.

Generally accepted accounting principles of the United States ("GAAP") require that a valuation allowance be established when it is "more likely than not" that all or a portion of deferred tax assets will not be realized. A review of all available positive and negative evidence needs to be considered, including a company's performance, the market environment in which the company operates and the length of carryback and carryforward periods. According to those principles, it is difficult to conclude that a valuation allowance is not needed when the negative evidence includes cumulative losses in recent years. Based on the consideration of all available evidence, we have concluded that we will maintain a full valuation allowance for all net deferred tax assets related to the carryforwards of U.S. net operating losses and foreign tax credits. We will continue to monitor our cumulative income and loss positions in the U.S. and foreign jurisdictions to determine whether full valuation allowances on net deferred tax assets are appropriate. We expect to pay minimal U.S. federal cash taxes for the foreseeable future as a result of our U.S. net operating losses that are carried forward.

Our future effective income tax rate depends on various factors, such as the amount of income (loss) in each tax jurisdiction, tax regulations governing each region, non-tax deductible expenses incurred as a percent of pre-tax income and the effectiveness of our tax planning strategies.

## Liquidity and Capital Resources

The following table sets forth for the periods presented certain consolidated cash flow information, in thousands:

	Three Months Ended December 31,	
	2022	2021
Net cash (used in) provided by operating activities	\$ (2,508 )	\$ 2,489
Net cash used in investing activities	(224 )	(45 )
Net cash provided by (used in) financing activities	20	(2,741 )
Effect of exchange rate changes on cash, cash equivalents and restricted cash	372	175
Net decrease in cash, cash equivalents and restricted cash	(2,340 )	(122 )
Cash and cash equivalents, beginning of period	46,874	32,836
Cash, cash equivalents and restricted cash, end of period	<u>\$ 44,534</u>	<u>\$ 32,714</u>

### *Cash and Cash Flow*

The decrease in cash and cash equivalents from September 30, 2022 of \$2.3 million was primarily due to the net loss in the current year period, as we incurred \$1.4 million in acquisition-related expenses. We maintain a portion of our cash and cash equivalents in Renminbis, a Chinese currency, at our operations in China; therefore, changes in the exchange rates have an impact on our cash balances. Our working capital was \$77.8 million as of December 31, 2022 and \$80.3 million as of September 30, 2022. The decrease in working capital was primarily due to the decrease in cash as well as a decrease in accounts receivable, as we collected customer payments that were not offset with new receivables. Our ratio of current assets to current liabilities was 4.6:1 as of December 31, 2022, and 4.5:1 as of September 30, 2022.

During periods of weakening demand, we typically generate cash from operating activities. Conversely, we are more likely to use operating cash flows for working capital requirements during periods of higher growth. The success of our growth strategy is dependent upon the availability of additional capital resources on terms satisfactory to management. Our sources of capital in the past have included the sale of equity securities, which includes common stock sold in private transactions and public offerings, the incurrence of long-term debt and customer deposits. There can be no assurance that we can raise such additional capital resources when needed or on satisfactory terms. We believe that our principal sources of liquidity discussed above are sufficient to support operations for at least the next twelve months. We have never paid dividends on our common stock.

### *Cash Flows from Operating Activities*

Cash used in our operating activities was approximately \$2.5 million for the three months ended December 31, 2022, compared to \$2.5 million provided by operating activities for the three months ended December 31, 2021. During the first quarter of fiscal 2023, our accounts receivable collections exceeded new accounts receivable, primarily due to the slowdown at our Shanghai facility. During the three months ended December 31, 2021, we increased our inventory balances in preparation for shipments scheduled for the second, third and fourth quarters of fiscal 2022. Additionally, our accounts receivable increased during this period as most of our shipments occurred late in the first quarter of fiscal 2022 and our customers generally have payment terms of 60-90 days.

### *Cash Flows from Investing Activities*

Cash used in investing activities was \$0.2 million and less than \$0.1 million in the three month periods ended December 31, 2022 and 2021, respectively. Both periods consist solely of capital expenditures. We expect capital expenditures to increase throughout fiscal 2023 as we make targeted investments in our IT systems.



### ***Cash Flows from Financing Activities***

For the three months ended December 31, 2022, cash provided by financing activities was less than \$0.1 million, comprised of proceeds received from the exercise of stock options partially offset by payments on long-term debt. For the three months ended December 31, 2021, \$2.7 million of cash used in financing activities was comprised of \$2.7 million of cash used for the repurchase of common stock and payments on long-term debt of \$97,000, partially offset by \$69,000 of proceeds received from the exercise of stock options.

### **Off-Balance Sheet Arrangements**

As of December 31, 2022, we had no off-balance sheet arrangements as defined in Item 303(a)(4) of Regulation S-K promulgated by the SEC that have or are reasonably likely to have a current or future effect on financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that are material to investors.

### **Contractual Obligations**

Unrecorded purchase obligations were \$19.5 million as of December 31, 2022, compared to \$20.0 million as of September 30, 2022, a decrease of \$0.5 million.

Subsequent to the end of our fiscal quarter ended December 31, 2022, we entered into a Loan and Security Agreement with UMB Bank. See Note 10 "Subsequent Events" of our condensed consolidated financial statements for a description of this credit facility. There were no other material changes to the contractual obligations included in "Part II, Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" of our 2022 Form 10-K.

### **Critical Accounting Estimates**

"Part I, Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations" of this Quarterly Report discusses our condensed consolidated financial statements that have been prepared in accordance with GAAP. The preparation of these condensed consolidated financial statements requires us to make estimates and assumptions that affect the reported amount of assets and liabilities at the date of the condensed consolidated financial statements, the disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenue and expenses during the reporting period.

On an ongoing basis, we evaluate our estimates and judgments, including those related to revenue recognition, income taxes, inventory valuation, and goodwill. We base our estimates and judgments on historical experience, expectations regarding the future and on various other factors that we believe to be reasonable under the circumstances. The results of these estimates and judgments form the basis for making conclusions about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

A critical accounting estimate is one that is both important to the presentation of our financial position and results of operations, and requires management's most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain. These uncertainties are discussed in Part I, Item 1A of our 2022 Form 10-K. We believe our critical accounting estimates relate to the more significant judgments and estimates used in the preparation of our consolidated financial statements.

We believe the critical accounting estimates discussed in the section entitled "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations – Critical Accounting Policies" in our 2022 Form 10-K represent the most significant judgments and estimates used in the preparation of our consolidated financial statements. There have been no significant changes in our critical accounting estimates during the three months ended December 31, 2022.

### **Impact of Recently Issued Accounting Pronouncements**

For discussion of the impact of recently issued accounting pronouncements, see “Part I, Item 1. Financial Information” under “Impact of Recently Issued Accounting Pronouncements.”

### **Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

As a smaller reporting company, as defined by Rule 12b-2 of the Exchange Act and in Item 10(f)(1) of Regulation S-K, we are electing scaled disclosure reporting obligations and, therefore, are not required to provide the information requested by this Item.

### **Item 4. CONTROLS AND PROCEDURES**

#### ***Disclosure Controls and Procedures***

Our management, including our Chief Executive Officer (“CEO”) and our Chief Financial Officer (“CFO”), has carried out an evaluation of the effectiveness of our disclosure controls and procedures as of December 31, 2022, pursuant to Exchange Act Rules 13a-15(e) and 15(d)-15(e). Disclosure controls and procedures means controls and other procedures that are designed to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to management, including the principal executive and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure. Based upon that evaluation, our CEO and CFO have concluded that as of such date, our disclosure controls and procedures in place were effective.

#### ***Changes in Internal Control Over Financial Reporting***

There have not been any changes in the Company’s internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the first fiscal quarter to which this report relates that materially affected, or are reasonably likely to materially affect, the internal control over financial reporting of the Company.

## **PART II. OTHER INFORMATION**

### **Item 1. Legal Proceedings**

For discussion of legal proceedings, see Note 7 to our condensed consolidated financial statements under “Part I, Item 1. Financial Information” under “Commitments and Contingencies” of this Quarterly Report.

### **Item 1A. Risk Factors**

We refer you to documents filed by us with the SEC, specifically “Item 1A. Risk Factors” in our 2022 Form 10-K, which identifies important risk factors that could materially affect our business, financial condition and future results. We also refer you to the factors and cautionary language set forth in the section entitled “Cautionary Statements Regarding Forward-Looking Statements” immediately preceding “Item 1. Condensed Consolidated Financial Statements” of this Quarterly Report. This Quarterly Report, including the accompanying condensed consolidated financial statements and related notes, should be read in conjunction with such risks and other factors for a full understanding of our operations and financial condition. The risks described in our 2022 Form 10-K and any described herein are not the only risks facing us. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or operating results. There have been no material changes to the risk factors previously disclosed in our 2022 Form 10-K.

### **Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

#### *Issuer Purchases of Equity Securities*

On February 10, 2022, the Board approved a stock repurchase program, pursuant to which the Company may repurchase up to \$5 million of its outstanding Common Stock over a one-year period, commencing on February 16, 2022. Repurchases under the program will be made in open market transactions at prevailing market prices, in privately negotiated transactions, or by other means in compliance with the rules and regulations of the Securities and Exchange Commission; however, the Company has no obligation to repurchase shares and the timing, actual number, and value of shares to be repurchased is subject to management’s discretion and will depend on the Company’s stock price and other market conditions. The Company may, in the sole discretion of the Board, terminate the repurchase program at any time while it is in effect. Repurchased shares may be retired or kept in treasury for further issuance.

During the three months ended December 31, 2022, we did not repurchase any of our equity securities nor did we sell any equity securities that were not registered under the Securities Act of 1933, as amended.

### **Item 3. Defaults Upon Senior Securities**

None.

### **Item 4. Mine Safety Disclosures**

Not applicable.

### **Item 5. Other Information**

None.

**Item 6. Exhibits**

EXHIBIT NO.	EXHIBIT DESCRIPTION	FORM	INCORPORATED BY REFERENCE			FILED HEREWITH
			FILE NO.	EXHIBIT NO.	FILING DATE	
10.1*	<a href="#"><u>Agreement and Plan of Merger, dated January 17, 2023, by and among the Registrant, Emerald Merger Sub, Inc., an Arizona corporation and wholly owned subsidiary of the Registrant, Entrepix, Inc., an Arizona corporation, Timothy P. Tobin, solely in his capacity as the shareholders' representative, and the Key Shareholders (as defined in the Agreement and Plan of Merger).</u></a>					X
10.2*	<a href="#"><u>Loan and Security Agreement, dated as of January 17, 2023, by and among the Registrant, its U.S. based wholly owned subsidiaries Bruce Technologies, Inc., a Massachusetts corporation, BTU International, Inc., a Delaware corporation, Intersurface Dynamics, Incorporated, a Connecticut corporation, P.R. Hoffman Machine Products, Inc., an Arizona corporation, and Entrepix, Inc., an Arizona corporation, as borrowers, and UMB Bank, N.A., national banking association, as lender.</u></a>					X
31.1	<a href="#"><u>Certification Pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as Amended</u></a>					X
31.2	<a href="#"><u>Certification Pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as Amended</u></a>					X
32.1	<a href="#"><u>Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u></a>					X
32.2	<a href="#"><u>Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u></a>					X
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.					X
101.SCH	Inline XBRL Taxonomy Extension Schema Document					X
101.PRE	Inline Taxonomy Presentation Linkbase Document					X
101.CAL	Inline XBRL Taxonomy Calculation Linkbase Document					X
101.LAB	Inline XBRL Taxonomy Label Linkbase Document					X

101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document	X
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)	X

\* Schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company hereby undertakes to furnish copies of any of the omitted schedules upon request by the Securities and Exchange Commission.

**SIGNATURES**

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

AMTECH SYSTEMS, INC.

By /s/ Lisa D. Gibbs  
Lisa D. Gibbs  
Vice President and Chief Financial Officer  
(Principal Financial Officer and Duly Authorized Officer)

Dated: February 8, 2023



**AGREEMENT AND PLAN OF MERGER**

by and among

**AMTECH SYSTEMS, INC.,**

**ENTREPIX, INC.,**

**EMERALD MERGER SUB, INC.,**

**TIMOTHY P. TOBIN,**

as the Shareholders' Representative

and

**TIMOTHY P. TOBIN and STEVEN N. HOROWITZ,**

as the Key Shareholders

dated as of January 17, 2023

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## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this “*Agreement*”), is made and entered into as of January 17, 2023, by and among (i) Entrepix, Inc., an Arizona corporation (the “*Company*”), (ii) Amtech Systems, Inc., an Arizona corporation (“*Buyer*”), (iii) Emerald Merger Sub, Inc., an Arizona corporation and wholly owned Subsidiary of Buyer (“*Merger Sub*” and, together with the Company, the “*Constituent Corporations*”), (iv) Timothy P. Tobin, solely in his capacity as the shareholders’ representative as set forth in this Agreement (the “*Shareholders’ Representative*”) and (v) the Key Shareholders (defined below). Capitalized terms used and not otherwise defined herein have the meanings set forth in ARTICLE XI below.

WHEREAS, the boards of directors of the Company, Buyer and Merger Sub have adopted this Agreement and approved the merger of Merger Sub with and into the Company (the “*Merger*”) upon the terms and conditions set forth in this Agreement and in accordance with the Arizona Revised Statutes (“*A.R.S.*”), and the board of directors of the Company has recommended that this Agreement and the Merger be approved by the Shareholders of the Company;

WHEREAS, Buyer, in its capacity as the sole shareholder of Merger Sub, has approved this Agreement and the Merger;

WHEREAS, in connection with the transactions contemplated by this Agreement, the Entrepix, Inc. 2005 Stock Incentive Plan (the “*2005 Incentive Plan*”), the Entrepix, Inc. 2019 Equity Incentive Plan (the “*2019 Incentive Plan*” and, together with the 2005 Incentive Plan, the “*Company Incentive Plans*”) and the Company Options (as defined herein) will be terminated, contingent upon and effective as of the Closing;

WHEREAS, the parties have agreed that certain employees of the Company (each, a “*Bonus Recipient*” and collectively, the “*Bonus Recipients*”) will receive cash payments in the amounts set forth on Schedule A (the “*Bonus Schedule*”);

WHEREAS, the approval of the holders of a majority of the outstanding capital stock of the Company entitled to vote on the Agreement and the Merger (the “*Necessary Shareholder Approval*”), has been obtained;

WHEREAS, the authorized capital stock of the Company consists of 15,000,000 shares of common stock (the “*Common Stock*”); and

WHEREAS, the authorized capital stock of Merger Sub consists of 1,000 shares of common stock, all of which are issued and outstanding and owned by Buyer.

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties and covenants set forth herein, and intending to be legally bound, the parties hereto agree as follows:

### ARTICLE I

#### THE MERGER

1.01 The Merger. On and subject to the terms and conditions contained herein, and in accordance with Sections 10-1101 through 10-1105 of the A.R.S., at the Effective Time, Merger Sub will merge with and into the Company, with (i) the separate corporate existence of Merger Sub thereupon

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ceasing and (ii) the Company surviving the Merger as a wholly owned Subsidiary of Buyer (the Company, as the surviving corporation after the Effective Time, is referred to herein as the “*Surviving Corporation*”).

**1.02 Filing of Statement of Merger; Effective Time.** At the Closing, (i) the Company will execute a statement of merger in substantially the form of Exhibit A (the “*Statement of Merger*”) in accordance with the relevant provisions of the A.R.S., and (ii) the Company and Merger Sub will, and Buyer will cause Merger Sub to, cause such executed Statement of Merger to be filed with Arizona Corporation Commission in accordance with the A.R.S., and the Merger will be effective at such time as the Statement of Merger is duly filed with the Arizona Corporation Commission (the “*Effective Time*”).

**1.03 Effect of the Merger; Further Assurances.**

(a) The Merger will have the effects provided in this Agreement, the Statement of Merger and the applicable provisions of the A.R.S. If, at any time after the Effective Time, the Surviving Corporation determines that any further documents or acts are necessary to vest in the Surviving Corporation the title to any properties, rights, privileges, powers or franchises of the Constituent Corporations acquired in the Merger or to otherwise carry out the purposes of this Agreement, the Surviving Corporation and its officers and directors will execute and deliver all such documents and do all such acts, and the officers and directors of the Surviving Corporation are fully authorized in the name of the Constituent Corporations or otherwise to take any and all such action after the Effective Time solely for the purposes set forth in this Section 1.03.

(b) At the Effective Time the articles of incorporation of the Company will, by operation of law and without any further action by any Person, be amended and restated in its entirety to contain the provisions set forth in the articles of incorporation of Merger Sub in effect immediately prior to the Effective Time (except for any references to the name, incorporator or original directors of Merger Sub), and as so amended and restated will be the articles of incorporation of the Surviving Corporation until thereafter amended or repealed in accordance with the provisions thereof, and applicable Law.

(c) At the Effective Time, the bylaws of the Company will, by operation of law and without any further action by any Person, be amended and restated in their entirety to contain the provisions set forth in the bylaws of Merger Sub as in effect immediately prior to the Effective Time (except for any references to the name of Merger Sub), and as so amended and restated will be the bylaws of the Surviving Corporation until thereafter amended or repealed in accordance with the provisions thereof, the articles of incorporation of the Surviving Corporation, and applicable Law.

(d) The directors of Merger Sub in office immediately prior to the Effective Time will be the directors of the Surviving Corporation until their respective successors are duly elected and qualified in the manner provided in the articles of incorporation and bylaws of the Surviving Corporation, their earlier resignation or removal, or as otherwise provided by applicable Law.

(e) The officers of Merger Sub in office immediately prior to the Effective Time, will be the officers of the Surviving Corporation until their respective successors are duly elected and qualified in the manner provided in the articles of incorporation and bylaws of the Surviving Corporation, their earlier resignation or removal, or as otherwise provided by applicable Law.

**1.04 Conversion of Shares; Treatment of Options.** At the Effective Time, by virtue of the Merger and without any action on the part of Buyer, Merger Sub, the Company or the holders of any of the securities described below:

(a) Each share of the common stock of Merger Sub issued and outstanding immediately prior to the Effective Time will be converted into one (1) validly issued, fully paid and non-assessable share of common stock, of the Surviving Corporation.

(b) Each share of Common Stock issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares) will be converted into the right to receive the Closing Common Stock Per Share Merger Consideration, plus any amount payable with respect to such share of Common Stock pursuant to Section 1.08, as applicable, and will automatically be cancelled and retired and will cease to exist.

(c) Each share of Common Stock held in the treasury of the Company and each share of Common Stock owned or held, directly or indirectly, by the Company or by Buyer, Merger Sub or their respective Subsidiaries, in each case, immediately prior to the Effective Time, will be cancelled and retired and will cease to exist without any conversion thereof and no payment of cash or any other consideration will be made with respect thereto.

(d) Each Company Option outstanding immediately prior to the Effective Time will, as of the Effective Time, be converted into the right to receive the Closing Option Per Share Merger Consideration payable pursuant to Section 1.06, plus any amount payable with respect to such Company Option pursuant to Section 1.08, as applicable, in each case, subject to any applicable Tax withholding pursuant to Section 1.10, and such Company Option will automatically be cancelled and retired and will cease to exist. The amount of cash each Optionholder is entitled to receive with respect to his or her Company Options shall be rounded down to the nearest cent and computed after aggregating cash amounts for all Company Options held by such Optionholder.

**1.05 Pre-Closing Merger Consideration Estimate.**

(a) At least three (3) Business Days before the Closing, the Shareholders' Representative shall prepare and deliver to Buyer a certificate signed by a duly authorized officer of the Company attaching (i) the consolidated balance sheet of the Company and the related statements of income and shareholders' capital and statement of cash flows for the twelve (12) month period ended as of October 31, 2022 prepared in accordance with GAAP and consistent with the past practices of the Company, and (ii) a statement (such statement, the "*Estimated Closing Statement*") including Shareholders' Representative's good faith estimates of (A) the Closing Net Working Capital (including each component item thereof calculated in accordance with the manner of calculation reflected in Schedule 1.05 attached hereto) (the "*Estimated Closing Net Working Capital*"), (B) the Closing Indebtedness (the "*Estimated Closing Indebtedness*"), (C) the Transaction Expenses (the "*Estimated Transaction Expenses*"), (D) the resulting Estimated Net Working Capital Surplus or Estimated Net Working Capital Shortfall (as applicable), (E) Cash (the "*Estimated Cash*") and (F) the Company's calculation of the Estimated Merger Consideration derived from the foregoing. Buyer shall have the opportunity to review and validate such financial statements and the Estimated Closing Statement and, in connection with such review, the Company shall cooperate with Buyer as reasonably required by Buyer in order to determine the accuracy of the Estimated Closing Statement and the amounts set forth therein. In connection with such review, Buyer may propose adjustments (including pro-rations of expenses) that it deems appropriate. The Shareholders' Representative and the Company shall consider in good faith any such adjustments to the Estimated Closing Statement proposed by Buyer and shall revise the Estimated Closing Statement to reflect any agreed upon adjustments (negotiating in

good faith with Buyer on any disagreements), and such updated statement (if any) shall constitute the Estimated Closing Statement for purposes of this Agreement.

(b) The portion of the Estimated Merger Consideration each Shareholder will be entitled to receive at the Closing in respect of his, her or its shares of Common Stock (the “**Closing Stock Payments**”) will be set forth on the Estimated Closing Statement and equal the product of (i) the Closing Common Stock Per Share Merger Consideration multiplied by (ii) the number of shares of Common Stock held by such Shareholder immediately prior to the Effective Time that were converted in accordance with Section 1.04(b); *provided* that the Closing Adjustment Escrow Amount and Retention Escrow Amount shall be withheld from the Estimated Merger Consideration payable to the Key Shareholders at Closing and placed into the respective escrow accounts.

(c) Closing Option Payments. The portion of the Estimated Merger Consideration each Optionholder will be entitled to receive at the Closing in respect of his, her or its Company Options (the “**Closing Option Payments**”) will be set forth on the Estimated Closing Statement and equal, with respect to each Company Option, the product of (i) the Closing Option Per Share Merger Consideration applicable to such Company Option multiplied by (ii) the number of shares of Common Stock corresponding to such Company Option held by such Optionholder as of immediately prior to the Effective Time that were converted in accordance with Section 1.04(d).

#### 1.06 Closing Payments.

(a) At the Closing, Buyer will, or will cause Merger Sub to, deposit with the Paying Agent the aggregate Closing Stock Payments payable to the Shareholders as set forth in the Estimated Closing Statement, by wire transfer of immediately available funds to the account designated by the Paying Agent, *provided* that the Closing Adjustment Escrow Amount and Retention Escrow Amount shall be withheld from the Estimated Merger Consideration payable to the Key Shareholders at Closing and placed into the respective escrow accounts.

(b) On the next regularly scheduled payroll date of the Surviving Corporation occurring at least ten (10) Business Days following the Closing Date, the Surviving Corporation will distribute to the Optionholders their respective Closing Option Payments, subject to any applicable Tax withholding pursuant to Section 1.10. After the Closing, Buyer shall cause the Surviving Corporation to make timely payment to the appropriate Taxing Authority or authorities of any amounts withheld from payment to the Optionholders pursuant to Section 1.10.

(c) On the next regularly scheduled payroll date of the Surviving Corporation occurring at least ten (10) Business Days following the Closing Date, the Surviving Corporation will distribute to the Bonus Recipients their respective bonus in accordance with the Bonus Schedule, subject to any applicable Tax withholding pursuant to Section 1.10. After the Closing, Buyer shall cause the Surviving Corporation to make timely payment to the appropriate Taxing Authority or authorities of any amounts withheld from payment to the Bonus Recipients pursuant to Section 1.10.

(d) At the Closing, Buyer will, or will cause Merger Sub to, deliver the Closing Adjustment Escrow Amount to the Escrow Agent by wire transfer of immediately available funds to an escrow account designated by the Escrow Agent (the “**Closing Adjustment Escrow Account**”) and established pursuant to the terms of an escrow agreement to be dated as of the Closing Date and substantially in the form attached as Exhibit B (the “**Escrow Agreement**”), among Buyer, the Shareholders’ Representative and the Escrow Agent. The Closing Adjustment Escrow Account will be maintained separately from other funds held by the Escrow Agent and will be Buyer’s and Merger Sub’s sole and exclusive source of recovery for any amounts owing to Buyer, Merger Sub or, following the Closing, the

Surviving Corporation under this Agreement (including pursuant to Section 1.08 with respect to any Post-Closing Adjustment, but excluding any amounts owing that arise out of claims for Fraud). The Closing Adjustment Escrow Amount shall be deducted from the amounts otherwise payable to the Key Shareholders at Closing.

(e) At the Closing, Buyer will, or will cause Merger Sub to, deliver an amount equal to \$166,250 (the “**Retention Escrow Amount**”) to the Escrow Agent by wire transfer of immediately available funds to an escrow account designated by the Escrow Agent (the “**Retention Escrow Account**”) and established pursuant to the terms of the Escrow Agreement. The Retention Escrow Account will be maintained separately from other funds held by the Escrow Agent to satisfy the Losses pursuant to Section 9.04 hereof. The Retention Escrow Amount shall be held in trust by the Escrow Agent for a period of twelve (12) months and shall be released in accordance with the terms thereof. The Retention Escrow Amount shall be deducted from the amounts otherwise payable to the Key Shareholders at Closing.

(f) At the Closing, Buyer will pay, or will cause Merger Sub to pay, on behalf of the Company and its Subsidiaries, all Estimated Transaction Expenses to such Persons as they are owed by wire transfer of immediately available funds to accounts designated by the Company upon at least two (2) Business Days prior to the Closing Date; provided, that the Bonus Recipients shall be paid in accordance with Section 1.06(c) and that any other Transaction Expenses payable to any current or former employee of the Company shall be paid to the Company or its payroll agent for further payment to applicable employee through payroll, less applicable withholdings, as soon as reasonably practicable after the Closing Date but in no event more than ten (10) Business Days after the Closing Date.

(g) At the Closing, Buyer will pay, or will cause Merger Sub to pay, on behalf of the Company and its Subsidiaries, all amounts required to be paid under payoff letter(s) (the “**Indebtedness Payoff Amount**”) and instructions delivered by the Closing Indebtedness Holders (the “**Payoff Letters**”) with respect to the Indebtedness Payoff Amount set forth on the Funds Flow. Pursuant to any such Payoff Letters, each Closing Indebtedness Holder will have been paid in full for any and all Indebtedness relating to such Closing Indebtedness Holder’s Indebtedness Payoff Amount and, in the event such Indebtedness Payoff Amount is secured, all related Liens will have been released with corresponding Lien releases being delivered to Buyer concurrently upon such Closing Indebtedness Holder’s receipt of payment of the amount specified, with the result that immediately following the Closing there will be no outstanding Indebtedness Payoff Amount or any other obligation with respect (including any Lien) to Buyer and the Company to any Closing Indebtedness Holder.

#### **1.07 Surrender of Certificates; Paying Agent.**

(a) In accordance with the paying agent agreement to be dated as of the Closing Date and substantially in the form attached as Exhibit C (the “**Paying Agent Agreement**”), the Paying Agent will act as the Shareholders’ Representative’s agent in delivering to each Shareholder its respective Closing Stock Payment in return for the certificates which, prior to the Effective Time, represented shares of Common Stock (other than Dissenting Shares) (each, a “**Certificate**”), as well as any amounts owed to such Shareholders pursuant to Section 1.08. The Company shall pay the fees incurred under the Paying Agent Agreement as a Transaction Expense. At or after the Effective Time, upon surrender of Certificates and delivery by a Shareholder of a duly executed letter of transmittal substantially in the form of Exhibit D (the “**Letter of Transmittal**”) to the Paying Agent, (i) the Paying Agent will pay each such Shareholder the Closing Stock Payment to which such Shareholder is entitled under Section 1.05(b) and (ii) each Shareholder will be irrevocably entitled to receive the portion of any amount payable under Section 1.08 with respect to the shares Common Stock held by such Shareholder immediately prior to the Effective Time. The Merger Consideration payable to a Shareholder will be made by wire transfer of immediately available funds to an account designated in writing by such Shareholder in the Letter of Transmittal, unless,



to the extent permitted by the Letter of Transmittal, alternative arrangements are specified by such holder in the Letter of Transmittal. Each such Shareholder that makes the deliveries to the Paying Agent required by this Agreement, the Letter of Transmittal and the Paying Agent Agreement prior to the Closing Date will be paid his, her or its Closing Stock Payment on the same Business Day as the Effective Time. Each such Shareholder that makes the deliveries to the Paying Agent required by this Agreement, the Letter of Transmittal and the Paying Agent Agreement thereafter will be paid his, her or its Closing Stock Payment as soon as possible after delivery thereof is made (but in any event no later than three (3) Business Days after the date such delivery thereof is made).

(b) If any Certificate has been or is claimed to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming that a Certificate has been lost, stolen or destroyed (in form and substance reasonably satisfactory to the Paying Agent) and, if required by the Paying Agent, the delivery of such indemnity by such Person as is reasonably satisfactory to the Paying Agent, the Paying Agent will deliver to such Person in exchange for such lost, stolen or destroyed Certificate or instrument representing shares of Common Stock the proper amount of the Merger Consideration to which they are entitled hereunder, subject to the other deliveries required by this [Section 1.07](#).

(c) At any time that is more than one (1) year after the Effective Time, Buyer may cause the Paying Agent to pay over to the Surviving Corporation any portion of the Merger Consideration (including any earnings thereon) that had been delivered to the Paying Agent and that has not been disbursed to Shareholders as of such time (other than any amounts then subject to dispute). After the Paying Agent makes such payments to the Surviving Corporation, all former Shareholders will be entitled to look only to the Surviving Corporation (subject to any applicable abandoned property, escheat and other similar Laws) as general creditors thereof with respect to the cash payable upon surrender of their Certificates pursuant to this Agreement, and the Paying Agent will have no further obligation under this [Section 1.07](#) in its capacity as such. None of the Surviving Corporation, Buyer, Merger Sub, the Shareholders' Representative or the Paying Agent will be liable to any Person in respect of amounts paid to a public official to the extent required under any applicable abandoned property, escheat or similar Law.

(d) At the Effective Time, the stock transfer books of the Company shall be closed and no further registration of transfers of shares shall thereafter be made on the books and records of the Company. If, after the Effective Time, Certificates representing shares of Common Stock are presented to the Surviving Corporation or the Paying Agent, they will be cancelled and exchanged as provided in this [Section 1.07](#).

**1.08 Post-Closing Merger Consideration Adjustment**. Following the Closing Date, the Merger Consideration will be adjusted, if at all, as set forth below:

(a) Within ninety (90) days after the Closing Date, Buyer shall cause to be prepared and delivered to Shareholders' Representative a certificate signed by a duly authorized officer of Buyer attaching (i) the consolidated balance sheet of the Company and the related statements of income and Shareholders' capital and statement of cash flows as of the Closing Date prepared in accordance with GAAP (without giving effect to the transactions contemplated herein), and (ii) a statement (the "**Closing Statement**") including Buyer's calculation of (A) the Closing Net Working Capital (including each component item thereof calculated in accordance with the manner of calculation reflected in [Schedule 1.05](#) attached hereto), (B) the Closing Indebtedness, (C) the Transaction Expenses (D) the resulting Closing Net Working Capital Surplus or Closing Net Working Capital Shortfall (as applicable) and the Post-Closing Adjustment (as defined herein), (E) Cash and (F) Buyer's calculation of the Final Merger Consideration derived from the foregoing. The Post-Closing Adjustment shall be an amount equal to the Closing Net Working Capital Surplus (if any) minus the Estimated Net Working Capital Surplus (if any) plus the Estimated Net Working Capital Shortfall (if any) minus the Closing Net Working Capital Shortfall (if any)

plus the Estimated Closing Indebtedness minus the Closing Indebtedness plus the Estimated Transaction Expenses minus the Closing Transaction Expenses plus the Estimated Cash minus the Cash (the "**Post-Closing Adjustment**"), provided that, the Post-Closing Adjustment shall in no way be affected, modified or adjusted by Buyer's Independent Investigation (as defined herein) conducted prior to the Closing, including but not limited to, inventory reserves.

(b) Shareholders' Representative shall have thirty (30) days following Shareholders' Representative's receipt of the Closing Statement to review and analyze Buyer's calculations set forth therein. If Shareholders' Representative concurs with such calculation or shall not object thereto in a writing delivered to Buyer within the aforesaid thirty (30) day period, Buyer's calculation of the Closing Net Working Capital shall become final, binding and conclusive on the parties hereto and shall not be subject to further review, challenge or adjustment. If Shareholders' Representative does not agree with Buyer's calculation and notifies Buyer of such objection in writing within the aforesaid thirty (30) day period with a statement containing reasonable detail as to the basis for all objection(s) (the "**Statement of Objections**"), Buyer and Shareholders' Representative shall work in good faith for a period of thirty (30) days thereafter (or such longer period as they may mutually agree) (the "**Agreement Period**") to agree upon such calculation.

(c) If Shareholders' Representative and Buyer fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Agreement Period, then any amounts remaining in dispute ("**Disputed Amounts**") shall be submitted for resolution to a Neutral Auditor mutually appointed by Buyer and Shareholders' Representative who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only and make any adjustments to the Post-Closing Adjustment, as the case may be, and the Closing Statement. The parties hereto agree that all adjustments shall be made without regard to materiality. The Neutral Auditor shall only decide the specific items under dispute by the parties and their decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Statement and the Statement of Objections, respectively. If Buyer and Shareholders' Representative are unable to agree on the selection of such Neutral Auditor within ten (10) days after the expiration of the Agreement Period, then within twenty (20) days after the expiration of the Agreement Period, Buyer and Shareholders' Representative shall each select an independent certified public accounting firm and such two (2) firms shall, within twenty-five (25) days after the expiration of the Agreement Period, select the Neutral Auditor. Such calculation by the Neutral Auditor shall be final, binding and conclusive on the parties hereto and shall not be subject to further review, challenge or adjustment. Each party hereto shall pay its own costs and expenses incurred in connection with this Section 1.08(c); provided, however, that Shareholders' Representative and Buyer shall each pay one-half (1/2) of the fees, costs and expenses of the Neutral Auditor.

(d) In the event the Post-Closing Adjustment is a negative number, then within five (5) Business Days of the Determination Date (as defined below), Buyer and Shareholders' Representative shall submit joint written instructions to the Escrow Agent to release from the Closing Adjustment Escrow Account (i) to Buyer, an amount by which the Post-Closing Adjustment is less than \$0 (up to the amount then remaining in the Closing Adjustment Escrow Account) and (ii) to the Key Shareholders as directed by the Shareholders' Representative, any amounts then remaining in the Closing Adjustment Escrow Account (after reduction pursuant to the foregoing clause (i)). If the amount to be paid to Buyer pursuant to clause (i) of the previous sentence exceeds the Closing Adjustment Escrow Amount, the Key Shareholders shall pay Buyer such amount in excess of the Closing Adjustment Escrow Amount by wire transfer of immediately available funds to such account as is directed by Buyer within five (5) Business Days of the Determination Date, or, at Buyer's option, Buyer and Shareholders' Representative shall submit joint written instructions to the Escrow Agent to release from the Retention Escrow Account to Buyer such amount in excess of the Closing Adjustment Escrow Amount. In the event the Post-Closing Adjustment is a positive number, then within five (5) Business Days of the Determination Date, Buyer and Shareholders'

Representative shall submit joint written instructions to the Escrow Agent to release the Closing Adjustment Escrow Amount to the Paying Agent and Buyer shall deposit with the Paying Agent the amount of the Post-Closing Adjustment by wire transfer of immediately available funds to be paid (i) first, to the Key Shareholders an amount of the Post-Closing Adjustment equal to the Closing Adjustment Escrow Amount; and (ii) second, any amounts then-remaining (after reduction pursuant to the foregoing clause (i)) to each Shareholder and Optionholder in accordance with their Pro Rata Portion; provided, that the portion of any such amounts payable to Optionholders may, if so directed by the Shareholders' Representative, be remitted to the Surviving Corporation for payment to such Persons through the Surviving Corporation's payroll procedures after applicable Tax withholding pursuant to Section 1.10, and the Surviving Corporation shall make such payments as directed by the Shareholders' Representative promptly following receipt thereof. The "**Determination Date**" means (A) the date of acceptance of the Closing Statement and Post-Closing Adjustment by Shareholders' Representative or (B) if there are Disputed Amounts then the date of resolution of the Disputed Amounts in accordance with this Section 1.08(d).

(e) The parties hereto agree that any payment made pursuant to this Section 1.08 shall be treated for all purposes as an adjustment to the Merger Consideration, unless otherwise required by applicable Law.

**1.09 Appraisal Rights.** Each share of Common Stock that is issued and outstanding immediately prior to the Effective Time and is held by a Person who, in accordance with A.R.S. Section 10-1302, (i) has not voted in favor of the Merger or consented thereto in writing or executed an enforceable waiver of appraisal rights (whether before or after the date of this Agreement) and (ii) has properly demanded appraisal of such share of Common Stock, and not effectively withdrawn, lost or failed to perfect their rights to appraisal, will not, at the Effective Time, be converted into the right to receive any portion of the Merger Consideration and instead will be cancelled and retired and shall cease to exist and shall represent only the right to receive payment from the Surviving Corporation with respect thereto as provided by the A.R.S., unless and until the holder of any such share has failed to perfect or has effectively withdrawn or lost his, her or its right to appraisal and payment under the A.R.S, in which case such share will thereupon be deemed, as of the Effective Time, to have been cancelled and retired and to have ceased to exist and been converted into the right to receive, upon surrender of such Certificate in accordance with ARTICLE I, without interest, in accordance with this Agreement, the Merger Consideration. From and after the Effective Time, no Shareholder who has demanded appraisal rights will be entitled to vote his, her or its shares of Common Stock for any purpose or to receive payment of dividends or other distributions on his, her or its shares (except dividends or other distributions payable to Shareholders of record at a date prior to the Effective Time). Any shares of Common Stock for which appraisal rights have been properly exercised, and not subsequently withdrawn, lost or failed to be perfected, in each case, in accordance with this Section 1.09 and the A.R.S, are referred to in this Agreement as "**Dissenting Shares**." The Company will give Buyer prompt notice of any demands for appraisal received by the Company, including any Shareholder's notice of their intent to demand payment pursuant to the A.R.S. that the Company receives, withdrawals of such demands and any other instruments served pursuant to the A.R.S. and received by the Company.

**1.10 Withholding Rights.** Buyer, Merger Sub, the Company or the Paying Agent will be entitled to deduct and withhold from the Merger Consideration all Taxes that Buyer or the Company are required to deduct and withhold under any applicable provision of Law; provided, however, that the Person intending to deduct or withhold shall use commercially reasonable efforts to notify such Persons of any amounts otherwise payable to such Persons that it intends to deduct and withhold at least five (5) Business Days prior to the due date for any relevant payment, and the Person intending to withhold with respect to such payments shall provide reasonable details regarding the provisions of Law that requires such deduction or withholding and provide such Persons with an opportunity to provide any applicable form, certification or other documentation or information to reduce or eliminate such deduction or withholding. All such

amounts withheld and properly paid over to the appropriate Taxing Authority shall be treated as having been paid to the person in respect of whom such deduction and withholding was made.

## ARTICLE II

### CLOSING

**2.01 The Closing.** In lieu of an in-person meeting, the closing of the transactions contemplated hereby, including the Merger (the “*Closing*”) will be accomplished remotely by teleconference and electronic exchange of documents (in .pdf or image format) on the date of this Agreement at 10:00 a.m., Eastern Standard Time unless another time, date or place is agreed to in writing by Buyer and the Company. All deliveries by one party to any other party or parties at the Closing shall be deemed to have occurred simultaneously and none shall be effective unless and until all have occurred, unless Buyer and the Company agree otherwise. The date on which the Closing actually occurs is referred to in this Agreement as the “*Closing Date*.”

**2.02 Certain Closing Deliveries.** Subject to the terms and conditions in this Agreement, the parties will make the following deliveries at the Closing:

(a) Buyer will deliver each of the payments it is required to deliver under Section 1.06.

(b) Buyer will deliver to each of the Company and the Shareholders’ Representative copies certified by a duly authorized officer of Buyer of (i) the resolutions or consents of the boards of directors of each of Buyer and Merger Sub approving this Agreement and the Merger, and (ii) the unanimous written consent of Buyer, as the sole Shareholder of Merger Sub, approving this Agreement and the Merger.

(c) The Company will deliver to Buyer:

(i) a certificate dated as of the Closing Date, duly executed by the Secretary (or equivalent officer) of the Company, given by him or her on behalf of the Company, certifying as to (A) an attached copy of the Company Charter Documents and stating that the same has not been amended, modified, revoked or rescinded, and (B) an attached copy of the resolutions of each of the board of directors and the Shareholders of the Company adopting this Agreement and approving the execution, delivery and performance of, and the consummation of the transactions contemplated by, this Agreement and stating that such resolutions have not been amended, modified, revoked or rescinded;

(ii) a certificate from the Arizona Corporation Commission as to the good standing of the Company as of a date not more than ten (10) Business Days prior to the Closing Date;

(iii) a certificate in compliance with Treasury Regulations Section 1.1445-2(c), certifying that no interests in the Company are U.S. real property interests within the meaning of Section 897 of the Code and the Treasury Regulations, together with an accompanying notice in compliance with Treasury Regulations Section 1.897-2(h)(2);

(iv) the Company’s stock transfer books and ledger; provided, that the parties hereto acknowledge and agree that delivery of such stock transfer books and ledger shall be satisfied by the Company making such stock transfer books and ledger available to Buyer at the Company’s principal place of business;

(v) the Payoff Letters and all instruments and documents necessary to release any and all Liens securing Indebtedness of the Company and its Subsidiaries, including any necessary UCC termination statements or other releases;

(vi) the consents from third parties set forth on Section 2.02(c)(vi) of the Company Disclosure Schedule;

(vii) resignation letters as officers and directors duly executed by the persons set forth on Section 2.02(c)(vii) of the Company Disclosure Schedule;

(viii) the Estimated Closing Statement in accordance with Section 1.05;

(ix) proof of termination of the Company Incentive Plans;

(x) proof the Company (a) ceased contributions to, and adopted written resolutions (or take other necessary and appropriate action(s)) to terminate the Company's 401(k) retirement plan (the "**401(k) Plan**") in compliance with the requirements of applicable Law, no later than the day immediately before the Closing Date (the "**401(k) Termination Date**"), (b) made all employee and employer contributions to the 401(k) Plan on behalf of all participants for all periods of service prior to the 401(k) Termination Date, and (c) fully vested all participants under the 401(k) Plan, such termination, cessation of contributions and vesting to be effective no later than the 401(k) Termination Date; and

(xi) an amendment to that certain Amended and Restated Management Services Agreement, dated as of December 31, 2019, by and between the Company and Entrepix Medical, LLC (the "**Medical MSA**"), in the form attached hereto as Exhibit E.

(d) Each of Buyer and the Shareholders' Representative will duly execute and deliver to the other, and to the Escrow Agent, the Escrow Agreement.

(e) Each of Buyer and the Shareholders' Representative will duly execute and deliver to the other, and to the Paying Agent, the Paying Agent Agreement.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as disclosed in a disclosure schedule of even date herewith and delivered by the Company to Buyer concurrently with the execution and delivery of this Agreement and referring by numbered section (and, where applicable, by lettered subsection) to the representations and warranties in this ARTICLE III (the "**Company Disclosure Schedule**"), the Company represents and warrants to Buyer as of the date hereof and as of the Closing Date as follows:

**3.01 Organization; Good Standing; Jurisdictions.** The Company is a corporation duly organized, validly existing and in good standing under the Laws of Arizona and has all requisite corporate power and authority to own, lease and operate the Assets and to carry on the Business as currently conducted. Section 3.01 of the Company Disclosure Schedule sets forth each jurisdiction in which the Company or its Subsidiaries is licensed or qualified to do business, and the Company or its applicable Subsidiary is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of the Business as currently conducted makes such licensing or qualification necessary.

**3.02 Authorization of Agreement.** The Company has all requisite corporate power and authority to execute and deliver this Agreement and each other Transaction Document to which it is a party, to perform its obligations under this Agreement and each such other Transaction Document, and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and each other Transaction Document to which it is a party, and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by the board of directors and Shareholders of the Company and, except for the filing of the Statement of Merger with the Arizona Corporation Commission pursuant to A.R.S. Section 10-1103, no other Legal Proceedings or Order on the part of the Company are necessary to authorize this Agreement and each such other Transaction Document, or to consummate the transactions contemplated hereby and thereby. This Agreement and each other Transaction Document to which it is a party has been duly and validly executed and delivered by the Company and, assuming the due authorization, execution and delivery by the other parties hereto and thereto, this Agreement constitutes, and each other Transaction Document when so executed and delivered will constitute, the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

**3.03 Conflicts; Consents of Third Parties.**

(a) Except as set forth on Section 3.03(a) of the Company Disclosure Schedule, none of the execution, delivery and performance by the Company of this Agreement or any of the other Transaction Documents to which the Company is a party, nor the consummation of the transactions contemplated hereby or thereby, nor compliance by the Company with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, amendment, cancellation or acceleration of any obligation or to loss of a material benefit under, or give rise to any obligation of the Company or its Subsidiaries to make any payment under, or to the increased, additional, accelerated or guaranteed rights or entitlements of any Person under, or result in the creation of any Liens upon any of the Assets of the Company or its Subsidiaries under, any provision of (i) the Company Charter Documents, (ii) any Company Contract or Permit to which the Company is a party or by which any of the Assets of the Company are bound, (iii) any Order applicable to the Company or any of the Assets of the Company or its Subsidiaries or (iv) any applicable Law.

(b) No consent, waiver, approval, Order, authorization of, or declaration or filing with, or notification to, any Governmental Authority is required on the part of the Company or its Subsidiaries in connection with (i) the execution, delivery and performance of this Agreement or any other Transaction Document, the compliance by the Company with any of the provisions hereof or thereof, or the consummation of the transactions contemplated hereby or thereby, or (ii) the continuing validity and effectiveness immediately following the Closing of any Contract or Permit to which the Company or its Subsidiaries is a party or by which any of the Assets of the Company or its Subsidiaries are bound.

**3.04 Shares; Title; Capitalization.**

(a) Section 3.04(a) of the Company Disclosure Schedule sets forth the authorized and outstanding number and class of the Shares and the name of each holder thereof together with the number of Equity Interests held by such holder and any beneficial holders thereof. The Shares have been duly authorized and validly issued, and are fully paid and non-assessable, have been issued in compliance with all Laws and the Company Charter Documents and none of such Shares have been issued in violation of any preemptive or similar rights.

(b) Except for the Company Incentive Plans, the Company has not adopted, sponsored or maintained any stock option plan or any other plan, agreement or arrangement providing for equity-related compensation to any Person. All outstanding Company Options have been issued under the

Company Incentive Plans, and no equity-based awards (whether payable in shares, cash or otherwise) have been granted outside of the Company Incentive Plans to any employees, officers, directors, consultants, agents, advisors or independent contractors of the Company or its Subsidiaries. As of the date of this Agreement, 423,204 Shares remain reserved for issuance for future awards pursuant to the 2005 Incentive Plan and 17,900 Shares are subject to currently outstanding awards under the 2005 Incentive Plan, 7,700 of which were vested and exercisable as of the date of this Agreement. As of the date of this Agreement, the Company has reserved 1,500,000 Shares that may be subject to awards and sold under the 2019 Incentive Plan to employees, officers, directors, consultants, agents, advisors and independent contractors of the Company, of which (i) 925,000 shares are subject to currently outstanding awards under the 2019 Incentive Plan, 845,000 of which were vested as of the date of this Agreement, and (ii) 575,000 shares remain available for future awards and sales under the 2019 Incentive Plan. Except as set forth on Section 3.04(b) of the Company Disclosure Schedule, the Company has not issued any awards under the Company Incentive Plans other than Company Options. Section 3.04(b) of the Company Disclosure Schedule lists each outstanding and unexercised Company Option as of the date of this Agreement, the holder thereof, the date of grant, the total number of Shares covered thereby, the Company Incentive Plan under which the Company Option was issued, whether such option is a nonstatutory option or intended to qualify as an incentive stock option as defined in Section 422 of the Code, the country in which the Company Option was granted, the vesting schedule, whether such Company Option is “early exercisable”, and the exercise price for each Company Option. The Company Options are held of record by the holders as set forth in Section 3.04(b) of the Company Disclosure Schedule free and clear of all Liens (other than restrictions on transfer arising under applicable securities Laws or under the Company Incentive Plans), and were issued in all material respects in accordance with the applicable Company Incentive Plan, all applicable Laws, the Company Charter Documents and all Contracts to which the Company, its Subsidiaries, or any Shareholder is a party. The treatment of each outstanding Company Option under Section 1.06(b) hereof, is permitted under the applicable Company Incentive Plan under which such award was granted and under applicable Law without obtaining the consent of or the provision of advanced notice to any holder of such Company Options. A true, correct and complete copy of the Company Incentive Plans, all forms of agreement and instruments or Contracts relating to or issued under the Company Incentive Plans and each agreement for awards under the Company Incentive Plans that does not conform to the standard agreements under the Company Incentive Plans have been made available to Buyer, and except as set forth herein or required to effectuate the transactions contemplated hereby, there are no agreements, understandings or commitments to amend, modify or supplement the Company Incentive Plans or any Contracts related to any award under the Company Incentive Plans. No Company Options are subject to any right of rescission, right of first refusal or preemptive right (other than any such rights which are held by the Company). All Shares issued upon exercise thereof have been granted and issued, and all exercises of Company Options have been made, in all material respects in accordance with the terms of the applicable Company Incentive Plan and in compliance with applicable Law and all requirements set forth in applicable Contracts and each such grant, exercise and issuance was properly accounted for in the financial statements (including the related notes) of the Company. No Company Option has been granted with an exercise price less than the fair market value of a share of Company, determined in accordance with the requirements of Section 409A and 422 of the Code on the date on which the grant of such Company Option was by its terms to be effective. All Company Options are exempt from application of Section 409A of the Code.

(c) Other than the Company Options, the Company has not granted any outstanding options, warrants, rights or other securities convertible into, or exchangeable or exercisable for, the Shares, and there are no (i) Contracts that obligate the Company to purchase, redeem or otherwise acquire any of its outstanding Shares; (ii) share appreciation rights, share unit, phantom equity or similar plans or agreements with respect to the Company; or (iii) stockholder agreements, voting trusts, proxies, or similar Contracts to which the Company is a party with respect to the Equity Interests of the Company. No bonds, debentures, notes or other instruments or evidence of indebtedness having the right to vote (or convertible into, or exercisable or exchangeable for, securities having the right to vote) on any matters on which the

Company's holders of the Shares may vote are issued or outstanding. There are no preemptive or similar rights to purchase or otherwise acquire any Equity Interests in the Company from the Company and, other than as contemplated hereby, the Company is not a party to any Contract with respect to the sale or voting of any of its Equity Interests (whether outstanding or issuable upon conversion or exercise of outstanding securities).

(d) Section 3.04(d) of the Company Disclosure Schedule lists all holders of Company Indebtedness and current amounts outstanding (the "**Closing Indebtedness Holders**"). Except as set forth on Section 3.04(d) of the Company Disclosure Schedule, neither the Company nor its Subsidiaries have Liabilities in respect of any Indebtedness.

(e) Except as set forth on Section 3.04(e) of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries, (i) owns, directly or indirectly, beneficially or of record, or holds the right to acquire any stock, partnership interest or joint venture interest or other equity ownership interest in any other corporation, organization or entity or (ii) is under any obligation to make any loan, capital contribution or other investment in any corporation, organization or entity other than a direct or indirect wholly owned Subsidiary of the Company.

### **3.05 Company Records.**

(a) The Company has made available to Buyer true, correct and complete copies of the articles of incorporation and bylaws of the Company and all amendments thereto through the date hereof, and any other organization or governing documents of the Company (collectively, the "**Company Charter Documents**") and its Subsidiaries. All such Company Charter Documents are in full force and effect and the Company is not in violation of any provisions therein.

(b) The minute books and resolutions of the Company made available to Buyer contain true, correct and complete records of all meetings and accurately reflects all actions of the Shareholders and the board of directors of the Company (including committees thereof) as of the date of this Agreement. The stock certificate books and transfer ledgers of the Company made available to Buyer are true, correct and complete as of the date of this Agreement.

### **3.06 Financial Statements.**

(a) Section 3.06(a) of the Company Disclosure Schedule contains true, correct and complete and copies of (i) the reviewed consolidated balance sheet of the Company and its Subsidiaries as of February 28, 2021 and the related statements of income and shareholders' capital and statement of cash flows for the fiscal year then ended, (ii) the reviewed consolidated balance sheet of the Company and its Subsidiaries as of February 28, 2022 and the related statements of income and shareholders' capital and statement of cash flows for the fiscal year then ended, and (iii) the unaudited consolidated balance sheet of the Company and its Subsidiaries as of October 31, 2022 and the related statements of income and shareholders' capital and statement of cash flows for the 8-month period then ended (such statements, including the related notes and schedules thereto, are referred to herein as the "**Financial Statements**"). Each of the Financial Statements has been prepared in accordance with GAAP consistently applied throughout the periods presented and presents fairly, in all material respects, the financial position, results of operations and cash flows of the Company and its Subsidiaries as of the dates and for the periods indicated therein. For the purposes hereof, the unaudited balance sheet of the Company and its Subsidiaries as of October 31, 2022 is referred to as the "**Balance Sheet**" and October 31, 2022 is referred to as the "**Balance Sheet Date**."

(b) The Company has devised and maintains a system of internal accounting controls to



provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP. The Company maintains accurate books and records reflecting the Company's assets and liabilities and maintains proper and adequate internal accounting and record-keeping controls that provide reasonable assurance that: (i) the Company maintains no off-the-book accounts and the Assets are used only in accordance with management's directives; (ii) transactions are executed in accordance with management's authorizations; (iii) transactions are recorded as necessary to permit preparation of financial statements consistent with past practice and to maintain asset accountability; (iv) access to the Assets is permitted only in accordance with management's authorization; (v) the recorded accounting for the Assets is compared with the existing assets at regular intervals and appropriate action is taken with respect to any differences; (vi) accounts, notes and other receivables and inventory are recorded accurately consistent with past practice and do not include any amounts for which there is no written contractual commitment to pay, and proper and adequate procedures are implemented to effect the collection of accounts, notes and other receivables on a current and timely basis; and (vii) the Company maintains records in accordance with statutory records retention requirements.

(c) The accounts receivable reflected on the Financial Statements and the accounts receivable arising after the date thereof (i) have arisen from bona fide transactions entered into by the Company or its Subsidiaries involving the rendering of services or sale of products in the Ordinary Course of Business; and (ii) constitute only valid, undisputed claims of the Company or its Subsidiaries not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the Ordinary Course of Business and subject to a reserve for bad debts shown on the Financial Statements or, with respect to accounts receivable arising after the Balance Sheet Date in the Ordinary Course of Business, on the accounting records of the Company. The reserve for bad debts shown on the Financial Statements or, with respect to accounts receivable arising after the Balance Sheet Date in the Ordinary Course of Business, on the accounting records of the Company, has been determined in accordance with GAAP, consistently applied. All accounts payable reflected on the Balance Sheet, and accounts payable arising after the Balance Sheet Date and reflected on the books and records of the Company and its Subsidiaries, have arisen in the Ordinary Course of Business.

**3.07 No Undisclosed Liabilities.** Neither the Company nor its Subsidiaries have Liabilities of any kind other than those (a) adequately reflected in, reserved against or otherwise described in the Balance Sheet, (b) incurred in the Ordinary Course of Business since the Balance Sheet Date, (c) Transaction Expenses and obligations under this Agreement or (d) executory obligations pursuant to any Contract.

**3.08 Absence of Certain Changes.** Except as expressly contemplated by this Agreement or as set forth on Section 3.08(a) of the Company Disclosure Schedule:

(a) between the Balance Sheet Date and the date of this Agreement (i) the Company and its Subsidiaries have conducted their business only in the Ordinary Course of Business, (ii) a Material Adverse Effect has not occurred and (iii) neither the Company nor its Subsidiaries have:

(i) declared, set aside, made or paid any dividend or other distribution in respect of the Shares or repurchased, redeemed or otherwise acquired any outstanding Shares or other securities of, or other ownership interests in, the Company or its Subsidiaries, except for (i) repurchases of Shares pursuant to repurchase rights arising upon termination of service of any employee, manager or consultant of the Company or its Subsidiaries and (ii) cash dividends or distributions to Shareholders, but only to the extent such dividends or distributions would not result in Closing Net Working Capital being less than the Working Capital Threshold;

(ii) transferred, issued, granted, delivered or sold or authorized or proposed the issuance, delivery or sale of, any Shares or securities convertible into, or subscriptions, rights,

warrants or options to acquire, or other agreements or commitments of any character obligating it to issue any such shares or other convertible securities;

(iii) effected any recapitalization, reclassification, stock split or like change in the capitalization of the Company;

(iv) amended the Company Charter Documents;

(v) (i) increased the compensation or benefits of any present or former officer, employee, director, independent contractor or consultant of the Company or its Subsidiaries, (ii) granted any new right to severance or termination pay to any present or former officer, employee, director, independent contractor or consultant of the Company or its Subsidiaries, (iii) loaned or advanced any money or other property to any present or former officer, employee, director, independent contractor or consultant of the Company or its Subsidiaries except as set forth on Section 3.08(a) of the Company Disclosure Schedule, (iv) established, adopted, entered into, amended or terminated any Company Plan or any plan, agreement, program, policy, trust, fund or other arrangement that would be a Company Plan if it were in existence as of the date of this Agreement except as set forth on Section 3.08(a) of the Company Disclosure Schedule, or (v) granted any equity or equity-based awards;

(vi) terminated any employees, independent contractors or consultants of the Company or its Subsidiaries unless for cause as defined under applicable Law except in each case, other than in the Ordinary Course of Business;

(vii) issued, created, incurred, assumed or guaranteed any Indebtedness other than Transaction Expenses;

(viii) failed to pay and discharge Current Liabilities when due except where disputed in good faith by appropriate proceedings;

(ix) directly or indirectly acquired any material properties or assets, sold, assigned, licensed, transferred, conveyed, leased or otherwise disposed of any of the material properties or Assets of the Company or its Subsidiaries or encumbered or subjected to any Lien or allowed or suffered to be encumbered any of the material properties or Assets of the Company or its Subsidiaries, in each case, whether tangible or intangible;

(x) engaged in any new business, invested in, made a loan, advance or capital contribution to, or otherwise acquired the securities of any other Person;

(xi) (i) canceled or compromised any debt or claim or waive or release any material right of the Company or its Subsidiaries other than in the Ordinary Course of Business, (ii) accelerated or delayed collection of notes or accounts receivable in advance of or beyond their regular due dates or the dates when the same would have been collected in the Ordinary Course of Business or (iii) delayed or accelerated payment of any account payable in advance of its due date or the date such Liability would have been paid in the Ordinary Course of Business;

(xii) entered into commitments for capital expenditures of the Company or its Subsidiaries in excess of \$10,000 for all commitments in the aggregate;

(xiii) entered into any labor or collective bargaining or similar agreement, through negotiation or otherwise, or made any commitment or incurred any Liability to any labor

organization with respect to the Company or its Subsidiaries, except when required by applicable Law or Order;

(xiv) made a material change in its financial or tax accounting principles, methods, policies or practices;

(xv) (i) made, revoked or changed any election with respect to Taxes, (ii) settled or compromised any Tax audit, claim, or assessment or any Liability for Taxes, (iii) filed any amendment to a Tax Return, (iv) entered into any closing agreement or obtained any Tax ruling or seek to change any Tax accounting period, (v) surrendered any right to claim a material refund of Taxes, (vi) consented to any extension or waiver with respect to any Tax claim, assessment, or Liability, (vii) taken any action that would have the effect of increasing the Tax liability of Buyer or the Company and its Subsidiaries in respect of any taxable period or portion thereof ending after the Closing Date or (viii) prepared or filed any Tax Return (other than an amendment to a Tax Return) in a manner inconsistent with past practice;

(xvi) adopted a plan or agreement of complete or partial liquidation, dissolution, restructuring, merger, consolidation or other reorganization, other than this Agreement;

(xvii) commenced any Legal Proceeding, except with respect to matters arising under or in connection with this Agreement or the transactions contemplated hereby;

(xviii) released, assigned, compromised, settled or agreed to settle any Legal Proceeding material to the Company or its Subsidiaries or any of their properties or Assets;

(xix) granted to any Person any license, sublicense, covenant not to sue, immunity, authorization, release or other right with respect to any Intellectual Property, or assigned or transferred to any Person any rights to any Intellectual Property;

(xx) failed to (i) pay any annuity or any filing, prosecution, maintenance or other fee or file any document, response to office action or other filing in connection with any Company Intellectual Property Registrations when due or (ii) diligently prosecute and maintain all Company Intellectual Property Registrations;

(xxi) entered into any agreement for the creation or development by a third party (except for consultants or independent contractors engaged by the Company or its Subsidiaries in the Ordinary Course of Business pursuant to a Contract containing a present assignment of Intellectual Property rights to the Company or its Subsidiaries) of any material Intellectual Property, products or services for the Company or its Subsidiaries;

(xxii) canceled or amended any of the insurance policies listed on Schedule 3.18 of the Company Disclosure Schedule; or

(xxiii) agreed, in writing or otherwise, to take any of the foregoing actions, or take any action or agree, in writing or otherwise, to take any action which would in any material respect impede or delay the ability of the parties to satisfy any of the conditions to the transactions contemplated by this Agreement or any other Transaction Document.

(b) since the Balance Sheet Date neither the Company nor its Subsidiaries have suffered any damage, destruction or loss of any material property or material Asset, whether or not covered by insurance, except ordinary wear and tear in the Ordinary Course of Business.

### 3.09 Taxes.

(a) (i) All Tax Returns required to be filed by or on behalf of the Company and each of its Subsidiaries have been duly and timely filed with the appropriate Taxing Authority in all jurisdictions in which such Tax Returns are required to be filed (after giving effect to any valid extensions of time in which to make such filings), and all such Tax Returns are true, complete and correct in all material respects, and (ii) all Taxes (whether or not shown or required to be shown on any Tax Return) due and payable by or on behalf of the Company and each of its Subsidiaries have been fully and timely paid. With respect to any Taxes where payment is not yet due or owing, the Company has established an adequate accrual for all such Taxes. Appropriate and sufficient accruals for Tax liabilities of the Company and each of its Subsidiaries as of the Balance Sheet Date are included in the Balance Sheet and will be included on the Closing Statement for periods through the Closing Date. All required estimated Tax payments sufficient to avoid any underpayment penalties have been made by or on behalf of the Company and each of its Subsidiaries.

(b) The Company and each of its Subsidiaries have complied with all applicable Laws relating to the payment and withholding of Taxes and have duly and timely withheld and paid over to the appropriate Taxing Authority all amounts required to be so withheld and paid under all applicable Laws. The Company and each of its Subsidiaries have timely and properly collected, remitted and reported all sales, use, goods and services, harmonized sales and value added Taxes. The Company and each of its Subsidiaries have complied in all material respects with all applicable Laws relating to record retention (including to the extent necessary to claim any exemption from sales or value added Tax collection and maintaining adequate and current resale certificates to support any such claimed exemption).

(c) The Company has made available to Buyer true, correct and complete copies of (i) all income, franchise and all other material Tax Returns of the Company and each of its Subsidiaries filed since January 1, 2018 and (ii) any audit or examination report issued relating to any Tax Returns or Taxes due from or with respect to the Company or any of its Subsidiaries.

(d) No Claim has been made in writing by a Taxing Authority in a jurisdiction where the Company or any of its Subsidiaries, as applicable, does not file Tax Returns that the Company or such Subsidiary is or may be subject to taxation by, or required to file any Tax Return in, that jurisdiction. No Liens for Taxes exist with respect to any of the Assets, other than Permitted Exceptions.

(e) All deficiencies asserted or assessments made as a result of any examination by a Taxing Authority of any Tax Returns of, or including, the Company or any of its Subsidiaries have been fully and timely paid. There are no Legal Proceedings by any Taxing Authority pending or to the Knowledge of the Company, in progress, nor has the Company received any written notice from any Taxing Authority that such Taxing Authority intends to conduct such a Legal Proceeding.

(f) The Company and each of its Subsidiaries use the accrual method of accounting for income Tax purposes. The Company and each of its Subsidiaries (i) have not agreed to and are not required to make any adjustments pursuant to Section 481(a) of the Code or any similar provision of Law and do not have any Knowledge that any Taxing Authority has proposed any such adjustment, (ii) have not had and do not have any application pending with any Taxing Authority requesting permission for any changes in accounting methods that relate to the Company or any of its Subsidiaries, (iii) have not requested any extension of time within which to file any Tax Return, which Tax Return has since not been filed, (iv) have not been granted any extension for the assessment or collection of Taxes, which Taxes have not since been paid or which extension has not yet expired, and (v) have not granted to any Person any power of attorney in force with respect to any Tax matter that will remain in force following the Closing Date.

(g) Neither the Company nor any of its Subsidiaries will be required to include any amount in income for any taxable period (or portion thereof) after the Closing Date as a result of (i) any change in or use of an improper method of accounting for a taxable period ending on or prior to the Closing Date; (ii) entering into any “closing agreement” within the meaning of Section 7121 of the Code (or any similar provision of applicable state, local or non-U.S. Law) on or prior to the Closing Date, (iii) any intercompany transaction or excess loss account described in the Treasury Regulations promulgated pursuant to Section 1502 of the Code (or any corresponding or similar provision of state, local or non-U.S. Law), (iv) any installment sale or open transaction disposition made on or prior to the Closing Date, (v) any prepaid amount received on or prior to the Closing Date, or (vi) an election under Section 965 of the Code.

(h) Neither the Company nor any of its Subsidiaries is a party to any Tax sharing, allocation, indemnity or similar agreement or arrangement (whether or not written) pursuant to which it may have any obligation to make any payments after the Closing, other than customary indemnification provisions in commercial agreements that are not primarily related to Taxes.

(i) Neither the Company nor any of its Subsidiaries is subject to any private letter ruling of the IRS or comparable ruling of any other Taxing Authority or has applied for or requested any such ruling or technical advice memorandum or similar document from any Taxing Authority.

(j) Neither the Company nor any of its Subsidiaries is or has ever been a member of any consolidated, combined, affiliated or unitary group of corporations for any Tax purposes (other than the group of which the Company is the parent) and neither the Company nor any of its Subsidiaries has any Liability for Taxes of another Person under Treasury Regulations Section 1.1502-6 (or any comparable provision of state, local or non-U.S. Law).

(k) Neither the Company nor any of its Subsidiaries has constituted either a “distributing corporation” or a “controlled corporation” (within the meaning of Section 355(a)(1)(A) of the Code) in a distribution of stock intended to qualify for tax-free treatment under Section 355 of the Code.

(l) There is no taxable income of the Company or any its Subsidiaries that will be required under applicable Law to be reported by Buyer or the Company or any of their Affiliates for a taxable period beginning after the Closing Date which taxable income was realized (and reflects economic income) arising prior to the Closing Date.

(m) The Company and each of its Subsidiaries have disclosed on their U.S. federal income Tax Returns all positions taken therein that could give rise to substantial understatement of U.S. federal income tax within the meaning of Section 6662 of the Code and have not engaged in any “reportable transactions” within the meaning of Treasury Regulations Section 1.6011-4(b).

(n) Neither the Company nor any of its Subsidiaries has engaged in a trade or business in any country outside the country of its formation or incorporation, has or has had a permanent establishment in any country other than the country of its formation or incorporation, or has engaged in any transaction subject to Tax in a jurisdiction outside the country of its formation or incorporation.

(o) Each of the Company and Entrepix International, Inc. has been treated as a C corporation for U.S. federal and applicable state and local income tax purposes since the date of its formation. Section 3.9(o) of the Company Disclosure Schedule sets forth for each Subsidiary of the Company organized or incorporated outside of the United States: (i) the current classification, for U.S. federal income tax purposes, of such Subsidiary, (ii) the date of formation of such Subsidiary, and (iii) if applicable, the date of any entity classification election made with respect to such Subsidiary for U.S. federal income tax purposes.

(p) Neither the Company nor any of its Subsidiaries has transferred any intangible property the transfer of which would be subject to the rules of Section 367(d) of the Code. Neither the Company nor any of its Subsidiaries is a party to a gain recognition agreement under Section 367 of the Code. Neither the Company nor any of its Subsidiaries is subject to the dual consolidated loss provisions of Section 1503(d) of the Code (or has any current or potential Tax liability thereunder).

(q) Neither the Company nor any of its Subsidiaries has been or is currently the beneficiary of any Tax exemption, Tax holiday, Tax credit or other Tax incentive from any Taxing Authority or Governmental Authority.

(r) All related party transactions involving the Company and each of its Subsidiaries are at arm's length in compliance with Section 482 of the Code and the Treasury Regulations promulgated thereunder (and any similar provision of state, local, or non-U.S. Tax Laws) and neither the Company nor any of its Subsidiaries has any liability under Section 482 of the Code (or any similar provision of state, local, or non-U.S. Tax Laws). All payments to Entrepix Exports, Inc. and deductions with respect thereto have been made in accordance with applicable Law, and the Company and each of its Subsidiaries have complied with all applicable documentation and record-keeping requirements with respect thereto.

(s) Neither the Company nor any of its Subsidiaries is a party to or member of any joint venture, partnership, limited liability company or other arrangement or Contract, which is treated as a partnership for U.S. federal income Tax purposes.

(t) Except as set forth on Section 3.09(t) of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries has: (i) deferred payment of the employer or employee portion of any Tax pursuant to the COVID-19 Tax Acts or the CARES Act, or (ii) claimed the employee retention credit pursuant to Section 2301 of the CARES Act or any other Tax credit applicable to employment Taxes under any provision of the 2020 U.S. Tax Acts.

(u) The Company and each of its Subsidiaries have filed all reports, forms or filings, including any required Report of Foreign Bank and Financial Accounts on U.S. Financial Crimes Enforcement Network Form 114 required to be filed with respect to any non-U.S. bank or financial account.

(v) No Subsidiary of the Company organized outside of the United States has any "subpart F income" as defined in Section 952 of the Code or any "global intangible low-taxed income" as defined in Section 951A(b) of the Code for the current taxable year.

For purposes of this Section 3.9, any reference to the Company shall be deemed to include any past Subsidiaries of the Company and any Person that merged into or was liquidated into the Company or any of its Subsidiaries, other than Entrepix Medical.

### **3.10 Real Property.**

(a) Section 3.10(a) of the Company Disclosure Schedule sets forth a complete list of all real property and interests in real property leased by the Company or any of its Subsidiaries as lessee or sublessor (individually, a "**Real Property Lease**" and collectively, the "**Real Property Leases**" and such related properties being referred to herein individually as a "**Company Property**" and collectively as the "**Company Properties**"), and such list includes (i) the landlord under each Real Property Lease, (ii) the rental amount currently being paid under each Real Property Lease, and (iii) the expiration of the term of each Real Property Lease. Neither the Company nor any of its Subsidiaries currently own, and has never in the past owned, any real property. The Company Properties constitute all interests in real property currently used or currently held for use in connection with the Business. The Company has a valid and

enforceable leasehold interest, free and clear of any Liens, other than Permitted Exceptions, under each of the Real Property Leases, and has not granted any other Person the right to occupy any of the premises subject to a Real Property Lease. All of the Company Properties are adequately maintained and suitable for the purpose of conducting the Business as currently conducted.

(b) Except as set forth in Section 3.10(b) of the Company Disclosure Schedule, with respect to each of the Real Property Leases: (i) such Real Property Lease is legal, valid and binding on the Company or its Subsidiaries and the other parties thereto, enforceable in accordance with its terms and in full force and effect; (ii) the consummation of the Closing does not require the consent of any other party to such Real Property Lease, will not result in a breach of or default under such Real Property Lease, and will not otherwise cause such Real Property Lease to cease to be legal, valid, binding, enforceable and in full force and effect on identical terms following the Closing; (iii) the possession and quiet enjoyment of the rights and benefits granted to the Company or its Subsidiaries under such Real Property Lease have not been disturbed in any material respect; and (iv) neither the Company nor, to the Knowledge of the Company, any other party thereto, is in material breach or default under such Real Property Lease.

(c) There are no written demands, claims or complaints by any Person alleging actual or potential liability, obligation or responsibility (collectively, "**Claims**"), Legal Proceedings or Orders pending or, to the Company's Knowledge, threatened in writing against or affecting any of the Company Properties or any portion thereof or interest therein in the nature of condemnation or eminent domain proceedings. Except as set forth in Section 3.10(c) of the Company Disclosure Schedule, no part of any Company Property is subject to any building or use restrictions that would restrict or prevent the present use and operation of such Company Property, and each Company Property is properly and duly zoned for its current use, and such current use is a conforming use. Since January 1, 2017, no Governmental Authority having jurisdiction over any Company Property has issued to the Company or any of its Affiliates or threatened in writing to issue any notice or Order or arbitration award that adversely affects the use or operation of any Company Property, or requires, as of the date hereof or a specified date in the future, any repairs or alterations or additions or improvements thereto, or the payment or deduction of any money, fee, exaction or property. All buildings and fixtures on the Company Properties are structurally sound, in good condition, working order and repair (ordinary wear and tear excepted), and none of the Company, the Shareholders or its or their Affiliates has received any written notice from any insurance company or bonding company of any defects or inadequacies in any Company Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond. All water, gas, electrical, steam, compressed air, telecommunication, utility, sanitary and storm sewage lines and systems and other similar systems serving the Company Properties are fully operational and in working order and are sufficient to enable the Company Properties to continue to be used, occupied and operated in the manner currently being used, occupied and operated. Neither the Company nor any of its Subsidiaries has made any material alterations, additions or improvements to any of the Company Properties that may be required to be removed upon termination of the applicable Real Property Lease term.

**3.11 Title to Assets.** Either the Company or one of its Subsidiaries (a) has good and marketable title to or (b) has valid leasehold interests in or has valid contractual rights to use, in each case free and clear of all Liens (other than Permitted Exceptions), all of the Assets owned or used by the Company or its Subsidiaries. The Assets currently owned by the Company and its Subsidiaries are in good, working order (reasonable wear and tear and scheduled maintenance excepted) and are adequate and sufficient to permit Buyer to operate the Business from and after the Closing Date in the same manner as the Business is being conducted by the Company and its Subsidiaries as of the date hereof. Other than as set forth on Section 3.11 of the Company Disclosure Schedule, none of the Assets or the Business is used in, and there are no shared services between or among the Business and any other business of Shareholders, their respective Affiliates or any other Person. No Person other than the Company or one of its Subsidiaries owns any

equipment or other personal property situated on the premises of the Company or its Subsidiaries, except for leased items that are subject to personal property leases.

### **3.12 Intellectual Property.**

(a) Section 3.12(a) of the Company Disclosure Schedule sets forth a true, correct and complete list of all Company Intellectual Property Registrations (including the record owner(s) thereof) and (i) for each Domain Name, the registration date, any renewal date and name of registry, (ii) for each Copyright, each applicable number and date of registration or Copyright application (if any) by country, province and state, (iii) all actual or, to the Knowledge of the Company, threatened Legal Proceedings before any court, tribunal or other Governmental Authority (including the United States Patent and Trademark Office or equivalent authority anywhere in the world) related to any Company Intellectual Property Registrations and (iv) any actions that must be taken within ninety (90) days after the date hereof for the purposes of obtaining, maintaining, perfecting, preserving or renewing any Company Intellectual Property Registrations, including the payment of any registration, maintenance or renewal fees or the filing of documents, applications or certificates or any responses to office actions. Section 3.12(a) of the Company Disclosure Schedule also sets forth a list of all (A) material unregistered and common law Trademarks used by the Company or its Subsidiaries, (B) material unregistered Copyrights for which an application has not been filed, excluding Company Software, (C) material unregistered designs for which an application has not been filed and (D) all actual or, to the Knowledge of the Company, threatened Legal Proceedings before any court, tribunal or other Governmental Authority related to any of the foregoing in (A) through (C).

(b) Each of the Company Intellectual Property Registrations is valid, enforceable and subsisting, all necessary registration, maintenance and renewal fees due as of the date of this Agreement in connection with such Company Intellectual Property Registrations have been made and all necessary documents, recordations and certificates in connection with such Company Intellectual Property Registrations have been filed with the relevant Governmental Authorities in the United States or other jurisdictions, as the case may be, for the purposes of prosecuting, perfecting and maintaining such Company Intellectual Property Registrations. There are no materials, information, facts or circumstances, including any materials, information, facts or circumstances that would constitute prior art, that would render any of the Company Intellectual Property Registrations invalid or unenforceable or that would materially affect any pending applications for any Company Intellectual Property Registrations. All applications for Company Intellectual Property Registrations have been prosecuted in compliance with all applicable rules, policies and procedures of the relevant Governmental Authorities of the United States or other jurisdictions (as applicable) for prosecution of applications for issuance or registration of Intellectual Property. There are no Legal Proceedings, including interference, derivation, reexamination, inter partes review, covered business method review, reissue, opposition, nullity or cancellation proceedings, pending for or involving any of the Company Intellectual Property Registrations, and, to the Knowledge of the Company, no such Legal Proceedings are threatened or contemplated by any Governmental Authority or any other Person. No issuance or registration obtained and no application filed by the Company or its Subsidiaries has been cancelled, abandoned, allowed to lapse or not renewed, except where the Company or its Subsidiaries have in reasonable business judgment decided to cancel, abandon, allow to lapse or not renew such issuance, registration or application.

(c) No Owned Company Intellectual Property or Company Products are subject to any Legal Proceeding or Order restricting any use, transfer or licensing of such Owned Company Intellectual Property or Company Products by the Company or that affects the validity, use or enforceability of such Owned Company Intellectual Property. To the Knowledge of the Company, no Licensed Company Intellectual Property included in any Company Product or otherwise used or held for use by the Company or its Subsidiaries is subject to any Legal Proceeding or Order restricting any use, transfer or licensing of



such Licensed Company Intellectual Property or Company Product by the Company or its Subsidiaries or that affects the validity, use or enforceability of such Licensed Company Intellectual Property.

(d) The Company owns, and has good and exclusive title to, all Owned Company Intellectual Property free and clear of any Liens and all Owned Company Intellectual Property is fully paid and not subject to any payments. All Owned Company Intellectual Property is fully transferable, alienable and licensable by the Company and can be amended and modified, in each case, without restriction and without payment of any kind to any Person.

(e) The Company and its Subsidiaries have a valid and enforceable license or other right to use, practice and exploit all Licensed Company Intellectual Property and all Owned Company Intellectual Property exclusively licensed to the Company and its Subsidiaries in the manner in which the foregoing Intellectual Property has been used, practiced and exploited, is being used, practiced or exploited or is intended by the Company and its Subsidiaries to be used, practiced or exploited by the Company and its Subsidiaries. Neither the Company nor any of its Subsidiaries use, practice or exploit any Intellectual Property in connection with its business as currently conducted other than the Owned Company Intellectual Property and the Licensed Company Intellectual Property.

(f) No Person other than the Company has any ownership interest in or exclusive rights to any Intellectual Property used in the Company Products (other than Licensed Company Intellectual Property) or any Owned Company Intellectual Property or any improvements made by or for the Company to any Company Products or any Owned Company Intellectual Property.

(g) Neither the Company nor any of its Subsidiaries have (i) transferred ownership of, or granted any exclusive license or exclusive right under or with respect to, or authorized the retention of any exclusive right with respect to or joint ownership of, any Intellectual Property that is or was at any time owned or purported to be owned by the Company or its Subsidiaries to any other Person, (ii) permitted the Company or its Subsidiaries' rights in any Owned Company Intellectual Property to lapse or enter the public domain or (iii) granted to any Person any right to bring any claim or cause of action arising out of or related to infringement, misappropriation or violation of any Owned Company Intellectual Property.

(h) Neither the Company nor any of its Subsidiaries have made, directly or indirectly, any commitments, promises, submissions, suggestions, statements or declarations to any standards-setting bodies, industry groups or other similar organizations ("**Standards Organizations**") (including any commitments, promises, submissions, suggestions, statements or declarations that would obligate the Company or its Subsidiaries to grant licenses to any Person or otherwise impair or limit the Company or its Subsidiaries' control of any Owned Company Intellectual Property), (ii) neither the Company, its Subsidiaries, nor any Company Intellectual Property is subject to any membership agreements, bylaws, practices or policies of any Standards Organization (including with respect to licensing or non-assertion or any obligation or requirement that would impair or limit the Company or its Subsidiaries' control of any Owned Company Intellectual Property), (iii) no Company Intellectual Property has been identified by the Company, its Subsidiaries, or, to the Knowledge of the Company, any other Person as essential to any Standards Organization or any standard promulgated by any Standards Organization and (iv) no Company Intellectual Property is essential to any Standards Organization or any standard promulgated by any Standards Organization. Neither the Company nor any of its Subsidiaries implement any standard or specifications in any Company Products that would require the grant of a Patent license to any Person.

(i) The Company and its Subsidiaries have required each current and former director, officer, employee, independent contractor and consultant of the Company and its Subsidiaries who has contributed to the creation or development of any Company Products or Intellectual Property for or on behalf of the Company or its Subsidiaries to sign a valid, binding and enforceable agreement that includes

(i) confidentiality obligations in favor of the Company and (ii) an irrevocable, present assignment to the Company of all right, title and interest in and to all Intellectual Property created or developed by such Person in the scope of such Person's employment by or engagement with the Company (including the rights to transfer, license, amend and modify such Intellectual Property) (collectively, the "***Invention Assignment Agreements***"). The Company has made available to Buyer true, correct and complete copies of all Invention Assignment Agreements. No current or former director, officer, employee, contractor or consultant of the Company or its Subsidiaries has ever excluded any Intellectual Property from any Invention Assignment Agreement executed by such Person in connection with such Person's employment by or engagement with the Company or its Subsidiaries. Section 3.12(i) of the Company Disclosure Schedule sets forth a complete and accurate list of all consultants and independent contractors (individuals and entities) used by the Company or its Subsidiaries in connection with the creation or development of any Company Product or any of the Company Intellectual Property.

(j) The Company and its Subsidiaries have paid, in full, all mandatory compensation to employees, contractors and consultants in relation to all Company Intellectual Property, and neither this Agreement nor any transactions contemplated by this Agreement will result in any further amounts being payable to any current or former employees, contractors or consultants of the Company or its Subsidiaries in relation to any Company Intellectual Property.

(k) There is no Order or other governmental prohibition or restriction on the use, practice or exploitation of any Company Intellectual Property in any jurisdiction in which the Company or any of its Subsidiaries currently conducts, has conducted or currently contemplates conducting business or on the export or import of any of the Company Intellectual Property or Company Products from or to any jurisdiction.

(l) To the Knowledge of the Company, neither the operation of the Business as previously or currently conducted or as currently proposed by the Company or its Subsidiaries to be conducted (including the design, development, manufacture, having manufactured, use, import, export, sale, offering for sale, provision, reproduction, display, performance, modification, licensing, disclosure, support, maintenance or other exploitation of Company Products) nor the use, practice or exploitation of any Company Intellectual Property: (i) infringes or violates, has infringed or violated, or will infringe or violate any Intellectual Property of any Person; (ii) constitutes or results from a misappropriation or misuse of, has constituted or resulted from a misappropriation or misuse of, or will constitute or result from a misappropriation or misuse of any Intellectual Property of any Person; (iii) otherwise violates, has violated, or will violate any rights of any Person (including any right to privacy); or (iv) constitutes, has constituted, or will constitute unfair competition or trade practices. Neither the Company nor any of its Subsidiaries have received notice from any Person of any claim (A) alleging any infringement, misappropriation, misuse, violation or unfair competition or trade practices with respect to any Intellectual Property, (B) that the Company or its Subsidiaries must license from any Person or refrain from using any Intellectual Property or (C) challenging the validity, enforceability, effectiveness or ownership by the Company or its Subsidiaries of any of the Owned Company Intellectual Property. To the Knowledge of the Company, no such claim is threatened by any Person and no valid basis exists for any such claim. Neither the Company nor any of its Subsidiaries have received any opinion of counsel regarding any allegation of infringement relating to the operation of the Business or any Company Products or Owned Company Intellectual Property.

(m) Section 3.12(m)(i) of the Company Disclosure Schedule sets forth a true, correct and complete list of all Outbound Intellectual Property Contracts. None of the Outbound Intellectual Property Contracts (i) cover or apply to any Intellectual Property of any Affiliates of the Company and (ii) would, after the Closing, apply to Buyer or its Affiliates other than the Company and its Subsidiaries. Section 3.12(m)(ii) of the Company Disclosure Schedule sets forth a true, correct and complete list of all Inbound

Intellectual Property Contracts, excluding Contracts that grant to the Company or any of its Subsidiaries any license for off-the-shelf software that is available on standard terms through commercial distributors, in consumer retail stores or through online distribution sources for a license fee of less than \$25,000 in the aggregate (“*Off-the-Shelf Software*”). Neither the Company nor any of its Subsidiaries have been subjected to an audit of any kind in connection with any Inbound Intellectual Property Contracts or received any notice of any intent to conduct any such audit. The Company has made available to Buyer true, correct and complete copies of all Intellectual Property Contracts other than for Off-the-Shelf Software.

(n) No Company Products have been supplied or provided by the Company or its Subsidiaries (and neither the Company nor any of its Subsidiaries have agreed to supply or provide any Company Products) to any Person other than pursuant to the Outbound Intellectual Property Contracts. Neither the Company nor any of its Subsidiaries have received from nor provided to any Person any Intellectual Property other than pursuant to the Intellectual Property Contracts.

(o) Immediately following the Closing, the Company or its Subsidiaries will be permitted to exercise all of the rights under all Intellectual Property Contracts to the same extent the Company or its Subsidiaries would have been able to had the transactions contemplated by this Agreement not occurred and without being required to pay any additional amounts or consideration other than fees, royalties or payments that the Company would otherwise have been required to pay had such transactions not occurred.

(p) Neither this Agreement nor any transactions contemplated by this Agreement will result in any of the following under or pursuant to any Contracts to which the Company or any of its Subsidiaries is a party or by which any of the Assets are bound: (i) any Person being granted rights or access to, or the placement in or release from escrow of, any source code or other Intellectual Property, (ii) Buyer or any of its Affiliates granting to any Person any ownership interest in, or any license, covenant not to sue or right under or with respect to, any Intellectual Property or (iii) Buyer or any of its Affiliates or any of their Intellectual Property rights being bound by, or subject to, any non-compete or other restriction on the operation or scope of their respective businesses.

(q) Except as set forth on Section 3.12(q) of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries have an obligation to compensate or account to any Person for the use, practice or exploitation of any Company Intellectual Property.

(r) Section 3.12(r) of the Company Disclosure Schedule sets forth a true, correct and complete list of all (i) software owned by or developed by or for the Company or its Subsidiaries (“*Company Software*”), (ii) software not owned by the Company or its Subsidiaries that is incorporated or embedded in or bundled with any Company Software and (iii) software, firmware or other technology components not owned by the Company or its Subsidiaries that are incorporated in, provided with or used by the Company or its Subsidiaries in connection with the development, use, exploitation, support or maintenance of any Company Products.

(s) All use and distribution of Company Software, Company Products and Open Source Materials by or through the Company or its Subsidiaries is in full compliance with all Open Source Licenses applicable thereto, including all copyright notice and attribution requirements. Section 3.12(s) of the Company Disclosure Schedule sets forth a true, correct and complete list of all Open Source Materials used in any Company Software or Company Products or otherwise by the Company or its Subsidiaries, including in development or testing of any Company Software or Company Products, and (i) identifies the Open Source License applicable thereto, (ii) identifies, where available, a URL at which such Open Source Materials are available and at which such Open Source License is identified, (iii) describes the manner in which such Open Source Materials were or are used, (iv) states whether (and, if so, how) such Open Source

Materials were modified by or for the Company or its Subsidiaries, (v) states whether such Open Source Materials were distributed by or for the Company or its Subsidiaries, (vi) states whether such Open Source Materials were used, offered or made available on a hosted or similar basis by or for the Company or its Subsidiaries and (vii) describes how such Open Source Materials are integrated with or interact with the Company Software or Company Products or any portion thereof. Neither the Company nor any of its Subsidiaries have (A) incorporated or embedded any Open Source Materials into, or combined or linked any Open Source Materials with, any Company Software or Company Products or (B) distributed any Open Source Materials in conjunction with or for use with any Company Software or Company Products, except as described in Section 3.12(s) of the Company Disclosure Schedule. Neither the Company nor any of its Subsidiaries have incorporated any Copyleft Materials into any Company Software or Company Products or used any Copyleft Materials, in each case, in a manner that requires the Company Software or Company Products, any portion thereof, or any Company Intellectual Property, to be subject to Copyleft Licenses or requires the Company, any of its Subsidiaries, Buyer, or any of Buyer's Affiliates to grant any Patent license or other Patent rights.

(t) The Intellectual Property owned by or validly licensed (pursuant to an enforceable written Inbound Intellectual Property Contract) to the Company and its Subsidiaries constitutes all Intellectual Property necessary and sufficient for the Company and its Subsidiaries to conduct its business as currently conducted and as currently proposed by the Company and its Subsidiaries to be conducted (including, as applicable, the design, development, manufacture, having manufactured, use, import, export, sale, licensing or other exploitation of Company Products). None of the transactions contemplated by this Agreement will alter, impair or otherwise adversely affect any rights of the Company or its Subsidiaries in any Company Intellectual Property.

(u) Section 3.12(u) of the Company Disclosure Schedule sets forth a true, correct and complete list of all Contracts pursuant to which any Person (i) has been provided any Company Software or any software or firmware in any Company Products or (ii) has obtained or may obtain rights to receive any Company Software or any software or firmware in any Company Products, in each case, in source code form through or from the Company, its Subsidiaries, any escrow agent, or any other Person. Neither the Company nor any of its Subsidiaries have disclosed or delivered to any escrow agent or any other Person any of the source code for any Company Software or relating to any Company Intellectual Property, and no Person (other than any contractor or consultant that has executed an Invention Assignment Agreement) has any right, contingent or otherwise, to obtain access to or use any such source code. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) will, or reasonably could be expected to, result in the delivery, license or disclosure of any such source code to any Person who is not, as of the date of this Agreement, an employee of the Company or its Subsidiaries that has executed an Invention Assignment Agreement.

(v) Except as set forth on Section 3.12(v) of the Company Disclosure Schedule, no government, university, college, other educational institution, research center or non-profit institution (collectively, "*Institutions*") provided or provides facilities or funding for the creation or development of any Owned Company Intellectual Property or Company Product. No Institutions have any rights in or with respect to any Owned Company Intellectual Property or Company Products or any developments of any Intellectual Property made by any current or former employee, contractor or consultant of the Company that relate in any manner to Owned Company Intellectual Property or Company Products. No current or former employee, contractor or consultant of the Company who was or is involved in, or who contributed or contributes to, the creation or development of any Owned Company Intellectual Property has performed services for any Institution during a period of time during which such employee, contractor or consultant was also performing services for the Company or its Subsidiaries.

(w) To the Knowledge of the Company, no Person has infringed, misappropriated,

misused or violated, or is infringing, misappropriating, misusing or violating, any Owned Company Intellectual Property. Neither the Company nor any of its Subsidiaries have made any claim against any Person alleging any infringement, misappropriation, misuse or violation of any Owned Company Intellectual Property.

(x) The Company and each of its Subsidiaries has taken steps to protect and maintain the confidentiality of, and the rights of the Company and its Subsidiaries in, Confidential Information, Personal Information and Trade Secrets in accordance with industry standard practices for comparable businesses. Without limiting the foregoing, the Company and its Subsidiaries has required each current and former director, officer, employee, contractor and consultant of the Company and its Subsidiaries to execute a valid, enforceable, binding, written agreement that provides reasonable protection for such Confidential Information and Trade Secrets and all current and former directors, officers, employees, contractors and consultants of the Company and its Subsidiaries with access to such Confidential Information or Trade Secrets have executed such an agreement. All disclosures by the Company and its Subsidiaries of any such Confidential Information or Trade Secrets have been made pursuant to a written agreement that provides reasonable protection for such Confidential Information and Trade Secrets. To the Knowledge of the Company, no Person has improperly disclosed or misappropriated any Company Trade Secrets.

(y) Section 3.12(y) of the Company Disclosure Schedule sets forth a true, correct and complete list of the top ten (10) Company Products (based on the dollar amount of revenues recognized by the Company), including title and most current version and release number, for fiscal year 2023. Each Company Product conforms in all material respects to the specifications and documentation therefor and all applicable contractual commitments and express and implied warranties therefor.

(z) The Company Software is free from any defect, virus or programming, design or documentation error or corruptant that would have a material effect on the operation or use of the Company Software. None of the Company Software or Company Products contains any “back door,” “drop dead device,” “time bomb,” “Trojan horse,” “virus” or “worm” (as such terms are commonly understood in the software industry) or any other code designed or intended to have, or capable of performing or that without user intent will cause, any of the following functions: (i) disrupting, disabling, harming or otherwise impeding in any manner the operation of, or providing unauthorized access to, any software, hardware or device (including any computer, tablet computer, handheld device, disk or storage device) that is managed or otherwise operated by such Company Software, Company Products or such code, or on which such Company Software, Company Products or such code is stored or installed; (ii) damaging or destroying any data or file without the user’s consent; or (iii) sending information to the Company or any other Person without the user’s consent. None of the Company Software or Company Products (A) constitutes, contains or is considered “spyware” or “trackware” (as such terms are commonly understood in the software industry), (B) records a user’s actions without such user’s Knowledge or (C) employs a user’s Internet connection without such user’s Knowledge to gather or transmit information on such user or such user’s behavior. The Company and each of its Subsidiaries have implemented commercially reasonable procedures to mitigate against the likelihood that the Company Software or Company Products contain any virus, Trojan horse, worm or other software routines or hardware components designed to permit unauthorized access to or disable, erase or otherwise harm software, hardware or data. The Company has made available to Buyer a true, correct and complete list of all material reported errors or bugs in the Company Software and Company Products.

(aa) The Company has not received any notice or request for any Person for indemnification with respect to any claim of infringement, misappropriation, misuse or violation of any Intellectual Property, which notice or request has not been finally resolved.

(bb) The IT Systems are adequate and sufficient (including with respect to data security,

monitoring, access and other controls, working condition and capacity) for the operations of the Company and its Subsidiaries. The Company and its Subsidiaries have taken reasonable measures to preserve and maintain the performance, security and integrity of the IT Systems (and all software, information or data stored thereon). There has been no failure with respect to any IT Systems that has had a Material Adverse Effect on the operations of the Company or its Subsidiaries, to the Knowledge of the Company, there has been no unauthorized access to or use of any IT Systems (or any software, information or data stored thereon) and no customer has complained to the Company or its Subsidiaries regarding the uptime, downtime, latency or inoperability of any IT System and neither the Company nor any of its Subsidiaries have paid any service credits associated with the downtime or other failure of any IT Systems. The Company maintains reasonable plans and procedures necessary to the conduct of the Business as currently conducted and currently contemplated to be conducted without material disruption to or material interruption in the Business (collectively, the “*Backup Plans*”). The Company has not had to implement any Backup Plan as a result of any incident, event or circumstance since January 1, 2017.

### **3.13 Company Contracts.**

(a) Section 3.13(a) of the Company Disclosure Schedule sets forth the following Contracts to which the Company or any of its Subsidiaries is a party or by which it is bound (collectively, the “*Company Contracts*”):

(i) Contracts with any director, officer, employee (excluding offer letters for at-will employment), individual consultant or Affiliate of the Company in excess of \$75,000 annually, including indemnification agreements, and Contracts providing for severance, retention, change in control or other similar payments;

(ii) Shareholder agreements, investors’ rights agreements, voting agreements, voting trusts, right of first refusal and co-sale agreements, or registration rights agreements;

(iii) Contracts required to be disclosed on Section 3.12(m)(i) and Section 3.12(m)(ii) of the Company Disclosure Schedule and all other Intellectual Property Contracts, including any other Contracts relating to the acquisition, use, transfer, development or sharing of any Intellectual Property (excluding licenses for Off-the-Shelf Software);

(iv) Contracts that include any grant by the Company to any Person of any express license, right or covenant not to sue with respect to any Patents;

(v) Contracts with respect to personal property leases and Real Property Leases;

(vi) Contracts evidencing or relating to Indebtedness;

(vii) Contracts under which the Company has made advances or loans to any other Person, except for advances of business expenses of up to \$10,000 in the Ordinary Course of Business;

(viii) Contracts for the purchase or sale of goods or services by or from the Company (A) under which the Company expects to receive or pay in excess of \$100,000 during the current calendar year or (B) that include terms and conditions that deviate from the Company’s standard terms and conditions, the form of which has been made available to Buyer; *provided* that all such Contracts received by the Company from its customers that are purchase orders and not fulfilled as of 12:01 a.m. on the date of this Agreement may be provided in a customary report included as an attachment to Section 3.13(a)(viii) of the Company Disclosure Schedule;

(ix) Contracts that require performance by or to the Company or its Subsidiaries more than twelve (12) months from the date hereof, including engineering, development or ongoing support work or other service obligations by the Company or its Subsidiaries after the date of this Agreement;

(x) Contracts relating to any single or series of related capital expenditures by the Company or its Subsidiaries pursuant to which the Company or its Subsidiaries has future financial obligations in excess of \$10,000;

(xi) Contracts for (A) the sale of any of the Business or the Assets of the Company or its Subsidiaries other than in the Ordinary Course of Business, (B) the grant to any Person of any preferential rights to purchase any of the Assets or (C) the acquisition by the Company or its Subsidiaries of any operating business, properties or assets, whether by merger, purchase or sale of Equity Interests or assets or otherwise (other than Contracts for the purchase of inventory or supplies entered into in the Ordinary Course of Business);

(xii) Distributor, reseller, sales representative, marketing or advertising Contracts;

(xiii) Contracts that grant to any Person any (A) exclusive license, supply, distribution or other rights, (B) "most favored nation" rights, (C) rights of first refusal, rights of first negotiation or similar rights or (D) exclusive rights to purchase any of the Company's products or services;

(xiv) Contracts (other than employment related Contracts) providing for any minimum or guaranteed payments by the Company to any Person in excess of \$25,000 annually;

(xv) (A) Contracts for joint ventures, strategic alliances, partnerships or similar arrangements (B) Contracts that involve a sharing of revenues, profits, cash flows, expenses or Losses with other Persons; and (C) Contracts that involve the payment by the Company or any of its Subsidiaries of royalties to any other Person;

(xvi) Contracts that purport to (A) limit, curtail or restrict the ability of the Company or any of its existing or future Subsidiaries or Affiliates, including Buyer, to compete in any geographical area, market or line of business, (B) restrict the Persons to whom the Company or any of its existing or future Subsidiaries or Affiliates, including Buyer, may sell products or deliver services, (C) restrict the Persons the Company or any of its existing or future Subsidiaries or Affiliates, including Buyer, may hire or solicit for hire, or (D) otherwise restrict the Company or any of its existing or future Subsidiaries or Affiliates, including Buyer, from engaging in any aspect of its business;

(xvii) Contracts relating to any settlement agreement with respect to any Legal Proceeding, any covenant not to sue or assert, or any co-existence agreement, in each case that (A) was entered into within the past three (3) years and involves payments of consideration in excess of \$25,000; or (B) imposes material continuing obligations to any other Person outside the Ordinary Course of Business;

(xviii) Contracts with a Governmental Authority;

(xix) Contracts that contain indemnification obligations of the Company or its Subsidiaries (excluding indemnification obligations in licenses for Off-the-Shelf Software) other

than customers in the Ordinary Course of Business;

(xx) Any Contract with any labor union or any collective bargaining agreement or similar Contract with its employees;

(xxi) Contracts that require a consent to or otherwise contain a provision relating to a “change of control,” which provide for payment or acceleration of benefits or that would prohibit or delay the consummation of the transactions contemplated by this Agreement or the other Transaction Documents; or

(xxii) Any Contract that is otherwise material to the Company, its Subsidiaries, or the Business and not previously disclosed pursuant to this Section 3.13(a).

(b) Each of the Company Contracts is in full force and effect with respect to the Company and, to the Knowledge of the Company, each other party thereto, and is the legal, valid and binding obligation of the Company or its Subsidiaries, enforceable against the Company or its Subsidiaries in accordance with its terms. Neither the Company nor any of its Subsidiaries is in default or breach under the terms of any Company Contract, nor, to the Knowledge of the Company, does any condition exist that, with or without notice or lapse of time or both, would constitute a default or breach thereunder by the Company or its Subsidiaries. To the Knowledge of the Company, no other party to any Company Contract is in default or breach thereunder, nor, to the Knowledge of the Company, does any condition exist that with or without notice or lapse of time or both would constitute a default or breach by any such other party thereunder. As of the date of this Agreement, neither the Company nor any of its Subsidiaries have received any notice of termination or cancellation under any Company Contract, received any notice of breach or default in any material respect under any Company Contract or granted to any third party any rights, adverse or otherwise, that would constitute a breach of any Company Contract. The Company has made available to Buyer true, correct and complete copies of all written Company Contracts (or a written description of the material terms of any Company Contract that is not written).

### **3.14 Employee Benefit Plans.**

(a) Section 3.14(a) of the Company Disclosure Schedule sets forth a correct and complete list of (i) all “employee benefit plans” (as defined in Section 3(3) of ERISA, whether or not subject to ERISA), (ii) all other employee benefit plans, policies, agreements or arrangements, and (iii) all employment, individual consulting or other compensation agreements, bonus, commission or other incentive compensation, pension, contribution, gratuity, jubilee, stock purchase, equity or equity-based compensation, deferred compensation, change in control, retention, severance, sick leave, vacation, recreation, pension contributions, loans, salary continuation, welfare, health, vision, dental, disability, life insurance, educational assistance, vacation, sick leave or other paid time off, and fringe benefit plans, policies, agreements or arrangements, in each case, whether written or unwritten, for the benefit of current or former employees, officers, individual consultants, individual independent contractors or directors of the Company or its Subsidiaries or with respect to which the Company or its Subsidiaries has any Liability, contingent or otherwise (collectively, the “**Company Plans**”). For the avoidance of doubt, the term “Company Plan” includes any employee benefit plan, policy, program or arrangement that covers, is provided or made available to, any current or former employee, officer, director, retiree, independent contractor or consultant of the Company or its Subsidiaries pursuant to or under a professional employer organization relationship.

(b) True, correct and complete copies of the following documents with respect to each of the Company Plans have been made available to Buyer to the extent applicable: (i) all Company Plans and all sub-plans and trust documents, administrative service agreements, insurance contracts or other



funding arrangements, and amendments related thereto, (ii) the three most recent Forms 5500 and all schedules thereto, (iii) the three most recent actuarial reports, if any, (iv) the most recent IRS determination or opinion letter, (v) all discrimination tests, as applicable, for the three most recent plan years, (vi) the most recent summary plan descriptions required under ERISA or similar applicable Law together with all summaries of material modification thereto, (vii) all correspondence with any Governmental Authority and (viii) written summaries of all unwritten Company Plans.

(c) The Company Plans have been established, administered, funded and maintained in all material respects in accordance with their terms and with all applicable provisions of ERISA, the Code and other applicable Laws. All material benefits, contributions and premium payments required to have been made under any of the Company Plans or by applicable Law (without regard to any waivers granted under Section 412 of the Code), have been timely made in accordance with the terms of the Company Plans, applicable Law and accounting principles, and all benefits accrued under any unfunded Company Plan have been paid, accrued or otherwise adequately reserved to the extent required by, and in accordance with GAAP. Each Company Plan that is an “employee benefit plan” (as defined in Section 3(3) of ERISA) can be amended, terminated or otherwise discontinued after the Closing in accordance with its terms without material Liability to Buyer, the Company or any of their Affiliates other than ordinary administrative expenses typically incurred in a termination event. The Company and its Subsidiaries have no commitment or obligation and have not made any representations to any employee, officer, director, independent contractor or consultant, whether or not legally binding, to adopt, amend, modify or terminate any Company Plan in connection with the consummation of the transactions contemplated by this Agreement or otherwise.

(d) Each Company Plan that is intended to be tax qualified under Section 401(a) of the Code is so qualified and has received, is covered by or has applied for a favorable and current determination or opinion letter from the IRS, and any trusts intended to be exempt from federal income taxation under the Code are so exempt. To the Company’s Knowledge, there are no facts or circumstances that would reasonably be expected to cause the loss of such qualification or exemption, or the imposition of any material Liability, penalty or Tax under ERISA or the Code or any other applicable Law.

(e) Neither the Company or any of its Subsidiaries nor any other entity which, together with the Company or any of its Subsidiaries, would be treated as a single employer under Section 4001 of ERISA or Section 414 of the Code (an “*ERISA Affiliate*”) has any Liability in respect of or has ever sponsored, maintained, contributed to, been required to contribute to or had any Liability in respect of (i) any defined benefit plan (as defined in Section 3(35) of ERISA), (ii) any plan subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA, or (iii) a “multiemployer plan,” as defined in Section 3(37) of ERISA. No Company Plan is (i) a multiple employer plan as defined in Section 210 of ERISA or Section 413(c) of the Code, (ii) a self-insured “group health plan” (as defined under Section 5000(b)(1) of the Code), (iii) a “voluntary employees’ beneficiary association” (as defined under Section 501(c)(9) of the Code), or (iv) a multiple employer welfare arrangement within the meaning of Section (40)(A) of ERISA.

(f) No Company Plan provides for, and neither the Company nor any of its Subsidiaries has incurred any Liability in respect of, post-employment life or health insurance benefits or coverage for any current or former employee, consultant, independent contractor or director or any beneficiary thereof, except as may be required under Part 6 of the Subtitle B of Title I of ERISA, or similar state or foreign Laws.

(g) Except as set forth on Section 3.14(g) of the Company Disclosure Schedule, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby (either alone or in combination with any other event) will (i) result in any payment becoming due to any current or former employee, consultant, independent contractor or director of the Company or its Subsidiaries, (ii) increase the compensation or benefits payable, including equity benefits, under, or result

in any other material obligation pursuant to any Company Plan, (iii) result in the acceleration of the time of payment, funding or vesting of any such compensation or benefits, including equity benefits, under any such Company Plan or otherwise, (iv) require any contributions or payments to fund any obligations under any Company Plan or (v) create any limitation or restriction on the right of the Company to merge, amend or terminate any Company Plan.

(h) The Company and each of its Subsidiaries have complied in all material respects with all applicable requirements of the Patient Protection and Affordable Care Act of 2010, as amended, and all regulations thereunder (together, the “ACA”), as well as any similar provisions of state or local law, including all requirements relating to eligibility waiting periods and the offer of or provision of minimum essential coverage that is compliant with Section 36B(c)(2)(C) of the Code and the regulations issued thereunder to full-time employees as defined in Section 4980H(c)(4) of the Code and the regulations issued thereunder. No excise tax or penalty under the ACA, including Sections 4980D and 4980H of the Code, is outstanding, has accrued, or has arisen with respect to any period prior to the Closing, with respect to any Company Plan. The Company and each of its Subsidiaries and each Company Plan has complied in all material respects with COBRA, FMLA, HIPAA, the Women’s Health and Cancer Rights Act of 1998, the Newborns’ and Mothers’ Health Protection Act of 1996, and any similar provisions of state Law applicable to its employees.

(i) Except as set forth on Section 3.14(i) of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries have ever maintained, established, sponsored, participated in, contributed to, or been required to contribute to, any International Employee Plan. Each International Employee Plan has been maintained and administered in all material respects in accordance with its terms and all applicable Laws, (ii) meets all requirements for such treatment if intended to qualify for special Tax treatment, and (iii) is fully funded and/or book reserved, as appropriate, based on reasonable actuarial assumptions. Neither the Company nor its Subsidiaries have ever sponsored any defined benefit pension plans.

(j) There are no pending Legal Proceedings arising from or relating to the Company Plans (other than routine benefit claims), and to the Company’s Knowledge no facts exist that would reasonably be expected to form the basis for any such Legal Proceeding.

(k) Each Company Plan providing for deferred compensation that constitutes a “nonqualified deferred compensation plan” (as defined in Section 409A(d)(1) of the Code and the regulations promulgated thereunder) is, and has been, established, administered and maintained in material compliance with the requirements of Section 409A of the Code and the regulations promulgated thereunder (“**Section 409A**”).

(l) No Person holds an Equity Interest in the Company that is non-transferable and subject to a substantial risk of forfeiture within the meaning of Section 83 of the Code with respect to which a valid election under Section 83(b) of the Code has not been timely made.

(m) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby (either alone or in combination with any other event) will give rise to the payment of any amount that is an “excess parachute payment” within the meaning of Section 280G of the Code.

(n) There is no Company Plan or Contract by which the Company is bound to compensate any Person for excise Taxes paid pursuant to Section 4999 of the Code or for any Tax paid as a result of Section 409A of the Code.

### **3.15 Labor.**

(a) Section 3.15(a) of the Company Disclosure Schedule sets forth a true, correct and complete list of all employees and independent contractors currently performing services for the Company and its Subsidiaries, and information indicating whether the Person is an employee or independent contractor and, as applicable, each Person's title, work location, employing or engaging entity, date of hire or engagement, exempt or non-exempt classification, compensation and benefits (including for each employee, whether the individual is paid on an hourly or salary basis), average hours worked per week, accrued but unused sick and vacation leave or paid time off, with respect to employees in Singapore whether they are Part IV Employment Act employees, and whether the employee is on a leave of absence and the type of such leave (including the anticipated return to work date). As of the date of this Agreement, no director, officer, group of employees, consultant or independent contractor of the Company or its Subsidiaries has provided written notice that it intends to terminate his, her or their employment, consulting, or independent contractor relationship. Except as set forth in Section 3.15(a) of the Company Disclosure Schedules, all independent contractors have signed a written consulting agreement with the relevant Company entity.

(b) No employees are or have ever been represented by any labor organization with respect to their employment with the Company or its Subsidiaries. Neither the Company nor any of its Subsidiaries is, or has never been, a party to or bound by any labor or collective bargaining agreement or represented by any labor organization and there are no labor or collective bargaining agreements that pertain to employees of the Company or its Subsidiaries.

(c) No labor organization or group of employees of the Company or its Subsidiaries has made a demand for recognition, and there are no representation proceedings or petitions seeking a representation proceeding presently pending or, to the Knowledge of the Company, threatened to be brought or filed, with the National Labor Relations Board or other labor relations tribunal and no such proceedings have occurred since January 1, 2017. There is no organizing activity involving the Company or its Subsidiaries pending or, to the Knowledge of the Company, threatened by any labor organization or group of employees of the Company or its Subsidiaries, and none have occurred since January 1, 2017.

(d) There are no (i) strikes, work stoppages, slowdowns, lockouts or arbitrations or (ii) material grievances or other labor disputes pending or, to the Knowledge of the Company, threatened against or involving the Company or its Subsidiaries, and none have occurred since January 1, 2017. There are no unfair labor practice charges, grievances or complaints pending or, to the Knowledge of the Company, threatened by or on behalf of any employee or group of employees of the Company or its Subsidiaries, and none have occurred since January 1, 2017.

(e) The Company and each of its Subsidiaries is, and since January 1, 2017 has been, in compliance with all applicable Laws pertaining to employment and employment practices, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, health and safety, workers' compensation, leaves of absence, and unemployment insurance. All individuals characterized and treated by the Company and its Subsidiaries as exempt employees are properly classified and compensated as exempt employees under all applicable Laws, and all non-exempt employees have been paid overtime pay as required by applicable Law. There are no, and since January 1, 2017 there have been no, Claims or Legal Proceedings against the Company pending, or to the Knowledge of the Company, brought or filed or threatened to be brought or filed, by or with any Governmental Authority in connection with the employment of any current or former employee or independent contractor of the Company or its Subsidiaries, including, without limitation, any Claim relating to unfair labor practices, employment discrimination, harassment, retaliation,

equal pay, wage and hour, misclassification or any other employment related matter arising under applicable Laws. All employees of the Company and its Subsidiaries are lawfully able to work in their current work location without a work permit or visa. The Company has completed a Form I-9 for all current and former employees.

(f) No individual who has performed services for the Company or its Subsidiaries has been unlawfully excluded from participation in any Company Plan, and neither the Company nor any of its Subsidiaries have incurred, nor reasonably expect to incur, any Liability with respect to any misclassification of any Person as an independent contractor rather than as an employee under applicable wage and hour Laws, or with respect to any employee leased from another employer.

(g) No written allegations directed to the Company or, to the Knowledge of the Company, oral allegations of sexual harassment or misconduct have been made involving any current or former director, officer or employee of the Company or its Subsidiaries. The Company has not entered into any settlement agreements related to allegations of sexual harassment by any current or former director, officer or employee of the Company or its Subsidiaries.

**3.16 Litigation.** Except as set forth on Section 3.16 of the Company Disclosure Schedule, there is, and since January 1, 2017 there has been, (a) no pending or, to the Knowledge of the Company, threatened, Claim or Legal Proceeding against the Company, its Subsidiaries, or any of the Assets, Shareholders, or any director or officer of the Company with regard to their actions as such, (b) no pending or, to the Knowledge of the Company, threatened, audit, examination or investigation by any Governmental Authority against the Company, its Subsidiaries, or any of the Assets, Shareholders, or any director or officer of the Company with regard to their actions as such, (c) no pending or threatened Legal Proceeding by the Company or its Subsidiaries against any third party, (d) no settlement or similar agreement that imposes any ongoing obligation or restriction on the Company or its Subsidiaries and (e) no Order imposed or, to the Knowledge of the Company, threatened to be imposed upon the Company, its Subsidiaries, or the Assets, or any of the directors or officers of the Company with regard to their actions as such. Neither the Company nor any of its Subsidiaries have received any written notice of any audit, examination or investigation by any Governmental Authority against the Company, its Subsidiaries or any of the Assets.

### **3.17 Compliance with Laws; Permits.**

(a) The Company and each of its Subsidiaries is, and since January 1, 2017 has been, in compliance in all material respects with all Laws and Orders applicable to the Business, the Company, its Subsidiaries, and the Assets (including, for the avoidance of doubt, Environmental Laws and Privacy Laws). To the Knowledge of the Company, no condition or state of facts exists that is reasonably likely to give rise to a material violation of, or a Liability or default under, any applicable Law or Order. Neither the Company nor any of its Subsidiaries have received any written notice to the effect that a Governmental Authority or other Person claimed that the Company or its Subsidiaries were not in compliance with all Laws or Orders applicable to the Business, the Company, its Subsidiaries, and the Assets.

(b) Section 3.17(b) of the Company Disclosure Schedule contains a list of all material Permits that are required for the operation of the Business as presently conducted. The Company and its Subsidiaries hold all material Permits required for the operation of the Business as presently conducted. Neither the Company nor any of its Subsidiaries is in material default or material violation, and no event has occurred, that, with or without notice or the lapse of time or both, would constitute a material default or material violation, of any term, condition or provision of any Permit to which it is a party, to which the Business is subject or by which the Assets are bound, and to the Knowledge of the Company, there are no facts or circumstances which could form the basis for any such default or violation.

**3.18 Insurance.** Section 3.18 of the Company Disclosure Schedule sets forth a true, correct and current list of the Company and its Subsidiaries' insurance policies (including policy number, amount and type of coverage, period of coverage, and whether such policy is an occurrence policy or a claims-made policy) and fidelity bonds maintained on the Assets, or with respect to its employees or the Business. All such complete and correct insurance policies and bonds have been made available to Buyer. All such insurance policies are valid, binding and enforceable in accordance with their terms against the respective insurers and have not been subject to any lapse in coverage. All such insurance policies are in full force and effect, all premiums due and payable thereon have been paid and neither the Company nor any Affiliate of the Company is in material default with respect to its obligations under any such insurance policy. Section 3.18 of the Company Disclosure Schedule sets forth a correct and complete list of all claims made by the Company or any of its Subsidiaries (or any Affiliate thereof in connection with the Assets or the Business) under any of its insurance policies or coverage during the past three (3) years. There are no claims related to the Business, Assets or pertaining to the Company's employees pending under any of such policies as to which coverage has been questioned, denied or disputed by the underwriters of such policies, or where available insurance coverage (inclusive of defense expenses) will be exceeded or in respect of which there is an outstanding written reservation of rights. All material claims potentially covered by such policies have been properly reported to the insurer, as required by such insurance policies. The insurance policies maintained by or on behalf of the Company and its Subsidiaries are sufficient for compliance with all applicable Laws and Contracts to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries or the Assets are bound. The Company and its Subsidiaries have timely provided all notices required to be given under such insurance policies to the respective insurer with respect to all Claims and actions covered by insurance. Neither the Company nor any of its Subsidiaries has (i) received any written notice from any insurer canceling or materially amending any of such insurance policies, and no such cancellation or amendment is threatened, or (ii) failed to present any Claim, which is still outstanding under any of such insurance policies. Neither the Company nor any of its Subsidiaries has reached or exceeded its policy limits for any insurance policies in effect. No such insurance policies are written on a retrospective, audited, or similar premium basis.

**3.19 Related Party Transactions.** Except as set forth on Section 3.19 of the Company Disclosure Schedule, no Shareholder, officer, employee, director or Affiliate of any Shareholder, the Company or any entity that controls or is controlled by such Persons: (a) has any Contract with the Company or its Subsidiaries; (b) has any loans or receivables outstanding to or from the Company or its Subsidiaries other than advances of business expenses of up to \$10,000 in the Ordinary Course of Business; (c) is otherwise indebted to the Company or its Subsidiaries; (d) owns any property, real or personal, tangible or intangible, required for or used in the Business; (e) is owed any money or property by the Company or its Subsidiaries, other than wages or salary earned in the Ordinary Course of Business or (f) owns, directly or indirectly, any interest (excepting less than five percent (5%) stock holdings for investment purposes in securities of publicly held and traded companies), or is an officer, director, employee or manager, of, any Person, which is, or is engaged in business as, a competitor, supplier, distributor, or customer or client of the Company or its Subsidiaries.

**3.20 Bank Accounts.** Set forth in Section 3.20 of the Company Disclosure Schedule is a complete and correct list of each bank account or safe deposit box of the Company and each of its Subsidiaries, the names and locations of all banks in which the Company and each of its Subsidiaries has accounts or safe deposit boxes, and the names of all individual persons authorized to draw thereon or to have access thereto. No individual person holds a power of attorney to act on behalf of the Company or any of its Subsidiaries.

**3.21 Compliance with Anti-Corruption Laws.**

(a) Neither the Company nor any of its Subsidiaries, nor to the Knowledge of the

Company, any director, officer, executive, employee, representative, agent, distributor, consultant or anyone acting on its or their behalf, has during the past three (3) years: (i) violated, or engaged in any activity, practice or conduct, which would violate, any Anti-Corruption Law; (ii) used directly or indirectly, Company funds or assets for any unlawful contribution, gift, entertainment or other unlawful expense, or, directly or indirectly, made any bribe, rebate, payoff, influence payment, kickback, or other unlawful payment; (iii) established or maintained, or is maintaining, any unlawful fund of corporate monies or other properties or made any false, incomplete or misleading entries on any books or records for any purpose; or (iv) directly, or indirectly through its agents, representatives or any other Person authorized to act on its behalf, offered, promised, paid, given or authorized the payment or giving of money or anything else of value to any: Government Official or Person while knowing or having reason to believe that some portion or all of the payment or thing of value will be offered, promised or given, directly or indirectly, to a Government Official or another Person for the purpose of influencing any act or decision of such Government Official or such Person in his, her or its official capacity, including a decision to do or omit to do any act in violation of his, her or its lawful duties or proper performance of functions, or inducing such Government Official or such Person to use his, her or its influence or position with any Governmental Authority or other Person to influence any act or decision in order to obtain or retain business for, direct business to, or secure an improper advantage for, the Company or any of its Subsidiaries; or (v) been (or currently is) under administrative, civil, or criminal investigation, indictment, suspension, debarment or audit (other than a routine contract audit) by any party, in connection with alleged or possible violations of any Anti-Corruption Laws or applicable Law that prohibit bribery, corruption, fraud, money laundering or other improper payments, or (vi) received written notice from, or made a voluntary disclosure to any Governmental Authority regarding alleged or possible violations of any applicable Law that prohibits bribery, corruption, fraud, money laundering or other improper payments.

(b) The Company and each of its Subsidiaries have adopted and maintain adequate policies, procedures and controls to ensure that the Company and its Subsidiaries have complied and are in compliance with all Anti-Corruption Laws, including, at a minimum, policies and procedures relating to prevention of bribery, accounting for financial transactions, due diligence on third parties and training of personnel.

(c) Neither the Company nor any of its Subsidiaries is or has been the subject of any investigation, inquiry or Legal Proceeding by any Governmental Authority or any customer regarding any violation or alleged violation of any Anti-Corruption Law, and to the Knowledge of the Company no such investigation, inquiry or Legal Proceeding has been threatened or is pending and there are no circumstances likely to give rise to any such investigation, inquiry or Legal Proceeding.

**3.22 Brokers and Financial Advisors.** Except as set forth on Section 3.22 of the Company Disclosure Schedule, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for the Company in connection with the transactions contemplated by this Agreement or any other Transaction Document and no Person is entitled to any fee or commission or like payment in respect thereof.

**3.23 Customers and Suppliers.** Section 3.23 of the Company Disclosure Schedule lists (a) the name of the ten (10) largest suppliers (by dollar volume) of the Company and (b) the name of the ten (10) largest customers (by revenue) of the Company, in each case, during fiscal years 2022 and 2021. Since March 1, 2022, neither the Company nor any of its Subsidiaries has received notice that the Company or any of its Subsidiaries is in material breach of or material default under any Contract with any such customer or supplier or, as of the date of this Agreement, that any such customer or supplier intends to cease doing business with the Company or its Subsidiaries.

**3.24 Product Specifications; Warranties.** Each Company Product sold, licensed, distributed, delivered or otherwise provided by the Company or its Subsidiaries has been in conformity in all respects

with all applicable product specifications, contractual commitments, express and implied warranties and applicable Law, and neither the Company nor any of its Subsidiaries has any Liability (and, to the Knowledge of the Company, there is no basis for any Legal Proceeding, complaint, claim or demand against the Company or its Subsidiaries giving rise to any material Liability) for violations thereof. No Company Product is subject to any guaranty, warranty or other indemnity beyond the applicable standard terms and conditions of sale in any material respect. Section 3.24 of the Company Disclosure Schedule includes copies of the standard terms and conditions for each Company Product (containing applicable guaranty, warranty, and indemnity provisions).

**3.25 Social Media.** Section 3.25 of the Company Disclosure Schedule sets forth a true, correct and complete list of all Social Media Accounts that the Company or any of its Subsidiaries uses, operates or maintains, including in connection with marketing or promoting any Company Products. Section 3.25 of the Company Disclosure Schedule also lists, for each such Social Media Account, any account name(s), user name(s), nickname(s), display name(s), handle(s), and other identifiers registered or used by or for the Company with respect to such Social Media Account (collectively, “*Social Media Account Names*”). All use of the Social Media Accounts complies with and has complied with (i) all terms and conditions, terms of use, terms of service and other Contracts applicable to such Social Media Accounts and (ii) applicable Law. Each current and former employee, contractor and consultant of the Company and its Subsidiaries has entered into a Contract that provides that the Company or its applicable Subsidiary, and not such employee, contractor or consultant, owns and controls the Social Media Accounts and Social Media Account Names (including all associated information and content and all relationships, interactions and communications with fans, followers, visitors, commenters, users and customers) and requires such employee, contractor or consultant to relinquish to the Company or its Subsidiaries all Social Media Account Names, passwords and other log-in information for the Social Media Accounts upon termination of employment or engagement or at any other time upon Company’s or its Subsidiaries’ request.

**3.26 Environmental Matters.** The Company and each of its Subsidiaries is currently and has been in compliance with all Environmental Laws and has not, and neither the Company nor any of its Subsidiaries has received from any Person any written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements. There has been no release of Hazardous Materials in contravention of Environmental Law with respect to the Business or the Assets of the Company or its Subsidiaries or any real property currently or formerly owned, operated or leased by the Company or its Subsidiaries, and neither the Company, nor its Subsidiaries, has received a notice that any real property currently or formerly owned, operated or leased in connection with the Business (including soils, groundwater, surface water, buildings and other structure located on any such real property) has been contaminated with any Hazardous Material, which could reasonably be expected to result in a Legal Proceeding against, or a violation of Environmental Law or term of any Permit by, the Company or its Subsidiaries.

### **3.27 Compliance with Privacy Laws.**

(a) The Company, each of its Subsidiaries, and to the Knowledge of the Company, their respective vendors, processors or third parties that process Personal Information, have taken commercially reasonable measures to protect the privacy and security of the Personal Information of each individual collected by the Company or on its behalf and to maintain in confidence such Personal Information, and is in compliance with its: (i) published privacy policies, (ii) internal privacy policies and guidelines, (iii) applicable Privacy Laws, and (iv) contractual requirements or terms of use concerning processing of Personal Information to which the Company or one of its Subsidiaries is a party or otherwise bound.

(b) No Claim is pending, or to the Knowledge of the Company, has, since January 1, 2017, been threatened in writing against the Company or any of its Subsidiaries by any individual, third

party or any Governmental Authority with respect to Personal Information collected, used, processed or shared by the Company or its Subsidiaries, or held or processed by any vendor, processor, or other third party for or on behalf the Company or its Subsidiaries, alleging any violation of Privacy Laws. There has been no loss or other misuse by the Company or its Subsidiaries, or to the Company's Knowledge by any vendor, processor, or third party for or on behalf of the Company or its Subsidiaries of such Personal Information, and, to the Knowledge of the Company, no third party has had unauthorized access to or misused the Personal Information collected by the Company or its Subsidiaries, or collected by any vendor, processor, or third party for or on behalf of the Company or its Subsidiaries.

(c) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, do not and will not: (i) conflict with or result in a violation or breach of any applicable Privacy Laws or applicable published privacy policies or internal privacy policies or guidelines (as currently existing or as existing at the time during which any Personal Information was collected or processed by, for, or on behalf of the Company); or (ii) require the consent of or notice to any Person concerning such Person's Personal Information.

(d) To the extent required by applicable Privacy Laws, the Company has posted to its website and mobile application and provided or otherwise made available in connection with any Company Products or services a Company privacy policy. No disclosure or representation made or contained in any Company privacy policy has been materially inaccurate, misleading, deceptive, or in violation of any applicable Privacy Laws. Neither the Company nor any of its Subsidiaries "sell" Personal Information as defined under applicable Privacy Laws.

### **3.28 Compliance with Trade Laws.**

(a) Since October 1, 2017, the Company and its Subsidiaries have (i) obtained, and are in compliance with, all Permits, licenses, consents, authorizations, waivers, approvals, and orders required by all applicable Trade Laws; and (ii) filed with applicable Governmental Authorities all notices, registrations, declarations, reports, and other documents and records required under the Trade Laws, in each case, that failure to do so or noncompliance would result in a Material Adverse Effect.

(b) To the Knowledge of the Company, there are no pending or threatened inquiries, investigations, enforcement actions, voluntary or directed disclosures, or other claims against the Company or any of its Subsidiaries with respect to compliance with the Trade Laws.

(c) Neither Buyer nor Company are required to obtain any Governmental Authority approvals for the transfer to Buyer of any licenses or other approvals previously issued to the Company or any of its Subsidiaries pursuant to the Trade Laws, or such approvals can be obtained expeditiously without material cost.

(d) Neither the Company nor any of its Subsidiaries, officers and directors, nor, to the Knowledge of the Company, its Shareholders is subject to sanctions or other restrictions issued under applicable Trade Laws.

(e) Since October 1, 2017, the Company and its Subsidiaries have not done business directly or, to the Knowledge of the Company, indirectly with Cuba, Iran, North Korea, Syria, or Russian-occupied areas of Ukraine (including, but not limited to, Luhansk, Donetsk, and Crimea) or any person, end user, or end use subject to restriction or licensing requirements under applicable Trade Laws.

**3.29 No Other Representations and Warranties.** Except for the representations and warranties contained in this ARTICLE III (including the related portions of the Disclosure Schedules) and



the Transaction Documents, neither the Company nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of the Company, including any representation or warranty as to the accuracy or completeness of any information regarding the Company furnished or made available to Buyer (including any information, documents or material provided to Buyer, management presentations, or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Company, or any representation or warranty arising from statute or otherwise in law.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES OF BUYER AND MERGER SUB

Buyer and Merger Sub represent and warrant to the Company as follows, as of the date of this Agreement and as of the Closing:

**4.01 Organization and Power.** Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of Arizona, and Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the State of Arizona. Buyer and Merger Sub have all requisite corporate power and authority to own, lease and operate their respective properties and assets and to carry on their respective business. Buyer and Merger Sub are each in good standing in each jurisdiction in which the failure to be so qualified and in good standing would have a material adverse effect on the ability of Buyer or Merger Sub to consummate the transactions contemplated by this Agreement.

**4.02 Authorization.** Buyer and Merger Sub have all requisite corporate power and authority to execute and deliver this Agreement and each other Transaction Document to which it is a party, to perform its obligations under this Agreement and each such other Transaction Document, and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and each other Transaction Document to which it is a party, and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all requisite action on the part of Buyer and Merger Sub as applicable, and no other corporate proceedings on the part of Buyer or Merger Sub are necessary to authorize this Agreement and each such other Transaction Document, or to consummate the transactions contemplated hereby and thereby. This Agreement and each other Transaction Document to which it is a party has been duly and validly executed and delivered by Buyer and Merger Sub, as applicable, and, assuming the due authorization, execution and delivery by the other parties hereto and thereto, this Agreement constitutes, and each other Transaction Document when so executed and delivered will constitute, the legal, valid and binding obligations of Buyer and Merger Sub, enforceable against Buyer and Merger Sub in accordance with their terms.

##### **4.03 Consents; Conflicts of Third Parties.**

(a) None of the execution, delivery and performance by Buyer or Merger Sub of this Agreement and of the other Transaction Documents, nor the consummation of the transactions contemplated hereby or thereby, nor the compliance by Buyer or Merger Sub with any of the provisions hereof or thereof will (i) conflict with, or result in the breach of, any provision of the articles of incorporation or bylaws of Buyer or Merger Sub, (ii) conflict with, violate, result in the breach of, or constitute a default under any Contract to which Buyer or Merger Sub is a party or by which Buyer or Merger Sub or their respective properties or assets are bound, (iii) violate any Order applicable to Buyer or Merger Sub or (iv) conflict with or result in the violation of any applicable Law.

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Governmental Authority is required on the part of Buyer or Merger Sub in connection

with the execution, delivery and performance of this Agreement or any other Transaction Document, the compliance by Buyer or Merger Sub with any of the provisions hereof or thereof, or the consummation by Buyer or Merger Sub of the transactions contemplated hereby.

**4.04 Sufficiency of Funds.** Buyer has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Merger Consideration and consummate the transactions contemplated by this Agreement.

**4.05 Litigation.** As of the date hereof, there is no Legal Proceeding pending or, to the Knowledge of Buyer, threatened, against Buyer or its Subsidiaries seeking to prevent, enjoin, challenge or otherwise delay the transactions contemplated by this Agreement or any other Transaction Document.

**4.06 Solvency.** Upon the consummation of the transactions contemplated herein, Buyer will not be insolvent as defined in Section 101 of Title 11 of the United States Code. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated herein with the intent to hinder, delay or defraud either present or future creditors of Buyer or its Subsidiaries.

**4.07 Independent Investigation.** Buyer has conducted its own independent investigation, review, and analysis of the Business, results of operations, prospects, condition (financial or otherwise), and assets of the Company, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of the Company for such purpose (collectively, the “*Buyer’s Independent Investigation*”). Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and the Transaction Documents to which it is or will be a party and to consummate the transactions contemplated hereby, Buyer has relied solely upon its own investigation and the express representations and warranties of the Company set forth in ARTICLE III (including the related portions of the Company Disclosure Schedules) and the Transaction Documents; and (b) neither the Company or any other Person has made any representation or warranty as to the Company, or this Agreement, except as expressly set forth in ARTICLE III of this Agreement (including the related portions of the Company Disclosure Schedules).

**4.08 Broker Fees.** Except JD Merit (the fees and expenses of which will be borne by Buyer), no person has acted, directly or indirectly, as a broker, finder or financial advisor for Buyer in connection with the transactions contemplated by this Agreement or any other Transaction Document and no Person is entitled to any fee or commission or like payment in respect thereof.

**4.09 Vote Required.** Buyer, as the sole Shareholder of Merger Sub, has approved and adopted this Agreement. No other vote of the holders of any class or series of capital stock of Buyer or Merger Sub is required to adopt this Agreement and approve the transactions contemplated thereby.

**4.10 Operation of Buyer and Merger Sub.** Merger Sub was formed solely for the purpose of engaging in the transactions contemplated by this Agreement and prior to the Effective Time will have engaged in no other business activities and will have incurred no liabilities or obligations other than in connection with its organization and formation, its execution and delivery of this Agreement and the other Transaction Documents and their performance of their obligations hereunder and thereunder or in furtherance of the transactions contemplated by this Agreement. All of the issued and outstanding capital stock of Merger Sub is, and at the Effective Time will be, owned by Buyer. Except and as expressly authorized by written consent of the Company, neither Buyer nor Merger Sub, or any of their respective Affiliates, is a party to any contract or agreement, or has made or entered into any formal or informal arrangements or other understandings (whether or not binding), with any Shareholder, director, officer or other Affiliate of the Company or any of its Subsidiaries relating to, or entered into in connection with, the Transactions.

**4.11 No Additional Representations or Warranties.** The representations and warranties made by Buyer and Merger Sub in this ARTICLE IV, constitute the sole and exclusive representations and warranties of Buyer and Merger Sub to the Company in connection with the transactions contemplated hereby, and the Company understands, acknowledges and agrees that all other representations and warranties of any kind or nature expressed or implied are specifically disclaimed by Buyer and Merger Sub.

#### ARTICLE V

[RESERVED]

#### ARTICLE VI

#### CERTAIN COVENANTS

**6.01 Records.** After the Closing and for a period of seven (7) years thereafter, each party hereto shall preserve all records that are pertinent to the Business and the Company and its Subsidiaries and, upon reasonable written notice, agree to furnish, or cause to be furnished, at the requesting party's expense, to the requesting party and/or its representatives, access, during normal business hours and upon reasonable advance written notice, to such records as are reasonably necessary for financial reporting, Tax and accounting matters, compliance with Law, audits and the prosecution or defense of Claims.

**6.02 Further Assurances.** If, at any time after the Closing, any party hereto reasonably determines that further action is necessary to effectuate the transactions contemplated hereby in accordance with the terms and conditions of this Agreement, the other parties shall take or cause to be taken all such action as may be reasonably requested and execute, deliver and file, or cause to be executed, delivered and filed, all such documentation as may be reasonably requested; provided, however, that the party requesting such action shall pay the reasonable out-of-pocket costs incurred by the other party or parties taking such action.

**6.03 Confidentiality.** Each party hereto shall hold, and shall cause such party's Affiliates, directors, managers, officers, employees, consultants, contractors, agents and other representatives to hold, in confidence, all Transaction Information and all Confidential Information furnished to such party by or on behalf of another party to this Agreement in connection with the transactions contemplated by this Agreement or any other Transaction Document. Notwithstanding anything to the contrary contained in this Agreement or any other Transaction Document, (a) except as otherwise set forth in clause (b) or (c), the Company shall protect and shall not disclose or disseminate, or permit any of its Affiliates, managers, officers, employees, consultants, contractors, agents or other representatives to disclose or disseminate, any Confidential Information to any third party, (b) following the Closing (i) Buyer shall have no obligations whatsoever under the Confidentiality Agreement and (ii) all Confidential Information of the Company and its Subsidiaries as of the Closing shall constitute Confidential Information of Buyer, and (c) any party may disclose Confidential Information (i) in connection with any Legal Proceedings to enforce its rights under this Agreement or any other Transaction Document or (ii) as required by any applicable Law as determined in the reasonable judgment of such party and its outside counsel (in which case such party shall not disclose such Confidential Information without prior consultation with the other parties). "**Transaction Information**" means (a) the terms and conditions of this Agreement and the other Transaction Documents, (b) the fact that negotiations between the parties have occurred, that information about the Company and its Subsidiaries has been made available to Buyer, or that a transaction involving the parties occurred, and (c) any of the terms, conditions or other facts with respect to this Agreement and the other Transaction Documents, the transactions contemplated hereby or thereby or the negotiations relating hereto or thereto; provided, however, that Transaction Information shall not include any information that is or becomes

generally known to the public or available for use without any special knowledge by the public other than as a result of any party's breach of this Section 6.03.

**6.04 Public Announcements.** The Company shall not, and shall use its reasonable best efforts to cause its Affiliates, officers, employees, consultants, contractors, agents and other representatives not to, issue or cause publication of any press release or other public announcement or make any other public statement or disclosure (including in Social Media Accounts) with respect to any Transaction Information without the prior written consent of Buyer, which consent may be provided by Buyer in its sole and absolute discretion, except as may be required by applicable Law (in which case Buyer shall be notified in advance and consulted with on the content of any such announcement, statement or disclosure).

**6.05 Restrictive Covenants.**

(a) During the Restrictive Covenant Period, none of Steven N. Horowitz, Timothy P. Tobin (the "**Key Shareholders**") nor any of their respective Affiliates (collectively, "**Restricted Parties**") shall, directly or indirectly, own, operate, manage, invest in, or otherwise finance (including the provision of a guaranty) any Person that (i) operates a business competitive to the Company or its Subsidiaries as conducted as of the Closing Date, or (ii) is held out to the public, marketed, or advertised as providing such services, in each case, in the Restrictive Covenant Zone.

(b) During the Restrictive Covenant Period, the Restricted Parties shall not directly or indirectly, solicit or entice, or attempt to solicit or entice, any clients or customers of the Company, Buyer or any Affiliate of Buyer for purposes of diverting their business or services from the Company or its Subsidiaries, Buyer or any Affiliate of Buyer, as applicable.

(c) During the Restrictive Covenant Period, the Restricted Parties shall not directly or indirectly, solicit, induce or recruit, or attempt to solicit, induce or recruit, or cause others to solicit, induce or recruit, any person who is then, or within the preceding six (6) month period was, employed or engaged by the Company, its Subsidiaries, Buyer or an Affiliate of Buyer to terminate such employment relationship or engagement and apply for or accept employment or engagement with any Restricted Party or an Affiliate of such Restricted Party; provided, however, that the placing of general advertisements in newspapers, magazines or electronic media not specifically aimed at employees or consultants of the Company or its Subsidiaries shall not, in itself, constitute a breach of this Section 6.05(c); and provided, further, that no Restricted Party may employ or hire any such employee of the Company or its Subsidiaries who terminates his or her employment or association with the Company or its Subsidiaries and seeks employment or association with such Restricted Party (including without limitation, through any Affiliate of such Restricted Party) of his or her own volition within the six (6) months of such termination.

(d) After the Closing, each party agrees that he will not make any disparaging or negative statements to any third party about the other party, its Subsidiaries, or any Affiliate of the other party. Nothing in this Section 6.05(d) shall require any party to testify dishonestly if he is compelled by Law to provide sworn testimony about the other party, its Subsidiaries, or any Affiliate of the other party.

(e) If any Restricted Party breaches, or threatens to commit a breach of, any of the provisions of this Section 6.05, Buyer and the Company, as applicable, shall have the following rights and remedies, each of which rights and remedies shall be independent of the others and severally enforceable, and each of which is in addition to, and not in lieu of, any other rights and remedies available to Buyer and the Company:

(i) the right and remedy to have such provision specifically enforced by any court having jurisdiction or to seek an injunction or injunctions to prevent such breach or threatened

breach, without bond or other security being required, it being acknowledged and agreed that any such breach or threatened breach may cause irreparable injury to each of Buyer and the Company and that money damages may not provide an adequate remedy to Buyer and the Company; and

(ii) the right and remedy to recover from such Restricted Party all monetary damages suffered by Buyer and the Company, as the case may be, as the result of any acts or omissions constituting a breach of this Section 6.05.

(f) Each Key Shareholder acknowledges that the restrictions contained in this Section 6.05 are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this Section 6.05 should ever be adjudicated to exceed the time, geographic or other limitations permitted by applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic or other limitations permitted by applicable Law. The covenants contained in this Section 6.05 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

**6.06 Fees and Expenses.** Except as otherwise set forth in this Agreement, all fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid (either directly or, in the case of Transaction Expenses included in the definition of Indebtedness, indirectly through the adjustments to the Merger Consideration contemplated by ARTICLE I) by the party incurring such fees or expenses, whether or not the transactions contemplated hereby are consummated.

#### **6.07 Tax Matters.**

(a) All Transfer Taxes shall be borne and paid one-half (1/2) by the Shareholders on one hand and one-half (1/2) by Buyer on the other hand when due. Each party shall, at each party's expense, timely file any Tax Returns or other documents with respect to such Taxes or fees (and each party shall cooperate with respect thereto as necessary).

(b) Except as otherwise contemplated by this Agreement, the preparation and filing of any Tax Return of the Surviving Corporation or any of its Subsidiaries after the Closing shall be exclusively within the control of Buyer.

(c) Any and all existing Tax sharing agreements (whether written or not) binding upon the Company or any of its Subsidiaries shall be terminated as of the Closing Date, other than any commercial agreements the primary purpose of which is unrelated to Taxes. After such date none of the Company, its Subsidiaries, Shareholders nor any of their Affiliates and their respective representatives shall have any further rights or liabilities thereunder.

(d) To the extent permitted under applicable Law, the Company shall elect (and cause its Subsidiaries to elect) to file a Tax Return for the taxable period ending on the Closing Date; provided that if the Company or any of its Subsidiaries is required to file a Tax Return for a Straddle Period, the portion of any relevant Taxes that are allocable to the portion of the Straddle Period ending on the Closing Date for purposes of this Agreement shall be: (i) in the case of Taxes (A) based upon, or related to, income, receipts, profits, wages, capital or net worth, (B) imposed in connection with the sale, transfer or assignment of property (other than Transfer Taxes, which are addressed in Section 6.07(a) or (b), required to be

withheld, deemed equal to the amount which would be payable if the taxable year ended with the Closing Date; and (ii) in the case of other Taxes, deemed to be the amount of such Taxes for the entire Straddle Period multiplied by a fraction the numerator of which is the number of days in the portion of the Straddle Period ending on the Closing Date and the denominator of which is the number of days in the entire Straddle Period.

(e) The Shareholders and Buyer shall provide each other with such cooperation and information as either of them reasonably may request of the other in filing any Tax Return pursuant to this Section 6.07 or in connection with any audit or other proceeding in respect of Taxes of the Company. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by Taxing Authorities; provided, however, that neither any Shareholder nor Buyer (nor any of their Affiliates) shall be required to provide any portion of any Tax Return filed on an affiliated, combined, consolidated or unitary basis that does not relate to the Company or any of its Subsidiaries. The Shareholders and Buyer shall retain all Tax Returns, schedules and work papers, records and other documents in their possession relating to Tax matters of the Company and each of its Subsidiaries for any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by the other party in writing of such extensions for the respective Tax periods. Prior to transferring, destroying or discarding any Tax Returns, schedules and work papers, records and other documents in their possession relating to Tax matters of the Company or any of its Subsidiaries for any taxable period beginning before the Closing Date, the Company or Buyer (as the case may be) shall provide the other party with reasonable written notice and offer the other party the opportunity to take custody of such materials.

(f) The parties hereto agree for purposes of preparing all relevant Tax Returns relating to the Company and its Subsidiaries that Buyer will file a consolidated U.S. federal income Tax Return with the Company and its applicable Subsidiaries starting on the day following the Closing Date and the Company and its applicable Subsidiaries will become members of the affiliated group of corporations of which Buyer is the common parent or of which Buyer is a member on the day following the Closing Date.

(g) Notwithstanding anything to the contrary, without the consent of the Shareholders' Representative (not to be unreasonably withheld, conditioned or delayed), Buyer shall not, and shall cause its Affiliates (including the Company and its Subsidiaries) not to: (i) make, change or revoke any Tax election with respect to the Company and its Subsidiaries that has retroactive effect to a taxable period (or portion thereof) ending on or before the Closing Date (including any election under Section 336 or Section 338 of the Code (or any corresponding or similar provision of state, local or non-U.S. Tax Law)); (ii) amend or refile any Tax Return with respect to the Company and its Subsidiaries for a taxable period (or portion thereof) that ends on or before the Closing Date, (iii) file any Tax Return with respect to a taxable period (or portion thereof) that ends on or before the Closing Date that is materially inconsistent with past practices of the Company or any Subsidiary or (iv) compromise or settle any Tax liability of the Company and its Subsidiaries, in each case, to the extent that such action would reasonably be expected to increase the amount of any Tax liabilities for which the Key Shareholders are responsible pursuant to this Agreement, provided however, that, (x) except as set forth in clause (y) below, the covenants in this Section 6.07(g) shall survive until the Post-Closing Adjustment has been finally determined pursuant to Section 1.08 of this Agreement, and (y) if Buyer voluntarily takes any Tax reporting position with respect to any Company Options that is materially inconsistent with past practices of the Company or any Subsidiary without the prior consent of the Shareholders' Representative, excluding any such position required by Buyer's auditors or an applicable Taxing Authority, Buyer shall no longer be entitled to any indemnification by the Key Shareholders for any Company Option Losses under Section 9.02(a)(i).

6.08 **R&W Insurance.** On the date hereof, Buyer shall cause CFC Underwriting Ltd (the “*R&W Insurer*”) to conditionally bind the R&W Insurance Policy on the terms and conditions as set forth in the R&W Policy Binder Agreement (as may be amended, modified or supplemented from time to time in accordance with this Agreement). Buyer shall cause the R&W Insurance Policy to provide that the R&W Insurer has no subrogation rights, rights of contribution, rights acquired by assignment or any other similar rights against any Shareholder or Shareholders’ Representative (or any direct or indirect Shareholder, member, partner, equityholder, manager, director, officer, employee, agent, representative or attorney (or the functional equivalent of any of the foregoing) of any Shareholder or Shareholders’ Representative) except solely in the case of Fraud in the making of the representations and warranties in Article III of this Agreement (in which case the R&W Insurer shall have rights of subrogation against such Person), and Buyer will not (and will cause its Affiliates not to) amend the subrogation or third-party beneficiary provisions contained in the R&W Insurance Policy benefitting Shareholder without the prior written consent of the Shareholders’ Representative. 50% of the premium, Taxes and surplus lines fees, and underwriting fee actually paid by Buyer to obtain the R&W Insurance Policy shall be borne by the Company as a Transaction Expense, and all other premiums, underwriting fees and other fees, Taxes and expenses payable in connection with the R&W Insurance Policy shall be paid exclusively by Buyer. The Company shall cooperate in good faith with Buyer to provide any assistance and/or information reasonably necessary to procure the final R&W Insurance Policy as reasonably requested in writing by Buyer. Buyer shall cause the R&W Insurance Policy to be issued promptly after the Closing in accordance with the terms of the R&W Policy Binder Agreement) and remain in full force and effect thereafter, including complying in all material respects with and maintaining the R&W Insurance Policy in full force and effect, and satisfying on a timely basis all conditions necessary for the continuance of coverage thereunder. During the term of the R&W Insurance Policy, Buyer will not (and will cause its Affiliates not to) terminate, cancel, amend, waive or otherwise modify the R&W Insurance Policy or any of the coverage thereunder (and Buyer and its Affiliates shall not take any action or fail to take any action that could result in the foregoing).

6.09 **Medical Equipment Finance Notes.** The Key Shareholders agree to make directly, or reimburse Buyer within five (5) Business Days of receiving notice of any payment being made by Buyer or the Company following the Closing, any payments required pursuant to the Medical Equipment Finance Notes.

#### ARTICLE VII

[RESERVED]

#### ARTICLE VIII

[RESERVED]

#### ARTICLE IX

### ADDITIONAL AGREEMENTS AND COVENANTS

9.01 **General Survival.** All representations and warranties of the Company contained in, or arising out of, this Agreement or any other Transaction Document (or any certificate or other documents delivered in connection herewith or therewith) shall expire and terminate at the consummation of the transactions contemplated hereby at the Closing, and thereafter no claim may be made with respect to, or any suit or other proceeding instituted for, any breach of or inaccuracy in any such representation or warranty (and consummation of the Closing shall be deemed a waiver of any and all breaches of or inaccuracies in any such representation and warranty and all of Buyer’s rights and remedies with respect thereto, including any claim made with respect thereto prior to Closing). All covenants and agreements

contained herein to be performed prior to or at the Closing shall expire and terminate at Closing, and thereafter no claim may be made with respect to, or any suit or other proceeding instituted for, any breach of or failure to perform any such covenant or agreement (and consummation of the Closing shall be deemed a waiver of any and all breaches of or failures to perform any such covenant or agreement and all of Buyer's rights and remedies with respect thereto, including any claim made with respect thereto prior to Closing). All covenants and agreements contained in this Agreement or any other Transaction Document which by their terms are to be performed (or which prohibit actions) subsequent to the Closing Date will survive the Closing for the period expressly specified therein, and thereafter no claim may be made with respect to, or any suit or other proceeding instituted for, any breach of or failure to perform any such covenant or agreement. Notwithstanding the foregoing, this Section 9.01 shall not (x) limit any claim or recovery available to Buyer under the R&W Insurance Policy subject to Section 9.04 (y) limit any claim or recovery available to Buyer related to the indemnification obligations subject to Section 9.02 or (z) prevent or limit any claim in the case of Fraud by the Company in the making of the representations and warranties contained in ARTICLE III hereof.

#### 9.02 Special Indemnity.

(a) Subject to the applicable limitations set forth in this Article IX, from and after the Closing, the Key Shareholders (on a joint and several, pro rata basis) shall indemnify Buyer and its Affiliates harmless, from and against any and all:

- (i) Company Option Losses;
- (ii) expenses, fees, and settlements paid related to any Dissenting Shares; and
- (iii) Medical Equipment Finance Notes Losses.

(b) If Buyer or its Affiliates receive notice of the assertion or commencement of any action, suit, claim or other Legal Proceeding made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement (a "**Third-Party Claim**") against such Buyer or Affiliate with respect to which the Key Shareholders are obligated to provide indemnification under this Agreement, Buyer and its Affiliates shall give the Shareholders' Representative prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Key Shareholders of its indemnification obligations, except and only to the extent that the Key Shareholders forfeits rights or defenses by reason of such failure. Such notice by Buyer or its Affiliates shall describe the Third-Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by Buyer or its Affiliates. Shareholders' Representative shall have the right to participate in, or by giving written notice to Buyer or its Affiliates, to assume the defense of any Third-Party Claim at the Key Shareholders' expense and by the Key Shareholders' own counsel, and Buyer or its Affiliates shall cooperate in good faith in such defense. In the event that the Shareholders' Representative assumes the defense of any Third-Party Claim, it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third-Party Claim in the name and on behalf of Buyer or its Affiliates. Buyer and its Affiliates shall cooperate with each other in all reasonable respects in connection with the defense of any Third-Party Claim. Notwithstanding any other provision of this Agreement, Buyer and its Affiliates shall not enter into settlement of any Third-Party Claim without the prior written consent of the Shareholders' Representative.

(c) Any claim by Buyer or its Affiliates on account of a Loss which does not result from a Third-Party Claim (a "**Direct Claim**") shall be asserted by Buyer or its Affiliates giving the Shareholders' Representative prompt written notice thereof. The failure to give such prompt written notice shall not,



however, relieve the Key Shareholders of its indemnification obligations, except and only to the extent that the Key Shareholders forfeits rights or defenses by reason of such failure. Such notice by the Buyer or its Affiliates shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by Buyer or its Affiliates. The Shareholders' Representative shall have 30 days after its receipt of such notice to respond in writing to such Direct Claim. During such 30-day period, Buyer or its Affiliates shall allow the Shareholders' Representative and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and Buyer or its Affiliates shall assist the Shareholders' Representative's investigation by giving such information and assistance (including access to the Surviving Corporation's premises and personnel and the right to examine and copy any accounts, documents or records) as the Shareholders' Representative or any of its professional advisors may reasonably request. If the Shareholders' Representative does not so respond within such 30-day period, the Shareholders' Representative shall be deemed to have rejected such claim, in which case Buyer and its Affiliates shall be free to pursue such remedies as may be available to Buyer and its Affiliates on the terms and subject to the provisions of this Agreement.

(d) The Key Shareholders' maximum aggregate liability to Buyer and its Affiliates with respect to indemnification obligations for Liability referenced in subsection (b) of Company Option Losses pursuant to Section 9.02 shall not exceed \$150,000.

(e) In no event shall Buyer and its Affiliates be entitled to any indemnification by the Key Shareholders with respect to Liability referenced in subsection (b) of Company Option Losses pursuant to Section 9.02 for any Third-Party Claim or Direct Claim occurring on or after April 15, 2027.

**9.03 Remedies.** Notwithstanding anything expressed or implied herein to the contrary, Buyer acknowledges and agrees, on behalf of itself and its Affiliates, and following the Closing, on behalf of the Company, that no Shareholder shall have any direct or indirect liability (derivatively or otherwise) with respect to any breach of or inaccuracy in any representation or warranty contained in, or arising out of, this Agreement or any other Transaction Document (or any certificate or other documents delivered in connection herewith), except, and only to the extent that, a breach of or inaccuracy in a representation and warranty made by the Company in ARTICLE III hereof constitutes Fraud in the making of such representations and warranties, and that no claim may be made, or any suit or other proceeding instituted, by the Buyer or any of its Affiliates or the Company following the Closing against any Shareholder with respect thereto. In furtherance of the foregoing, Buyer, on behalf of itself and its Affiliates, and following the Closing, on behalf of the Company, acknowledges and agrees that, except, and only to the extent that, a breach of or inaccuracy in a representation and warranty made by the Company in ARTICLE III hereof constitutes Fraud by the Company in the making of such representations and warranties, (a) subject to Section 9.02 and 9.04, the sole and exclusive remedy of Buyer, its Affiliates, the Company following the Closing with respect to any breach of or inaccuracy in any representation or warranty contained in, or arising out of, this Agreement or any other Transaction Document (or any certificate or other documents delivered in connection herewith) shall be claims under the R&W Insurance Policy subject to Section 9.04, and (b) no Shareholder nor any of their respective Affiliates shall have any direct or indirect liability of any kind or nature with respect to the R&W Insurance Policy or any claim thereunder subject to Section 9.04. No Shareholder shall have any liability for or with respect to Fraud by another Shareholder.

**9.04 Retention Escrow Account.** Notwithstanding the foregoing, the retention under the R&W Insurance Policy shall be shared by the parties as set forth in this Section 9.04. With respect to claims for Losses by Buyer under the R&W Insurance Policy with respect to the failure of any representation or warranty of the Company in this Agreement to be true, correct and complete on the Closing Date (provided that, any such representations and warranties, which by their express terms are made solely as of a specified

earlier date shall be true, correct and complete only as of such specified earlier date) at or prior to 11:59 p.m., Pacific time, on the date that is twelve (12) months following the Closing, Buyer shall be entitled to recover such Losses (to the extent such Losses actually erode the retention under R&W Insurance Policy) from the Retention Escrow Account, but only after Buyer has incurred aggregate Losses (which Losses actually erode the retention under the R&W Insurance Policy) with respect to breaches of representations or warranties of the Company in this Agreement of at least \$166,250. Once the funds in the Retention Escrow Account have been exhausted and/or released, the sole and exclusive remedy of Buyer, its Affiliates and the Company following the Closing with respect to any breach of or inaccuracy in any representation or warranty contained in, or arising out of, this Agreement or any other Transaction Document (or any certificate or other documents delivered in connection herewith) shall be claims under the R&W Insurance Policy. For purposes of this ARTICLE IX, all materiality qualifications (such as “material” and “Material Adverse Effect”) in the representations and warranties shall be disregarded, including without limitation for (A) determining whether such breach exists and (B) calculating the amount of Losses resulting therefrom.

**9.05 Exclusive Remedy.** Except for the remedies (i) of specific performance and injunctive or other equitable relief to the extent expressly permitted in Section 10.01 and (ii) for Fraud, the remedies in this Article IX shall be the sole and exclusive remedies of the parties hereto with respect to this Agreement that arise after the Closing for any and all Claims arising under, out of, or relating to this Agreement and the transactions contemplated hereby, and no Person will have any other entitlement, remedy or recourse, whether in contract, tort or otherwise, it being agreed that all of such other remedies, entitlements and recourse are expressly waived and released by the parties to the fullest extent permitted by applicable Law.

#### **9.06 Shareholders’ Representative.**

(a) By virtue of the Necessary Shareholder Approval, the Shareholders shall be deemed to have agreed to appoint Timothy P. Tobin as their agent and attorney-in-fact, as the Shareholders’ Representative for and on behalf of the Shareholders to give and receive notices and communications, to agree to the adjustment (if any) of the Merger Consideration pursuant to the terms of the Agreement, to object to the foregoing adjustments, to agree to, negotiate, enter into settlements and compromises of, and comply with Orders with respect to such Legal Proceedings, to assert, negotiate, enter into settlements and compromises of, and comply with Orders with respect to, any other Legal Proceeding by Buyer against the Shareholders or by the Shareholders against Buyer, in each case relating to this Agreement or the transactions contemplated hereby, and to take all other actions that are either (i) necessary or appropriate in the judgment of the Shareholders’ Representative for the accomplishment of the foregoing, or (ii) specifically mandated by the terms of this Agreement. Such agency may be changed by the Shareholders from time to time upon not less than thirty (30) days prior written notice to Buyer; *provided, however*, that (A) the Shareholders’ Representative may not be removed unless all Shareholders agree to such removal and to the identity of the substituted agent and (B) the Shareholders’ Representative may resign at any time. Notwithstanding the foregoing, a resignation of the Shareholders’ Representative or other vacancy in the position of Shareholders’ Representative may be filled by an appointee of either Key Shareholder. No bond shall be required of the Shareholders’ Representative, and the Shareholders’ Representative shall not receive any compensation for his, her or its services. Notices or communications to or from the Shareholders’ Representative shall constitute notice to or from the Shareholders.

(b) The Shareholders’ Representative shall not be liable to the Shareholders for any act done or omitted hereunder as Shareholders’ Representative while acting in good faith and in the exercise of reasonable judgment. The Shareholders shall indemnify the Shareholders’ Representative and hold the Shareholders’ Representative harmless against any loss, Liability or expense incurred without gross negligence or bad faith on the part of the Shareholders’ Representative and arising out of or in connection with the acceptance or administration of the Shareholders’ Representative’s duties hereunder, including the

reasonable fees and expenses of any legal counsel retained by the Shareholders' Representative. A decision, act, consent or instruction of the Shareholders' Representative, including an amendment, extension or waiver of this Agreement pursuant to the terms of this Agreement, shall constitute a decision of the Shareholders and shall be final, binding and conclusive upon the Shareholders, and Buyer may rely upon any such decision, act, consent or instruction of the Shareholders' Representative as being the decision, act, consent or instruction of the Shareholders.

**9.07 Entrepix Medical.** Following the Closing and through May 31, 2026, the Surviving Corporation shall use its reasonable best efforts to maintain, operate and manage its working relationship with Entrepix Medical in accordance with the terms of the Medical MSA, as amended, consistent in all respects with the past practices of the Company, and the Merger and the transactions contemplated herein shall not materially affect such relationship with Entrepix Medical, including without limitation, with respect to any areas utilized by Entrepix Medical (including such areas used for manufacturing) and access thereto, except with the prior written approval of the Shareholders' Representative; provided however, that (i) the Surviving Corporation shall use its reasonable best efforts to protect the Trade Secrets of Entrepix Medical consistent with the past practices of the Company (and in no event shall the Surviving Corporation use efforts less than those used by Buyer to protect its own Trade Secrets); and (ii) all obligations of Buyer and the Surviving Corporation under this Section 9.07 are contingent on the continued compliance in all material respects with Section 6.05, Section 6.09 and Section 9.02 of this Agreement by the Key Shareholders, provided that any non-compliance shall be evidenced by the filing for an injunction or other Legal Proceeding by the Surviving Corporation or Buyer as described in Section 10.01 and Section 10.02 below.

## ARTICLE X

### MISCELLANEOUS

**10.01 Specific Performance.** The parties hereto agree that irreparable damage would occur in the event that any of the covenants of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties hereto shall be entitled to seek an injunction or injunctions to prevent breaches of the covenants of this Agreement and to enforce specifically the covenants of this Agreement in the state courts or federal courts sitting in the State of Arizona, without bond or other security being required, this being in addition to any other remedy to which they are entitled at Law or in equity.

**10.02 Governing Law; Jurisdiction; Service of Process.** This Agreement shall be governed by and construed in accordance with the Laws of the State of Arizona without giving effect to the principles of conflicts of law thereof. Each party hereto hereby irrevocably submits to (a) the exclusive jurisdiction of the state courts or federal courts sitting in the State of Arizona, for purposes of any action, suit or other Legal Proceeding arising out of this Agreement and the transactions contemplated hereby, and (b) the exclusive venue of such action, suit or other proceeding in the State of Arizona. The parties hereto irrevocably waive, to the fullest extent permitted by applicable Law, any objection that they may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Each party hereto further agrees that service of process may be effected by mailing a copy of such process by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such party at its address as provided in Section 10.06.

**10.03 Entire Agreement; Amendments and Waivers.** This Agreement, the Company Disclosure Schedule and the other Transaction Documents (including the schedules and exhibits hereto and thereto) represent the entire understanding and agreement between the parties hereto with respect to the

subject matter hereof and thereof and can be amended, supplemented or changed, and any provision hereof or thereof can be waived, only by written instrument making specific reference to this Agreement or such other Transaction Document, as applicable, signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement or any other Transaction Document, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

**10.04 No Third Party Beneficiaries.** This Agreement, the Company Disclosure Schedule and the other Transaction Documents (including the schedules and exhibits hereto and thereto) are not intended to, and shall not, confer upon any other Person any rights or remedies hereunder.

**10.05 Notices.** All notices, requests and other communications to any party hereunder shall be in writing and shall be deemed given (a) when delivered or sent if delivered in person or sent by facsimile transmission (provided confirmation of facsimile transmission is obtained), (b) on the third (3rd) Business Day after dispatch by registered certified mail, (c) on the next Business Day if transmitted by national overnight courier or (d) on the date delivered if sent by email (provided confirmation of email receipt is obtained), in each case as follows:

If to Shareholders' Representative, to:

Timothy P. Tobin  
7910 South Juniper Street  
Tempe, Arizona 85284  
Email: TTobin@planatome.com

With a copy to:

Greenberg Traurig, LLP  
2375 East Camelback Road, Suite 800  
Phoenix, Arizona 85016  
Attention: Brian H. Blaney  
Email: blaneyb@gtlaw.com

If to Buyer, to:

Amtech Systems, Inc.  
131 South Clark Dr.  
Tempe, AZ 85288  
Attention: Chief Financial Officer  
Email: lgibbs@amtechsystems.com

With a copy to:

DLA Piper LLP (US)  
2525 E. Camelback Road, Suite 1000  
Phoenix, Arizona 85016  
Attention: Greg Hall  
Email: Greg.Hall@us.dlapiper.com

**10.06 Severability.** If any term or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other terms, provisions and conditions of this Agreement shall nevertheless 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 by this Agreement is not affected in any manner adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable Law in an acceptable manner to the end that the transactions contemplated by this Agreement are fulfilled to the extent possible.

**10.07 Assignment; Binding Effect.** Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of Law or otherwise, by any of the parties hereto without the prior written consent of each other party hereto, except that Buyer may assign, in its sole discretion, any or all of its rights, interests and obligations under this Agreement to one (1) or more of its Affiliates, but no such assignment shall relieve Buyer of any of its obligations hereunder. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns. Any purported assignment not permitted under this Section 10.07 shall be null and void.

**10.08 Counterparts.** This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one (1) and the same agreement. The exchange of a fully executed Agreement (in counterparts or otherwise) by electronic transmission in .PDF format or by facsimile shall be sufficient to bind the parties to the terms and conditions of this Agreement.

**10.09 Conflict Waiver; Attorney-Client Privilege.**

(a) Each of the parties hereto acknowledges and agrees, on its own behalf and on behalf of its directors, members, shareholders, partners, officers, employees and Affiliates, that:

(i) Greenberg Traurig, LLP has acted as counsel to the Company in connection with the negotiation, preparation, execution and delivery of this Agreement, the other Transaction Documents and the consummation of the transactions contemplated hereby. Buyer agrees, and shall cause the Company to agree, that, following consummation of the transactions contemplated hereby, such representation and any prior representation of the Company by Greenberg Traurig (or any successor) ("**Seller Group Law Firm**") shall not preclude Seller Group Law Firm from serving as counsel to the Shareholders or any director, member, shareholder, partner, officer or employee of the Shareholders, in connection with any litigation, claim or obligation arising out of or relating to this Agreement or the transactions contemplated hereby.

(ii) Buyer shall not, and shall cause the Company not to, seek or have Seller Group Law Firm disqualified from any such representation based on the prior representation of the

Company by Seller Group Law Firm. Each of the parties hereto hereby consents thereto and waives any conflict of interest arising from such prior representation, and each of such parties shall cause any of its Affiliates to consent to waive any conflict of interest arising from such representation. Each of the parties acknowledges that such consent and waiver is voluntary, that it has been carefully considered, and that the parties have consulted with counsel or have been advised they should do so in connection herewith. The covenants, consent and waiver contained in this Section 10.09 shall not be deemed exclusive of any other rights to which Seller Group Law Firm is entitled whether pursuant to Law, contract or otherwise.

(b) All communications between the Shareholders or the Company, on the one hand, and Seller Group Law Firm, on the other hand, relating to the negotiation, preparation, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby (the “*Privileged Communications*”) shall be deemed to be attorney-client privileged and the expectation of client confidence relating thereto shall belong solely to the Shareholders and shall not pass to or be claimed by Buyer or the Company. Accordingly, Buyer and the Company shall not have access to any Privileged Communications or to the files of Seller Group Law Firm relating to such engagement from and after Closing and may not use or rely on any Privileged Communications in any Legal Proceeding against or involving any of the Shareholders. Without limiting the generality of the foregoing, from and after the Closing, (i) the Shareholders (and not Buyer or the Company) shall be the sole holders of the attorney-client privilege with respect to such engagement, and none of Buyer or the Company shall be a holder thereof, (ii) to the extent that files of Seller Group Law Firm in respect of such engagement constitute property of the client, only the Shareholders (and not Buyer nor the Company) shall hold such property rights and (iii) Seller Group Law Firm shall have no duty whatsoever to reveal or disclose any such attorney-client communications or files to Buyer or the Company by reason of any attorney-client relationship between Seller Group Law Firm and the Company or otherwise. Notwithstanding the foregoing, in the event that a dispute arises between Buyer or its Affiliates (including the Company), on the one hand, and a third-party other than any of the Shareholders, on the other hand, Buyer and its Affiliates (including the Company) may assert the attorney-client privilege to prevent disclosure of confidential communications to such third-party; provided, however, that neither Buyer nor any of its Affiliates (including the Company) may waive such privilege without the prior written consent of the Shareholders’ Representative, which consent shall not be unreasonably withheld, conditioned or delayed. In the event that Buyer or any of its Affiliates (including the Company) is legally required by Governmental Order or otherwise legally required to access or obtain a copy of all or a portion of the Privileged Communications, to the extent (x) permitted by applicable Law, and (y) advisable in the opinion of Buyer’s counsel, then Buyer shall immediately notify the Shareholders’ Representative in writing so that Shareholders’ Representative can seek a protective Order.

This Section 10.09 is intended for the benefit of, and shall be enforceable by, the Seller Group Law Firm. This Section shall be irrevocable, and no term of this Section may be amended, waived or modified, without the prior written consent of Seller Group Law Firm.

## ARTICLE XI

### DEFINITIONS

11.01 Certain Definitions. The following terms shall have the following meanings:

“*Affiliate*” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such Person, and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise. For

the avoidance of doubt, Entrepix Medical, LLC, a Delaware limited liability company ("**Entrepix Medical**"), shall not constitute an "Affiliate" of the Company.

"**Aggregate Fully Diluted Shares**" means the sum of (i) the aggregate number of shares of Common Stock issued and outstanding immediately prior to the Effective Time, plus (ii) the aggregate number of shares of Common Stock issuable upon the exercise in full of all Company Options outstanding as of immediately prior to the Effective Time; provided that, for the avoidance of doubt, in no event shall Aggregate Fully Diluted Shares include any shares held in the treasury of the Company as contemplated by Section 1.04.

"**Anti-Corruption Law**" means the United States Foreign Corrupt Practices Act of 1977 (FCPA), as amended, and any applicable anti-corruption Laws in the jurisdictions in which the Company does business.

"**Assets**" means all of the Company's and its Subsidiaries' rights, assets and properties of every kind and nature that are used in the operation of the Business by the Company and its Subsidiaries, including all property, tangible and intangible, real, personal or mixed, inventory, Intellectual Property, accounts receivable, prepayments, Contracts, Claims, Permits and records of the Company and its Subsidiaries.

"**Base Merger Consideration**" means \$35,000,000.

"**Business**" means the CMP technology, wafer cleaning, and supporting services business in the semiconductor industry conducted by the Company and any of its Subsidiaries in the semiconductor industry, including, without limitation, the Company Products and all related services. For avoidance of doubt, the term "Business," shall not include services provided by Entrepix Medical.

"**Business Day**" means a day except a Saturday, a Sunday or other day on which the SEC or banks in New York, New York, are authorized or required by Law to be closed.

"**CARES Act**" means the Coronavirus Aid, Relief and Economic Security Act, as amended.

"**Cash**" means all unrestricted cash as of the Closing, which for the avoidance of doubt shall not include any cash that cannot be legally repatriated from foreign subsidiaries without withholding taxes or other tax costs, and cash equivalents of the Company and its Subsidiaries.

"**Closing Adjustment Escrow Amount**" means \$350,000 to be held by the Escrow Agent in the Closing Adjustment Escrow Account in accordance with the terms of this Agreement and the Escrow Agreement.

"**Closing Common Stock Per Share Merger Consideration**" means, as of any time of determination, an amount equal to the quotient determined by dividing (i) the Estimated Merger Consideration by (ii) the Aggregate Fully Diluted Shares.

"**Closing Current Assets**" means all Current Assets as of the Closing.

"**Closing Current Liabilities**" means all Current Liabilities as of the Closing.

"**Closing Indebtedness**" means all Indebtedness of the Company and its Subsidiaries as of the Closing.

“**Closing Net Working Capital**” means an amount equal to (a) the Closing Current Assets *minus* (b) the Closing Current Liabilities.

“**Closing Net Working Capital Shortfall**” means the amount by which the Closing Net Working Capital is less than the Working Capital Threshold.

“**Closing Net Working Capital Surplus**” means the amount by which the Closing Net Working Capital is greater than the Working Capital Threshold.

“**Closing Option Per Share Merger Consideration**” means, in respect of each share of Common Stock issuable upon exercise of any particular Company Option, the excess, if any, of (i) the Closing Common Stock Per Share Merger Consideration minus (ii) the applicable exercise price to acquire such share of Common Stock pursuant to such Company Option.

“**Closing Transaction Expenses**” means the Transaction Expenses of the Company and its Subsidiaries unpaid and outstanding as of the Closing.

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

“**Company Intellectual Property**” means Licensed Company Intellectual Property and Owned Company Intellectual Property.

“**Company Intellectual Property Registrations**” means all of the registrations with a Governmental Authority (including the United States Patent and Trademark Office, the United States Copyright Office or any other such office in any country or jurisdiction) or Internet domain name registrar for Intellectual Property owned by or under obligation of assignment to and all applications filed in the name of the Company and its Subsidiaries for any Intellectual Property owned or purported to be owned by the Company and its Subsidiaries.

“**Company Option**” means any option to purchase shares of capital stock of the Company issued by the Company, whether pursuant to the Company Incentive Plans or otherwise.

“**Company Option Losses**” means all Liability related to (a) a claim by any holders of Company Options to any rights of ownership in the Surviving Corporation subsequent to the Closing, and (b) any Liability related to the treatment of Company Options, including but not limited to any adverse tax or accounting consequences that, in either case of this clause (b), result in actual cash losses to the Buyer.

“**Company Products**” means all products and services that have been or are currently offered, distributed or under development by the Company or its Subsidiaries.

“**Confidential Information**” means all information constituting or relating to Intellectual Property, Company Products, product development, price, customer and supplier lists, pricing and marketing plans, policies and strategies, details of client and consultant contracts, operations methods, product development techniques, business acquisition plans or new personnel acquisition plans and all other confidential or proprietary information with respect to a party and its customers and vendors; provided, however, that “**Confidential Information**” shall not include (a) issued Patents and published Patent applications or (b) information that is or becomes generally available to the public or general industry knowledge through no action or inaction by the Company or its Subsidiaries.

“**Contract**” means any currently effective contract, agreement, indenture, note, bond, loan or credit agreement, instrument, lease, commitment, mortgage, deed of trust, license or other arrangement,



understanding or obligation, whether written or oral, express or implied, in each case, as amended and supplemented from time to time and including all schedules, annexes and exhibits thereto.

**“Copyleft License”** means any license that requires, as a condition of use, modification or distribution of software or other Intellectual Property subject to such license, that such software or other Intellectual Property subject to such license, or other software or other Intellectual Property incorporated into, derived from, used or distributed with such software or other Intellectual Property subject to such license (a) in the case of software, be made available or distributed in a form other than binary (e.g., source code form), (b) be licensed for the purpose of preparing derivative works, (c) be licensed under terms that allow the Company Products or portions thereof or interfaces therefor to be reverse engineered, reverse assembled or disassembled (other than by operation of Law) or (d) be redistributable at no license fee. Copyleft Licenses include the GNU General Public License, the GNU Lesser General Public License, the Mozilla Public License, the Common Development and Distribution License, the Eclipse Public License and all Creative Commons “sharealike” licenses.

**“Copyleft Materials”** means any software or other Intellectual Property subject to a Copyleft License.

**“Copyrights”** means copyrights and all other rights with respect to Works of Authorship, and all copyright registrations thereof and applications therefor and renewals, extensions and reversions thereof, and all other rights corresponding thereto throughout the world (including moral and economic rights, however denominated).

**“COVID-19 Tax Acts”** means The Families First Coronavirus Response Act (Pub. L. 116-127), the CARES Act, the Consolidated Appropriations Act, 2021 (H.R. 133), any U.S. executive order (including the Presidential Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster, as issued on August 8, 2020), and any applicable Treasury Regulations or any other applicable Law or other official guidance (including IRS Notice 2020-65 and Notice 2021-11) intended to address the consequences of COVID-19.

**“Current Assets”** means, with respect to the Company and its Subsidiaries, inventory and accounts receivable net of allowance for doubtful accounts, marketable securities and prepaid expenses, but excluding (a) the portion of any prepaid expense of which Buyer will not receive the benefit following the Closing, (b) any current or deferred Tax Assets, (c) receivables from any of the Company’s Affiliates, directors, officers or employees and any of their respective Affiliates determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Financial Statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end; provided, however, that Current Assets shall not include Cash.

**“Current Liabilities”** means, with respect to the Company and its Subsidiaries, any accounts payable, accrued payroll and related obligations, change of control payment obligations, customer deposits, deferred services revenue, accrued Taxes and all current Liabilities that are payable within one (1) year from the date of determination (which have been accrued and maintained in accordance with the historic practices of the Company), but excluding payables to any of the Company’s Affiliates, directors, officers or employees and any of their respective Affiliates (other than change of control payment obligations) and deferred Tax liabilities, determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Financial Statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end; provided, however, that (a) any item included in “Current Liabilities” shall not be included

in “Indebtedness” and (b) any item included in “Indebtedness” (including Transaction Expenses) shall not be included in “Current Liabilities.”

“**Domain Names**” means Internet domain names and numbers, uniform resource locators and other names and locators associated with the Internet, including applications and registrations thereof.

“**Environmental Law**” means any federal, state or local Laws relating to the protection of the environment, or that classify, regulate, call for the remediation of, require reporting with respect to, or list or define air, water, groundwater, solid waste, hazardous or toxic substances, materials, wastes, pollutants or contaminants, or which regulate the manufacture, handling, transport, use, treatment, storage or disposal of Hazardous Materials or materials containing Hazardous Materials.

“**Equity Interests**” means, with respect to any Person, any share capital of, or other ownership, membership, partnership, joint venture or equity interest in, such Person or any indebtedness, securities, options, restricted share unit, phantom equity, warrants, call, subscription or other rights or entitlements of, or granted by, such Person or any of its Affiliates that are convertible into, or are exercisable or exchangeable for, or giving any Person any right or entitlement to acquire any such capital stock or other ownership, partnership, joint venture or equity interest, in all cases, whether vested or unvested.

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

“**Escrow Agent**” means U.S. Bank National Association, in its capacity as escrow agent under the Escrow Agreement, or such other Person acting in such capacity that is agreed to in writing by both Buyer and the Company.

“**Estimated Merger Consideration**” means the result equal to (A) the Base Merger Consideration, minus (B) the estimated Indebtedness Payoff Amount, minus (C) the unpaid Estimated Transaction Expenses, plus (D) the Estimated Net Working Capital Surplus, if applicable, minus (E) the Estimated Net Working Capital Shortfall, if applicable, plus (F) the Estimated Cash.

“**Estimated Net Working Capital Shortfall**” means the amount by which the Estimated Closing Net Working Capital is less than the Working Capital Threshold.

“**Estimated Net Working Capital Surplus**” means the amount by which the Estimated Closing Net Working Capital is greater than the Working Capital Threshold.

“**Final Merger Consideration**” means the result equal to (A) the Base Merger Consideration, minus (B) the Indebtedness Payoff Amount, minus (C) the unpaid Transaction Expenses, plus (D) the Closing Net Working Capital Surplus, if applicable, minus (E) the Closing Net Working Capital Shortfall, if applicable, plus (F) Cash.

“**Fraud**” means common law fraud under the law of the State of Arizona based on the intent to deceive a Person. For the avoidance of doubt, “Fraud” shall not include equitable fraud, constructive fraud, statutory fraud, negligent misrepresentation or omission, or any tort based on negligence or recklessness.

“**Funds Flow**” means that certain Funds Flow, dated as of the Closing Date, agreed to by and among Buyer, the Company and Shareholders’ Representative.

“**GAAP**” means generally accepted accounting principles in the United States in effect from time to time.

**“Governmental Authority”** means any government or governmental or regulatory body thereof, or political subdivision thereof, whether federal, state, local or foreign, or any agency, instrumentality or authority thereof, or any court or arbitral body, exercising executive, legislative, judicial, regulatory or administrative functions.

**“Government Official”** means (i) any director, officer, employee, agent or representative (including anyone elected, nominated, or appointed to be an officer, employee, or representative) of any Governmental Authority, or anyone otherwise acting in an official capacity on behalf of a Governmental Authority; (ii) any candidate for public or political office; (iii) any royal or ruling family member; or (iv) any agent or representative of any of those Persons listed in subcategories (i) through (iii).

**“Hazardous Material”** means any substance, material or waste that is regulated, classified, or otherwise characterized under or pursuant to any Environmental Law as “hazardous,” “toxic,” “pollutant,” “contaminant,” “radioactive,” or words of similar meaning or effect, including petroleum and its by-products, asbestos, polychlorinated biphenyls, radon, mold and urea formaldehyde insulation.

**“Inbound Intellectual Property Contracts”** means Contracts pursuant to which any Person has licensed or sublicensed any Intellectual Property to the Company or its Subsidiaries or granted to the Company or its Subsidiaries any immunity, authorization, release, covenant not to sue or other right with respect to any Intellectual Property.

**“Indebtedness”** with respect to a Person and as of a specific date, means without duplication, the principal, accreted value, accrued and unpaid interest, prepayment and redemption premiums or penalties (including breakage costs, penalties and fees), if any, unpaid fees or expenses and other monetary Liabilities as of such time in respect of (a) all indebtedness of such Person for borrowed money or for the deferred or unpaid purchase price of property or services, (b) any other indebtedness of such Person that is evidenced by a note, bond, debenture or similar instrument or commercial paper (including a purchase money obligation), (c) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit, surety bond, performance bond or other instrument, (d) all indebtedness of others guaranteed, directly or indirectly, by such Person or as to which such Person has an obligation (contingent or otherwise) that is substantially the economic equivalent of a guarantee, (e) all obligations of such Person under capital leases, (f) all indebtedness of others secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on any property or assets of such Person (whether or not such obligation is assumed by such Person), (g) the aggregate net liability pursuant to any derivative instruments, including any interest rate or currency swaps, caps, collars, options, futures or purchase or repurchase obligations, or other similar derivative instruments, (h) all Transaction Expenses, (i) accrued and unpaid royalties and (j) any unpaid payroll Taxes deferred under the COVID-19 Tax Acts; provided, however, that (x) any item included in “Indebtedness” shall not be included in “Current Liabilities” and (y) any amounts associated with the Promissory Note and Security Agreement, dated September 26, 2019, between the Company and Innovation Finance USA LLC, Promissory Note and Security Agreement, dated March 30, 2020, between the Company and Innovation Finance USA LLC, Promissory Note and Security Agreement, dated March 17, 2020, between the Company and Innovation Finance USA LLC and Promissory Note and Security Agreement, dated August 16, 2020, between the Company and Innovation Finance USA LLC (collectively, the “**Medical Equipment Finance Notes**”) shall not be included in “Indebtedness.”

**“Intellectual Property”** means all worldwide (a) technology, proprietary information and materials, including inventions and invention disclosures (whether or not patentable or reduced to practice), (b) Patents, (c) Trade Secrets, other confidential and proprietary information, know-how, methodologies, processes, technical data, techniques, methods, compositions, ideas, procedures, concepts and tools (whether or not patentable or reduced to practice), (d) customer lists, customer contact information,

customer licensing and purchasing histories, manufacturing information, business plans and product roadmaps, (e) databases and data collections, computer programs, software (including all source code and object code), models, firmware, algorithms and implementations thereof, development tools, flow charts, programmers' annotations and notes, product user manuals and other work product used to design, plan, organize, maintain, support or develop any of the foregoing, irrespective of the media on which it is recorded, (f) product designs, reference designs and product specifications and documentation, mask works, integrated circuit topographies and Works of Authorship of any kind (whether or not published), (g) Copyrights, (h) Trademarks, (i) Domain Names, (j) registered and unregistered designs, (k) mask work, industrial design and similar rights and registrations, applications for registration, renewals and extensions thereof, (l) derivatives, improvements, modifications, enhancements, revisions and releases relating to any of the foregoing and (m) other proprietary or intellectual property rights now known or hereafter recognized in any jurisdiction.

**"International Employee Plans"** means any Company Plans in which employees or other service providers working outside of the US are eligible to participate.

**"Intellectual Property Contracts"** means the Outbound Intellectual Property Contracts and the Inbound Intellectual Property Contracts.

**"IRS"** means the Internal Revenue Service of the United States.

**"IT Systems"** means all computer systems, servers, network equipment and other computer and information technology hardware, software, services and systems owned, leased, used or licensed by the Company or its Subsidiaries.

**"Knowledge"** means, with respect to any Person, the actual knowledge, after reasonable inquiry, of the specified Person. In the case of the Knowledge of the Company or its Subsidiaries, **"Knowledge"** means the actual knowledge, after reasonable inquiry, of Steven N. Horowitz, Timothy P. Tobin, Jim Mello, Jason Brown, and David A. Husband.

**"Law(s)"** means any federal, state, local or foreign law (including common law), statute, directive, code, self-regulatory guidelines, ordinance, rule, regulation, guidance, treaty or other legal requirement.

**"Legal Proceeding"** means any suit, claim, action, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, audit, examination or investigation commenced, brought, conducted or heard by or before, any court, arbitrator, mediator or other Governmental Authority.

**"Liability"** means any debt, loss, damage, liability or obligation (whether direct or indirect, known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, secured or unsecured, joint or several, vested or unvested, executory or due or to become due, and whether in contract, tort, strict liability or otherwise), including all costs and expenses relating thereto.

**"Licensed Company Intellectual Property"** means any Intellectual Property that is licensed to the Company or its Subsidiaries on a nonexclusive basis by any Person (or subject to a permission, co-existence agreement, release, waiver or nonexclusive covenant not to sue or other immunity from suit granted in favor of the Company or its Subsidiaries by any Person) that is or has been used, held for use or practiced by the Company or its Subsidiaries.

“**Lien**” means any lien, pledge, mortgage, deed of trust, preemptive right, security interest, equitable interest, claim, lease, charge, condition, option, right of first refusal, easement, servitude, proxy, voting trust or agreement, transfer restriction under any stockholder, member or similar agreement, encumbrance or any other similar restriction or limitation.

“**Losses**” means any and all deficiencies, judgments, settlements, losses, damages, interest, fines, penalties, Taxes, costs and expenses (including reasonable legal, accounting and other costs and expenses of professionals) incurred in connection with investigating, defending, settling or satisfying any and all demands, claims, actions, causes of action, suits, proceedings, assessments, judgments or appeals, and in seeking indemnification, compensation or reimbursement therefor.

“**Material Adverse Effect**” means any change, effect, event, occurrence or development (each, an “**Effect**”) that has had, or would reasonably be expected to have, individually or in the aggregate, (a) a material adverse effect on the Business, Assets, results of operations or financial condition of the Company or its Subsidiaries or (b) a material adverse effect on the ability of the Company or its Subsidiaries to consummate the transactions contemplated hereby or perform its obligations under this Agreement; provided, however, that no Effect (by itself or when aggregated with any other Effect) resulting from, arising out of or relating to, any of the following shall be deemed to constitute a Material Adverse Effect or be taken into account when determining whether a “**Material Adverse Effect**” has occurred or may, would or could occur: (i) any Effect to the extent resulting solely from or arising out of the pendency or anticipated consummation of the transactions contemplated by this Agreement, (ii) any action taken by the Company or its Subsidiaries that is consented to by Buyer and (iii) to the extent that such conditions or changes do not disproportionately affect the Company or its Subsidiaries relative to other participants in the industries and geographic locations in which the Company or any of its Subsidiaries participates (A) any Effect resulting from or arising out of general business, financial, credit, political or economic conditions or changes in such conditions (including acts of God, sabotage, or terrorism), (B) changes in accounting rules, including GAAP or applicable Law after the date of this Agreement, and (C) changes resulting from a declaration of a national emergency or war (whether declared or not) or the occurrence of any military action or the escalation thereof.

“**Medical Equipment Finance Note Losses**” means any Liability related to the Medical Equipment Finance Notes, including payment of the principal and interest thereunder, legal fees related to terminating UCC financing statements filed in connection therewith, and any expenses, fees, and settlements incurred by Buyer or the Company arising out of seeking reimbursement pursuant to Section 6.09.

“**Merger Consideration**” means the Stock Consideration and the Option Consideration payable in accordance with this Agreement.

“**Neutral Auditor**” shall mean a firm of national or regionally recognized independent public accountants who have not performed services for any of the parties, or their respective Affiliates, at any time during the two (2) years immediately preceding the proposed engagement.

“**Open Source License**” means any license meeting the Open Source Definition (as promulgated by the Open Source Initiative) or the Free Software Definition (as promulgated by the Free Software Foundation), or any substantially similar license, including any license approved by the Open Source Initiative or any Creative Commons License. For the avoidance of doubt, Open Source Licenses include Copyleft Licenses.

“**Open Source Materials**” means any software or other Intellectual Property subject to an Open Source License.

“**Option Consideration**” means, with respect to each Optionholder, the applicable Closing Option Payment plus any amounts payable to such Optionholder with respect to Company Options pursuant to Section 1.08.

“**Optionholders**” means the holders of the Company Options.

“**Order**” means any order, injunction, judgment, decree, ruling, writ, assessment or other similar requirement or agreement enacted, adopted, promulgated or applied by any Governmental Authority.

“**Ordinary Course of Business**” means the ordinary and usual course of operations of the business of the Company and its Subsidiaries through the date hereof consistent with past practice.

“**Outbound Intellectual Property Contracts**” means Contracts pursuant to which the Company or its Subsidiaries has licensed or sublicensed any Intellectual Property to any Person or granted to any Person any immunity, authorization, release, covenant not to sue or other right with respect to any Company Intellectual Property.

“**Owned Company Intellectual Property**” means any Intellectual Property that is or has been used, held for use or practiced by the Company or its Subsidiaries other than Licensed Company Intellectual Property.

“**Patents**” means any domestic or foreign patents, utility models and applications, drafts and disclosures relating thereto (and any patents or utility models that issue as a result of such applications, drafts and disclosures) and any reissues, divisions, divisionals, continuations, continuations-in-part, provisionals, renewals, extensions, substitutions, reexaminations or invention registrations related to such patents, utility models and applications.

“**Paying Agent**” means U.S. Bank National Association, in its capacity as paying agent under the Paying Agent Agreement.

“**Permits**” means any approvals, authorizations, consents, licenses, permits, waivers, certificates or registrations of a Governmental Authority.

“**Permitted Exceptions**” means (a) statutory Liens for current Taxes not yet delinquent or Liens for Taxes the amount or validity of which is being contested in good faith by appropriate proceedings, provided an appropriate reserve is established therefor in the Financial Statements and (b) mechanics’, carriers’, workers’, repairers’ and similar Liens arising or incurred in the Ordinary Course of Business and that are not material to the Business, operations or financial condition of the Company Property so encumbered and that are not resulting from a breach, default or violation by the Company or its Subsidiaries of any Contract or Law.

“**Person**” means any individual, corporation, partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority or other entity.

“**Personal Information**” means, in addition to any definition provided by the Company or its Subsidiaries for any similar term (e.g., “personally identifiable information,” “personal data,” “mental or health data,” “PHI,” “medical data,” “sensitive personal information,” “special categories of personal data” or “PII”) in any Company or its Subsidiaries’ privacy policy or other public-facing statement, all information regarding or capable of being associated with an individual person, household or device,

including (a) information that identifies, could be used to identify or is otherwise identifiable with an individual or household, including name, email or physical address, telephone number, financial or other account name or number or government-issued identifier (including Social Security Number, passport, national ID and driver's license number), biometric, genetic, medical, health or insurance information, protected class, cultural, social identity, physical or physiological information, racial or ethnic origin, sexual orientation, sex or gender information, date of birth, educational or employment information, religious or political views or affiliations, trade union, marital or other status, and any other data used or intended to be used to identify, contact or locate an individual (e.g., geolocation data), (b) to the extent it identifies an individual, any data regarding an individual's internet or other electronic network activity information, interactions with a website, application or advertisement, or activities online or offline, on or with mobile device or other equipment or other application (e.g., searches conducted, web pages or content visited or viewed), (c) Internet Protocol addresses, unique device identifiers or other persistent identifiers, (d) any data regarding inferences, analysis or predictions, segments, demographics, automated processing, or profiles such as performance at work, economic situation, health, interests, reliability, location, movement, preferences, characteristics, psychological trends, predispositions, behavior, electronic, thermal, olfactory or similar information, attitudes, intelligence, abilities and aptitudes and (e) commercial information, including records of personal property, products or services purchased, obtained or considered, or other purchasing or consuming histories or tendencies. Personal Information may relate to any individual, including a current, prospective or former customer or employee of any Person. Personal Information includes information in any form, including paper, electronic and other forms.

**"Privacy Laws"** means all Laws governing the privacy, protection, or security of Personal Information, including as relevant to the receipt, collection, use, storage, processing, sharing, security, destruction, disclosure, sale or transfer of Personal Information and interest based advertising, measurement, tracking technologies, call or electronic marketing or recording or any outbound calling or text messaging, telemarketing or email marketing, including the Federal Trade Commission Act, data security Laws, data breach notification Laws, consumer protection Laws, biometric Laws, social security number protection Laws, the California Online Privacy Protection Act, the Health Insurance Reporting and Accountability Act, and other applicable Laws of the jurisdictions in which Company and its Affiliates operate.

**"Pro Rata Portion"** means, with respect to each Shareholder and each Optionholder, the percentage set forth on the Estimated Closing Statement under the column labeled "Pro Rata Portion" as updated from time to time by the Shareholders' Representative.

**"Restrictive Covenant Period"** means, with respect to each Key Shareholder, the period commencing on the Closing Date and ending on the date that is five (5) years following the date that such Key Shareholder's employment with the Company, Buyer or an Affiliate of Buyer is terminated, or, if a court of competent jurisdiction determines that five (5) years following the date that such Key Shareholder's employment with the Company, Buyer or an Affiliate of Buyer is terminated is overbroad and unenforceable, then the five (5) year period immediately following the Closing Date, or, if a court of competent jurisdiction determines that five (5) years immediately following the Closing Date is overbroad and unenforceable, then the three (3) year period immediately following the Closing Date, or, if a court of competent jurisdiction determines that three (3) years immediately following the Closing Date is overbroad and unenforceable, then the one (1) year period immediately following the Closing Date.

**"Restrictive Covenant Zone"** means the United States of America, or, if a court of competent jurisdiction determines that the United States of America is overbroad and unenforceable, then the State of Arizona, or, if a court of competent jurisdiction determines that the State of Arizona is overbroad and unenforceable, then Maricopa County, Arizona.

“**R&W Insurance Policy**” means a buyer-side representations and warranties insurance policy conditionally bound with CFC Underwriting Ltd., with the terms and conditions set forth in the R&W Policy Binder Agreement.

“**R&W Policy Binder Agreement**” means the binder agreement for the R&W Insurance Policy, a copy of such binder agreement is attached hereto as Exhibit F.

“**SEC**” means the United States Securities and Exchange Commission, together with its staff.

“**Shareholder**” means a shareholder of the Company.

“**Shares**” means the issued and outstanding shares of Common Stock of the Company.

“**Social Media Accounts**” means any and all accounts, profiles, pages, feeds, tags, registrations and other presences on or in connection with any (a) social media or social networking website or online service, (b) blog or microblog, (c) mobile application, (d) photo, video or other content-sharing website, (e) virtual game world or virtual social world, (f) rating and review website, (g) wiki or similar collaborative content website or (h) message board, bulletin board, or similar forum.

“**Stock Consideration**” means, with respect to each Shareholder, the applicable Closing Stock Payment plus any amounts payable to such Shareholder with respect to Common Stock pursuant to Section 1.08.

“**Straddle Period**” means any taxable period that includes (but does not end on) the Closing Date.

“**Subsidiary**” when used with respect to any party, means any corporation, limited liability company, partnership, association, trust or other entity the accounts of which would be consolidated with those of such party’s consolidated financial statements if such financial statements were prepared in accordance with GAAP, or any other corporation, limited liability company, partnership, association, trust or other entity of which securities or other ownership interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power (or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests) are, as of such date, owned by such party or one (1) or more Subsidiaries of such party or by such party and one (1) or more Subsidiaries of such party.

“**Tax Return**” means any return, report or statement filed or required to be filed with respect to any Tax (including any attachments thereto, and any amendment thereof) including any information return, claim for refund, estimated tax return, amended return or declaration of estimated Tax, and including, where permitted or required, combined, consolidated, affiliated or unitary returns for any group of entities that includes the Company or any of its Affiliates.

“**Taxes**” means (a) all federal, state, local or foreign taxes, charges, fees, imposts, levies or other assessments, including all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, escheat, unclaimed property, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, customs duties, fees, assessments and charges of any similar kind whatsoever, (b) all interest, penalties, fines, additions to tax or additional amounts imposed by any Taxing Authority in connection with any item described in clause (a), and (c) any Liability in respect of any items described in clauses (a) or (b) payable by reason of Contract, assumption, transferee or successor liability, operation of



Law, Treasury Regulations Section 1.1502-6(a) (or any predecessor or successor thereof or any analogous or similar provision under Law) or otherwise.

“**Taxing Authority**” means the IRS and any other Governmental Authority responsible for the imposition, determination, administration, assessment or collection of any Tax or the review or audit of any Tax Return.

“**Trade Laws**” means the import, economic and trade sanctions, export control, and trade remedy Laws and Orders applicable to the Company promulgated, administered or enforced by the United States, UK, EU, EU member states, and other jurisdictions in which the Company and its Subsidiaries do business including, but not limited to, the Laws and Orders of the U.S. Departments of Commerce, State, the Treasury, and Homeland Security, and any other department or agency of the U.S. federal government, the UK Bribery Act, the United States Foreign Corrupt Practices Act of 1977, the OECD Convention on Combating Bribery of Foreign Public Officials in Business Transactions, the Arms Export Control Act, the Trading with the Enemy Act of 1917, the International Emergency Economic Powers Act, the Export Administration Act of 1979, the Export Control Reform Act of 2018, the Tariff Act of 1930, the Export Administration Regulations, the International Traffic in Arms Regulations, and the United States Customs Regulations.

“**Trade Secrets**” means confidential and proprietary information, whether oral or written, and whether or not patentable or reduced to practice, including ideas, designs, concepts, compositions, compilations of information, formulas, patterns, program, device, methods, methodologies, techniques, procedures, processes and other know-how, whether or not patentable, of any nature in any form, including all writings, memoranda, copies, reports, papers, surveys, analyses, drawings, letters, computer printouts, computer programs, computer applications, tools, specifications, business methods, business processes, business techniques, business plans, data (including customer data and technical data), graphs, charts, sound recordings and pictorial reproductions. The term “**Trade Secrets**” includes all information that derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use.

“**Trademarks**” means unregistered and registered trademarks and service marks, trademark and service mark applications, common law trademarks and service marks, trade dress and logos, trade names, business names, corporate names, product names and other source or business identifiers and the goodwill associated with any of the foregoing and any renewals and extensions of any of the foregoing.

“**Transaction Documents**” means this Agreement and each agreement, document, certificate and instrument executed in connection herewith, including the Escrow Agreement.

“**Transaction Expenses**” means any and all (whether or not disclosed) (a) unpaid costs, fees and expenses of outside professionals incurred by the Company in connection with the negotiation, execution and consummation of the transactions contemplated hereby, including all legal fees, accounting, management or other similar fees and investment banking fees and expenses, and (b) unpaid payment obligations of the Company that become due as a result of the consummation of the transactions contemplated hereby, including but not limited to under any change in control, retention transaction or incentive bonus or similar agreement or arrangement with any employee (including, for the avoidance of doubt, the cash consideration paid pursuant to the Bonus Schedule), individual consultant, individual independent contractor or director of the Company or its Subsidiaries existing at or prior to the Closing Date and the employer portion of any employment Taxes payable with respect thereto, which includes the employer portion of employment Taxes payable with respect to the cash out of vested Company equity, if any.

“**Transfer Taxes**” means any and all transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the other Transaction Documents (including any real property transfer Tax and any other similar Tax).

“**Treasury Regulations**” means the United States Treasury Regulations promulgated under the Code.

“**Working Capital Threshold**” means \$6,728,000.

“**Works of Authorship**” means software, register-transfer level and gate-level descriptions, netlists, documentation, scripts, verification components, test suites, websites, content, images, graphics, text, photographs, artwork, audiovisual works, sound recordings, graphs, drawings, reports, analyses, writings, and other works of authorship and copyrightable subject matter.

**11.02 Cross Reference Table.** The following terms defined elsewhere in this Agreement in the Sections set forth below shall have the respective meaning therein defined:

<u>Term</u>	<u>Definition</u>
“ <b>401(k) Plan</b> ”	Section 2.02(c)(x)
“ <b>2005 Incentive Plan</b> ”	Recitals
“ <b>2019 Incentive Plan</b> ”	Recitals
“ <b>ACA</b> ”	Section 3.14(h)
“ <b>Agreement</b> ”	Preamble
“ <b>Agreement Period</b> ”	Section 1.08(b)
“ <b>A.R.S.</b> ”	Recitals
“ <b>Backup Plans</b> ”	Section 3.12(bb)
“ <b>Balance Sheet</b> ”	Section 3.06(a)
“ <b>Balance Sheet Date</b> ”	Section 3.06(a)
“ <b>Bonus Recipient</b> ”	Recitals
“ <b>Bonus Schedule</b> ”	Recitals
“ <b>Buyer</b> ”	Preamble
“ <b>Buyer’s Independent Investigation</b> ”	Section 4.07
“ <b>Certificate</b> ”	Section 1.07(a)
“ <b>Claims</b> ”	Section 3.10(c)
“ <b>Closing</b> ”	Section 2.01
“ <b>Closing Adjustment Escrow Account</b> ”	Section 1.06(d)
“ <b>Closing Date</b> ”	Section 2.01
“ <b>Closing Indebtedness Holders</b> ”	Section 3.04(d)
“ <b>Closing Option Payments</b> ”	Section 1.05(c)
“ <b>Closing Stock Payments</b> ”	Section 1.05(b)
“ <b>Closing Statement</b> ”	Section 1.08(a)
“ <b>Common Stock</b> ”	Recitals
“ <b>Company</b> ”	Preamble
“ <b>Company Charter Documents</b> ”	Section 3.05(a)
“ <b>Company Contracts</b> ”	Section 3.13(a)
“ <b>Company Disclosure Schedule</b> ”	Article III
“ <b>Company Incentive Plans</b> ”	Recitals
“ <b>Company Plans</b> ”	Section 3.14(a)
“ <b>Company Property</b> ”	Section 3.10(a)

<u>Term</u>	<u>Definition</u>
<i>“Company Software”</i>	Section 3.12(r)
<i>“Constituent Corporations”</i>	Preamble
<i>“Determination Date”</i>	Section 1.08(d)
<i>“Direct Claim”</i>	Section 9.02(c)
<i>“Dissenting Shares”</i>	Section 1.09
<i>“Disputed Amounts”</i>	Section 1.08(c)
<i>“Effective Time”</i>	Section 1.02
<i>“ERISA Affiliate”</i>	Section 3.14(e)
<i>“Escrow Agreement”</i>	Section 1.06(d)
<i>“Estimated Cash”</i>	Section 1.05(a)
<i>“Estimated Closing Net Working Capital”</i>	Section 1.05(a)
<i>“Estimated Closing Indebtedness”</i>	Section 1.05(a)
<i>“Estimated Closing Statement”</i>	Section 1.05(a)
<i>“Estimated Transaction Expenses”</i>	Section 1.05(a)
<i>“Financial Statements”</i>	Section 3.06(a)
<i>“Indebtedness Payoff Amount”</i>	Section 1.06(g)
<i>“Institutions”</i>	Section 3.12(v)
<i>“Invention Assignment Agreements”</i>	Section 3.12(i)
<i>“Key Shareholders”</i>	Section 6.05
<i>“Letter of Transmittal”</i>	Section 1.07(a)
<i>“Medical MSA”</i>	Section 2.02(c)(ix)
<i>“Merger”</i>	Recitals
<i>“Merger Sub”</i>	Preamble
<i>“Necessary Shareholder Approval”</i>	Recitals
<i>“Off-the-Shelf Software”</i>	Section 3.12(m)
<i>“Paying Agent Agreement”</i>	Section 1.07(a)
<i>“Payoff Letters”</i>	Section 1.06(g)
<i>“Post-Closing Adjustment”</i>	Section 1.08(a)
<i>“Privileged Communications”</i>	Section 10.09(b)
<i>“Real Property Lease”</i>	Section 3.10(a)
<i>“Restricted Parties”</i>	Section 6.05
<i>“Retention Escrow Account”</i>	Section 1.06(e)
<i>“Retention Escrow Amount”</i>	Section 1.06(e)
<i>“R&amp;W Insurer”</i>	Section 6.08
<i>“Section 409A”</i>	Section 3.14(k)
<i>“Seller Group Law Firm”</i>	Section 10.09(a)(i)
<i>“Shareholders’ Representative”</i>	Preamble
<i>“Social Media Account Names”</i>	Section 3.25
<i>“Standards Organizations”</i>	Section 3.12(h)
<i>“Statement of Merger”</i>	Section 1.02
<i>“Statement of Objections”</i>	Section 1.08(b)
<i>“Surviving Corporation”</i>	Section 1.01
<i>“Third-Party Claim”</i>	Section 9.02(b)
<i>“Transaction Information”</i>	Section 6.03

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

(a) Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. References to “days” are to calendar days; provided, however, that any action otherwise required to be taken on a day that is not a Business Day shall instead be taken on the next succeeding Business Day. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(b) Dollars. Any reference in this Agreement to “\$” or “Dollars” shall mean United States dollars.

(c) Exhibits/Schedules. All 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 schedule but not otherwise defined therein shall be defined as set forth in this Agreement.

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

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

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

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

(h) Negotiation and Drafting. The parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

(i) Updates. Except as otherwise set forth herein, any Law defined or referred to herein or in any agreement or instrument that is referred to herein means such Law as from time to time amended, modified or supplemented, including by succession of comparable successor Laws and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and Plan of Merger on the day and year first above written.

**BUYER:**

AMTECH SYSTEMS, INC.

By: /s/ Lisa D. Gibbs

Name: Lisa D. Gibbs

Title: Chief Financial Officer

**MERGER SUB:**

EMERALD MERGER SUB, INC.

By: /s/ Lisa D. Gibbs

Name: Lisa D. Gibbs

Title: Chief Financial Officer

*Signature Page to Merger Agreement*

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement and Plan of Merger on the day and year first above written.

**COMPANY:**

ENTREPIX, INC.

By: /s/ Timothy P. Tobin

Name: Timothy P. Tobin

Title: President and Chief Executive Officer

**SHAREHOLDERS' REPRESENTATIVE:**

/s/ Timothy P. Tobin

Timothy P. Tobin

**KEY SHAREHOLDERS:**

/s/ Steven N. Horowitz

Steven N. Horowitz

/s/ Timothy P. Tobin

Timothy P. Tobin

*Signature Page to Merger Agreement*

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## LOAN AND SECURITY AGREEMENT

This LOAN AND SECURITY AGREEMENT dated as of January 17, 2023 (the “Agreement”), is executed by and among AMTECH SYSTEMS, INC., an Arizona corporation (the “Parent Borrower”), BRUCE TECHNOLOGIES, INC., a Massachusetts corporation, BTU INTERNATIONAL, INC., a Delaware corporation, INTERSURFACE DYNAMICS, INC., a Connecticut corporation, P.R. HOFFMAN MACHINE PRODUCTS, INC., an Arizona corporation, and ENTREPIX, INC., an Arizona corporation (collectively with the Parent Borrower, the “Borrower”), each of which has its chief executive office located at 131 S. Clark Drive, Tempe, Arizona 85288, and UMB BANK, N.A., national banking association (the “Lender”), whose address is 2777 East Camelback Rd., Ste. 350, Phoenix, Arizona 85016.

### RECITALS:

A. The Borrower desires to borrow funds and obtain other financial accommodations from the Lender.

B. Pursuant to the Borrower’s request, the Lender is willing to extend such financial accommodations to the Borrower under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises, and the mutual covenants and agreements set forth herein, the Borrower agrees to borrow from the Lender, and the Lender agrees to lend to the Borrower, subject to and upon the following terms and conditions:

### AGREEMENTS:

#### Section 2. DEFINITIONS.

2.3 Defined Terms. For the purposes of this Agreement, the following capitalized words and phrases shall have the meanings set forth below.

“Acquisition” shall mean the acquisition of the Shares (as defined in the Stock Purchase Agreement).

“Affiliate” of any Person shall mean (a) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person, (b) any officer or director of such Person, and (c) with respect to the Lender, any entity administered or managed by the Lender, or an Affiliate or investment advisor thereof and which is engaged in making, purchasing, holding or otherwise investing in commercial loans. A Person shall be deemed to be “controlled by” any other Person if such Person possesses, directly or indirectly, power to direct or cause the direction of the management and policies of such Person whether by contract, ownership of voting securities, membership interests or otherwise.

“Bank Product Agreements” shall mean those certain agreements entered into from time to time by the Borrower or any Subsidiary with the Lender or any Affiliate of the Lender concerning Bank Products.

“Bank Product Obligations” shall mean all obligations, liabilities, contingent reimbursement obligations, fees, and expenses owing by the Borrower or any Subsidiary to the Lender or any Affiliate of the Lender pursuant to or evidenced by the Bank Product Agreements and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising.



“Bank Products” shall mean any service or facility extended to the Borrower or any Subsidiary by the Lender or any Affiliate of the Lender, including: (a) credit cards, (b) credit card and other payment processing services, (c) debit cards, (d) purchase cards, (e) ACH Transactions, (f) deposit accounts or other cash management, including controlled disbursement, accounts or services, or (g) Hedging Agreements.

“Bankruptcy Code” shall mean the United States Bankruptcy Code, as now existing or hereafter amended.

“Business Day” shall mean any day other than a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed for the conduct of commercial banking business in Phoenix, Arizona.

“Capital Expenditures” shall mean all expenditures (including Capitalized Lease Obligations) which, in accordance with GAAP, would be required to be capitalized and shown on the consolidated balance sheet of the Parent Borrower, but excluding expenditures made in connection with the replacement, substitution or restoration of assets to the extent financed (i) from insurance proceeds (or other similar recoveries) paid on account of the loss of or damage to the assets being replaced or restored or (ii) with awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced.

“Capital Lease” shall mean, as to any Person, a lease of any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, by such Person, as lessee, that is, or should be, in accordance with Financial Accounting Standards Board Statement No. 13, as amended from time to time, or, if such statement is not then in effect, such statement of GAAP as may be applicable, recorded as a “capital lease” on the financial statements of such Person prepared in accordance with GAAP.

“Capital Securities” shall mean, with respect to any Person, all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of such Person’s capital, whether now outstanding or issued or acquired after the date hereof, including common shares, preferred shares, membership interests in a limited liability company, limited or general partnership interests in a partnership or any other equivalent of such ownership interest.

“Capitalized Lease Obligations” shall mean, as to any Person, all rental obligations of such Person, as lessee under a Capital Lease which are or will be required to be capitalized on the books of such Person.

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

“Collateral” shall have the meaning set forth in Section 6.1 hereof.

“Collateral Access Agreement” shall mean an agreement in form and substance reasonably satisfactory to the Lender pursuant to which a mortgagee or lessor of real property on which Collateral is stored or otherwise located, or a warehouseman, processor or other bailee of Inventory or other property owned by the Borrower or any Subsidiary, acknowledges the Liens of the Lender and waives any Liens held by such Person on such property, and, in the case of any such agreement with a mortgagee or lessor, permits the Lender reasonable access to and use of such real property following the occurrence and during the continuance of an Event of Default to assemble, complete and sell any collateral stored or otherwise located thereon.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Contingent Liability” and “Contingent Liabilities” shall mean, respectively, each obligation and liability of the Borrower and all such obligations and liabilities of the Borrower incurred pursuant to any agreement, undertaking or arrangement by which the Borrower: (a) guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the indebtedness, dividend, obligation or other liability of any other Person in any manner (other than by endorsement of instruments in the course of collection), including without limitation, any indebtedness, dividend or other obligation which may be issued or incurred at some future time; (b) guarantees the payment of dividends or other distributions upon the shares or ownership interest of any other Person; (c) undertakes or agrees (whether contingently or otherwise): (i) to purchase, repurchase, or otherwise acquire any indebtedness, obligation or liability of any other Person or any property or assets constituting security therefor, (ii) to advance or provide funds for the payment or discharge of any indebtedness, obligation or liability of any other Person (whether in the form of loans, advances, stock purchases, capital contributions or otherwise), or to maintain solvency, assets, level of income, working capital or other financial condition of any other Person, or (iii) to make payment to any other Person other than for value received; (d) agrees to lease property or to purchase securities, property or services from such other Person with the purpose or intent of assuring the owner of such indebtedness or obligation of the ability of such other Person to make payment of the indebtedness or obligation; (e) to induce the issuance of, or in connection with the issuance of, any letter of credit for the benefit of such other Person; or (f) undertakes or agrees otherwise to assure a creditor against loss. The amount of any Contingent Liability shall (subject to any limitation set forth herein) be deemed to be the outstanding principal amount (or maximum permitted principal amount, if larger) of the indebtedness, obligation or other liability guaranteed or supported thereby.

“Debt” shall mean, as to any Person, without duplication, (a) all indebtedness of such Person for (i) all borrowed money of such Person (including principal, interest, fees and charges), whether or not evidenced by bonds, debentures, notes or similar instruments and (ii) all obligations to pay the deferred purchase price of property or services; (b) all obligations, contingent or otherwise, with respect to the maximum face amount of all letters of credit (whether or not drawn), bankers’ acceptances and similar obligations issued for the account of such Person (including the Letters of Credit), and all unpaid drawings in respect of such letters of credit, bankers’ acceptances and similar obligations; (c) all indebtedness secured by any Lien on any property owned by such Person, whether or not such indebtedness has been assumed by such Person (provided, however, if such Person has not assumed or otherwise become liable in respect of such indebtedness, such indebtedness shall be deemed to be in an amount equal to the fair market value of the property subject to such Lien at the time of determination); (d) the aggregate amount of all Capitalized Lease Obligations of such Person; (e) all Contingent Liabilities of such Person, whether or not reflected on its balance sheet; (f) all Bank Product Obligations of such Person; and (g) all monetary obligations of such Person under (i) a so-called synthetic, off-balance sheet or tax retention lease, or (ii) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment). Notwithstanding the foregoing, Debt shall not include trade payables and accrued expenses incurred by such Person in accordance with customary practices and in the ordinary course of business of such Person.

“Default Rate” shall mean the applicable per annum rate of interest on each Loan plus two percent (2.0%).

“Depreciation” shall mean the total amounts added to depreciation, amortization, obsolescence, valuation and other proper reserves, as reflected on the Parent Borrower’s financial statements and determined in accordance with GAAP.

“EBITDA” shall mean, for any period, (a) the sum for such period of: (i) Net Income, plus (ii) Interest Charges, plus (iii) federal and state income taxes, plus (iv) Depreciation, plus (v) Transaction Expenses, plus (vi) the amount of restructuring costs and reserves, including, without limitation, in connection with acquisitions and closing and/or consolidation of facilities, plus (vii) extraordinary, non-recurring items, whether or not classified as such under GAAP, plus (viii) any losses from disposed or discontinued operations, plus (ix) non-recurring expenses for severance, integration costs (including information technology integration costs), relocation costs, facilities’ opening costs and other business optimization expenses, recruiting costs and fees, signing fees, expenses, costs and bonuses, retention or completion bonuses, contract termination costs, transition costs, systems establishment costs, costs related to closure/consolidation of office and facilities, or any consulting fees incurred in connection with any of the foregoing in connection with the Acquisition or any other acquisition permitted by the Loan Documents), provided, that such expenditures are reasonably identifiable, factually supportable and, to the extent requested by Lender, are accompanied by a detailed itemization thereof, plus (x) non-cash compensation expense (including deferred non-cash compensation expense), or other non-cash expenses or charges, arising from the sale or issuance of Capital Securities, the granting of stock options, and the granting of stock appreciation rights and similar arrangements (including any repricing, amendment, modification, substitution, or change of any such Capital Securities, stock option, stock appreciation rights, or similar arrangements) minus the amount of any such expenses or charges when paid in cash to the extent not deducted in the computation of net income (or loss), plus (xi) all other non-cash charges approved by Lender in its sole discretion, calculated on a consolidated basis in accordance with GAAP consistently applied; provided that the aggregate amount added back to EBITDA pursuant to clauses (vii) through (xi) above shall not exceed \$500,000.00 in the aggregate in any fiscal year without the prior written consent of the Lender.

“EDITDAR” shall mean, the EBITDA of Borrower plus operating lease expenses, calculated on a consolidated basis in accordance with GAAP consistently applied.

“Employee Plan” includes any employee pension benefit plan (as defined in Section 3(2) of ERISA) maintained or administered by the Borrower or to which the Borrower is a party or may reasonably be expected to have any liability or by which the Borrower is bound.

“Environmental Laws” shall mean all applicable federal, state or local laws, statutes, rules, regulations, ordinances and codes, together with all administrative or judicial orders, consent agreements, licenses, authorizations and permits of any governmental authority, in each case relating to any matter arising out of or relating to public health and safety, or pollution or protection of the environment or workplace, as each relate to the exposure to Hazardous Substances, including any of the foregoing relating to the presence, use, production, generation, handling, transport, treatment, storage, disposal, distribution, discharge, emission, release, control or cleanup of any Hazardous Substance.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

“Event of Default” shall mean any of the events or conditions which are set forth in Section 11 hereof.

“Excluded Account” shall mean a deposit account, securities account or commodity account (i) which is used for the sole purpose of making payroll and withholding tax payments related thereto and other employee wage and benefit payments and accrued and unpaid employee compensation payments (including salaries, wages, benefits and expense reimbursements, 401(k) and other retirement plans and employee benefits, including rabbi trusts for deferred compensation and health care benefits), (ii) which is used solely for paying taxes, including sales taxes, (iii) which is used as an escrow account or as a fiduciary

or trust account or is otherwise held exclusively for the benefit of an unaffiliated third party (including any account solely holding amounts representing fines, violations, fees and similar amounts paid by third parties and owed to municipalities), (iv) which is a zero balance deposit account, securities account or commodity account or (v) which is not otherwise subject to the provisions of this definition and together with any other deposit accounts, securities accounts or commodity accounts that are excluded pursuant to this clause (v), have an average daily balance for any fiscal month of less than \$350,000.00 in the aggregate.

“Excluded Collateral” shall have the meaning set forth in Section 6.1 hereof.

“Excluded Subsidiary” means any direct or indirect Subsidiary of a Borrower that is (a) a “controlled foreign corporation” as defined in Section 957 of the Code, (b) a Subsidiary owned by such a “controlled foreign corporation” or (c) a Subsidiary organized under the laws of United States, any state thereof, or the District of Columbia, substantially all of the assets of which consist of (or are treated as consisting of for U.S. federal income tax purposes) the Capital Securities of (or Capital Securities and debt of) Subsidiaries described in clauses (a) and (b).

“Excluded Taxes” means any of the following Taxes imposed on or with respect to the Lender or required to be withheld or deducted from a payment to the Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of the Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of the Lender with respect to an applicable interest in a Loan or commitment pursuant to a law in effect on the date on which (i) the Lender acquires such interest in the Loan or commitment (other than an assignment request pursuant to Section 2.5(g)) or (ii) the Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.5(a), amounts with respect to such Taxes were payable either to the Lender’s assignor immediately before the Lender became a party hereto or to the Lender immediately before it changed its lending office, (c) Taxes attributable to the Lender’s failure to comply with Section 2.5(e), and (d) any U.S. federal withholding Taxes imposed under FATCA.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among governmental authorities and implementing such Sections of the Code.

“Foreign Lender” means any Lender that is not a U.S. Person.

“Excluded Swap Obligation” means, with respect to any Borrower, any Swap Obligation if, and to the extent that, all or a portion of the guaranty of such Borrower of, or the grant by such Borrower of a security interest to secure, such Swap Obligation (or a guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Borrower’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty of such Borrower or the grant of such security interests becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guaranty or security interests is or becomes illegal.

“GAAP” shall mean generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified

Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination, provided, however, that interim financial statements or reports shall be deemed in compliance with GAAP despite the absence of footnotes and fiscal year-end adjustments as required by GAAP.

“Hazardous Substances” shall mean (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, dielectric fluid containing levels of polychlorinated biphenyls, radon gas and mold; (b) any chemicals, materials, pollutant or substances defined as or included in the definition of “hazardous substances”, “hazardous waste”, “hazardous materials”, “extremely hazardous substances”, “restricted hazardous waste”, “toxic substances”, “toxic pollutants”, “contaminants”, “pollutants” or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, the exposure to, or release of which is prohibited, limited or regulated by any governmental authority or any Environmental Law.

“Hedging Agreement” means any interest rate protection agreement, foreign currency exchange agreement, currency options, spot contracts, collar transactions, commodity price protection agreement, rate swap transactions, basis swaps, forward rate transactions, or other interest rate, currency exchange rate, or commodity price hedging arrangement, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), designed to provide protection against fluctuations in interest rates, currency exchange rates, or commodity prices, whether or not any such transaction is governed by or subject to any master agreement.

“Indemnified Party” and “Indemnified Parties” shall mean, respectively, each of the Lenders and any parent corporation, Affiliate or Subsidiary of the Lender, and each of their respective officers, directors, employees, attorneys and agents, and all of such parties and entities.

“Intellectual Property” shall mean the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including copyrights, patents, service marks and trademarks, and all registrations and applications for registration therefor and all licensees thereof, trade names, domain names, technology, know-how and processes, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

“Interest Charges” shall mean, for any period, the sum of: (a) all interest, charges and related expenses payable with respect to that fiscal period to a lender in connection with borrowed money or the deferred purchase price of assets that are treated as interest in accordance with GAAP, plus (b) the portion of Capitalized Lease Obligations with respect to that fiscal period that should be treated as interest in accordance with GAAP, plus (c) all charges paid or payable (without duplication) during that period with respect to any Hedging Agreements entered into for the purpose of hedging interest rate risk.

“Letter of Credit” and “Letters of Credit” shall mean, respectively, a letter of credit and all such letters of credit issued by the Lender upon the execution and delivery by the Borrower and the acceptance by the Lender of a Letter of Credit Agreement.

“Letter of Credit Agreement” shall mean, at any time, with respect to the issuance of Letters of Credit, the Letter of Credit Agreement in the form being used by the Lender at such time.

“Letter of Credit Obligations” shall mean, at any time, an amount equal to the aggregate of the original face amounts of all Letters of Credit minus the sum of (i) the amount of any reductions in the original face amount of any Letter of Credit which did not result from a draw thereunder, (ii) the amount

of any payments made by the Lender with respect to any draws made under a Letter of Credit for which the Borrower has reimbursed the Lender, (iii) the amount of any payments made by the Lender with respect to any draws made under a Letter of Credit which have been converted to a Revolving Loan as set forth in Section 2.4, and (iv) the portion of any issued but expired Letter of Credit which has not been drawn by the beneficiary thereunder. For purposes of determining the outstanding Letter of Credit Obligations at any time, the Lender's acceptance of a draft drawn on the Lender pursuant to a Letter of Credit shall constitute a draw on the applicable Letter of Credit at the time of such acceptance.

“Liabilities” shall mean at all times all liabilities of the Borrower that would be shown as such on a consolidated balance sheet of the Parent Borrower prepared in accordance with GAAP.

“Lien” shall mean, with respect to any Person, any interest granted by such Person in any real or personal property, asset or other right owned or being purchased or acquired by such Person (including, without limitation, an interest in respect of a Capital Lease) which secures payment or performance of any obligation and shall include any mortgage, lien, encumbrance, title retention lien, charge or other security interest of any kind, whether arising by contract, as a matter of law, by judicial process or otherwise.

“Loan Documents” shall mean each of the agreements, documents, instruments and certificates set forth in Section 3.1 hereof, and any and all such other instruments, documents, certificates and agreements from time to time executed and delivered by the Borrower, or any of its Subsidiaries for the benefit of the Lender pursuant to any of the foregoing, and all amendments, restatements, supplements and other modifications thereto.

“Loans” shall mean, collectively, all Revolving Loans and Term Loan made by the Lender to the Borrower and all Letter of Credit Obligations issued by the Lender for the benefit of the Borrower or any of its Subsidiaries, under and pursuant to this Agreement.

“Material Adverse Effect” shall mean (a) a material adverse change in, or a material adverse effect upon, the assets, business, properties, financial condition or results of operations of the Parent Borrower taken as a whole, (b) a material impairment of the ability of the Borrower to perform any of the Obligations under any of the Loan Documents, or (c) a material adverse effect on (i) any substantial portion of the Collateral, (ii) the legality, validity, binding effect or enforceability against the Borrower of any of the Loan Documents, (iii) the perfection or priority of any Lien granted to the Lender under any Loan Document, or (iv) the rights or remedies of the Lender under any Loan Document.

“Net Income” shall mean, with respect to the Parent Borrower for any period, the consolidated net income (or loss) of the Parent Borrower for such period as determined in accordance with GAAP, excluding any extraordinary gains and any gains from discontinued operations.

“Non-Excluded Taxes” shall mean Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Loan Document.

“Note” and “Notes” shall mean, respectively, each of and collectively, the Revolving Note and Term Note.

“Obligations” shall mean the Loans, as evidenced by any Note, all interest accrued thereon (including interest which would be payable as post-petition in connection with any bankruptcy or similar proceeding, whether or not permitted as a claim thereunder), any fees due the Lender hereunder, any expenses incurred by the Lender hereunder and any and all other liabilities and obligations of the Borrower to the Lender under this Agreement and any other Loan Document, including any reimbursement obligations of the Borrower in respect of Letters of Credit and surety bonds, and all other Bank Product

Obligations of the Borrower owed to the Lender or an Affiliate of the Lender, all in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due, together with any and all renewals or extensions thereof.

“Organizational Certificates” means, with respect to any Person that is a corporation, limited partnership or limited liability company, a certificate of the appropriate official(s) of the jurisdiction of organization of such Person and each jurisdiction of foreign qualification in which such Person is required to maintain foreign qualification to lawfully transact business in such jurisdiction (other than any jurisdiction where the failure to be so qualified would not reasonably likely to have a Material Adverse Effect on the Borrower), certifying as to (i) the subsistence in good standing of, (ii) the authority to transact business by and (iii) the payment of taxes by, such Person in such jurisdiction(s).

“Organizational Documents” means (i) with respect to any Person that is a corporation, the articles of incorporation and bylaws of such corporation, (ii) with respect to any Person that is a limited partnership, the articles of formation and partnership agreement of such limited partnership, (iii) with respect to any Person that is a limited liability company, the articles of organization or certificate of formation and operating agreement or limited liability company agreement of such limited liability company, (iv) with respect to any Person that is a trust, the trust agreement governing such trust, and (v) with respect to any Person that is a general partnership, the partnership agreement of such general partnership.

“Organizational Identification Number” means, with respect to Borrower, the organizational identification number assigned to Borrower by the applicable governmental unit or agency of the jurisdiction of organization of the Borrower.

“Other Connection Taxes” means, with respect to the Lender, Taxes imposed as a result of a present or former connection between the Lender and the jurisdiction imposing such Tax (other than connections arising from the Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” shall mean any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from the execution, delivery, enforcement or registration of, or otherwise with respect to, this Agreement or any of the other Loan Documents, except any such Taxes that are Other Connection Taxes.

“Permitted Liens” shall mean (a) Liens for Taxes, assessments or other governmental charges not at the time delinquent or thereafter payable without penalty or being contested in good faith by appropriate proceedings and, in each case, for which the Borrower maintains adequate reserves in accordance with GAAP; (b) Liens arising in the ordinary course of business (such as (i) Liens of carriers, warehousemen, mechanics and materialmen and other similar Liens imposed by law, and (ii) Liens in the form of deposits or pledges incurred in connection with worker’s compensation, unemployment compensation and other types of social security (excluding Liens arising under ERISA) or in connection with surety bonds, bids, performance bonds and similar obligations); (c) Liens described on Schedule 9.2 as of the Closing Date; (d) attachments, appeal bonds, judgments and other similar Liens to the extent such underlying judgments or awards do not constitute an Event of Default under Section 11.8 hereof; (e) easements, rights of way, restrictions (including zoning and other land use restrictions), covenants, licenses, encroachments, protrusions and other similar charges or encumbrances and minor defects or irregularities in title and other similar Liens not interfering in any material respect with the ordinary conduct of the business of the Borrower; (f) Liens granted to the Lender hereunder and under the other Loan Documents and any Hedge Agreements; (g) leases, subleases, licenses or sublicenses (including licenses or sublicenses of intellectual property) granted to other Persons not materially interfering with the conduct of the business of the

Borrower; (h) Liens arising from precautionary Uniform Commercial Code or other similar financing statement filings regarding operating leases or consignments entered into in the ordinary course of business; (i) statutory and common law landlords' liens under leases to which the Borrower or any is a party; (j) deposits made in the ordinary course of business to secure liability to insurance carriers; (k) Liens (i) of a collection bank arising under Section 4-210 of the UCC (or similar provisions of other applicable laws) on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and (iii) in favor of a banking or other financial institution arising as a matter of law or under customary general terms and conditions encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry; (l) Liens that may arise on inventory or equipment of the Borrower in the ordinary course of business as a result of such inventory or equipment being located on premises owned by Persons other than the Borrower; (m) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business; (n) Liens on specific items of inventory or other goods (and proceeds thereof) of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods, and pledges or deposits in the ordinary course of business; (o) Liens upon assets of the Borrower securing Debt permitted by Section 9.1(g); provided that such Liens do not encumber any asset of the Borrower other than the assets acquired with such Debt and after-acquired property that is affixed or incorporated into such assets and proceeds and products thereof; provided that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender on customary terms; (p) Liens arising pursuant to purchase and sale agreements or similar agreements in favor of buyers of equipment, servicing, machine tools, manufacturing products and/or other inventory; and (q) other Liens to the extent securing liabilities with a principal amount not in excess of \$750,000.00 (measured at the time of incurrence) in the aggregate at any time outstanding.

"Person" shall mean any natural person, partnership, limited liability company, corporation, trust, joint venture, joint stock company, association, unincorporated organization, government or agency or political subdivision thereof, or other entity, whether acting in an individual, fiduciary or other capacity.

"Prime Rate" shall mean the floating per annum rate of interest which at any time, and from time to time, shall be most recently announced by the Lender as its Prime Rate, which is not intended to be the Lender's lowest or most favorable rate of interest at any one time. The effective date of any change in the Prime Rate shall for purposes hereof be the date the Prime Rate is changed by the Lender. The Lender shall not be obligated to give notice of any change in the Prime Rate.

"Receivables Employment Agreement" shall mean an agreement between Parent Borrower and the former chairman and chief executive officer of Parent Borrower that provides for, among other things, payment of incentive compensation tied to the collection of a customer receivable that was previously written off.

"Regulatory Change" shall mean the introduction of, or any change in any applicable law, treaty, rule, regulation or guideline or in the interpretation or administration thereof by any governmental authority or any central bank or other fiscal, monetary or other authority having jurisdiction over the Lender or its lending office.

"Revolving Interest Rate" shall mean a floating per annum rate of interest equal to the Prime Rate, adjusting daily. In no instance shall the Revolving Interest Rate be less than 0.00%.



“Revolving Loan” and “Revolving Loans” shall mean, respectively, each direct advance and the aggregate of all such direct advances made by the Lender to the Borrower under and pursuant to this Agreement, as set forth in Section 2.1 of this Agreement.

“Revolving Loan Availability” shall mean, at any time, an amount equal to the Revolving Loan Commitment minus the Letter of Credit Obligations.

“Revolving Loan Commitment” shall mean Eight Million and 00/100 Dollars (\$8,000,000.00).

“Revolving Loan Maturity Date” shall mean January 17, 2024, unless extended by the Lender pursuant to any modification, extension or renewal note executed by the Borrower and accepted by the Lender in its sole and absolute discretion in substitution for the Revolving Note.

“Revolving Note” shall mean a revolving note in the form prepared by and acceptable to the Lender, dated as of the date hereof, in the amount of the Revolving Loan Commitment and maturing on the Revolving Loan Maturity Date, duly executed by the Borrower and payable to the order of the Lender, together with any and all renewal, extension, modification or replacement notes executed by the Borrower and delivered to the Lender and given in substitution therefor.

“SEC” shall mean the Securities and Exchange Commission or any successor thereto.

“Senior Debt” shall mean all Debt of the Borrower owing to Lender.

“Stock Purchase Agreement” shall mean that certain Stock Purchase Agreement, dated on or about the date hereof, by and among Amtech Systems, Inc., Entrepix, Inc., the stockholders of Entrepix, Inc., and Timothy P. Tobin.

“Subordinated Debt” shall mean that portion of the Debt of the Borrower which is subordinated to the Obligations in a manner reasonably satisfactory to the Lender, including, but not limited to, right and time of payment of principal and interest.

“Subsidiary” and “Subsidiaries” shall mean, respectively, with respect to any Person, each and all such corporations, partnerships, limited partnerships, limited liability companies, limited liability partnerships, joint ventures or other entities of which or in which such Person owns, directly or indirectly, such number of outstanding Capital Securities as have more than fifty percent (50.00%) of the ordinary voting power for the election of directors or other managers of such corporation, partnership, limited liability company or other entity. Unless the context otherwise requires, each reference to Subsidiaries herein shall be a reference to Subsidiaries of the Parent Borrower.

“Swap Obligation” means, with respect to the Borrower, any obligation to pay or perform under any agreement, contract, or transaction, that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Taxes” shall mean any and all present and future taxes, duties, levies, imposts, deductions, assessments, charges or withholdings imposed by a government authority, including interest and penalties and other additions to taxes, with respect to the foregoing.

“Term Interest Rate” shall mean a fixed per annum rate of interest equal to 6.38%.

“Term Loan” shall mean the direct advance made by the Lender to the Borrower in the form of Term Loan under and pursuant to this Agreement, as set forth in Section 2.2 of this Agreement.

“Term Loan Commitment” shall mean Twelve Million and 00/100 Dollars (\$12,000,000.00).

“Term Loan Maturity Date” shall mean January 17, 2028, unless extended by the Lender pursuant to any modification, extension or renewal.

“Term Note” shall mean a term note in the form prepared by and acceptable to the Lender, dated as of the date hereof, in the amount of the Term Loan Commitment and maturing on the Term Loan Maturity Date, duly executed by the Borrower and payable to the order of the Lender, together with any and all renewal, extension, modification or replacement notes executed by the Borrower and delivered to the Lender and given in substitution therefor.

“Transaction Expenses” shall mean any fees or expenses incurred or paid by the Parent Borrower or any of its Subsidiaries in connection with the Transactions, this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby, including any amortization thereof in any period.

“Transactions” shall mean, collectively, the negotiation and execution of the Loan Documents, funding of any Loans, the consummation of the Acquisition and the payment of the Transaction Expenses.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“UCC” shall mean the Uniform Commercial Code in effect in the state of Arizona from time to time.

“Unmatured Event of Default” shall mean any event which, with the giving of notice, the passage of time or both, would constitute an Event of Default.

“Voidable Transfer” shall have the meaning set forth in Section 13.21 hereof.

“Wholly-Owned Subsidiary” shall mean any Subsidiary of which or in which the Borrower owns, directly or indirectly, one hundred percent (100%) of the Capital Securities of such Subsidiary.

2.4Accounting Terms. Any accounting terms used in this Agreement which are not specifically defined herein shall have the meanings customarily given them in accordance with GAAP. Calculations and determinations of financial and accounting terms used and not otherwise specifically defined hereunder and the preparation of financial statements to be furnished to the Lender pursuant hereto shall be made and prepared, both as to classification of items and as to amount, in accordance with sound accounting practices and GAAP as used in the preparation of the financial statements of the Borrower on the date of this Agreement. If any changes in accounting principles or practices from those used in the preparation of the financial statements are hereafter occasioned by the promulgation of rules, regulations, pronouncements and opinions by or required by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants (or any successor thereto or agencies with similar functions), which results in a material change in the method of accounting in the financial statements required to be furnished to the Lender hereunder or in the calculation of financial covenants, standards or terms contained in this Agreement, the parties hereto agree to enter into good faith negotiations to amend such provisions so as equitably to reflect such changes to the end that the criteria for evaluating the financial condition and performance of the Borrower will be the same after such changes as they were before such changes; and if the parties fail to agree on the amendment of such provisions, the Borrower will furnish financial statements in accordance with such changes, but shall provide calculations for all financial covenants, perform all financial covenants and otherwise observe all financial standards and terms in accordance with applicable

accounting principles and practices in effect immediately prior to such changes. Calculations with respect to financial covenants required to be stated in accordance with applicable accounting principles and practices in effect immediately prior to such changes shall be reviewed and certified by the Borrower's accountants.

**2.5 Other Terms Defined in UCC.** All other capitalized words and phrases used herein and not otherwise specifically defined herein shall have the respective meanings assigned to such terms in the UCC, to the extent the same are used or defined therein.

**2.6 Other Interpretive Provisions.**

(c) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms. Whenever the context so requires, the neuter gender includes the masculine and feminine, the single number includes the plural, and vice versa, and in particular the word "Borrower" shall be so construed.

(d) Section and Schedule references are to this Agreement unless otherwise specified. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(e) The term "including" is not limiting, and means "including, without limitation".

(f) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including".

(g) Unless otherwise expressly provided herein, (i) references to agreements (including this Agreement and the other Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, supplements and other modifications thereto, but only to the extent such amendments, restatements, supplements and other modifications are not prohibited by the terms of any Loan Document, and (ii) references to any statute or regulation shall be construed as including all statutory and regulatory provisions amending, replacing, supplementing or interpreting such statute or regulation.

(h) To the extent any of the provisions of the other Loan Documents are inconsistent with the terms of this Loan Agreement, the provisions of this Loan Agreement shall govern.

(i) This Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and each shall be performed in accordance with its terms.

**Section 3. COMMITMENT OF THE LENDER.**

**3.3 Revolving Loans.**

(c) **Revolving Loan Commitment.** Subject to the terms and conditions of this Agreement and the other Loan Documents, and in reliance upon the representations and warranties of the Borrower set forth herein and in the other Loan Documents, the Lender agrees to make such Revolving Loans at such times as the Parent Borrower may from time to time request until, but not

including, the Revolving Loan Maturity Date (as may be extended), and in such amounts as the Parent Borrower may from time to time request, provided, however, that the aggregate principal balance of all Revolving Loans outstanding at any time shall not exceed the Revolving Loan Availability. Revolving Loans made by the Lender may be repaid and, subject to the terms and conditions hereof, borrowed again up to, but not including the Revolving Loan Maturity Date unless the Revolving Loans are otherwise accelerated, terminated or extended as provided in this Agreement. The Revolving Loans shall be used by the Borrower for the purpose of working capital.

(d)Revolving Loan Interest and Payments. The principal amount of the Revolving Loans outstanding from time to time shall bear interest at the applicable Revolving Interest Rate. Accrued and unpaid interest on the unpaid principal balance of all Revolving Loans outstanding from time to time, shall be due and payable monthly, in arrears, commencing on February 1, 2023, and continuing on the first day of each calendar month thereafter, and on the Revolving Loan Maturity Date. Any amount of principal or interest on the Revolving Loans which is not paid when due, whether at stated maturity, by acceleration or otherwise, shall bear interest payable on demand at the Default Rate.

(e)Revolving Loan Principal Payments.

(iii)*Revolving Loan Mandatory Payments*. All Revolving Loans hereunder shall be repaid by the Borrower on the Revolving Loan Maturity Date, unless payable sooner pursuant to the provisions of this Agreement. In the event the aggregate outstanding principal balance of all Revolving Loans and Letter of Credit Obligations hereunder exceeds the Revolving Loan Availability, the Borrower shall, without notice or demand of any kind, immediately make such repayments of the Revolving Loans or take such other actions as are satisfactory to the Lender as shall be necessary to eliminate such excess, all without further demand, presentment, protest or notice of any kind, all of which are hereby waived by the Borrower.

(iv)*Optional Prepayments*. The Borrower may from time to time prepay the Revolving Loans, in whole or in part, without any prepayment penalty whatsoever, provided that any prepayment of the entire principal balance of the Revolving Loans shall include accrued interest on such Revolving Loans to the date of such prepayment.

### 3.4Term Loan.

(c)Term Loan Commitment. Subject to the terms and conditions of this Agreement and the other Loan Documents, and in reliance upon the representations and warranties of the Borrower set forth herein and in the other Loan Documents, the Lender agrees to make Term Loan equal to the Term Loan Commitment. Term Loan shall be available to the Borrower in a single principal advance on such date as the conditions set forth in Section 3 shall have been satisfied. Term Loan shall be used by the Borrower to facilitate the acquisition of Entrepix, Inc. by the Parent Borrower. Term Loan may be prepaid in whole or in part at any time without penalty, but shall be due in full on the Term Loan Maturity Date, unless the credit extended under Term Loan is otherwise accelerated, terminated or extended as provided in this Agreement. Term Loan Commitment shall terminate upon the making of the Term Loan on the date hereof.

(d)Term Loan Interest. The principal amount of Term Loan outstanding from time to time shall bear interest at the applicable Term Interest Rate. Any amount of principal or interest

on Term Loan which is not paid when due, whether at stated maturity, by acceleration or otherwise, shall bear interest payable on demand at the Default Rate.

(e)Term Loan Principal and Interest Payments. The outstanding principal balance of Term Loan shall be repaid in equal installments of principal and interest each in the amount of Two Hundred Thirty Five Thousand Two Hundred Three and 93/100 Dollars (\$235,203.93), beginning on February 1, 2023, and continuing on the first day of each month thereafter, with a final payment of all outstanding principal and accrued interest due on the Term Loan Maturity Date. Principal amounts repaid on Term Note may not be borrowed again.

(f)Term Loan Optional Prepayments.

(iii)The Borrower may voluntarily prepay the principal balance of Term Loan, in whole or in part at any time or from time to time on or after the date hereof, subject to the following conditions:

(C)Not less than three (3) days prior to the date upon which the Borrower desires to make such prepayment, the Borrower shall deliver to the Lender written notice of its intention to prepay Term Loan, which notice shall be irrevocable and state the prepayment amount and the prepayment date.

(D)The Borrower shall pay to the Lender all accrued and unpaid interest on the Term Loan through the date of such prepayment on the principal balance being prepaid. Each prepayment of the Term Loan shall be applied to the scheduled installments of the Term Loan in inverse order of maturity.

(E)Notwithstanding the forgoing, if the Term Loan is subject to a Bank Product Agreement (i.e. Hedging Agreement), in whole or in part, it is expressly understood by the Borrower that such a prepayment may cause breakage, termination or like fees to be due under the terms of the Bank Product Agreement. Accordingly, Borrower should consult the terms the Bank Product Agreements and other disclosures provided therewith for determination of fees or penalties which may be associated with such a prepayment.

3.5Interest and Fee Computation: Collection of Funds. Except as otherwise set forth herein, all interest and fees shall be calculated on the basis of a year consisting of 360 days and shall be paid for the actual number of days elapsed. Principal payments submitted in funds not immediately available shall continue to bear interest until collected. If any payment to be made by the Borrower hereunder or under any Note shall become due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing any interest in respect of such payment. Notwithstanding anything to the contrary contained herein, the final payment due under any of the Loans must be made by wire transfer or other immediately available funds. All payments made by the Borrower hereunder or under any of the Loan Documents shall be made without setoff, counterclaim, or other defense. To the extent permitted by applicable law, all payments hereunder or under any of the Loan Documents (including any payment of principal, interest, or fees) to, or for the benefit, of any Person shall be made by the Borrower free and clear of, and without deduction or withholding for, or account of, any taxes now or hereinafter imposed by any taxing authority.

3.6Letters of Credit. Subject to the terms and conditions of this Agreement and upon (i) the execution by the Borrower and the Lender of a Letter of Credit Agreement in form and substance acceptable

to the Lender (together with all amendments, modifications and restatements thereof, the “Letter of Credit Agreement”) and (ii) the execution and delivery by the Borrower, and the acceptance by the Lender, in its sole and absolute discretion, of a Letter of Credit Agreement, the Lender agrees to issue for the account of the Borrower or any of its Subsidiaries such Letters of Credit in the standard form of the Lender and otherwise in form and substance reasonably acceptable to the Lender, from time to time during the term of this Agreement. The amount of any payments made by the Lender with respect to draws made by a beneficiary under a Letter of Credit for which the Borrower has failed to reimburse the Lender upon five (5) Business Days the Lender’s demand for repayment shall be deemed to have been converted to a Revolving Loan as of the date such payment was made by the Lender to such beneficiary. Upon the occurrence of an Event of a Default and at the option of the Lender upon written notice to the Borrower during the continuance of such Event of Default, all Letter of Credit Obligations shall be converted to Revolving Loans consisting of Prime Loans, all without demand, presentment or protest of any kind, all of which are hereby waived by the Borrower. To the extent the provisions of the Letter of Credit Agreement differ from, or are inconsistent with, the terms of this Agreement, the provisions of this Agreement shall govern.

### 3.7 Taxes.

(c) Except as required by applicable law, all payments made by the Borrower under this Agreement shall be made free and clear of, and without deduction or withholding for or on account of any Taxes. If any Non-Excluded Taxes or Other Taxes are required to be withheld from any amounts payable to the Lender hereunder, the amounts so payable to the Lender shall be increased to the extent necessary to yield to the Lender (after payment of all Non-Excluded Taxes and Other Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement, provided, however, that the Borrower shall not be required to increase any such amounts payable to the Lender with respect to any Non-Excluded Taxes that are attributable to the Lender’s failure to comply with the requirements of subsection 2.5(c).

(d) Without duplication of the prior subsection, the Borrower shall pay any Other Taxes to the relevant governmental authority in accordance with applicable law.

(e) At the request of the Borrower, the Lender shall take reasonable steps to (i) contest its liability for any Non-Excluded Taxes or Other Taxes that have not been paid, or (ii) seek a refund of any Non-Excluded Taxes or Other Taxes that have been paid.

(f) Whenever any Non-Excluded Taxes or Other Taxes are payable by the Borrower, as promptly as possible thereafter the Borrower shall send to the Lender a certified copy of an original official receipt received by the Borrower showing payment thereof, a copy of the Tax return reporting such payment, or other evidence of such payment reasonably satisfactory to the lender. If the Borrower fails to pay any Non-Excluded Taxes or Other Taxes when due to the appropriate taxing authority, the Borrower shall indemnify the Lender on an after-tax basis for any incremental taxes, interest or penalties that may become payable by the Lender.

(g) If the Lender is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document, the Lender shall deliver to the Borrower, at the time or times reasonably requested by the Borrower, such properly completed and executed documentation reasonably requested by the Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, the Lender, if reasonably requested by the Borrower, shall deliver such other documentation prescribed by applicable law or

reasonably requested by the Borrower as will enable the Borrower to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

(iii) Without limiting the generality of the foregoing,

(C) any Lender that is a U.S. Person shall deliver to the Borrower on or about the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower), executed copies of IRS Form W-9 certifying that the Lender is exempt from U.S. federal backup withholding tax.

(D) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower (in such number of copies as shall be requested by the Borrower) on or about the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower), whichever of the following is applicable:

i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

ii) executed copies of IRS Form W-8ECI;

iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or

iv) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate, IRS Form W-9, or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender

may provide a U.S. Tax Compliance Certificate on behalf of each such direct and indirect partner;

(E) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower (in such number of copies as shall be requested by the recipient) on or about the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made; and

(F) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower at the time or times prescribed by law and at such time or times reasonably requested by the Borrower such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower as may be necessary for the Borrower to comply with its obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower in writing of its legal inability to do so.

(h) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.5 (including by the payment of additional amounts pursuant to this Section 2.5), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.5 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant governmental authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant governmental authority) in the event that such indemnified party is required to repay such refund to such governmental authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.



(i) If the Lender requires the Borrower to pay any additional amounts to the Lender or any governmental authority for the account of the Lender pursuant to Section 2.5, then the Lender shall (at the request of the Borrower) use reasonable efforts to, as applicable, designate a different lending or issuing office for funding or booking its Loans hereunder or issuing Letters of Credit or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of the Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.5, as the case may be, in the future, and (ii) would not subject the Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to the Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by the Lender in connection with any such designation or assignment.

(j) The agreements in this Section 2.5 shall survive the satisfaction and payment of the Obligations and the termination of this Agreement.

3.8 All Loans to Constitute Single Obligation; Joint and Several Liability. The Loans shall constitute one general obligation of the Borrower, and shall be secured by Lender's priority security interest in and Lien upon all of the Collateral and by all other security interests, Liens, claims and encumbrances heretofore, now or at any time or times hereafter granted by the Borrower to Lender. Further, each undersigned Borrower agrees that it shall be jointly and severally liable for the Loans.

#### Section 4. CONDITIONS OF BORROWING.

Notwithstanding any other provision of this Agreement, the Lender shall not be required to disburse, make or continue all or any portion of the Loans, if any of the following conditions shall have occurred.

4.3 Loan Documents. With respect to the initial borrowing of Loans, the Borrower shall have failed to execute and deliver to the Lender any of the following Loan Documents, all of which must be reasonably satisfactory to the Lender and the Lender's counsel in form, substance and execution:

(c) Loan Agreement. Two copies of this Agreement duly executed by the Borrower.

(d) Revolving Note. A Revolving Note duly executed by the Borrower, in the form prepared by and acceptable to the Lender.

(e) Term Note. A Term Note duly executed by the Borrower, in the form prepared by and acceptable to the Lender.

(f) Negative Pledge Agreement. A Negative Pledge Agreement dated as of the date of this Agreement, executed by the Borrower, with respect to the real property located at 131 S. Clark Drive, Tempe, Arizona 85288, in the form prepared by and acceptable to the Lender.

(g) [Reserved].

(h) [Reserved].

(i) Search Results; Lien Terminations. Copies of UCC search reports dated such a date as is reasonably acceptable to the Lender, listing all effective financing statements which name the Borrower, under its present names and any previous names, as debtors, together with (i) copies of such financing statements, (ii) payoff letters evidencing repayment in full of all existing Debt to be

repaid with the Loans, the termination of all agreements relating thereto and the release of all Liens granted in connection therewith, with UCC or other appropriate termination statements and documents effective to evidence the foregoing (other than Permitted Liens), and (iii) such other UCC termination statements as the Lender may reasonably request.

(j)Organizational and Authorization Document. Copies of (i) the Organizational Documents of the Borrower; (ii) resolutions for the Borrower approving and authorizing such Person's execution, delivery and performance of the Loan Documents to which it is party and the transactions contemplated thereby; (iii) signature and incumbency certificates for the Borrower, for any Person executing any of the Loan Documents, each of which the Borrower hereby certifies to be true and complete, and in full force and effect without modification, it being understood that the Lender may conclusively rely on each such document and certificate until formally advised by the Borrower of any changes therein; and (iv) Organizational Certificate of the Borrower and in each other state requested by the Lender.

(k)Insurance. Evidence reasonably satisfactory to the Lender of the existence of insurance required to be maintained pursuant to Section 8.6, together with evidence that the Lender has been named as a lender's loss payee on all related insurance policies.

(l)Additional Documents. Such other certificates, financial statements, schedules, resolutions, opinions of counsel, notes and other documents which are provided for hereunder or which the Lender shall reasonably require.

4.4Event of Default. Any Event of Default, or Unmatured Event of Default shall have occurred and be continuing.

4.5Material Adverse Effect. The occurrence and continuance of any event having a Material Adverse Effect upon the Borrower.

4.6Litigation. Any litigation or governmental proceeding shall have been instituted against the Borrower or any of its officers or shareholders which has a Material Adverse Effect upon the Borrower.

4.7Representations and Warranties. Any representation or warranty of the Borrower contained herein or in any Loan Document shall be untrue or incorrect in any material respect as of the date of any Loan as though made on such date, except to the extent such representation or warranty expressly relates to an earlier date.

4.8Commitment Fee. With respect to the initial borrowing of Loans, the Borrower shall have failed to pay or cause to be paid to the Lender (which may be with Loan proceeds) a commitment fee in the amount of Thirty Thousand and 00/100 Dollars (\$30,000.00).

#### Section 5.NOTES EVIDENCING LOANS.

5.3Revolving Note. The Revolving Loans and the Letter of Credit Obligations shall be evidenced by the Revolving Note. At the time of the initial disbursement of a Revolving Loan and at each time any additional Revolving Loan shall be requested hereunder, or a repayment made in whole or in part thereon, Lender shall make a notation thereof on the books and records of the Lender. All amounts recorded shall be, absent manifest error, conclusive and binding evidence of (i) the principal amount of the Revolving Loans advanced hereunder and the amount of all Letter of Credit Obligations, (ii) any accrued and unpaid interest owing on the Revolving Loans, and (iii) all amounts repaid on the Revolving Loans or the Letter

of Credit Obligations. The failure to record any such amount or any error in recording such amounts shall not, however, limit or otherwise affect the obligations of the Borrower under the Revolving Note to repay the principal amount of the Revolving Loans, together with all interest accruing thereon.

5.4Term Note. Term Loan shall be evidenced by Term Note. At the time of the disbursement of Term Loan or a repayment made in whole or in part thereon, the Lender shall make a notation thereof shall be made on the books and records of the Lender. All amounts recorded shall be, absent demonstrable error, conclusive and binding evidence of (i) the principal amount of Term Loan advanced hereunder, (ii) any accrued and unpaid interest owing on Term Loan and (iii) all amounts repaid on Term Loan. The failure to record any such amount or any error in recording such amounts shall not, however, limit or otherwise affect the obligations of the Borrower under Term Note to repay the principal amount of Term Loan, together with all interest accruing thereon.

#### Section 6.MANNER OF BORROWING.

6.3Borrowing Procedures. Each Loan shall be made available to the Borrower upon any written, verbal, electronic, telephonic or teletype loan request which the Lender in good faith reasonably believes to emanate from a properly authorized representative of the Parent Borrower, whether or not that is in fact the case. Each such notice shall be effective upon receipt by the Lender, shall be irrevocable, and shall specify the date, amount and type of borrowing. A request for a direct advance must be received by the Lender no later than 3:00 p.m. Phoenix, Arizona time, on the day it is to be funded. The proceeds of each direct advance shall be made available at the office of the Lender by credit to the account of the applicable Borrower as designated by the Parent Borrower or by other means requested by the Borrower and acceptable to the Lender. The Borrower does hereby irrevocably confirm, ratify and approve all such advances by the Lender prior to the Revolving Loan Maturity Date or Term Loan Maturity Date, as applicable.

6.4Automatic Debit. In order to effectuate the timely payment of any of the Obligations when due, the Borrower hereby authorizes and directs the Lender, at the Lender's option, to (a) debit the amount of the Obligations to any ordinary deposit account of the Borrower, or (b) make a Revolving Loan hereunder to pay the amount of the Obligations.

6.5Discretionary Disbursements. The Lender, in its sole and absolute discretion, may immediately upon notice to the Borrower, disburse any or all proceeds of the Loans made or available to the Borrower pursuant to this Agreement to pay any fees, costs, expenses or other amounts required to be paid by the Borrower to the Lender hereunder and not so paid. All monies so disbursed shall be a part of the Obligations, payable by the Borrower on demand from the Lender.

#### Section 7.SECURITY FOR THE OBLIGATIONS.

7.3Security for Obligations. As security for the payment and performance of the Obligations, the Borrower does hereby pledge, assign, transfer and deliver to the Lender and does hereby grant to the Lender a continuing and unconditional first priority security interest (subject to Permitted Liens) in and to any and all property of the Borrower, of any kind or description, tangible or intangible, wheresoever located and whether now existing or hereafter arising or acquired, including, but not limited to, the following (all of which property, along with the products and proceeds therefrom, are individually and collectively referred to as the "Collateral"):

(c)all property of, or for the account of, the Borrower now or hereafter coming into the possession, control or custody of, or in transit to, the Lender or any agent or bailee for the Lender

or any parent, Affiliate or Subsidiary of the Lender or any participant with the Lender in the Loans (whether for safekeeping, deposit, collection, custody, pledge, transmission or otherwise), including all earnings, dividends, interest, or other rights in connection therewith and the products and proceeds therefrom, including the proceeds of insurance thereon; and

(d)the additional property of the Borrower, whether now existing or hereafter arising or acquired, and wherever now or hereafter located, together with all additions and accessions thereto, substitutions, betterments and replacements therefor, products and Proceeds therefrom, and all of the Borrower's books and records and recorded data relating thereto (regardless of the medium of recording or storage), together with all of the Borrower's right, title and interest in and to all computer software required to utilize, create, maintain and process any such records or data on electronic media, identified and set forth as follows:

(iii)All Accounts and all Goods whose sale, lease or other disposition by the Borrower has given rise to Accounts and have been returned to, or repossessed or stopped in transit by, the Borrower, or rejected or refused by an Account Debtor;

(iv)All Inventory, including, without limitation, raw materials, work-in-process and finished goods;

(v)All Goods (other than Inventory), including, without limitation, embedded software, Equipment, vehicles, furniture and Fixtures;

(vi)All Software and computer programs;

(vii)All Securities, Investment Property, Financial Assets and Deposit Accounts;

(viii)All Chattel Paper, Electronic Chattel Paper, Instruments, Documents, Letter of Credit Rights, all proceeds of letters of credit, Health-Care-Insurance Receivables, Supporting Obligations, notes secured by real estate, Commercial Tort Claims and General Intangibles, including Payment Intangibles; and

(ix)All Proceeds (whether Cash Proceeds or Noncash Proceeds) of the foregoing property, including, without limitation, all insurance policies and proceeds of insurance payable by reason of loss or damage to the foregoing property, including unearned premiums, and of eminent domain or condemnation awards.

Notwithstanding the foregoing, no security interest is or will be granted pursuant hereto in any right, title or interest of the in, to or under (all of which property, along with the products and proceeds therefrom, are individually and collectively referred to as the "Excluded Collateral"):

(a)interest in any contracts (including Contracts and Contract Rights), permits, licenses, leases, Accounts, General Intangibles (other than any Capital Securities), Payment Intangibles, Chattel Paper, Letter-of-Credit Rights, Promissory Notes and Health-Care-Insurance Receivables if the grant of a security interest or Lien therein is prohibited as a matter of law, rule or regulation or under the terms of such contracts (including Contracts and Contract Rights), permits, licenses, leases, Accounts, General Intangibles, Payment Intangibles, Chattel Paper, Letter-of-Credit Rights, Promissory Notes and Health-Care-Insurance Receivables, in each case after giving effect to any applicable Uniform Commercial Code and other applicable law;

(b)Capital Securities of any current or future Excluded Subsidiary;

(c)assets subject to Capitalized Lease Obligations, purchase money financing and cash to secure letter of credit reimbursement obligations to the extent such Capitalized Lease Obligations, purchase money financing or letters of credit are permitted under the Credit Agreement and the terms thereof prohibit a grant of a security interest therein;

(d)any application for registration of a trademark filed with the U.S. Patent and Trademark Office on an intent-to-use basis until such time (if any) as a statement of use or amendment to allege use is accepted by the U.S. Patent and Trademark Office, at which time such trademark shall automatically become part of the Collateral and subject to the security interest of this Agreement;

(e)Capital Securities in any Person (i) other than the Borrower (other than the Parent Borrower) and Wholly-Owned Subsidiaries to the extent a pledge thereof is not permitted by the terms of such Person's charter documents or joint venture or shareholders agreements and other organizational documents and (ii) to the extent a pledge thereof is not permitted by any law, rule or regulation after giving effect to the applicable anti-assignment provisions of the UCC and other applicable law;

(f)those assets as to which the Lender and the Parent Borrower reasonably and mutually agree that the cost of obtaining such a security interest or perfection thereof are excessive in relation to the benefit to the Lender of the security to be afforded thereby;

(g)"margin stock" (within the meaning of Regulation U as adopted by the Board of Governors of the Federal Reserve System or any successor thereto);

(h)Excluded Accounts; and

(i)any asset to the extent granting a security interest in such asset would result in a material adverse tax consequence to Borrower and/or its Subsidiaries, as reasonably determined in good faith by Parent Borrower and notified in writing to the Lender;

provided, however, that Excluded Collateral shall not include any Proceeds, substitutions or replacements of any Excluded Collateral referred to in any of clauses (a) through (i) above (unless such Proceeds, substitutions or replacements would constitute Excluded Collateral referred to in any of clauses (a) through (l) above). Notwithstanding anything to the contrary contained herein or in any other Loan Document, (i) the Borrower shall not be required to perfect a security interest in Fixtures, (ii) the Borrower shall not be required to take any action with respect to the creation or perfection of a security interest or Liens under foreign law with respect to any Collateral and (iii) the Borrower shall not be required to comply with the Federal Assignment of Claims Act (or any state or municipal equivalent).

7.4 Possession and Transfer of Collateral. Unless an Event of Default exists hereunder, the Borrower shall be entitled to possession or use of the Collateral (except that Borrower shall deliver to Lender Instruments or Documents with an individual value in excess of \$50,000.00, Tangible Chattel Paper with an individual value in excess of \$50,000.00, Investment Property consisting of certificated securities and other Collateral required to be delivered to the Lender pursuant to this Section 6). The cancellation or surrender of any Note, upon payment or otherwise, shall not affect the right of the Lender to retain the Collateral for any other of the Obligations. The Borrower shall not sell, assign (by operation of law or otherwise), license, lease or otherwise dispose of, or grant any option with respect to any of the Collateral (collectively "Dispose" ("Disposition" shall have the meaning correlative thereto)), except (a) that the

Borrower may Dispose of Inventory or obsolete, worn-out or excess furniture, fixtures, equipment or other property, real or personal, tangible or intangible, in each case, in the ordinary course of business; (b) Dispositions between or among Borrowers; (c) the sale, assignment, transfer, disposition or discount by the Borrower, without recourse, of accounts receivable arising in the ordinary course of business; (d) sales of equipment by the Borrower for fair market value so long as the amount does not exceed \$500,000.00 in the aggregate per year; and (e) pursuant to the Receivables Employment Agreement.

7.5 Financing Statements. The Borrower shall, at the Lender's request, at any time and from time to time, execute and deliver to the Lender such financing statements, amendments and other documents and do such acts as the Lender reasonably deems necessary in order to establish and maintain valid, attached and perfected first priority security interests (subject to Permitted Liens) in the Collateral in favor of the Lender, free and clear of all Liens and claims and rights of third parties whatsoever, except Permitted Liens. The Borrower hereby irrevocably authorizes the Lender at any time, and from time to time, until the Obligations are paid in full, to file in any jurisdiction any initial financing statements and amendments thereto without the signature of the Borrower that (a) indicate the Collateral (i) is comprised of all assets of the Borrower or words of similar effect, regardless of whether any particular asset comprising a part of the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed, or (ii) as being of an equal or lesser scope or within greater detail as the grant of the security interest set forth herein, and (b) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether the Borrower is an organization, the type of organization and any Organizational Identification Number issued to the Borrower, and (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of the real property to which the Collateral relates. The Borrower agrees to furnish any such information to the Lender promptly upon reasonable request. The Borrower further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by the Lender in connection with this Agreement in any jurisdiction prior to the date of this Agreement.

6.4 [Reserved].

6.5 Preservation of the Collateral. The Lender may, but is not required, to take such actions from time to time as the Lender reasonably deems appropriate to maintain or protect the Collateral. The Lender shall have exercised reasonable care in the custody and preservation of the Collateral if the Lender takes such action as the Borrower shall reasonably request in writing which is not inconsistent with the Lender's status as a secured party, but the failure of the Lender to comply with any such request shall not be deemed a failure to exercise reasonable care; provided, however, the Lender's responsibility for the safekeeping of the Collateral shall (i) be deemed reasonable if such Collateral is accorded treatment substantially equal to that which the Lender accords its own property, and (ii) not extend to matters beyond the control of the Lender, including, without limitation, acts of God, war, insurrection, riot or governmental actions. In addition, any failure of the Lender to preserve or protect any rights with respect to the Collateral against prior or third parties, or to do any act with respect to preservation of the Collateral, not so requested by the Borrower, shall not be deemed a failure to exercise reasonable care in the custody or preservation of the Collateral. The Borrower shall have the sole responsibility for taking such action as may be reasonably necessary, from time to time, to preserve all rights of the Borrower and the Lender in the Collateral against prior or third parties. Without limiting the generality of the foregoing, where Collateral consists in whole or in part of securities, the Borrower represents to, and covenants with, the Lender that the Borrower has made arrangements for keeping informed of changes or potential changes affecting the securities (including, but not limited to, rights to convert or subscribe, payment of dividends, reorganization or other exchanges, tender offers and voting rights), and the Borrower agrees that the Lender shall have no responsibility or

liability for informing the Borrower of any such or other changes or potential changes or for taking any action or omitting to take any action with respect thereto.

6.6Other Actions as to any and all Collateral. The Borrower further agrees to promptly take any other action reasonably requested by the Lender to ensure the attachment, perfection and first priority (subject to Permitted Liens) of, and the ability of the Lender to enforce, the Lender's security interest in any and all of the Collateral including, without limitation, taking all actions requested by the Lender that are required by the UCC in effect from time to time or by other law, as applicable in any relevant UCC jurisdiction, or by other law as applicable in any foreign jurisdiction; provided that Borrower shall not be required to execute a (a) mortgage in favor of the Lender unless (i) an Event of Default has occurred and is continuing or (ii) the real property to be covered by such mortgage has a value in excess of \$5,000,000.00, (b) control agreement (i) with respect to an Excluded Account or (ii) on any other accounts held by it sooner than sixty (60) days after the date hereof or the opening of such account (or, in each case, such later date as the Lender shall agree), (c) any documents or instruments necessary to perfect on the Borrower's interest (A) in any cars, trucks, construction and other equipment covered by a certificate of title law of any state and rolling stock, vessels, boats, ships and aircraft or (B) or leaseholds, unless, with respect to this clause (c), an Event of Default has occurred and is continuing, in each case, to the extent a security interest therein cannot be perfected by a UCC filing.

6.7Collateral in the Possession of a Warehouseman or Bailee. If any of the Collateral with an aggregate fair market value in excess of \$750,000.00 at any time (including the date hereof) is in the possession of a warehouseman or bailee, the Borrower shall promptly notify the Lender thereof, and shall use commercially reasonable efforts to, within ninety (90) days after date hereof (or such later date as may be agreed by the Lender), obtain a Collateral Access Agreement. The Lender agrees with the Borrower that the Lender shall not give any such instructions unless an Event of Default has occurred and is continuing.

6.8Letter-of-Credit Rights. If the Borrower at any time is a beneficiary under a letter of credit with a face value in excess of \$100,000.00 now or hereafter issued in favor of the Borrower, the Borrower shall promptly notify the Lender thereof and, at the request and option of the Lender, the Borrower shall, pursuant to an agreement in form and substance reasonably satisfactory to the Lender, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to the Lender of the proceeds of any drawing under the letter of credit, or (ii) arrange for the Lender to become the transferee beneficiary of the letter of credit, with the Lender agreeing, in each case, that the proceeds of any drawing under the letter to credit are to be applied as provided in this Agreement.

6.9Commercial Tort Claims. If the Borrower shall at any time hold or acquire a Commercial Tort Claim with a value in excess of \$100,000.00, the Borrower shall promptly notify the Lender in writing signed by the Borrower of the details thereof and grant to the Lender in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, in each case in form and substance reasonably satisfactory to the Lender, and shall execute any amendments hereto deemed reasonably necessary by the Lender to perfect its security interest in such Commercial Tort Claim.

6.10Electronic Chattel Paper and Transferable Records. If the Borrower at any time holds or acquires an interest in any electronic chattel paper or any "transferable record", as that term is defined in Section 201 of the federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction with a value in excess of \$100,000.00, the Borrower shall promptly notify the Lender thereof and, at the request of the Lender, shall take such action as the Lender may reasonably request to vest in the Lender control under Section 9-105 of the UCC of such electronic chattel paper or control under Section 201 of the federal Electronic Signatures

in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The Lender agrees with the Borrower that the Lender will arrange, pursuant to procedures satisfactory to the Lender and so long as such procedures will not result in the Lender's loss of control, for the Borrower to make alterations to the electronic chattel paper or transferable record permitted under Section 9-105 of the UCC or, as the case may be, Section 201 of the federal Electronic Signatures in Global and National Commerce Act or Section 16 of the Uniform Electronic Transactions Act for a party in control to make without loss of control.

#### Section 8. REPRESENTATIONS AND WARRANTIES.

To induce the Lender to make the Loans, the Borrower makes the following representations and warranties to the Lender, each of which shall survive the execution and delivery of this Agreement:

8.3 Borrower Organization and Name. The Borrower is duly organized, existing and in good standing under the laws of the state of reflected in its Organizational Documents, with power to conduct its business as presently conducted. The Borrower is duly licensed or qualified in all foreign jurisdictions wherein the nature of its activities require such qualification or licensing, except for such jurisdictions where the failure to so qualify would not have a Material Adverse Effect. The exact legal name of the Borrower is as set forth in the first paragraph of this Agreement, and the Borrower currently does not conduct, nor has it during the last five (5) years conducted, business under any other name or trade name.

8.4 Authorization. The Borrower has the requisite power and authority to enter into this Agreement, to request the borrowings and execute and deliver the Loan Documents as provided herein and to perform all of its duties and obligations under this Agreement and the other Loan Documents to which it is a party. The execution and delivery of this Agreement and the other Loan Documents will not, nor will the observance or performance of any of the matters and things herein or therein set forth, violate or contravene any provision of law or of the Organizational Documents or Organizational Certificates of the Borrower. All necessary and appropriate action has been taken on the part of the Borrower to authorize the execution and delivery of this Agreement and the Loan Documents.

8.5 Validity and Binding Nature. This Agreement and the other Loan Documents to which the Borrower is a party are the legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms, subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and to general principles of equity.

8.6 Consent: Absence of Breach. To the Borrower's knowledge, the execution, delivery and performance of this Agreement, the other Loan Documents to which it is a party and any other documents or instruments to be executed and delivered by the Borrower in connection with the Loans, and the borrowings by the Borrower hereunder, do not and will not (a) require any consent, approval, authorization of, or filings with, notice to or other act by or in respect of, any governmental authority or any other Person (other than any consent or approval which has been obtained and is in full force and effect); (b) conflict with (i) any provision of law or any applicable regulation, order, writ, injunction or decree of any court or governmental authority, (ii) the Organizational Documents of the Borrower, or (iii) any material agreement, indenture, instrument or other document, or any judgment, order or decree, which is binding upon the Borrower or any of their properties or assets; or (c) require, or result in, the creation or imposition of any Lien on any asset of Borrower, other than Liens in favor of the Lender created pursuant to this Agreement (in the case of the preceding clauses (a), (b)(i), (b)(iii) and (c), other than in each case that would not reasonably be expected to have a Material Adverse Effect).



8.7 Ownership of Properties; Liens. The Borrower is the sole owner all of its properties and assets, real and personal, tangible and intangible, of any nature whatsoever (including patents, trademarks, trade names, service marks and copyrights), free and clear of all Liens, charges and claims (including infringement claims with respect to patents, trademarks, service marks, copyrights and the like), other than Permitted Liens.

8.8 Equity Ownership. All issued and outstanding Capital Securities of the Borrower and each of its Subsidiaries are duly authorized and validly issued, fully paid, non-assessable, and free and clear of all Liens other than those in favor of the Lender, if any, and such securities were issued in compliance with all applicable state and federal laws concerning the issuance of securities. As of the date hereof, there are no pre-emptive or other outstanding rights, options, warrants, conversion rights or other similar agreements or understandings for the purchase or acquisition of any Capital Securities of the Borrower and each of its Subsidiaries.

8.9 Intellectual Property. The Borrower owns and possesses or has a license or other right to use all Intellectual Property, as are necessary for the conduct of the businesses of the Borrower, without any infringement upon rights of others which would reasonably be expected to have a Material Adverse Effect upon the Borrower, and no material claim has been asserted and is pending by any Person challenging or questioning the use of any Intellectual Property or the validity or effectiveness of any Intellectual Property nor does the Borrower know of any valid basis for any such claim.

8.10 Financial Statements. All financial statements submitted to the Lender by the Parent Borrower have been prepared in accordance with GAAP, on a consolidated basis, except as otherwise noted therein, consistent with the previous fiscal year and present fairly the financial condition of the Parent Borrower and the results of the operations for the Parent Borrower as of such date and for the periods indicated. Since the date of the most recent financial statement submitted by the Parent Borrower to the Lender, there has been no change in the financial condition or in the assets or liabilities of the Parent Borrower having a Material Adverse Effect on the Parent Borrower on a consolidated basis.

8.11 Litigation and Contingent Liabilities. There is no litigation, arbitration proceeding, demand, charge, claim, petition or governmental investigation or proceeding pending, or to the knowledge of the Borrower, threatened in writing, against the Borrower, which, if adversely determined, which would reasonably be expected to have a Material Adverse Effect upon the Borrower, except as set forth in Schedule 7.9. Other than any liability incident to such litigation or proceedings, the Borrower has no material guarantee obligations, contingent liabilities, liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not reflected or reserved for (in each case, to the extent required by GAAP) in the most recent audited financial statements delivered pursuant to subsection 8.8(a) or fully-reflected or fully reserved for in the most recent quarterly financial statements delivered pursuant to subsection 8.8(b) and not permitted by Section 9.1.

8.12 Event of Default. No Event of Default or Unmatured Event of Default exists or would result from the incurrence by the Borrower of any of the Obligations hereunder or under any other Loan Document, and the Borrower is not in material default under any other material contract or agreement for Debt to which it is a party, the effect of which would have a Material Adverse Effect upon the Borrower.

8.13 [Reserved].

8.14 Environmental Laws and Hazardous Substances. The Borrower has not generated, used, stored, treated, transported, manufactured, handled, produced or disposed of any Hazardous Substances, on

the premises of the Borrower in any manner which at any time materially violates any Environmental Law or any license, permit, certificate, approval or similar authorization required thereunder. The Borrower complies in all material respects with all Environmental Laws and all licenses, permits, certificates, approvals and similar authorizations required thereunder. Within the last two (2) years, Borrower has not received any written investigation, proceeding, complaint, order, claim, citation or notice by any governmental authority or any other Person, nor is any pending or, to the Borrower's knowledge, threatened in writing, and the Borrower shall promptly notify the Lender after receiving written notice of any such investigation, proceeding, complaint, order, claim, citation or notice, and shall take reasonably prompt and appropriate actions to respond thereto, with respect to any material non-compliance with, or violation of, the requirements of any Environmental Law by the Borrower. The Borrower has no material liability, contingent or otherwise, in connection with a release, spill or discharge of any Hazardous Substances or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Substances. The Borrower further agrees to allow the Lender or its agent access to the properties of the Borrower, upon reasonable prior notice from the Lender, to confirm material compliance with all Environmental Laws, and the Borrower shall, following determination by the Lender that there is material non-compliance with any Environmental Law, at the Borrower's sole expense, cause an independent environmental engineer reasonably acceptable to the Lender to conduct such tests of the relevant site as are appropriate, and prepare and deliver a report setting forth the result of such tests, and, if required by Environmental Laws, a proposed plan for remediation and an estimate of the costs thereof.

8.15 Solvency, etc. As of the date hereof, and immediately prior to and immediately after giving effect to the issuance of each Letter of Credit and each Loan hereunder and the use of the proceeds thereof, (a) the fair value of the Parent Borrower's assets is greater than the amount of its liabilities (including disputed, contingent and unliquidated liabilities) as such value is established and liabilities evaluated as required under the Section 548 of the Bankruptcy Code, (b) the present fair saleable value of the Parent Borrower's assets is not less than the amount that will be required to pay the probable liability on its debts as they become absolute and matured, (c) the Parent Borrower (on a consolidated basis with its Subsidiaries) is able to realize upon its assets and pay its debts and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business, (d) the Parent Borrower (on a consolidated basis with its Subsidiaries) does not intend to, and does not believe that it will, incur debts or liabilities beyond its ability to pay as such debts and liabilities mature, and (e) the Parent Borrower is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which its property would constitute unreasonably small capital.

8.16 ERISA Obligations. All Employee Plans of the Borrower meet the minimum funding standards of Section 302 of ERISA and 412 of the Code where applicable, and each such Employee Plan that is intended to be qualified within the meaning of Section 401 of the Code is qualified. No withdrawal liability has been incurred under any such Employee Plans and no "Reportable Event" or "Prohibited Transaction" (as such terms are defined in ERISA), has occurred with respect to any such Employee Plans and Borrower's participation in such Employee Plans, as applicable, unless approved by the appropriate governmental agencies. The Borrower has promptly paid and discharged all obligations and liabilities of the Borrower arising under the Employee Retirement Income Security Act of 1974 ("ERISA") of a character which if unpaid or unperformed might result in the imposition of a Lien against any of its properties or assets.

8.17 Labor Relations. Except as could not reasonably be expected to have a Material Adverse Effect, (i) there are no strikes, lockouts or other labor disputes against the Borrower or, to the best knowledge of the Borrower, threatened, (ii) hours worked by and payment made to employees of the Borrower have not been in violation of the Fair Labor Standards Act or any other applicable law, (iii) no unfair labor practice complaint is pending against the Borrower or, to the best knowledge of the Borrower,

threatened before any governmental authority and (iv) Borrower has been in compliance with all applicable laws regarding employment and employment practices (including but not limited to laws regarding terms and conditions of employment, discrimination, harassment, retaliation, equal opportunity, immigration, benefits, payment of employment, social security and similar Taxes, occupational safety and health, plant closings and wages and hours, unemployment insurance and termination of employment).

8.18Security Interest. This Agreement creates a valid security interest in favor of the Lender in the Collateral and, when properly perfected by filing in the appropriate jurisdictions, or by possession or Control of such Collateral by the Lender or delivery of such Collateral to the Lender, shall constitute a valid, perfected, first-priority security interest (subject to Permitted Liens) in such Collateral.

8.19Lending Relationship. The relationship hereby created between each Borrower (on the one hand) and the Lender (on the other) is and has been conducted on an open and arm's length basis in which no fiduciary relationship exists, and the Borrower has not relied and is not relying on any such fiduciary relationship in executing this Agreement and in borrowing the Loans. The Lender represents that it will receive any Note payable to its order as evidence of a bank loan.

8.20Business Loan. The Loans, including interest rate, fees and charges as contemplated hereby, are business loans.

8.21Taxes. The Borrower has timely filed all income and other material tax returns and reports required by law to have been filed by it and has paid all income and other material Taxes due and payable with respect to such returns, except any such Taxes which are not yet due and payable or are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books or the contesting of which does not create a Lien on the Collateral which is not a Permitted Lien. There is no controversy, audit or examination by a governmental authority in progress, or to the knowledge of the Borrower, threatened in writing in respect of any tax returns of the Borrower. The Borrower has made adequate reserves on its books and records in accordance with GAAP for all Material Taxes that have accrued but which are not yet due and payable.

8.22Compliance with Regulation U. No portion of the proceeds of the Loans shall be used by the Borrower, or any Affiliate of the Borrower, either directly or indirectly, for the purpose of purchasing or carrying any margin stock, within the meaning of Regulation U as adopted by the Board of Governors of the Federal Reserve System or any successor thereto.

8.23Governmental Regulation. The Borrower is not, and after giving effect to any loan, will not be, subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the ICC Termination Act of 1995 or the Investment Company Act of 1940 or to any federal or state statute or regulation limiting its ability to incur indebtedness for borrowed money.

8.24Bank Accounts. Except those listed on Schedule 7.22 attached hereto, and subject to Section 8.20, all Deposit Accounts and operating bank accounts of the Borrower are located at the Lender.

8.25Place of Business. The principal place of business and books and records of the Borrower is set forth in the preamble to this Agreement, and the location of all Collateral, if other than at such principal place of business, is as set forth on Schedule 7.23 attached hereto and made a part hereof, and the Borrower shall promptly notify the Lender of any change in such locations. The Borrower will not remove or permit assets constituting the Collateral with a value in excess of \$750,000.00 to be removed from such locations without the prior written notice to the Lender, except for Inventory sold in the usual and ordinary course of the Borrower's business.

8.26 Complete Information. This Agreement and all financial statements, schedules, certificates, confirmations, agreements, contracts, and other materials and information heretofore or contemporaneously herewith furnished in writing by the Borrower to the Lender for purposes of, or in connection with, this Agreement and the transactions contemplated hereby is, and all written information hereafter furnished by or on behalf of the Borrower to the Lender pursuant hereto or in connection herewith will be, taken as a whole and after giving supplements thereto, true and accurate in all material respects on the date as of which such information is dated or certified, and none of such information, taken as a whole and after giving supplements thereto, omits to state any material fact known to the Borrower necessary to make such information not misleading in light of the circumstances under which made (it being recognized by the Lender that any projections and forecasts provided by the Borrower are based on good faith estimates and assumptions believed by the Borrower to be reasonable as of the date of the applicable projections or assumptions and that actual results during the period or periods covered by any such projections and forecasts may differ from projected or forecasted results and such difference may be material).

8.27 Subordinated Debt. The subordination provisions of the Subordinated Debt are enforceable against the holders of the Subordinated Debt by the Lender. The Obligations constitute Senior Debt entitled to the benefits of the subordination provisions contained in the Subordinated Debt (if any).

Section 9. AFFIRMATIVE COVENANTS. During the term of this Agreement:

9.3 Compliance with Bank Regulatory Requirements; Increased Costs. If the Lender shall reasonably determine that any Regulatory Change, or compliance by the Lender or any Person controlling the Lender with any request or directive (whether or not having the force of law) of any governmental authority, central bank or comparable agency has or would have the effect of reducing the rate of return on the Lender's or such controlling Person's capital as a consequence of the Lender's obligations hereunder or under any Letter of Credit to a level below that which the Lender or such controlling Person could have achieved but for such Regulatory Change or compliance (taking into consideration the Lender's or such controlling Person's policies with respect to capital adequacy) by an amount deemed by the Lender or such controlling Person to be material or would otherwise reduce the amount of any sum received or receivable by the Lender under this Agreement or under any Note with respect thereto, then from time to time, upon written demand by the Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail), the Borrower shall pay directly to the Lender or such controlling Person such additional amount as will compensate the Lender for such increased cost or such reduction, so long as such amounts have accrued on or after the day which is one hundred eighty days (180) days prior to the date on which the Lender first made demand therefor.

9.4 Borrower Existence. The Borrower shall at all times preserve and maintain its (a) its existence and good standing in the jurisdiction of its organization, and (b) its qualification to do business and good standing in each jurisdiction where the nature of its business makes such qualification necessary (other than such jurisdictions in which the failure to be qualified or in good standing could not reasonably be expected to have a Material Adverse Effect), and shall at all times continue as a going concern in the business which the Borrower is presently conducting or such other business reasonably related or ancillary thereto.

9.5 Compliance With Laws. The Borrower shall use the proceeds of the Loans for working capital and other general corporate or business purposes (including to facilitate the acquisition of Entrepix, Inc. by the Parent Borrower) not in contravention of any requirements of law and not in violation of this Agreement, and shall comply in all respects, including the conduct of its business and operations and the use of its properties and assets, with all applicable laws, rules, regulations, decrees, orders, judgments, licenses and permits, except where failure to comply would not reasonably be expected to have a Material

Adverse Effect. In addition, and without limiting the foregoing sentence, the Borrower shall (a) ensure, and cause each Subsidiary to ensure, that no person who owns a controlling interest in or otherwise controls the Borrower or any Subsidiary is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control (“OFAC”), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loans to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause each Subsidiary to comply, with all applicable Bank Secrecy Act (“BSA”) laws and regulations, as amended.

9.6Payment of Taxes and Liabilities. The Borrower shall pay and discharge, prior to delinquency and before penalties accrue thereon, all property and other taxes, and all governmental charges or levies against it or any of the Collateral, as well as claims of any kind which, if unpaid, could become a Lien on any of the Collateral; provided that the foregoing shall not require the Borrower to pay any such tax or charge so long as it shall contest the validity thereof in good faith by appropriate proceedings and shall set aside on its books adequate reserves with respect thereto in accordance with GAAP and, in the case of a claim which would become a Lien on any of the Collateral, such contest proceedings stay the foreclosure of such Lien or the sale of any portion of the Collateral to satisfy such claim.

9.7Maintain Property. The Borrower shall at all times maintain, preserve and keep its plant, properties and Equipment constituting Collateral, in good repair, working order and condition, normal wear and tear excepted.

9.8Maintain Insurance. The Borrower shall at all times maintain with insurance companies reasonably acceptable to the Lender, such insurance coverage as may be required by any law or governmental regulation or court decree or order applicable to it and such other insurance, to such extent and against such hazards and liabilities, including employers’, public and professional liability risks, as is customarily maintained by companies similarly situated, and shall have insured amounts no less than, and deductibles no higher than, are customary and reasonable. The Borrower shall furnish to the Lender a certificate setting forth in reasonable detail the nature and extent of all insurance maintained by the Borrower, which shall be reasonably acceptable to the Lender. The Borrower shall cause each issuer of an insurance policy to provide the Lender with an endorsement (i) showing the Lender as lender loss payee with respect to each policy of property or casualty insurance; and (ii) providing that ten (10) days’ notice will be given to the Lender prior to any cancellation of, material reduction or change in coverage provided by or other material modification to such policy. The Borrower shall execute and deliver to the Lender a collateral assignment, in form and substance satisfactory to the Lender, of each business interruption insurance policy maintained by the Borrower.

In the event the Borrower either fails to provide the Lender with evidence of the insurance coverage required by this Section or at any time hereafter shall fail to obtain or maintain any of the policies of insurance required above, or to pay any premium in whole or in part relating thereto, then the Lender, without waiving or releasing any obligation or default by the Borrower hereunder, may at any time (but shall be under no obligation to so act), obtain and maintain such policies of insurance and pay such premiums and take any other action with respect thereto, which the Lender reasonably deems advisable. This insurance coverage (a) may, but need not, protect the Borrower’s interests in such property, including, but not limited to, the Collateral, and (b) may not pay any claim made by, or against, the Borrower in connection with such property, including, but not limited to, the Collateral. The Borrower may later cancel any such insurance purchased by the Lender, but only after providing the Lender with evidence that the Borrower has obtained the insurance coverage required by this Section. If the Lender purchases insurance for the Collateral, the Borrower will be responsible for the costs of that insurance, including interest and any other charges that may be imposed with the placement of the insurance, until the effective date of the

cancellation or expiration of the insurance. The costs of the insurance may be added to the principal amount of the Loans owing hereunder. The costs of the insurance may be more than the cost of the insurance the Borrower may be able to obtain on its own.

9.9ERISA Liabilities; Employee Plans. The Borrower shall (i) keep in full force and effect any and all Employee Plans which are presently in existence or may, from time to time, come into existence under ERISA, and not withdraw from any such Employee Plans, unless such withdrawal can be effected or such Employee Plans can be terminated without material liability to the Borrower; (ii) make required contributions to all of such Employee Plans in a timely manner in all material respects and in a sufficient amount to comply with the standards of ERISA; including the minimum funding standards of ERISA, as applicable; (iii) comply with all material requirements of ERISA which relate to such Employee Plans in all material respects; (iv) notify the Lender promptly upon receipt by the Borrower of any notice concerning the imposition of any withdrawal liability or of the institution of any proceeding or other action which may result in the termination of any such Employee Plans or the appointment of a trustee to administer such Employee Plans; (v) promptly advise the Lender of the occurrence of any "Reportable Event" or "Prohibited Transaction" (as such terms are defined in ERISA), with respect to any such Employee Plans that would reasonably be expected to result in material liability to the Borrower; and (vi) amend any Employee Plan that is intended to be qualified within the meaning of Section 401 of the Code to the extent necessary to keep the Employee Plan qualified, and to cause the Employee Plan to be administered and operated in a manner that does not cause the Employee Plan to lose its qualified status.

9.10Financial Statements. The Parent Borrower shall at all times maintain a system of accounting in all respects in accordance with GAAP, and shall furnish to the Lender such information regarding the business affairs, operations and financial condition of the Parent Borrower, including, but not limited to:

(c) promptly when available, and in any event, within one hundred twenty (120) days after the close of each of its fiscal years, a copy of the annual audited financial statements of the Parent Borrower, including consolidated balance sheet, statement of income and retained earnings, statement of cash flows for the fiscal year then ended prepared and certified without adverse reference to going concern value and without qualification (except for qualifications for a change in accounting principles with which such accountants concur and which shall have been disclosed in the notes to the financial statements or other than as a result of, or with respect to, an upcoming maturity date under this Agreement occurring within one year from the time such opinion is delivered or any potential inability to satisfy any financial maintenance covenant in this Agreement on a future date or in a future period) by Grant Thornton LLP or other independent auditor of recognized standing, selected by the Borrower and reasonably acceptable to the Lender; and

(d) promptly when available, and in any event, (i) within seventy (70) days following the end of each fiscal quarter, a copy of the consolidated financial statements of the Parent Borrower regarding such fiscal quarter, including balance sheet, statement of income and retained earnings, statement of cash flows for the fiscal quarter then ended prepared and certified as true and correct by the Borrower's treasurer or chief financial officer.

Notwithstanding the foregoing, the obligations referred to in clauses (a) and (b) above may be satisfied with respect to financial information of the Parent Borrower by furnishing the Parent Borrower's Form 10-K or 10-Q, as applicable, filed with the SEC (and the public filing of such report with the SEC shall constitute delivery under this Section 8.8)

No change with respect to such accounting principles shall be made by the Borrower without giving prior notification to the Lender. The Borrower represents and warrants to the Lender that the financial statements delivered to the Lender at or prior to the execution and delivery of this Agreement and to be delivered at all times thereafter accurately reflect and will accurately reflect the financial condition of the Borrower.

9.11 [Reserved].

9.12 Aged Accounts Schedule. The Parent Borrower shall, within sixty (60) days after the end of its fiscal quarters, deliver to the Lender an aged schedule of the Accounts of the Borrower, listing the name and amount due from each Account Debtor and showing the aggregate amounts due from date of original invoice: (a) 0-30 days, (b) 31-60 days, (c) 61-90 days and (d) more than 90 days, and certified as accurate by the Borrower's treasurer or chief financial officer.

9.13 Inventory Reports. The Borrower shall, within sixty (60) days after the end of each fiscal quarter, deliver to the Lender an inventory report, certified as accurate by the Borrower's treasurer or chief financial officer.

9.14 Covenant Compliance Certificate. The Borrower shall, contemporaneously with the furnishing of the financial statements pursuant to Section 8.8, deliver to the Lender a duly completed compliance certificate, dated the date of such financial statements and certified as true and correct by an appropriate officer of the Borrower, containing a computation of each of the financial covenants set forth in Section 10 and stating that the Borrower has not become aware of any Event of Default or Unmatured Event of Default that has occurred and is continuing or, if there is any such Event of Default or Unmatured Event of Default describing it and the steps, if any, being taken to cure it.

9.15 Field Audits; Appraisals. On any Business Day during normal business hours, upon reasonable prior notice to the Borrower, the Borrower shall permit the Lender to inspect the Inventory, other tangible assets and/or other business operations of the Borrower, to perform appraisals of the Equipment of the Borrower, and to inspect, audit, check and make copies of, and extracts from, the books, records, computer data, computer programs, journals, orders, receipts, correspondence and other data relating to Inventory, Accounts and any other Collateral. All such inspections or audits by the Lender shall be at the Borrower's sole expense, provided, however, that so long as no Event of Default or Unmatured Event of Default exists, the Borrower shall not be required to reimburse the Lender for inspections or audits more frequently than once each fiscal year.

9.16 Other Reports. The Borrower shall, within such reasonable period of time as the Lender may reasonably specify, deliver to the Lender such other schedules and reports as the Lender may reasonably require.

9.17 Intellectual Property. The Borrower shall maintain, preserve and renew all Intellectual Property necessary for the conduct of its business as and where the same is currently located as heretofore or as hereafter conducted by it.

9.18 Notice of Proceedings. The Borrower, promptly upon becoming aware, shall give written notice to the Lender of any litigation, arbitration or governmental investigation or proceeding not previously disclosed by the Borrower to the Lender which has been instituted or, to the knowledge of the Borrower, is threatened in writing against the Borrower or to which any of its respective properties is subject, in each case, which the Borrower determines in its reasonable discretion would reasonably be expected to have a Material Adverse Effect.

9.19 Notice of Event of Default or Material Adverse Effect. The Borrower shall, promptly after the commencement thereof, give notice to the Lender in writing of the occurrence of any Event of Default or any Unmatured Event of Default, or the occurrence of any condition or event having a Material Adverse Effect.

9.20 Environmental Matters. If any release or other disposal of Hazardous Substances shall occur or shall have occurred on any real property or any other assets of the Borrower in material violation of Environmental Law, the Borrower shall cause the prompt containment and removal of such Hazardous Substances and the remediation of such real property or other assets as necessary to comply with all Environmental Laws. Without limiting the generality of the foregoing, the Borrower shall comply with any Federal or state judicial or administrative order requiring the performance at any real property of the Borrower of activities in response to the release of a Hazardous Substance. To the extent that the transportation of Hazardous Substances is permitted by this Agreement, the Borrower shall dispose of such Hazardous Substances, or of any other wastes, only at licensed disposal facilities.

9.21 Further Assurances. The Borrower shall take such actions as are necessary and as the Lender may reasonably request from time to time to ensure that the Obligations under the Loan Documents are secured by substantially all of the assets of the Borrower (other than Excluded Collateral), in each case as the Lender may reasonably determine, including (a) the execution and delivery of security agreements, pledge agreements, mortgages, deeds of trust, financing statements and other documents, and the filing or recording of any of the foregoing, and (b) the delivery of certificated securities and other collateral with respect to which perfection is obtained by possession.

9.22 Banking Relationship. The Borrower covenants and agrees, at all times during the term of this Agreement, to utilize the Lender as its primary bank of account and depository for all financial services, including all receipts, disbursements, cash management and related service for its operations located in the United States. Notwithstanding the foregoing, Borrower shall have until (i) April 30, 2023 (or such later date as the Lender shall agree) to establish all necessary accounts with Lender to comply with the foregoing sentence and (ii) June 30, 2023 (or such later date as the Lender shall agree), to transition all of its existing accounts and deposits to Lender (other than as agreed to by the Lender from time to time).

9.23 Non-Utilization Fee. The Borrower agrees to pay to the Lender a non-utilization fee equal to 12.5 basis points of the total of (a) the Revolving Loan Commitment, minus (b) the sum of (i) the daily average of the aggregate principal amount of all Revolving Loans outstanding, plus (ii) the daily average of the aggregate amount of the Letter of Credit Obligations, which non- utilization fee shall be (A) calculated on the basis of a year consisting of 360 days, (B) paid for the actual number of days elapsed, and (C) payable quarterly in arrears on the last day of each March, June, September and December, commencing on March 31, 2023, and on the Revolving Loan Maturity Date.

9.24 Post Closing Obligations. Notwithstanding anything herein to the contrary, the Borrower shall:

(c) within ninety (90) days of the Closing Date (or such longer period as the Lender may agree), use its commercially reasonable efforts to terminate the (i) UCC-1 Financing Statement, filed with the Delaware Secretary of State on July 5, 2019 with the Filing Number 20194652439, in favor of Dana Limited and (ii) UCC-1 Financing Statement, filed with the Delaware Secretary of State on November 6, 2019 with the Filing Number 20197836328, in favor of Dana Limited; and



(d) within ten (10) Business Days of the Closing Date (or such longer period as the Lender may agree), deliver to the Lender all physically certificated equity interests held by the Borrower with accompanying stock powers which are required to be delivered pursuant to the terms and conditions of the Loan Documents.

Section 10. NEGATIVE COVENANTS.

10.3 Debt. The Borrower shall not, either directly or indirectly, create, assume, incur or have outstanding any Debt (including purchase money indebtedness), or become liable, whether as endorser, guarantor, surety or otherwise, for any debt or obligation of any other Person, except:

(c) the Obligations under this Agreement and the other Loan Documents;

(d) obligations of the Borrower for Taxes, assessments, municipal or other governmental charges;

(e) obligations of the Borrower for accounts payable, other than for money borrowed, incurred in the ordinary course of business;

(f) Subordinated Debt and unsecured Debt;

(g) Bank Product Obligations under a Hedging Agreement incurred in favor of the Lender or an Affiliate thereof for bona fide hedging purposes and not for speculation;

(h) Debt described on Schedule 9.1 and any extension, renewal or refinancing thereof so long as the principal amount thereof is not increased;

(i) Debt of the Borrower evidenced by Capitalized Lease Obligations and purchase money Debt (including obligations in respect of mortgages, industrial revenue bonds, industrial development bonds and similar financings) in connection with the acquisition, construction, installation, repair, replacement or improvement of fixed or capital assets; provided that in no event shall the aggregate principal amount of all such Debt incurred or assumed in each case after the date hereof pursuant to this clause (g) exceed \$1,000,000.00 (measured at the time of incurrence) at any one time outstanding;

(j) intercompany loans;

(k) unsecured Debt of the Borrower in respect of earn-outs owing to sellers of assets or Capital Securities to the Borrower that is incurred in connection with the consummation of one or more acquisitions to the extent permitted by this Agreement;

(l) Debt incurred by the Borrower arising from agreements providing for indemnification or from guaranties or letters of credit, surety bonds or performance bonds securing the performance of the Borrower pursuant to such agreements, in connection with Dispositions of any business or assets permitted by this Agreement;

(m) Debt of the Borrower which may be deemed to exist pursuant to any guaranties not in respect of borrowed money, performance, surety, statutory or appeal bonds or similar obligations incurred in the ordinary course of business;

(n)Debt of the Borrower in respect of cash management agreements, netting services, overdraft protections and otherwise in connection with deposit accounts;

(o)Debt of the Borrower consisting of insurance premium financing in the ordinary course of business; or

(p)other Debt of the Borrower in an aggregate principal amount not to exceed \$750,000.00 at any time outstanding.

10.4Encumbrances. The Borrower shall not, either directly or indirectly, create, assume, incur or suffer or permit to exist any Lien or charge of any kind or character upon any asset of the Borrower, whether owned at the date hereof or hereafter acquired, except for Permitted Liens.

10.5[Reserved]

10.6Acquisitions, Merger or Sales. Following the date hereof, the Borrower shall not, whether in one transaction or a series of related transactions, be a party to any merger or consolidation, or purchase or otherwise acquire all or substantially all of the assets or any Capital Securities of any class of, or any partnership or joint venture interest in, any other Person without the prior written consent of Lender. Further, the Borrower shall not, whether in one transaction or a series of related transactions, be a party to any merger or consolidation, or sell all or substantially all of its assets or any Capital Securities of any class to any other Person without the prior written consent of Lender. Notwithstanding anything herein to the contrary, if any Excluded Subsidiary is permitted to be formed or acquired after the Closing Date, such Excluded Subsidiary shall not become a Borrower or guarantor of this Agreement, and no Capital Securities of such Excluded Subsidiary shall be pledged pursuant to any pledge agreement.

10.7[Reserved.]

10.8Distributions. If an Event of Default has occurred and is continuing, the Parent Borrower shall not, (a) make any distribution or dividend (other than stock dividends or distributions or dividends to any other Borrower or Affiliate for the purposes of payment of any Tax determined on a combined, consolidated, unitary, affiliated or other group basis for any such group that includes the Borrower), whether in cash or otherwise, to any of its equityholders, (b) purchase or redeem any of its Capital Securities or any warrants, options or other rights in respect thereof (other than distributions or dividends to allow for the repurchase, acquisition or retirement for value of Capital Securities of Parent Borrower (or of any parent entity thereof) or any of its Subsidiaries, as applicable, held by any employee or director or former employee or director of the Parent Borrower or its Subsidiaries, as applicable, including pursuant to any employee or director equity plan, employee or director stock option or profits interest plan or any other employee or director benefit plan or any agreement (including any separation, stock subscription or shareholder agreement) in aggregate amount not to exceed \$100,000.00 per fiscal year), (c) pay any management fees or similar fees to any of its equityholders or any Affiliate thereof, or (d) pay or prepay interest on, principal of, premium, if any, redemption, conversion, exchange, purchase, retirement, defeasance, sinking fund or any other payment in respect of any Subordinated Debt.

10.9Transactions with Affiliates. The Borrower shall not, directly or indirectly, enter into or permit to exist any transaction with any of its Affiliates or with any director, officer or employee of the Borrower other than (i) transactions between or among Borrowers, (ii) transactions in the ordinary course of, and pursuant to the reasonable requirements of, the business of the Borrower and upon fair and reasonable terms which are no less favorable to the Borrower than would be obtained in a comparable arm's

length transaction with a Person that is not an Affiliate of the Borrower, (iii) transactions permitted by Section 9.6, and (iv) transactions pursuant to the Receivables Employment Agreement.

10.10 Unconditional Purchase Obligations. The Borrower shall not enter into or be a party to any contract for the purchase of materials, supplies or other property or services if such contract requires that payment be made by it regardless of whether delivery is ever made of such materials, supplies or other property or services.

10.11 Cancellation of Debt. The Borrower shall not cancel any material claim or debt owing to it, except for reasonable consideration or in the ordinary course of business.

10.12 Inconsistent Agreements. The Borrower shall not enter into any agreement containing any provision which would (a) be violated or breached by any borrowing by the Borrower hereunder or by the performance by the Borrower or any Subsidiary of any of its Obligations hereunder or under any other Loan Document, (b) prohibit the Borrower or any Subsidiary from granting to the Lender a Lien on any of its assets or (c) create or permit to exist or become effective any encumbrance or restriction on the ability of any Subsidiary to (i) pay dividends or make other distributions to the Borrower or any other Subsidiary, or pay any Debt owed to the Borrower or any other Subsidiary, (ii) make loans or advances to the Borrower or any other Subsidiary, or (iii) transfer any of its assets or properties to the Borrower or any other Subsidiary, other than, in each case, (A) customary restrictions and conditions contained in agreements relating to the sale of all or a substantial part of the assets of any Subsidiary pending such sale, provided that such restrictions and conditions apply only to the Subsidiary to be sold and such sale is permitted hereunder, (B) restrictions or conditions imposed by any agreement relating to purchase money Debt, Capital Leases and other secured Debt permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Debt, and (C) customary provisions in leases and other contracts restricting the assignment thereof.

10.13 Use of Proceeds. Neither the Borrower nor any of its Subsidiaries or Affiliates shall use any portion of the proceeds of the Loans, either directly or indirectly, for the purpose of purchasing any securities (other than, to the extent constituting securities, the Capital Securities of Entrepix, Inc.) or transactions permitted by Section 9.6.

10.14 Bank Accounts. The Borrower shall not establish any new Deposit Accounts or other bank accounts, other than Deposit Accounts or other bank accounts established at or with the Lender without the prior written consent of the Lender.

10.15 Business Activities; Change of Legal Status and Organizational Documents. The Borrower shall not (a) without the consent of the Lender, engage in any line of business other than the businesses engaged in on the date hereof and businesses reasonably related or ancillary thereto, including, without limitation, software licensing and contract manufacturing, (b) without notice to the Lender, change its name, its Organizational Identification Number, if it has one, its type of organization, its jurisdiction of organization or other legal structure, or (c) without the consent of the Lender, permit its charter, bylaws or other organizational documents to be amended or modified in any way which would reasonably be expected to materially adversely affect the interests of the Lender.

## Section 11. FINANCIAL COVENANTS.

11.3 Senior Debt to EBITDA. As of the end of each of its fiscal quarters, beginning March 31, 2023, the Borrower shall maintain a ratio of consolidated Senior Debt to consolidated EBITDA for such fiscal quarter, of not greater than 1.50 to 1.00, through December 31, 2024, based on a building 4 quarters,

and then 1.00 to 1.00 each fiscal quarter thereafter. For the purposes of this financial covenant “a building 4 quarters” shall mean that that Borrower will annualize its net cash flow over annualized debt service based on completed quarters, starting with the quarter ending March 31, 2023, until such time as the Borrower has completed for successive quarters post-Transaction, at which time calculations shall be based on a trailing 4 quarters.

11.4Fixed Charge Coverage. As of the end of each of its fiscal quarters, beginning March 31, 2023, the Borrower shall maintain a ratio of (a) the total for such fiscal quarter of EBITDAR minus the sum of all (i) income taxes paid in cash plus cash dividends/distributions plus maintenance Capital Expenditures plus management fees paid in cash, to (b) the sum for such fiscal quarter of (i) Interest Charges plus (ii) required payments of principal on Debt (including the Term Loan, but excluding the Revolving Loans) plus (iii) operating lease/rent expense, of not less than 1.30 to 1.00 based on a building 4 quarters. For the purposes of this financial covenant “a building 4 quarters” shall mean that that Borrower will annualize its net cash flow, starting with the quarter ending March 31, 2023, until such time as the Borrower has completed for successive quarters post-Transaction, at which time calculations shall be based on a trailing 4 quarters.

11.5Working Capital. As of the end of each of its fiscal quarters, beginning March 31, 2023, the Borrower shall maintain, on a consolidated working capital of current assets (excluding related party receivables and prepaid expenses) minus current liabilities of at least \$35,000,000.00.

## Section 12. EVENTS OF DEFAULT.

The Borrower, without notice or demand of any kind (except as specified below), shall be in default under this Agreement upon the occurrence of any of the following events (each an “Event of Default”).

12.3Nonpayment of Obligations. Any amount due and owing on any Note or any of the Obligations, whether by its terms or as otherwise provided herein, is not paid within five (5) Business Days of when due.

12.4Misrepresentation. Any written warranty, representation, certificate or statement of the Borrower in this Agreement, or the other Loan Documents shall be false in any material respect when made, or if any financial data or any other information now or hereafter furnished to the Lender by or on behalf of the Borrower pursuant to the Loan Documents shall prove to be false, inaccurate or misleading in any material respect.

12.5Nonperformance. Any failure to perform or default in the performance of any covenant, condition or agreement contained in this Agreement or any other Loan Document and, if capable of being cured, such failure to perform or default in performance continues for a period of thirty (30) days after the Borrower receives notice or knowledge from any source of such failure to perform or default in performance.

12.6Default under Loan Documents. A default under any of the other Loan Documents, all of which covenants, conditions and agreements contained therein are hereby incorporated in this Agreement by express reference, shall be and constitute an Event of Default under this Agreement and any other of the Obligations and, if capable of being cured, such failure to perform or default in performance continues for a period of thirty (30) days after the Borrower receives notice or knowledge from any source of such failure to perform or default in performance.

12.7Default under Other Debt. Any default by the Borrower in the payment of any Debt (other than the Loans) beyond any period of grace provided with respect thereto or in the performance of any other term, condition or covenant contained in any agreement (including, but not limited to any capital or operating lease or any agreement in connection with the deferred purchase price of property) under which any such obligation is created, the effect of which would reasonably be expected to have a Material Adverse Effect upon the Borrower.

12.8Other Material Obligations. Any default in the payment when due, or in the performance or observance of, any material obligation of, or condition agreed to by, any Obligor with respect to any material purchase or lease of goods or services where such default, singly or in the aggregate with all other such defaults, which would reasonably be expected to have a Material Adverse Effect.

12.9Bankruptcy, Insolvency, etc. The Borrower becomes insolvent or admits in writing its inability or refusal to pay Debts as they become due; or the Borrower applies for, consents to, or acquiesces in the appointment of a trustee, receiver or other custodian for the Borrower or any property thereof, or makes a general assignment for the benefit of creditors; or, in the absence of such application, consent or acquiescence, a trustee, receiver or other custodian is appointed for the Borrower or for a substantial part of the property of any thereof and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding, is commenced in respect of the Borrower, and if such case or proceeding is not commenced by the Borrower, it is consented to or acquiesced in by the Borrower, or remains undismissed for sixty (60) days; or the Borrower takes any action to authorize, or in furtherance of, any of the foregoing.

12.10Judgments. The entry of any final judgment, decree, levy, attachment, garnishment or other process, or the filing of any Lien against the Borrower in connection with the foregoing which is not covered by insurance and which judgment or other process would have a Material Adverse Effect on the Borrower.

12.11Collateral Impairment. The entry of any judgment, decree, levy, attachment, garnishment or other process, or the filing of any Lien against, any of the Collateral in each case involving an amount in excess of \$750,000.00 (to the extent not covered by insurance) and such judgment or other process shall not have been, within sixty (60) days from the entry thereof, (i) bonded over to the reasonable satisfaction of the Lender and appealed, (ii) vacated, or (iii) discharged, or the loss, theft, destruction, seizure or forfeiture, or the occurrence of any material deterioration or impairment of any material portion of the Collateral, or any material decline or depreciation in the value or market price thereof (whether actual or reasonably anticipated), which causes such Collateral, in the sole opinion of the Lender acting in good faith, to become unsatisfactory as to value or character, such that it causes the Lender to reasonably believe that it is insecure and that the likelihood for repayment of the Obligations is or will soon be impaired, time being of the essence. The cause of such deterioration, impairment, decline or depreciation shall include, but is not limited to, the failure by the Borrower to use commercially reasonable efforts to take any action deemed reasonably necessary by the Lender to preserve and maintain the value and collectability of the Collateral and requested by Lender to Borrower in writing.

12.12Material Adverse Effect. The occurrence of any development, condition or event which has a Material Adverse Effect on the Borrower.

12.13[Reserved].

12.14 Subordinated Debt. The subordination provisions of any Subordinated Debt shall for any reason be revoked or invalid or otherwise cease to be in full force and effect. The Borrower shall contest in any manner, or any other holder thereof shall contest in any judicial proceeding, the validity or enforceability of the Subordinated Debt or deny that it has any further liability or obligation thereunder, or the Obligations shall for any reason not have the priority contemplated by the subordination provisions of the Subordinated Debt.

### Section 13. REMEDIES.

Upon the occurrence and during the continuance of an Event of Default, the Lender shall have all rights, powers and remedies set forth in the Loan Documents as a secured party under the UCC or as otherwise provided at law or in equity. Without limiting the generality of the foregoing, the Lender may, at its option upon the occurrence of an Event of Default, declare its commitments to the Borrower to be terminated and all Obligations to be immediately due and payable, provided, however, that upon the occurrence of an Event of Default under Section 11.7, all commitments of the Lender to the Borrower shall immediately terminate and all Obligations shall be automatically due and payable, all without demand, notice or further action of any kind required on the part of the Lender. The Borrower hereby waives any and all presentment, demand, notice of dishonor, protest, and all other notices and demands in connection with the enforcement of Lender's rights under the Loan Documents, and hereby consents to, and waives notice of release, with or without consideration, of any Borrower or of any Collateral, notwithstanding anything contained herein or in the Loan Documents to the contrary. In addition to the foregoing, upon the occurrence and during the continuance of an Event of Default:

13.3 Possession and Assembly of Collateral. The Lender may, without notice, demand or legal process of any kind, take possession of any or all of the Collateral (in addition to Collateral of which the Lender already has possession), wherever it may be found, and for that purpose may pursue the same wherever it may be found, and may at any time enter into any of the Borrower's premises where any of the Collateral may be or is supposed to be, and search for, take possession of, remove, keep and store any of the Collateral until the same shall be sold or otherwise disposed of and the Lender shall have the right to store and conduct a sale of the same in any of the Borrower's premises without cost to the Lender. At the Lender's request, the Borrower will, at the Borrower's sole expense, assemble the Collateral and make it available to the Lender at a place or places to be designated by the Lender which is reasonably convenient to the Lender and the Borrower.

13.4 Sale of Collateral. The Lender may sell any or all of the Collateral at public or private sale, upon such terms and conditions as the Lender may deem proper, and the Lender may purchase any or all of the Collateral at any such sale. The Borrower acknowledges that the Lender may be unable to effect a public sale of all or any portion of the Collateral because of certain legal and/or practical restrictions and provisions which may be applicable to the Collateral and, therefore, may be compelled to resort to one or more private sales to a restricted group of offerees and purchasers. The Borrower consents to any such private sale so made even though at places and upon terms less favorable than if the Collateral were sold at public sale. The Lender shall have no obligation to clean-up or otherwise prepare the Collateral for sale. The Lender may apply the net proceeds, after deducting all costs, expenses and attorneys' fees incurred or paid at any time in the collection, protection and sale of the Collateral and the Obligations, to the payment of any Note and/or any of the other Obligations, returning the excess proceeds, if any, to the Borrower. The Borrower shall remain liable for any amount remaining unpaid after such application, with interest at the Default Rate. Any notification of intended disposition of the Collateral required by law shall be conclusively deemed reasonably and properly given if given by the Lender at least ten (10) calendar days before the date of such disposition. The Borrower hereby confirms, approves and ratifies all acts and deeds of the Lender relating to the foregoing, and each part thereof, and expressly waives any and all claims of

any nature, kind or description which it has or may hereafter have against the Lender or its representatives, by reason of taking, selling or collecting any portion of the Collateral. The Borrower consents to releases of the Collateral at any time (including prior to default) and to sales of the Collateral in groups, parcels or portions, or as an entirety, as the Lender shall deem appropriate. The Borrower expressly absolves the Lender from any loss or decline in market value of any Collateral by reason of delay in the enforcement or assertion or nonenforcement of any rights or remedies under this Agreement.

**13.5 Standards for Exercising Remedies.** To the extent that applicable law imposes duties on the Lender to exercise remedies in a commercially reasonable manner, the Borrower acknowledges and agrees that it is not commercially unreasonable for the Lender (a) to fail to incur expenses reasonably deemed significant by the Lender to prepare Collateral for disposition or otherwise to complete raw material or work-in-process into finished goods or other finished products for disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove liens or encumbrances on or any adverse claims against Collateral, (d) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other Persons, whether or not in the same business as the Borrower, for expressions of interest in acquiring all or any portion of the Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (h) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, including, without limitation, any warranties of title, (k) to purchase insurance or credit enhancements to insure the Lender against risks of loss, collection or disposition of Collateral or to provide to the Lender a guaranteed return from the collection or disposition of Collateral, or (l) to the extent deemed appropriate by the Lender, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Lender in the collection or disposition of any of the Collateral. The Borrower acknowledges that the purpose of this section is to provide non-exhaustive indications of what actions or omissions by the Lender would not be commercially unreasonable in the Lender's exercise of remedies against the Collateral and that other actions or omissions by the Lender shall not be deemed commercially unreasonable solely on account of not being indicated in this section. Without limitation upon the foregoing, nothing contained in this section shall be construed to grant any rights to the Borrower or to impose any duties on the Lender that would not have been granted or imposed by this Agreement or by applicable law in the absence of this section.

**13.6 UCC and Offset Rights.** The Lender may exercise, from time to time, any and all rights and remedies available to it under the UCC or under any other applicable law in addition to, and not in lieu of, any rights and remedies expressly granted in this Agreement or in any other agreements between the Borrower and the Lender, and may, without demand or notice of any kind, appropriate and apply toward the payment of such of the Obligations, whether matured or unmatured, including costs of collection and reasonable attorneys' fees, and in such order of application as the Lender may, from time to time, elect, any indebtedness of the Lender to the Borrower, however created or arising, including, but not limited to, balances, credits, deposits, accounts or moneys of the Borrower in the possession, control or custody of, or in transit to the Lender. The Borrower hereby waives the benefit of any law that would otherwise restrict or limit the Lender in the exercise of its right, which is hereby acknowledged, to appropriate at any time hereafter any such indebtedness owing from the Lender to the Borrower.

13.7 Additional Remedies. The Lender shall have the right and power to:

(c) instruct the Borrower, at its own expense, to notify any parties obligated on any of the Collateral, including, but not limited to, any Account Debtors, to make payment directly to the Lender of any amounts due or to become due thereunder, or the Lender may directly notify such obligors of the security interest of the Lender, and/or of the assignment to the Lender of the Collateral and direct such obligors to make payment to the Lender of any amounts due or to become due with respect thereto, and thereafter, collect any such amounts due on the Collateral directly from such Persons obligated thereon;

(d) enforce collection of any of the Collateral, including, but not limited to, any Accounts, by suit or otherwise, or make any compromise or settlement with respect to any of the Collateral, or surrender, release or exchange all or any part thereof, or compromise, extend or renew for any period (whether or not longer than the original period) any indebtedness thereunder;

(e) take possession or control of any proceeds and products of any of the Collateral, including the proceeds of insurance thereon;

(f) extend, renew or modify for one or more periods (whether or not longer than the original period) any Note, any other of the Obligations, any obligation of any nature of any other obligor with respect to any Note or any of the Obligations;

(g) grant releases, compromises or indulgences with respect to any Note, any of the Obligations, any extension or renewal of any of the Obligations, any security therefor, or to any other obligor with respect to any Note or any of the Obligations;

(h) transfer the whole or any part of securities which may constitute Collateral into the name of the Lender or the Lender's nominee without disclosing, if the Lender so desires, that such securities so transferred are subject to the security interest of the Lender, and any corporation, association, or any of the managers or trustees of any trust issuing any of such securities, or any transfer agent, shall not be bound to inquire, in the event that the Lender or such nominee makes any further transfer of such securities, or any portion thereof, as to whether the Lender or such nominee has the right to make such further transfer, and shall not be liable for transferring the same;

(i) vote the Collateral;

(j) make an election with respect to the Collateral under Section 1111 of the Bankruptcy Code or take action under Section 364 or any other section of the Bankruptcy Code; provided, however, that any such action of the Lender as set forth herein shall not, in any manner whatsoever, impair or affect the liability of the Borrower hereunder, nor prejudice, waive, nor be construed to impair, affect, prejudice or waive the Lender's rights and remedies at law, in equity or by statute, nor release, discharge, nor be construed to release or discharge, the Borrower, any guarantor or other Person liable to the Lender for the Obligations; and

(k) at any time, and from time to time, accept additions to, releases, reductions, exchanges or substitution of the Collateral, without in any way altering, impairing, diminishing or affecting the provisions of this Agreement, the Loan Documents, or any of the other Obligations, or the Lender's rights hereunder, under any Note or under any of the other Obligations.



The Borrower hereby ratifies and confirms whatever the Lender may do upon the occurrence and during the continuance of an Event of Default with respect to the Collateral and agrees that the Lender shall not be liable for any error of judgment or mistakes of fact or law with respect to actions taken in connection with the Collateral upon the occurrence and during the continuance of an Event of Default.

13.8 Appointment of Receiver. After the occurrence and during the continuance of an Event of Default, Borrower hereby agrees and acknowledges that in addition to any other remedy under the Loan Documents, this Agreement, or at law or equity, that the Lender shall be and is entitled to the appointment of a receiver under either state or federal receivership law and the Borrower hereby consents to the appointment of a receiver of the Lender's choice for purposes of effectuating the provisions of this paragraph. Borrower further agrees and consents that, at the Lender's choosing, such receiver will be entitled to take exclusive possession and control, to the exclusion of Borrower and its agents, of all or substantially all of Borrower's Collateral or such limited or specific property of Borrower constituting Collateral as the Lender at its discretion may identify or select. Borrower further agrees that such receiver shall be vested with such powers as the appointing court determines are necessary and appropriate to possess, maintain, operate, control, and/or liquidate property placed into the control of the receiver and specifically agrees that at the specific request of the Lender, the receiver may be vested with the power to operate the Borrower as a going concern in all respects, and to collect accounts, enforce and settle claims, and to liquidate Borrower's property or the Collateral. Borrower shall and hereby agrees to cooperate in all reasonable receiver requests for assistance and information necessary to effectuate the duties ascribed to the receiver by the court. Borrower hereby grants to the Lender, solely upon the occurrence and during the continuation of an Event of Default during the term of this Agreement, its limited power of attorney authorizing the Lender to represent the Borrower's consent to the appointment of a receiver in any order that the Lender may present to a court. Borrower further agrees and acknowledges that three (3) Business Days' notice of a hearing appointing such receiver shall be considered reasonable notice of such hearing. The provisions of this Section 12.6 shall survive the termination of this Agreement.

13.9 Attorney-in-Fact. The Borrower hereby irrevocably makes, constitutes and appoints the Lender (and any officer of the Lender or any Person designated by the Lender for that purpose) as the Borrower's true and lawful proxy and attorney-in-fact (and agent-in-fact) in the Borrower's name, place and stead, with full power of substitution, solely upon the occurrence and during the continuation of an Event of Default during the term of this Agreement, to (i) take such actions as are permitted in this Agreement, (ii) execute such financing statements and other documents and to do such other acts as the Lender may require to perfect and preserve the Lender's security interest in, and to enforce such interests in the Collateral, and (iii) carry out any remedy provided for in this Agreement, including, without limitation, endorsing the Borrower's name to checks, drafts, instruments and other items of payment, and proceeds of the Collateral, executing change of address forms with the postmaster of the United States Post Office serving the address of the Borrower, changing the address of the Borrower to that of the Lender, opening all envelopes addressed to the Borrower and applying any payments contained therein to the Obligations. The Borrower hereby acknowledges that the constitution and appointment of such proxy and attorney-in-fact are coupled with an interest and are irrevocable. The Borrower hereby ratifies and confirms all that such attorney-in-fact may do or cause to be done by virtue of any provision of this Agreement.

13.10 No Marshaling. The Lender shall not be required to marshal any present or future Collateral for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order. To the extent that it lawfully may, the Borrower hereby agrees that it will not invoke any law relating to the marshaling of Collateral which might cause delay in or impede the enforcement of the Lender's rights under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations

is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, the Borrower hereby irrevocably waives the benefits of all such laws.

13.11 Application of Proceeds. The Lender will within three (3) Business Days after receipt of cash or solvent credits from collection of items of payment, proceeds of Collateral or any other source, apply the whole or any part thereof against the Obligations secured hereby. The Lender shall further have the exclusive right to determine how, when and what application of such payments and such credits shall be made on the Obligations, and such determination shall be conclusive upon the Borrower. Any proceeds of any disposition by the Lender of all or any part of the Collateral may be first applied by the Lender to the payment of expenses incurred by the Lender in connection with the Collateral, including attorneys' fees and legal expenses as provided for in Section 13 hereof. Notwithstanding anything to the contrary set forth above, in no event shall any proceeds of any Collateral owned, or any guaranty provided, by any Borrower under any Loan Document be applied to repay or cash collateralize any Excluded Swap Obligation with respect to such Borrower, but appropriate adjustments shall be made with respect to payments from other Borrowers to preserve the allocation to Obligations otherwise set forth above in this Section; provided, further, that Lender may elect to apply the proceeds of any such Collateral or guaranty to repay or cash collateralize any Obligations in accordance with the priority set forth above (other than Excluded Swap Obligation with respect to such Borrower) before applying the proceeds of any other Collateral or guaranty provided under any Loan Document, if in the reasonable determination of Lender, such order of application will maximize the repayment of all of the Obligations. Lender shall have absolute discretion as to the time of application of any such proceeds, moneys, or balances in accordance with this Agreement.

13.12 No Waiver. No Event of Default shall be waived by the Lender except in writing. No failure or delay on the part of the Lender in exercising any right, power or remedy hereunder shall operate as a waiver of the exercise of the same or any other right at any other time; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. There shall be no obligation on the part of the Lender to exercise any remedy available to the Lender in any order. The remedies provided for herein are cumulative and not exclusive of any remedies provided at law or in equity. The Borrower agrees that in the event that the Borrower fails to perform, observe or discharge any of its Obligations or liabilities under this Agreement or any other agreements with the Lender, no remedy of law will provide adequate relief to the Lender, and further agrees that the Lender shall be entitled to seek temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

13.13 Letters of Credit. With respect to all Letters of Credit for which presentment for honor shall not have occurred at the time of an acceleration pursuant to this Section 12, the Borrower shall at such time deposit in a cash collateral account opened by the Lender an amount equal to the Letter of Credit Obligations then outstanding. Amounts held in such cash collateral account shall be applied by the Lender to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay the Obligations, in such order of application as the Lender may, in its sole discretion, from time to time elect. After all such Letters of Credit shall have expired or been fully drawn upon, all commitments to make Loans hereunder have terminated and all other Obligations have been indefeasibly satisfied and paid in full in cash, the balance, if any, in such cash collateral account shall be returned to the Borrower or such other Person as may be lawfully entitled thereto.

#### Section 14. MISCELLANEOUS.

14.3 Obligations Absolute. None of the following shall affect the Obligations of the Borrower to the Lender under this Agreement or the Lender's rights with respect to the Collateral:

(c) acceptance or retention by the Lender of other property or any interest in property as security for the Obligations;

(d) release by the Lender of any Borrower, or all or any part of the Collateral or of any party liable with respect to the Obligations;

(e) release, extension, renewal, modification or substitution by the Lender of any Note, or any note evidencing any of the Obligations, or the compromise of the liability of any guarantor of the Obligations; or

(f) failure of the Lender to resort to any other security or to pursue the Borrower or any other obligor liable for any of the Obligations before resorting to remedies against the Collateral.

14.4 Entire Agreement. This Agreement and the other Loan Documents (i) are valid, binding and enforceable against the Borrower and the Lender in accordance with their respective provisions and no conditions exist as to their legal effectiveness; (ii) constitute the entire agreement between the parties with respect to the subject matter hereof and thereof; and (iii) are the final expression of the intentions of the Borrower and the Lender. No promises, either expressed or implied, exist between the Borrower and the Lender, unless contained herein or therein. This Agreement, together with the other Loan Documents, supersedes all negotiations, representations, warranties, commitments, term sheets, discussions, negotiations, offers or contracts (of any kind or nature, whether oral or written) prior to or contemporaneous with the execution hereof with respect to any matter, directly or indirectly related to the terms of this Agreement and the other Loan Documents. This Agreement and the other Loan Documents are the result of negotiations among the Lender, the Borrower and the other parties thereto, and have been reviewed (or have had the opportunity to be reviewed) by counsel to all such parties, and are the products of all parties. Accordingly, this Agreement and the other Loan Documents shall not be construed more strictly against the Lender merely because of the Lender's involvement in their preparation.

14.5 Amendments; Waivers. No delay on the part of the Lender in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by the Lender of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy. No amendment, modification or waiver of, or consent with respect to, any provision of this Agreement or the other Loan Documents shall in any event be effective unless the same shall be in writing and acknowledged by the Lender, and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

14.6 WAIVER OF DEFENSES. THE BORROWER WAIVES EVERY PRESENT AND FUTURE DEFENSE, CAUSE OF ACTION, COUNTERCLAIM OR SETOFF WHICH THE BORROWER MAY NOW HAVE OR HEREAFTER MAY HAVE TO ANY ACTION BY THE LENDER IN ENFORCING THIS AGREEMENT. PROVIDED THE LENDER ACTS IN GOOD FAITH, THE BORROWER RATIFIES AND CONFIRMS WHATEVER THE LENDER MAY DO PURSUANT TO THE TERMS OF THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDER GRANTING ANY FINANCIAL ACCOMMODATION TO THE BORROWER.

14.7 FORUM SELECTION AND CONSENT TO JURISDICTION. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF ARIZONA OR IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA; PROVIDED THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE THE LENDER FROM BRINGING SUIT OR TAKING

OTHER LEGAL ACTION IN ANY OTHER JURISDICTION. THE BORROWER HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF ARIZONA AND OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. THE BORROWER FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF ARIZONA. THE BORROWER HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

14.8WAIVER OF JURY TRIAL. THE LENDER AND THE BORROWER, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY, ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT, ANY NOTE, ANY OTHER LOAN DOCUMENT, ANY OF THE OTHER OBLIGATIONS, THE COLLATERAL, OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH OR ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, OR ANY COURSE OF CONDUCT OR COURSE OF DEALING IN WHICH THE LENDER AND THE BORROWER ARE ADVERSE PARTIES, AND EACH AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDER GRANTING ANY FINANCIAL ACCOMMODATION TO THE BORROWER.

14.9Assignability. The Lender may at any time assign the Lender's rights in this Agreement, the other Loan Documents, the Obligations, or any part thereof and transfer the Lender's rights in any or all of the Collateral, and the Lender thereafter shall be relieved from all liability with respect to such Collateral. In addition, the Lender may at any time sell one or more participations in the Loans. The Borrower may not sell or assign this Agreement, or any other agreement with the Lender or any portion thereof, either voluntarily or by operation of law, without the prior written consent of the Lender. This Agreement shall be binding upon the Lender and the Borrower and their respective legal representatives and successors. All references herein to the Borrower shall be deemed to include any successors, whether immediate or remote.

14.10Confirmations. The Borrower and the Lender agree from time to time, upon written request received by it from the other, to confirm to the other in writing the aggregate unpaid principal amount of the Loans then outstanding under such Note.

14.11Participations. In the event that any Lender sells one or more participations in the Loans to any Person pursuant to Section 13.7 (each, a "Participant") (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower and any other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 13.21 with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.5 (subject to the requirements and limitations therein (it being understood that the documentation required under Section 2.5(e) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 13.7; provided that such Participant (A) agrees to be subject to the provisions of Section 2.5(g) as if it were an assignee under Section 13.7; and (B) shall not be entitled to receive any greater payment under Section 2.5, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

14.12Confidentiality. The Lender agrees to use reasonable efforts (equivalent to at least the efforts the Lender applies to maintain the confidentiality of its own confidential information) to maintain as confidential all information provided to it by or on behalf of the Borrower, except that the Lender may disclose such information (a) to Persons employed or engaged by the Lender in evaluating, approving, structuring or administering the Loans; (b) to any assignee or participant or potential assignee or participant that has agreed to comply with the covenant contained in this Section 13.9 (and any such assignee or participant or potential assignee or participant may disclose such information to Persons employed or engaged by them as described in clause (a) above); (c) as required or requested by any federal or state regulatory authority or examiner, or any insurance industry association, or as reasonably believed by the Lender to be compelled by any court decree, subpoena or legal or administrative order or process; (d) as, on the advice of the Lender's counsel, is required by law; (e) in connection with the exercise of any right or remedy under the Loan Documents or in connection with any litigation with respect to the Loan Documents to which the Lender is a party; (f) to any nationally recognized rating agency that requires access to information about the Lender's investment portfolio in connection with ratings issued with respect to the Lender; (g) to any Affiliate of the Lender who may provide Bank Products to the Borrower or any Subsidiary, or (h) that ceases to be confidential through no fault of the Lender; provided, that, to the extent permitted pursuant to any applicable law, order, regulation or ruling, and other than in connection with credit and other bank examinations conducted in the ordinary course with respect to the Lender, in the case of any disclosure pursuant to the foregoing clauses (c), (d) or (e), the Lender will to notify the Borrower in advance of such disclosure so as to afford the Borrower the opportunity to protect the confidentiality of the information proposed to be so disclosed.

14.13Binding Effect. This Agreement shall become effective upon execution by the Borrower and the Lender. If this Agreement is not dated or contains any blanks when executed by the Borrower, the Lender is hereby authorized, without notice to the Borrower, to date this Agreement as of the date when it

was executed by the Borrower, and to complete any such blanks according to the terms upon which this Agreement is executed.

14.14 Governing Law. This Agreement, the Loan Documents and any Note shall be delivered and accepted in and shall be deemed to be contracts made under and governed by the internal laws of the State of Arizona (but giving effect to federal laws applicable to national banks) applicable to contracts made and to be performed entirely within such state, without regard to conflict of laws principles.

14.15 Enforceability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, unenforceable or invalid under any jurisdiction, such provision shall as to such jurisdiction, be severable and be ineffective to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

14.16 Survival of Borrower Representations. All covenants, agreements, representations and warranties made by the Borrower herein shall, notwithstanding any investigation by the Lender, be deemed material and relied upon by the Lender and shall survive the making and execution of this Agreement and the other Loan Documents and the issuance of any Note,. The Lender, in extending financial accommodations to the Borrower, is expressly acting and relying on the aforesaid representations and warranties.

14.17 Extensions of Lender's Commitment. This Agreement shall secure and govern the terms of (i) any extensions or renewals of the Lender's commitment hereunder, and (ii) any replacement note executed by the Borrower and accepted by the Lender in its sole and absolute discretion in substitution for any Note.

14.18 Time of Essence. Time is of the essence in making payments of all amounts due the Lender under this Agreement and in the performance and observance by the Borrower of each covenant, agreement, provision and term of this Agreement.

14.19 Counterparts; Facsimile Signatures. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt of an executed signature page to this Agreement by facsimile or other electronic transmission shall constitute effective delivery thereof. Electronic records of executed Loan Documents maintained by the Lender shall deemed to be originals thereof.

14.20 Notices. Except as otherwise provided herein, the Borrower waives all notices and demands in connection with the enforcement of the Lender's rights hereunder. All notices, requests, demands and other communications provided for hereunder shall be in writing and addressed as follows:

If to the Borrower:  
c/o Amtech Systems, Inc.  
131 S Clark Drive  
Tempe, Arizona 85288  
Attention: Lisa D. Gibbs, CFO

With a copy to:  
DLA Piper LLP (US)

2525 E. Camelback Road, Suite 1000  
Phoenix, Arizona 85016  
Attention: Gregory R. Hall  
Email: greg.hall@us.dlapiper.com

If to the Lender:  
UMB Bank, N.A.  
2777 E. Camelback Road, Suite 350  
Phoenix, Arizona 85016  
Attention: Sarah George

or, as to each party, at such other address as shall be designated by such party in a written notice to each other party complying as to delivery with the terms of this subsection. All notices addressed as above shall be deemed to have been properly given (i) if served in person, upon acceptance or refusal of delivery; (ii) if mailed by certified or registered mail, return receipt requested, postage prepaid, on the third (3rd) Business Day following the day such notice is deposited in any post office station or letter box; or (iii) if sent by recognized overnight courier, on the first Business (1st) Day following the day such notice is delivered to such carrier. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

14.21 [Reserved].

14.22 Costs, Fees and Expenses. The Borrower shall pay or reimburse the Lender for all reasonable and documented out-of-pocket costs, fees and expenses incurred by the Lender or for which the Lender becomes obligated in connection with the negotiation, preparation, consummation, collection of the Obligations or enforcement of this Agreement, the other Loan Documents and all other documents provided for herein or delivered or to be delivered hereunder or in connection herewith (including any amendment, supplement or waiver to any Loan Document), or during any workout, restructuring or negotiations in respect thereof, including, without limitation, reasonable consultants' fees and attorneys' fees and time charges of one outside counsel to the Lender; search fees, costs and expenses, whether or not the transaction contemplated hereby shall be consummated. In furtherance of the foregoing, the Borrower shall pay any and all UCC search fees, filing fees and other costs and expenses in connection with the execution and delivery of this Agreement, any Note and the other Loan Documents to be delivered hereunder, and agrees to save and hold the Lender harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such costs and expenses. That portion of the Obligations consisting of costs, expenses or advances to be reimbursed by the Borrower to the Lender pursuant to this Agreement or the other Loan Documents which are not paid on or prior to the date hereof shall be payable by the Borrower to the Lender on demand. If at any time or times hereafter the Lender: (a) employs counsel for advice or other representation (i) with respect to this Agreement or the other Loan Documents, (ii) to represent the Lender in any litigation, contest, dispute, suit or proceeding or to commence, defend, or intervene or to take any other action in or with respect to any litigation, contest, dispute, suit, or proceeding (whether instituted by the Lender, the Borrower, or any other Person) in any way or respect relating to this Agreement, the other Loan Documents or the Borrower's business or affairs, or (iii) to enforce any rights of the Lender against the Borrower or any other Person that may be obligated to the Lender by virtue of this Agreement or the other Loan Documents; (b) takes any action to protect, collect, sell, liquidate, or otherwise dispose of any of the Collateral; and/or (c) attempts to or enforces any of the Lender's rights or remedies under this Agreement or the other Loan Documents, the costs and expenses incurred by the Lender in any manner or way with respect to the foregoing, shall be part of the Obligations, payable by the Borrower to the Lender on demand.

**14.23 Indemnification.** The Borrower agrees to defend (with counsel reasonably satisfactory to the Lender), protect, indemnify, exonerate and hold harmless each Indemnified Party from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and distributions of any kind or nature (including, without limitation, the disbursements and the and documented out-of-pocket reasonable fees of counsel for the Indemnified Parties party thereto, which may be imposed on, incurred by, or asserted against, any Indemnified Party (whether direct, indirect or consequential and whether based on any federal, state or local laws or regulations, including, without limitation, securities laws, Environmental Laws, commercial laws and regulations, under common law or in equity, or based on contract or otherwise)) in any manner relating to or arising out of this Agreement or any of the Loan Documents, or any act, event or transaction related or attendant thereto, the preparation, execution and delivery of this Agreement and the Loan Documents, including, but not limited to, the making or issuance and management of the Loans, the use or intended use of the proceeds of the Loans, the enforcement of the Lender's rights and remedies under this Agreement, the Loan Documents, any Note, any other instruments and documents delivered hereunder; provided, however, that the Borrower shall not have any obligations hereunder to any Indemnified Party with respect to matters determined by a court of competent jurisdiction by final judgment not subject to appeal to have been caused by or resulting from the willful misconduct or gross negligence of such Indemnified Party or its Affiliate. To the extent that the undertaking to indemnify set forth in the preceding sentence may be unenforceable because it violates any law or public policy, the Borrower shall satisfy such undertaking to the maximum extent permitted by applicable law. Any liability, obligation, loss, damage, penalty, cost or expense covered by this indemnity shall be paid to each Indemnified Party on demand, and failing prompt payment, together with interest thereon at the Default Rate from the date incurred by each Indemnified Party until paid by the Borrower, shall be added to the Obligations of the Borrower and be secured by the Collateral. The provisions of this Section shall survive the satisfaction and payment of the other Obligations and the termination of this Agreement. This Section 13.21 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, or damages arising from any non-Tax claim.

**14.24 Revival and Reinstatement of Obligations.** If the incurrence or payment of the Obligations by the Borrower or the transfer to the Lender of any Collateral should for any reason subsequently be declared to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (collectively, a "Voidable Transfer"), and if the Lender is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that the Lender is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys' fees of the Lender, the Obligations shall automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

**14.25 Customer Identification - USA Patriot Act Notice.** The Lender 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 "Act"), and the Lender's policies and practices, the Lender is required to obtain, verify and record certain information and documentation that identifies the Borrower, which information includes the name and address of the Borrower and such other information that will allow the Lender to identify the Borrower in accordance with the Act.

**14.26 Electronic Records.** The Borrower acknowledges and agrees that this Agreement and each other Loan Document and all paper records related to the transaction with which the Loan Documents are a part and whether or not the paper records were submitted in advance of, contemporaneously with or subsequent to, the execution of the Loan Documents may, at the option of the Lender, be converted by any digital or electronic method or process to an electronic record or subsequently further converted or migrated



to another electronic record format or electronic storage medium. The Borrower acknowledges and agrees that upon conversion to an electronic record as authorized herein such electronic record shall be the record of the transaction and the electronic record shall have the same legal force and effect as the paper documents from which it was converted. The Borrower waives any legal requirement that any documents digitally or electronically converted be embodied, stored, or reproduced in a tangible media. The Borrower agrees that a printed or digitally reproduced copy of the electronic record shall be given the same legal force and effect as a signed writing. In addition, the Borrower authorizes and agrees to destruction of the paper documents by the Lender upon conversion of the paper documents to a digital or electronic record.

14.27 No Oral Agreements. Oral agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable, regardless of the legal theory upon which it is based that is in any way related to this Agreement. To protect the Borrower and the Lender from misunderstanding or disappointment, any agreements the Borrower and the Lender reach covering such matters are contained in this Agreement, which is the complete and exclusive statement of the agreement between the Borrower and the Lender, except as the Borrower and the Lender may later agree in writing to modify it.

14.28 Parent Borrower. Each Borrower (other than the Parent Borrower) hereby appoints and designates the Parent Borrower as its representative, and the Parent Borrower hereby accepts such appointment and designation. As the representative of each Borrower, the Parent Borrower is authorized to act as agent, attorney-in-fact and representative of such Borrower for the purposes of issuing loan notice and similar notices, giving instructions with respect to the disbursement of the proceeds of the Loans, electing interest rate options, giving and receiving all other notices and consents under the Loan Documents, making and taking all other actions (including in respect of compliance with covenants) on behalf of such Borrower under the Loan Documents and all other purposes incidental to any of the foregoing. Each Borrower (other than the Parent Borrower) hereby agrees that each notice, instruction, election, request, representation and warranty, agreement, covenant, undertaking, consent and similar action made or taken on its behalf by the Parent Borrower shall be deemed for all purposes to have been made or taken by such Borrower and shall be binding upon and enforceable against such Borrower to the same extent as if the same had been made or taken directly by such Borrower.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Borrower and the Lender have executed this Loan and Security Agreement as of the date first above written.

BORROWER:

AMTECH SYSTEMS, INC.,  
an Arizona corporation

By: /s/ Lisa D. Gibbs  
Name: Lisa D. Gibbs  
Title: Chief Financial Officer

BTU INTERNATIONAL, INC.,  
a Delaware corporation

By: /s/ Lisa D. Gibbs  
Name: Lisa D. Gibbs  
Title: Chief Financial Officer

P.R. HOFFMAN MACHINE PRODUCTS, INC., an Arizona  
corporation

By: /s/ Lisa D. Gibbs  
Name: Lisa D. Gibbs  
Title: Chief Financial Officer

BRUCE TECHNOLOGIES, INC.,  
a Massachusetts corporation

By: /s/ Lisa D. Gibbs  
Name: Lisa D. Gibbs  
Title: Chief Financial Officer

INTERSURFACE DYNAMICS, INC.,  
a Connecticut corporation

By: /s/ Lisa D. Gibbs  
Name: Lisa D. Gibbs  
Title: Chief Financial Officer

ENTREPIX, INC.  
an Arizona corporation

By: /s/ Lisa D. Gibbs  
Name: Lisa D. Gibbs  
Title: Chief Financial Officer

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Agreed and accepted:

UMB BANK, N.A.,  
a national banking association

By: /s/ Sarah George

Name: Sarah George

Title: Commercial Client Manager

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AMTECH SYSTEMS, INC. AND ITS SUBSIDIARIES  
CERTIFICATION PURSUANT TO RULE 13a-14(a)/15d-14(a)  
OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED

I, Michael Whang, certify that:

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

By        /s/ Michael Whang  
            Michael Whang  
            Chief Executive Officer  
            Amtech Systems, Inc.

Date:     February 8, 2023

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AMTECH SYSTEMS, INC. AND ITS SUBSIDIARIES  
CERTIFICATION PURSUANT TO RULE 13a-14(a)/15d-14(a)  
OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED

I, Lisa D. Gibbs, certify that:

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

By        /s/ Lisa D. Gibbs  
            Lisa D. Gibbs  
            Vice President and Chief Financial Officer  
            Amtech Systems, Inc.

Date:     February 8, 2023

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AMTECH SYSTEMS, INC. AND ITS SUBSIDIARIES  
CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Amtech Systems, Inc. (the "Company") on Form 10-Q for the period ended December 31, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael Whang, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

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

By        /s/ Michael Whang  
          Michael Whang  
          Chief Executive Officer  
          Amtech Systems, Inc.

Date:     February 8, 2023

The foregoing certification is being furnished pursuant to 18 U.S.C. Section 1350. It is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and it is not to be incorporated by reference into any filing of the Company, regardless of any general incorporation language in such filing.

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AMTECH SYSTEMS, INC. AND ITS SUBSIDIARIES  
CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Amtech Systems, Inc. (the "Company") on Form 10-Q for the period ended December 31, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Lisa D. Gibbs, Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. sections 1350, as adopted pursuant to sections 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

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

By        /s/ Lisa D. Gibbs  
          Lisa D. Gibbs  
          Vice President and Chief Financial Officer  
          Amtech Systems, Inc.

Date:     February 8, 2023

The foregoing certification is being furnished pursuant to 18 U.S.C. Section 1350. It is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and it is not to be incorporated by reference into any filing of the Company, regardless of any general incorporation language in such filing.

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