UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Maureen K. Ohlhausen, Acting Chairman**
Terrell McSweeny

In the Matter of	)	
BECTON, DICKINSON AND COMPANY, **a corporation;**	)	
and	)	**Docket No. C-4637** **REDACTED PUBLIC VERSION**
C. R. BARD, INC., **a corporation.**	)	

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent Becton, Dickinson and Company ("BD") of Respondent C. R. Bard, Inc. ("Bard"), collectively ("Respondents"), and Respondents having been furnished thereafter with a copy of a draft of the Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of the Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34,

the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Becton, Dickinson and Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its offices and principal place of business located at 1 Becton Drive, Franklin Lakes, NJ 07417.

2. Respondent C. R. Bard, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its offices and principal place of business located at 730 Central Avenue, Murray Hill, NJ 07974.

3. The Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER
I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "BD" means Becton, Dickinson and Company, its directors, officers, employees, agents, and representatives; its successors and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by BD, and the respective directors, officers, employees, agents, representatives, successors and assigns of each. After the Acquisition, BD will include Bard.

B. "Bard" means C. R. Bard, Inc., its directors, officers, employees, agents, and representatives; its successors and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Bard, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

C. "Respondent(s)" means BD and Bard, individually and collectively.

D. "Commission" means the Federal Trade Commission.

E. "Acquirer" means the following:

1. Merit; or

2. Any other Person that receives the prior approval of the Commission to acquire the Assets To Be Divested.

Provided, however, that if Merit is not approved by the Commission as the Acquirer, the Soft Tissue Core Needle Biopsy Assets To Be Divested and the Tunneled Home Drainage Catheter System Assets To Be Divested may, in the

Commission's sole discretion, be divested to two different Acquirers that receive the prior approval of the Commission.

F. "Acquisition" means BD's acquisition of Bard through a series of transactions as contemplated by and pursuant to the Agreement and Plan of Merger dated April 23, 2017, among BD, Bard, and Lambda Corp. that was submitted by the Respondents to the Commission.

G. "Acquisition Date" means the date on which the Acquisition is consummated.

H. "Actual Cost" means the actual cost incurred to provide the relevant goods or services, including the cost of direct labor and direct material used and allocation of overhead that is consistent with past custom and practice.

Provided, however, in each instance where: (i) an agreement to divest relevant assets is specifically referenced and attached to this Order; and (ii) an agreement becomes a Remedial Agreement for the Assets to be Divested, "Actual Cost" means such cost as is provided in such Remedial Agreement.

I. "Agency(ies)" means any government regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution, or sale of the Tunneled Home Drainage Catheter System Products and Soft Tissue Core Needle Biopsy Products, as the case may be. The term "Agency" includes, without limitation, the United States Food and Drug Administration ("FDA").

J. "Application(s)" means all submissions and applications for a Product filed or to be filed with the FDA pursuant to 21 C.F.R. Parts 800 to 898, including all premarket notifications (Section 510(k) submissions) and premarket approvals ("PMA"), and all supplements, amendments, and revisions thereto, any preparatory work, registration dossier, drafts and data necessary for the preparation thereof, and all correspondence between the holder and the FDA related thereto.

K. "Assets To Be Divested" means the Tunneled Home Drainage Catheter System Assets To Be Divested and the Soft Tissue Core Needle Biopsy Assets To Be Divested.

L. "Business" means the research, Development, manufacture, commercialization, distribution, marketing, promotion, importation, exportation, advertisement, and/or sale of a Product.

M. "Business Records" means all books, records, files, databases, printouts, and all other documents of any kind, whether stored or maintained in hard copy paper format, by means of electronic, optical, or magnetic media or devices,

photographic or video images, or any other format or media, including, without limitation: customer files, customer lists, customer purchasing histories, supplier and vendor files, vendor lists, correspondence, advertising and marketing materials, marketing analyses, sales materials, price lists, cost information, employee lists and contracts, salary and benefits information, personnel files, financial and accounting records and documents, financial statements, financial plans and forecasts, operating plans, studies, reports, regulatory materials, Applications, Agency filings and submissions, Agency correspondence, operating guides, technical information, manuals, policies and procedures, service and warranty records, maintenance logs, equipment logs, registrations, and permits.

N. "cGMP" means current Good Manufacturing Practice as set forth in the United States Federal Food, Drug, and Cosmetic Act, as amended, and includes all rules and regulations promulgated by the FDA thereunder.

O. "Clinical Trial(s)" means a controlled study in humans of the safety or efficacy of a product, and includes, without limitation, such clinical trials as are designed to satisfy the requirements of an Agency in connection with any product and any other human study used in research and Development of a product.

P. "Closing Date" means the date Respondents (or a Divestiture Trustee) consummate a transaction to divest any of the Assets To Be Divested to an Acquirer pursuant to this Order.

Q. "Confidential Business Information" means competitively sensitive, proprietary, and all information owned by, or in the possession or control of, any Respondent that is not in the public domain and to the extent that it is directly related to the conduct of the Tunneled Home Drainage Catheter System Business or the Soft Tissue Core Needle Biopsy Business. The term "Confidential Business Information" excludes the following:

1. Information relating to any Respondent's general business strategies or practices that does not discuss with particularity the Tunneled Home Drainage Catheter System Business or the Soft Tissue Core Needle Biopsy Business;

2. Information that is contained in documents, records or books of any Respondent that are provided to an Acquirer by a Respondent that is unrelated to either the Tunneled Home Drainage Catheter System Business or the Soft Tissue Core Needle Biopsy Business or that is exclusively related to the Retained Business;

3. Information that is protected by the attorney work product, attorney-client, joint defense or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition Laws;

4. Information that subsequently falls within the public domain through no violation of this Order or breach of confidentiality and non-disclosure agreement with respect to such information by Respondents;

5. Information that is required by Law to be disclosed;

6. Information that does not directly relate to the Tunneled Home Drainage Catheter System Business or the Soft Tissue Core Needle Biopsy Business; and

7. Information that Respondents demonstrate to the satisfaction of the Commission, in the Commission's sole discretion:

   a. Is necessary to be included in Respondents' mandatory regulatory filings, *provided, however,* that Respondents shall make all reasonable efforts to maintain the confidentiality of such information in the regulatory filings;

   b. Is information the disclosure of which is consented to by the Acquirer;

   c. Is necessary to be exchanged in the course of consummating the Acquisition or the transaction under the Remedial Agreement; or

   d. Is disclosed in complying with this Order.

R. "Contract Manufacturing Agreement(s)" means any agreement(s) that receives the prior approval of the Commission between the Respondents and the Acquirer to provide, at the option of the Acquirer, sufficient quantities of Soft Tissue Core Needle Biopsy Products and Tunneled Home Drainage Catheter System Products for a period of time sufficient to allow the Acquirer to obtain all of the relevant Product Approvals necessary to manufacture the Soft Tissue Core Needle Biopsy Products and Tunneled Home Drainage Catheter System Products in commercial quantities, and in a manner consistent with cGMP, independently of Respondents.

S. "Development" means all preclinical and clinical medical device development activities, including test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control development, statistical analysis and report writing, conducting Clinical Trials for the purpose of obtaining any and all approvals, licenses, registrations or authorizations from any Agency necessary for the manufacture, use, storage, import, export, transport, promotion, marketing, and sale of a product, product approval and registration, and regulatory affairs related to the foregoing. "Develop" means to engage in Development.

T. "Divestiture Product IP" means (a) all patents, copyrights, trade secrets or other intellectual property rights owned by Respondents as of the Closing Date (other than trademarks or trade dress), that are used in or would otherwise be infringed by the Soft Tissue Core Needle Biopsy Business as of the Closing Date but that are not included in the Soft Tissue Core Needle Biopsy Assets To Be Divested; and (b) all patents, copyrights, trade secrets or other intellectual property rights owned by Respondents as of the Closing Date (other than trademarks or trade dress), that are used in or would otherwise be infringed by the Tunneled Home Drainage Catheter System Business as of the Closing Date but that are not included in the Tunneled Home Drainage Catheter System Assets To Be Divested.

U. "Divestiture Product IP License" means a royalty-free, fully paid-up, perpetual, irrevocable, worldwide, non-exclusive license to the Acquirer under any Divestiture Product IP to operate the Soft Tissue Core Needle Biopsy Business, including the research, Development, manufacture, distribution, marketing or sale of Soft Tissue Core Needle Biopsy Products anywhere in the world, and the Tunneled Home Drainage Catheter System Business, including the research, Development, manufacture, distribution, marketing or sale of Tunneled Home Drainage Catheter System Products anywhere in the world.

V. "Divestiture Trustee" means the trustee appointed by the Commission pursuant to Paragraph IV of this Order.

W. Employee(s)" means:

1. If Merit is approved by the Commission to be the Acquirer, the employees identified in the Merit Agreement; or

2. If the Acquirer(s) is not Merit, any individual employed on a full-time, part-time, or contract basis as of, and at any time after, April 23, 2017, the date of the announcement of the Acquisition, by:

    a. BD, where such employee's job responsibilities relate or related primarily to the Soft Tissue Core Needle Biopsy Business; and

    b. Bard, where such employee's job responsibilities relate or related primarily to the Tunneled Home Drainage Catheter System Business.

X. "Exclusive Supplier Contract" means any contract for the supply of finished goods of, inputs to, or instrumentation for, the Tunneled Home Drainage Catheter System Products or the Soft Tissue Core Needle Biopsy Products where under the terms of the contract with Respondents, the Acquirer would be prevented from

entering into a contract for the supply of such finished goods, inputs, or instrumentation with such Supplier.

Y. "Government Entity" means any Federal, state, local or non-U.S. government, or any court, legislature, Agency, or government commission, or any judicial or regulatory authority of any government.

Z. "Law" means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law.

AA. "Merit" means Merit Medical Systems, Inc., a corporation organized under the laws of the state of Utah with its principal place of business at 1600 West Merit Parkway, South Jordan, Utah 64095.

BB. "Merit Agreement" means the "Asset Purchase Agreement" by and between BD and Merit, dated as of November 15, 2017, and all amendments, exhibits, attachments, agreements and schedules, in each case thereto or contemplated thereby, related to the Assets To Be Divested, that have been approved by the Commission to accomplish the requirements of this Order. The Merit Agreement is attached to this Order as Non-Public Appendix A.

CC. "Monitor" means any monitor appointed pursuant to Paragraph III of this Order.

DD. "Order Date" means the date on which the final Decision and Order in this matter is issued by the Commission.

EE. "Patents" means all patents, patent applications, including provisional patent applications, invention disclosures, certificates of invention, applications for certificates of invention, and statutory invention registrations, in each case filed, or in existence, on or before the Closing Date, and includes all reissues, divisions, continuations, continuations-in-part, supplementary protection certificates, substitutions, reexaminations, restorations, and/or patent term extensions thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for patents and registrations thereto.

FF. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or Government Entity, and any subsidiaries, divisions, groups or affiliates thereof.

GG. "Product(s)" means any medical device or system regulated by the FDA as a Class II (Special Controls) or Class III (PMA) medical device pursuant to 21 C.F.R. Parts 800 to 898, *i.e.,* an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part, or accessory, which is:

1. recognized in the official National Foundry, or the United States Pharmacopoeia, or any supplement to them:

2. intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals; or

3. intended to affect the structure or any function of the body of man or other animals, and which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its primary intended purposes.

HH. "Product Approval(s)" means any approvals, registrations, permits, licenses, consents, authorizations, and other approvals, and pending applications and requests therefor, required by applicable Agencies related to the research, development, manufacture, distribution, finishing, packaging, marketing, sale, storage, or transport of a Product, and includes, without limitation, all approvals, registrations, licenses, or authorizations granted in connection with any Application related to that Product.

II. "Proposed Acquirer" means any proposed acquirer of the Assets To Be Divested that Respondents or the Divestiture Trustee intend to submit or have submitted to the Commission for its approval under this Order. "Proposed Acquirer" includes Merit.

JJ. "Remedial Agreement(s)" means the following:

1. The Merit Agreement;

2. Any agreement between a Respondent and an Acquirer (or between a Divestiture Trustee and an Acquirer that has received the prior approval of the Commission) to accomplish the requirements of this Order, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Assets To Be Divested, that have been approved by the Commission to accomplish the requirements of this Order.

KK. "Retained Business" means:

1. All right, title and interest in and to the names "BD" and "Bard," together with all variations thereof and all trademarks and trade dress containing, incorporating or associated with any of the foregoing, and any trademark and trade dress other than what is included in the Tunneled Home Drainage Catheter System Assets

To Be Divested or the Soft Tissue Core Needle Biopsy Assets To Be Divested;

2. Any of the assets, tangible or intangible, businesses or goodwill that relate to the Retained Products or that are not related to the Assets to be Divested; and

3. Cash and cash equivalents; tax assets; stock in any entity; corporate and tax records of any entity; insurance policies; benefit plans; and accounts receivable arising prior to the Closing Date.

LL. "Retained Products" means any Product researched, Developed, manufactured, marketed, sold or distributed by Respondents other than the Tunneled Home Drainage Catheter System Products and the Soft Tissue Core Needle Biopsy Products.

MM. "Soft Tissue Core Needle Biopsy Assets To Be Divested" means all of the rights, titles and interest in, to and under the following, in each case exclusively or predominantly related to the Soft Tissue Core Needle Biopsy Business, including any improvements as of the Closing Date, and all such products under Development as of the Closing Date, including the right to Develop, manufacture and use with a view to its marketing and sale including, but not limited to:

1. Finished product inventory;

2. Advertising, marketing and promotional materials for the Soft Tissue Core Needle Biopsy Products;

3. Copies of all design history files, technical files, drawings, product specifications, manufacturing process descriptions, validation documentation, packaging specifications, quality control standards and regulatory records for the Soft Tissue Core Needle Biopsy Products;

4. Demonstration models, prototypes, samples, instruments, and supporting equipment that are used for training purposes and copies of all training materials that are used for training in the proper use of the Soft Tissue Core Needle Biopsy Products;

5. Copies of all testing and clinical performance reports, market research reports and other marketing related information and materials for the Soft Tissue Core Needle Biopsy Products;

6. Copies of all Soft Tissue Core Needle Biopsy Products Manufacturing Technology;

7. All equipment and machinery (including all molds) and the spare parts held by BD as of the Closing Date for use in such equipment and machinery;

8. Copies of all Soft Tissue Core Needle Biopsy Scientific and Regulatory Material;

9. Soft Tissue Core Needle Biopsy Intellectual Property;

10. A list of existing and past customers for the Soft Tissue Core Needle Biopsy Products;

11. Copies of customer credit and other records for the Soft Tissue Core Needle Biopsy Products;

12. Copies of all books, ledgers and other business records for the Soft Tissue Core Needle Biopsy Products;

13. Copies of clinical, regulatory, and customer sales databases for the Soft Tissue Core Needle Biopsy Products; and

14. All licenses, permits and authorizations related to the Soft Tissue Core Needle Biopsy Products, to the extent transferrable, and all dossiers to the current and/or pending authorizations held or sought for the Soft Tissue Core Needle Biopsy Products.

provided, however, that "Soft Tissue Core Needle Biopsy Business" does not include the Retained Business; and

provided further, however, that with respect to documents or other materials included in the Soft Tissue Core Needle Biopsy Business that contain information (a) that relates both to Soft Tissue Core Needle Biopsy Products and to other products of Respondents or (b) for which Respondents have a legal obligation to retain the original copies, Respondents shall be required to provide only copies or, at their option, relevant excerpts of such documents and materials, but Respondents shall provide the Acquirer access to the originals of such documents as necessary, it being a purpose of this provision to ensure that Respondents not be required to divest themselves completely of records or information that relate to products other than Soft Tissue Core Needle Biopsy Products.

NN. "Soft Tissue Core Needle Biopsy Business" means the Business conducted by BD as of immediately prior to the Acquisition Date, and as maintained by Respondents up to the Closing Date, with respect to the Soft Tissue Core Needle Biopsy Products.

OO. "Soft Tissue Core Needle Biopsy Intellectual Property" means all of the following to the extent owned by BD and used exclusively or predominantly in the research, Development, manufacture, marketing, distribution, or sale of Soft Tissue Core Needle Biopsy Products:

1. Patents and patent applications in each case filed, or in existence, on or before the Closing Date, and any renewal, derivation, divisions, reissues, continuations, continuations in-part, modifications, or extensions thereof; and

2. Trademarks, trade dress, copyrights, trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development and other information; in each case, other than patents or patent applications (which are addressed in Item 1, above).

PP. "Soft Tissue Core Needle Biopsy Manufacturing Technology" means all tangible technology, trade secrets, know-how, formulas, and proprietary information (whether patented, patentable or otherwise), in each case to the extent related exclusively or predominantly to the manufacture of Soft Tissue Core Needle Biopsy Products for sale, including, but not limited to, the following: all product specifications, processes, analytical methods, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions, annual product reviews, regulatory communications, control history, current and historical information associated with the FDA Product Approval(s) conformance, and labeling and all other information related to the manufacturing process, and supplier lists.

QQ. "Soft Tissue Core Needle Biopsy Products" means BD's soft tissue core needle biopsy devices as of immediately prior to the Acquisition Date, including but not limited to all Products marketed or sold under the following Trademarks: Achieve™, Pink Achieve™, Temno™, Original Temno™, Temno Evolution™, Adjustable Coaxial Temno™ and Tru-Cut™, and all such Products under Development, including but not limited to Sontina.

RR. "Soft Tissue Core Needle Biopsy Scientific and Regulatory Material" means all technological, scientific, chemical, biological, pharmacological, toxicological, regulatory and Clinical Trial materials and information, to the extent each of the foregoing are related to the research, Development, manufacture, marketing, distribution, or sale of Soft Tissue Core Needle Biopsy Products.

SS. "Supplier" means any Third Party provider of finished goods of, inputs to, or instrumentation for, the Tunneled Home Drainage Catheter System Products or the Soft Tissue Core Needle Biopsy Products.

TT. "Transition Services" means technical services, personnel, assistance, training, and other logistical, administrative and transitional support as required by the Acquirer and approved by the Commission to facilitate the transfer of the Assets To Be Divested from the Respondents to the Acquirer, including, but not limited to, services, training, personnel, and support related to: audits, finance and accounting, accounts receivable, accounts payable, employee benefits, payroll, pensions, human resources, information technology and systems, maintenance and repair of facilities and equipment, manufacturing, purchasing, quality control, R&D support, technology transfer, regulatory compliance, sales and marketing, customer service, and supply chain management and customer transfer logistics.

UU. "Transition Services Agreement(s)" means any agreement(s) that receives the prior approval of the Commission between the Respondents and the Acquirer to provide, at the option of the Acquirer, Transition Services (or training for the Acquirer to provide services for itself) necessary to transfer the Assets To Be Divested to the Acquirer in a manner consistent with the purposes of this Order.

VV. "Third Party(ies)" means any non-governmental Person other than the Respondents, or the Acquirer.

WW. "Tunneled Home Drainage Catheter System Assets To Be Divested" means all of the rights, titles and interest in, to and under the following, in each case exclusively or predominantly related to the Tunneled Home Drainage Catheter System Business, including any improvements as of the Closing Date, and all such products under Development as of the Closing Date, including the right to Develop, manufacture and use with a view to its marketing and sale including, but not limited to:

1. Finished product inventory;

2. Instrumentation inventory for the Tunneled Home Drainage Catheter System Products;

3. Advertising, marketing and promotional materials for the Tunneled Home Drainage Catheter System Products;

4. Copies of all design history files, technical files, drawings, product specifications, manufacturing process descriptions, validation documentation, packaging specifications, quality control standards and regulatory records for the Tunneled Home Drainage Catheter System Products;

5. Demonstration models, prototypes, samples, instruments, and supporting equipment that are used for training purposes and copies of all training materials that are used for training in the proper use of the Tunneled Home Drainage Catheter System Products;

6. Copies of all testing and clinical performance reports, market research reports and other marketing related information and materials for the Tunneled Home Drainage Catheter System Products;

7. Copies of all Tunneled Home Drainage Catheter System Products Manufacturing Technology;

8. All equipment and machinery (including all molds) and the spare parts held by Bard at the Closing Date for use in such equipment and machinery;

9. Copies of all Tunneled Home Drainage Catheter System Scientific and Regulatory Material;

10. Tunneled Home Drainage Catheter System Intellectual Property;

11. A list of existing and past customers for the Tunneled Home Drainage Catheter System Products;

12. Copies of customer credit and other records for the Tunneled Home Drainage Catheter System Products;

13. Copies of all books, ledgers and other business records for the Tunneled Home Drainage Catheter System Products;

14. Copies of clinical, regulatory, and customer sales databases for the Tunneled Home Drainage Catheter System Products; and

15. All licenses, permits and authorizations related to the Tunneled Home Drainage Catheter System Products, to the extent transferrable, and all dossiers to the current and/or pending authorizations held or sought for the Tunneled Home Drainage Catheter System Products.

provided, however, that "Tunneled Home Drainage Catheter System Business" does not include the Retained Business; and

provided further, however, that with respect to documents or other materials included in the Tunneled Home Drainage Catheter System Business that contain information (a) that relates both to Tunneled Home Drainage Catheter System

Products and to other products of Respondents or (b) for which Respondents have a legal obligation to retain the original copies, Respondents shall be required to provide only copies or, at their option, relevant excerpts of such documents and materials, but Respondents shall provide the Acquirer access to the originals of such documents as necessary, it being a purpose of this provision to ensure that Respondents not be required to divest themselves completely of records or information that relate to products other than Tunneled Home Drainage Catheter System Products.

XX. "Tunneled Home Drainage Catheter System Business" means the Business conducted by Bard as of immediately prior to the Acquisition Date, and as maintained by Respondents up to the Closing Date, with respect to the Tunneled Home Drainage Catheter System Products.

YY. "Tunneled Home Drainage Catheter System Intellectual Property" means all of the following to the extent owned by Bard and used exclusively or predominantly in the research, Development, manufacture, marketing, distribution, or sale of Tunneled Home Drainage Catheter Products:

1. Patents and patent applications in each case filed, or in existence, on or before the Closing Date, and any renewal, derivation, divisions, reissues, continuations, continuations in-part, modifications, or extensions thereof; and

2. Trademarks, trade dress, copyrights, trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development and other information; in each case, other than patents or patent applications (which are addressed in Item 1, above).

ZZ. "Tunneled Home Drainage Catheter System Manufacturing Technology" means all tangible technology, trade secrets, know-how, formulas, and proprietary information (whether patented, patentable or otherwise), in each case to the extent exclusively or predominantly related to the manufacture of Tunneled Home Drainage Catheter System Products for sale, including, but not limited to, the following: all product specifications, processes, analytical methods, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions, annual product reviews, regulatory communications, control history, current and historical information associated with the FDA Product Approval(s) conformance, and labeling and all other information related to the manufacturing process, and supplier lists.

AAA. "Tunneled Home Drainage Catheter System Products" means Bard's tunneled home drainage catheter systems used to reduce symptoms associated with malignant pleural effusion or malignant ascites as of immediately prior to the Acquisition Date, including but not limited to all Products marketed or sold under the trademark Aspira, and all such Products under Development.

BBB. "Tunneled Home Drainage Catheter System Scientific and Regulatory Material" means all technological, scientific, chemical, biological, pharmacological, toxicological, regulatory and Clinical Trial materials and information, to the extent each of the foregoing are exclusively or predominantly related to the research, Development, manufacture, marketing, distribution, or sale of Tunneled Home Drainage Catheter System Products.

II.

IT IS FURTHER ORDERED that:

A. Not later than the earlier of: (a) twenty (20) days after the Acquisition Date, or (b) three (3) days after Respondents receive all regulatory approvals necessary for the divestiture of the Assets To Be Divested, Respondents shall divest the Assets To Be Divested and grant the Divestiture Product IP License, absolutely and in good faith, to Merit pursuant to, and in accordance with, the Merit Agreement(s) (which agreement(s) shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of the Acquirer or to reduce any obligations of Respondents under such agreement(s)), and each such agreement, if it becomes a Remedial Agreement, is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondents have divested the Assets To Be Divested to Merit prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondents that Merit is not an acceptable purchaser of the Assets To Be Divested, then Respondents shall immediately rescind the transaction with Merit, in whole or in part, as directed by the Commission, and shall divest the Assets To Be Divested within one hundred eighty (180) days from the Order Date, absolutely and in good faith, at no minimum price, to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission;

provided further, however, that if Respondents have divested the Assets To Be Divested to Merit prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Assets To

Be Divested to Merit (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order;

provided further, however, that subject to the approval of the Commission, Respondents may obtain a royalty-free, fully paid-up, perpetual, irrevocable, worldwide, non-exclusive license from the Acquirer to the Tunneled Home Drainage Catheter System Intellectual Property and the Soft Tissue Core Needle Biopsy Intellectual Property for use in the research, Development, manufacture, distribution, marketing or sale of Retained Products, anywhere in the world, to the extent and only to the extent that the Tunneled Home Drainage Catheter System Intellectual Property or the Soft Tissue Core Needle Biopsy Intellectual Property was used in or would otherwise be infringed by the Retained Products as of the Closing Date.

B. Prior to the Closing Date, Respondents shall, at their sole expense, obtain all consents and waivers from all Third Parties that are necessary to permit Respondents to divest the Assets To Be Divested to the Acquirer(s), and to permit the Acquirer(s) to continue to operate the Businesses related to the Assets To Be Divested in a manner that will achieve the purposes of this Order; *provided, however*, that the Respondents may satisfy this requirement by certifying that the Acquirer(s) has executed agreements or entered into equivalent arrangements directly with the relevant Third Party(ies).

C. Respondents shall, at the option of the Acquirer, and subject to the prior approval of the Commission, provide Transition Services to the Acquirer pursuant to a Transition Services Agreement for a period of thirty (30) months from the Closing Date; *provided, however*, that such Agreement shall provide that (1) the Acquirer may terminate the Agreement at any time, without cost or penalty to the Acquirer, upon commercially reasonable notice to Respondents; and (2) at the Acquirer's request, Respondents shall file with the Commission any request for prior approval to extend the term of a Transition Services Agreement as provided in this Paragraph. The Transition Services provided pursuant to a Transition Services Agreement shall be at no greater than Respondents' Actual Costs for such personnel, technical support, assistance, training, and other services as are necessary to transfer the Assets To Be Divested to the Acquirer and enable the Acquirer to operate the Assets To Be Divested in a manner consistent with the purposes of this Order.

D. Respondents shall, at the option of the Acquirer, and subject to the prior approval of the Commission, enter into a Contract Manufacturing Agreement to supply the Acquirer with the Soft Tissue Core Needle Biopsy Products and the Tunneled Home Drainage Catheter System Products for a period of two (2) years from the Closing Date; *provided, however*, that such Agreement shall provide that the Acquirer may terminate the Agreement at any time, without cost or penalty to the Acquirer, upon commercially reasonable notice to Respondents. The Soft Tissue

Core Needle Biopsy Products and the Tunneled Home Drainage Catheter System Products supplied by Respondents to the Acquirer pursuant to such Contract Manufacturing Agreement shall be at no greater than Respondents' Actual Costs.

E. Respondents shall:

1. submit to the Acquirer, at Respondents' expense, all Confidential Business Information related to the Assets To Be Divested;

2. deliver all Confidential Business Information related to the Assets To Be Divested to the Acquirer:

   a. in good faith;

   b. in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the respective information; and

   c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;

3. pending complete delivery of all such Confidential Business Information to the Acquirer, provide the Acquirer and the Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Assets To Be Divested that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order;

4. Not use, directly or indirectly, any Confidential Business Information, other than as necessary to comply with the following: (i) the requirements of this Order; (ii) the Respondents' obligations to the Acquirer under the terms of any Remedial Agreement related to the Assets to be Divested; or (iii) applicable Law, including mandatory regulatory filings;

5. Not disclose or convey any Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer, (ii) other Persons specifically authorized by the Acquirer to receive such information, (iii) the Commission, and (iv) the Monitor, if any, and the Divestiture Trustee, if any; and

6. No later than thirty (30) days after the Closing Date, provide written notification of the restrictions on the use of the Confidential Business Information to all Respondents' employees

who are involved in the manufacture, distribution, sale, or marketing of the Assets to be Divested or who may have or have access to Confidential Business Information ("Designated Employees"); Respondents shall give the above-described notification by e-mail with return receipt requested or similar transmission, and keep a file of those receipts for at least one (1) year after the Closing Date. Respondents shall provide a copy of such notification to the Acquirer. Respondents shall maintain complete records at its principal place of business regarding the provision of notification to Designated Employees and shall provide an officer's certification to the Commission stating that such notification program has been implemented and is being complied with. Respondents shall provide the Acquirer with copies of all certifications, notifications, and reminders sent to Designated Employees.

provided however, that this Paragraph II.E. shall not apply:

i. To any Confidential Business Information related to the Tunneled Home Drainage Catheter System Business that Respondents can demonstrate to the Commission that BD obtained other than in connection with the Acquisition;

ii. To any Confidential Business Information related to the Soft Tissue Core Needle Biopsy Business that Respondents can demonstrate to the Commission that Bard obtained other than in connection with the Acquisition;

iii. To any Confidential Business Information to the extent related to Retained Products or the Retained Business; and

iv. To the use of Confidential Business Information by Respondents to defend against legal claims brought by any Third Party, or investigations or enforcement actions by Government Entities.

F. Respondents shall:

1. No later than the earlier of ten (10) days after a request from the Proposed Acquirer or ten (10) days before the Closing Date if requested by a Proposed Acquirer, provide to the Proposed Acquirer a list of all Employees and, in compliance with and to the extent permitted by all Laws, and an opportunity to inspect the personnel files and other documentation relating to such Employees. The list of Employees that Respondents shall provide shall include the following information for each Employee, as

requested by the Proposed Acquirer, and to the extent permitted by Law:

a. Name, job title or position, date of hire by the relevant Respondent, and effective service date;

b. Specific description of the employee's responsibilities and primary work location;

c. The base salary or current wages;

d. Most recent bonus paid, aggregate annual compensation for the relevant Respondent's last fiscal year, current target or guaranteed annual bonus or commission opportunities and target long term incentive opportunities, if applicable;

e. Employment and leave status (*i.e.*, active or on leave or disability); full-time or part-time; reason for leave and expected date of return from leave, in each case, if applicable; accrued and unused vacation, sick leave, and personal time off days;

f. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly-situated employees; and

g. At the Proposed Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the Employee.

2. No later than ten (10) days before the Closing Date, allow the Proposed Acquirer an opportunity to meet personally and outside the presence or hearing of any employee or agent of Respondents with any Employee, and to make offers of employment to any one or more of the Employees;

3. Not interfere, directly or indirectly, with the hiring or employing of any Employee by the Proposed Acquirer, not offer any incentive to any Employee to decline employment with the Proposed Acquirer, not make any counter-offer to any Employee who has an outstanding offer of employment from the Proposed Acquirer or who has accepted an offer of employment from the Proposed Acquirer, and not otherwise interfere with the recruitment or employment of an Employee by the Proposed Acquirer;

4. Remove any impediments within the control of Respondents that may deter any Employee from accepting employment with the Proposed Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of the Employee(s) to accept employment with the Proposed Acquirer;

5. Not, for a period of one (1) year from the Closing Date, directly or indirectly, solicit or otherwise attempt to induce any Employee who has accepted an offer of employment with the Acquirer to terminate his or her employment with the Acquirer; *provided, however*, that Respondents may:

   a. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, as long as this is not targeted specifically at Employees; or

   b. Hire Employees who apply for employment with Respondents, as long as such Employees were not solicited by Respondents in violation of this Paragraph II.F.

Provided, however, that this Paragraph II.F. shall not prohibit Respondents from making offers of employment to or employing any Employee after the Closing Date where: (i) the Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that Employee; (ii) the Acquirer has terminated the employment of the Employee; or (iii) where the Employee's employment with the Acquirer ended for any reason more than ninety (90) days prior to Respondents' solicitation of the Employee.

G. Until the Closing Date, Respondents shall take such actions as are necessary to:

1. maintain the full economic viability and marketability of the Tunneled Home Drainage Catheter System Business and the Soft Tissue Core Needle Biopsy Business;

2. minimize any risk of loss of competitive potential for the Tunneled Home Drainage Catheter System Business and the Soft Tissue Core Needle Biopsy Business;

3. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to the Tunneled Home Drainage Catheter System Business and the Soft Tissue Core Needle Biopsy Business; and

4. not sell, transfer, encumber, or otherwise impair the Tunneled Home Drainage Catheter System Business or the Soft Tissue Core Needle Biopsy Business (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Tunneled Home Drainage Catheter System Business or the Soft Tissue Core Needle Biopsy Business.

Provided, however, that Respondents are required to maintain, for the term of the Contract Manufacturing Agreement, the full economic viability and marketability, other than ordinary wear and tear, of any equipment or machinery included in the Assets To Be Divested that remain in any facility of Respondents during the term of the Contract Manufacturing Agreement.

H. No later than the Closing Date, Respondents shall waive any rights under any Exclusive Supplier Contracts that would prevent the Acquirer from entering into a contract with the Supplier for the supply of finished goods of, inputs to, or instrumentation for, the Tunneled Home Drainage Catheter System Products or the Soft Tissue Core Needle Biopsy Products. No later than three (3) days after the Closing Date, Respondents shall notify in writing any Supplier that is party to an Exclusive Supplier Contract of such waiver.

I. The purpose of the divestiture of the Assets To Be Divested to an Acquirer is to create an independent, viable and effective competitor in the markets for the Development, license, manufacture, marketing, distribution, and sale of (1) tunneled home drainage catheter systems and (2) soft tissue core needle biopsy devices, and to remedy the lessening of competition from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

A. Mazars LLP shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondents and attached as Appendix B ("Monitor Agreement") and Non-Public Appendix C ("Monitor Compensation"). The Monitor is appointed to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order and the Remedial Agreement(s).

B. The Monitor Agreement shall require that, not later than three (3) days after the Commission accepts the Order for comment, Respondents transfer to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities, pursuant to the Order and consistent with the purposes of the Order, and Respondents shall effectuate such transfer.

C. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:

1. The Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and related requirements of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Order and in consultation with the Commission.

2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.

3. The Monitor shall serve at least until Respondents have fulfilled all their obligations under Paragraphs II.A., II.B., II.C., II.D., and II.E. of this Order.

D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with their obligations under this Order, including, but not limited to, their obligations related to the Assets To Be Divested. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order.

E. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.

F. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the willful default, recklessness, gross negligence or bad faith of the Monitor, its employees, agents or advisors.

G. Respondents shall report to the Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by

Respondents, and any reports submitted by the Acquirer, with respect to the performance of Respondents' obligations under this Order or the Remedial Agreement. Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under this Order.

H. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; provided, however, that such agreement shall not restrict the Monitor from providing any information to the Commission.

I. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

J. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph.

K. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

L. The Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

IV.

IT IS FURTHER ORDERED that:

A. If Respondents have not fully complied with the obligations to divest the Assets To Be Divested as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to divest the Assets To Be Divested. In the event that the Commission or the Attorney General brings an action pursuant to § *5(l)* of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the Assets To Be Divested. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § *5(l)* of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.

D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the Assets To Be Divested.

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court appointed Divestiture Trustee, by the court; provided, however, the Commission may extend the divestiture period only two (2) times.

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the Assets To Be Divested, and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however,* if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondents from among those approved by the Commission; *provided further, however,* that Respondents shall select such Person within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of the Assets To Be Divested.

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested; *provided, however,* that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor pursuant to the relevant provisions of this Order.

8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; provided, however, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.

F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the Divestiture required by this Order.

V.

IT IS FURTHER ORDERED that:

A. Any Remedial Agreement shall be deemed incorporated into this Order.

B. Any failure by Respondents to comply with any term of such Remedial Agreement shall constitute a failure to comply with this Order.

C. Respondents shall include in each Remedial Agreement a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of each Respondent's obligation to the Acquirer pursuant to this Order.

D. Respondents shall not seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any Remedial Agreement, or in any agreement related to the Assets To Be Divested, a decision the result of which would be inconsistent with the terms of this Order or the remedial purposes thereof.

E. Respondents shall not modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5). Notwithstanding any term of the Remedial Agreement(s), any modification or amendment of any Remedial Agreement made without the prior approval of the Commission, or as otherwise provided in Rule 2.41(f)(5), shall constitute a failure to comply with this Order.

VI.

IT IS FURTHER ORDERED that:

A. Within five (5) days of the Acquisition, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.

B. Within thirty (30) days after the Order Date, and every thirty (30) days thereafter until Respondents have fully complied with Paragraphs II.A. and II.E., of this Order, and every sixty (60) days thereafter until Respondents have fully complied with the Paragraphs II.C. and II.D. of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. Respondents shall submit at the same time a copy of their report concerning compliance with this Order to the Monitor, if any Monitor has been appointed. Respondents shall include in their reports, among other things that are required from time to time:

1. A full description of the efforts being made to comply with the relevant Paragraphs of this Order;

2. A detailed plan to deliver all Confidential Business Information required to be delivered to the Acquirer pursuant to Paragraph II.E., and agreed upon by the relevant Acquirer and the Monitor (if applicable) and any updates or changes to such plan;

3. A description of all Confidential Business Information delivered to the Acquirer, including the type of information delivered, method of delivery, and date(s) of delivery;

4. A description of the Confidential Business Information currently remaining to be delivered and a projected date(s) of delivery; and

5. A description of all technical assistance provided to the Commission-Approved Acquired during the reporting period.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of a Respondent; (2) acquisition, merger or consolidation of Respondents; or (3) other change in the Respondents; in each case that may affect compliance obligations arising out of this Order, including, but not limited to, assignment, and the creation or dissolution of subsidiaries.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and with reasonable notice to Respondents made to their principal United States offices, Respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of Respondent; and

B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of the Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date the Order is issued.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED:

Non-Public Appendix A

The Asset Purchase Agreement Between Becton, Dickenson and Company and Merit Medical Systems, Inc.

[Redacted From the Public Record Version, But Incorporated By Reference]

Appendix B

Monitor Agreement

MONITOR AGREEMENT

This Monitor Agreement ("Monitor Agreement") entered into this 16th day of November 2017, by and between Mazars LLP ("Monitor"), who has been chosen to act as Monitor, and Becton, Dickinson and Company ("BD" or "Respondent") (Monitor and Respondent are each individually referred to herein as a "Party" and collectively referred to herein as the "Parties"), provides as follows:

WHEREAS, on April 23, 2017, BD entered into an Agreement and Plan of Merger (the "Bard Merger Agreement") with C. R. Bard, Inc. ("Bard"), and Lambda Corp. ("Lambda"), pursuant to which, upon the terms and subject to the conditions set forth in the Bard Merger Agreement, Lambda will merge with and into Bard, with Bard surviving as a wholly owned subsidiary of BD (the "Merger");

WHEREAS, the United States Federal Trade Commission (the "Commission") has entered into an Agreement Containing Consent Order with Respondent, which includes a Decision and Order that the Commission is considering for public comment (the "Order");

WHEREAS, the Order provides for the appointment of a Monitor to assure that Respondent complies with all of its obligations and performs all of its responsibilities required by the Order and the Remedial Agreements;

WHEREAS, the Order further provides that Respondent shall execute an agreement, subject to prior approval of the Commission, conferring all the rights, powers, and authority necessary to permit the Monitor to perform its duties and responsibilities pursuant to the Order;

WHEREAS, this Monitor Agreement, although executed by the Monitor and Respondent, is not effective for any purpose, including but not limited to, imposing rights and responsibilities on Respondent or the Monitor, until this Monitor Agreement has been approved by the Commission;

WHEREAS, the Monitor is well versed in the operation of the Assets To Be Divested and wishes to accept such appointment upon the terms and conditions stated herein; and

WHEREAS, the Parties to this Monitor Agreement intend to be legally bound.

NOW, THEREFORE, the Parties agree as follows:

1. Capitalized terms used herein and not specifically defined herein shall have the respective definitions given to them in the Order.

2. The Monitor shall have all of the powers, authority, and responsibilities conferred upon the Monitor by the Order, including, without limitation, the responsibility, consistent with the Order, for monitoring Respondent's compliance with its obligations under the Order and the Remedial Agreements. The Monitor shall have the authority, in its sole discretion, to consult with third parties in the exercise of its duties under the Order and this

Monitor Agreement; provided, that the Monitor shall not have the authority to execute any documents or enter into any agreements on behalf of BD, Bard or any of their affiliates.

3. In the performance of its functions and duties under this Monitor Agreement, the Monitor will perform its obligations hereunder in good faith, using its best efforts to perform these services in accordance with generally accepted industry standards.

4. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.

5. If the Monitor becomes aware during the term of this Monitor Agreement that it has or may have a conflict of interest that may affect or could have the appearance of affecting performance by the Monitor of any of its duties under this Monitor Agreement, the Monitor shall promptly inform Respondent and the Commission of any such conflict.

6. The Monitor shall have reasonable access, subject to any legally recognized privilege of Respondent, to Respondent's personnel, books, records, documents, facilities and technical information to the extent relating to the Respondent's compliance with its obligations under the Order, including its obligations related to the Assets To Be Divested, as the Monitor may reasonably require to perform the services set forth herein, subject to the limitations contained in the Order. Such access shall include, inter alia, access to all relevant information related to the Assets To Be Divested. Respondent shall cooperate with any reasonable request of the Monitor, including but not limited to complying with Monitor's requests for onsite visits and interviews with employees of Respondent. Respondent shall take no action to interfere with or impede the Monitor's ability to monitor Respondent's compliance with the Order and the Remedial Agreements.

7. Respondent shall designate a senior employee(s) of Respondent to be a primary contact ("Primary Contact") for the Monitor and to notify the Monitor regarding any changes in the contact personnel. Respondent shall notify the Monitor of meetings and other critical events relating to the Assets To Be Divested, the Order, or the Remedial Agreements, and provide any available minutes of such meetings to the Monitor.

8. Respondent shall provide and the Monitor shall evaluate the reports submitted by Respondent pursuant to the Order, and within 30 days from the date the Monitor receives the first such report, and every 30 days thereafter until the end of the Monitor's term, the Monitor shall report in writing to the Commission concerning performance by Respondent of their obligations under the Order.

9. In response to a request by the Commission or its staff, the Monitor shall further report in writing to the Commission concerning Respondent's compliance with its obligations under the Order.

10. Monitor shall be compensated by Respondent for its services under this Monitor Agreement, including all work in connection with the negotiation and preparation of this Monitor Agreement, pursuant to the fee schedule attached as Confidential Exhibit A for time spent in connection with the discharge of its duties under this Monitor Agreement and the Order. In addition, Respondent will pay all documented out-of-pocket expenses

reasonably incurred by the Monitor in the performance of the Monitor's duties, including all fees and disbursements reasonably incurred by such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. Payments under this Paragraph 12 shall be made on a monthly basis until the Monitor ceases its activities under this Monitor Agreement. The Monitor shall provide Respondent with monthly invoices for time and expenses that include details and an explanation of all matters for which the Monitor submits an invoice to Respondent. Respondent shall pay such invoices within 30 days of receipt. The Monitor and Respondent shall submit any disputes about invoices to the Commission's Compliance Division for assistance in resolving such disputes.

11. Respondent hereby confirms its obligation to indemnify the Monitor (and all Persons retained by the Monitor) and hold the Monitor harmless against any liabilities arising out of the performance of the Monitor's duties, except to the extent that such liabilities result from the willful default, recklessness, gross negligence, or bad faith of the Monitor, its employees, agents or advisors.

12. In the event of a disagreement or dispute between Respondent and the Monitor, and in the event that such disagreement or dispute cannot be resolved by the Parties, either Party may seek the assistance of the Assistant Director of the Commission's Compliance Division, to resolve the issue. In the event that such disagreement or dispute cannot be resolved by the Parties, the Parties shall submit the matter to binding arbitration before the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Binding arbitration shall not be available, however, to resolve any disagreement or dispute concerning Respondent's obligations pursuant to any Order entered by the Commission.

13. The term of this Monitor Agreement shall commence on the Acquisition Date, and shall continue until the latter of (i) the completion of all divestitures required by the Order, and (ii) the end of any Transition Services Agreement in effect with any Commission-Approved Acquirer; provided further, however, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Order. In the event that Monitor is no longer able to perform the duties described in this Monitor Agreement, Monitor may terminate this Monitor Agreement by providing Respondent 30 days written notice. In the event of such termination, Monitor shall cooperate with Respondent pursuant to Paragraph 15.

14. Upon termination of the Monitor's duties under this Monitor Agreement, the Monitor shall consult with the Commission's staff regarding disposition of any written and electronic materials (including materials that Respondent provided to the Monitor) in the possession or control of the Monitor that relate to the Monitor's duties, and the Monitor shall dispose of such materials, which may include sending such materials to the Commission's staff, as directed by the staff. In response to a request by Respondent to return or destroy materials that Respondent provided to the Monitor, the Monitor shall inform the Commission's staff of such request and, if the Commission's staff does not object, shall comply with the Respondents' request. Nothing herein shall abrogate the Monitor's duty of confidentiality, which includes an

obligation not to disclose any non-public information that was obtained while acting as a Monitor.

15. Should the Commission appoint a substitute monitor pursuant to an Order to Maintain Assets or should the Monitor terminate this Monitor Agreement pursuant to Paragraph 13, the Monitor shall cooperate with Respondent and the substitute monitor in order to effect a prompt transition to the substitute monitor. Such cooperation shall include, but is not limited to, (i) the prompt return to Respondent of all confidential materials as required by the preceding Paragraph of this Monitor Agreement, and (ii) the provision of access to the Monitor and any personnel hired by the Monitor for interviews by Respondent and/or the substitute monitor for purposes of gathering relevant information relating to the Monitor's performance of its duties.

16. Any notices or other communication required to be given hereunder shall be deemed to have been properly given if sent by mail or e-mail to the applicable Party at its address below (or to such other address as to which such Party shall hereafter notify the other party):

If to the Monitor, to:

Justin Menezes
Mazars LLP
Tower Bridge House, St. Katharine's Way, London, E1W 1DD
Justin.Menezes@mazars.co.uk

If to Respondent, to:

Becton, Dickinson & Company
1 Becton Drive
Franklin Lakes, NJ 07417
Attention: Joseph LaSala, Chief Counsel, Transactions/M&A
Joseph.Lasala@bd.com

17. The Monitor Agreement may not be assigned by Respondent or the Monitor without the prior written consent of the other Party and the Commission.

18. It is understood and agreed that the Monitor shall act as an independent contractor in the undertaking of this Monitor Agreement and the Monitor shall exercise control over and employ its own means and methods of accomplishing the projects and tasks in performing services hereunder.

19. This Monitor Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

20. This Monitor Agreement contains the entire agreement between the Parties relating to the subject matter hereof and supersedes all previous negotiations, agreements, undertakings and representations, documents, minutes of meetings, letters or

notices (whether oral or written) between the Parties and/or their respective affiliates with respect to the subject matter.

21. This Monitor Agreement shall not become binding until it has been approved by the Commission and the Order has been accepted for public comment. The Order shall govern this Monitor Agreement and any provisions herein that conflict or are inconsistent with such orders may be declared void by the Commission and any provision not in conflict shall survive and remain a part of this Monitor Agreement.

22. This Monitor Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of New York.

23. For the avoidance of doubt, each of the Parties expressly acknowledges that the Non-Disclosure Agreement, dated as of October 12, 2017 (the "NDA"), by and between the Parties, shall apply to all Confidential Information (as defined in the NDA) provided by BD to the Monitor in connection with the Monitor Agreement.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties hereto have executed this Monitor Agreement as of the date first above written.

Respondent:

By:_____

Name: Evelyn Douglas
Title: SVP, Corporate Development

Monitor:
By:_____

Name: Justin Menezes
Title: Partner

Confidential Exhibit A
Monitor's Fees

Non-Public Appendix C

Monitor Compensation

[Redacted From the Public Record Version, But Incorporated By Reference]