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

# FORM 10-Q

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

For the quarterly period ended **June 30, 2012**

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: 1-13165

# CRYOLIFE, INC.

(Exact name of registrant as specified in its charter)

| **Florida** | **59-2417093** |
|---|---|
| (State or other jurisdiction of incorporation or organization) | (I.R.S. Employer Identification No.) |
| **1655 Roberts Boulevard, NW, Kennesaw, Georgia** | **30144** |
| (Address of principal executive offices) | (Zip Code) |

**(770) 419-3355**
(Registrant's telephone number, including area code)

**Not Applicable**
(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes ☒ No ☐

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

| | |
|---|---|
| Large accelerated filer ☐ | Accelerated filer ☒ |
| Non-accelerated filer ☐ (Do not check if a smaller reporting company) | Smaller reporting company ☐ |

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes ☐ No ☒

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

| **Class** | **Outstanding at July 27, 2012** |
|---|---|
| Common Stock, $.01 par value per share | 27,452,507 Shares |

**Part I – FINANCIAL INFORMATION**

**Item 1. Financial Statements.**

**CRYOLIFE, INC. AND SUBSIDIARIES**
**SUMMARY CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME**
**(IN THOUSANDS, EXCEPT PER SHARE DATA)**

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2012 | 2011 | 2012 | 2011 |
| | (Unaudited) | | (Unaudited) | |
| **Revenues:** | | | | |
| Preservation services | $ 16,313 | $ 14,688 | $31,972 | $ 30,362 |
| Products | 16,696 | 14,580 | 33,150 | 29,009 |
| Other | 179 | 111 | 367 | 204 |
| **Total revenues** | **33,188** | **29,379** | **65,489** | **59,575** |
| **Cost of preservation services and products:** | | | | |
| Preservation services | 9,144 | 8,164 | 17,640 | 17,360 |
| Products | 2,673 | 2,162 | 5,186 | 4,658 |
| **Total cost of preservation services and products** | **11,817** | **10,326** | **22,826** | **22,018** |
| **Gross margin** | **21,371** | **19,053** | **42,663** | **37,557** |
| **Operating expenses:** | | | | |
| General, administrative, and marketing | 13,871 | 13,659 | 31,841 | 27,950 |
| Research and development | 1,670 | 1,643 | 3,363 | 3,409 |
| **Total operating expenses** | **15,541** | **15,302** | **35,204** | **31,359** |
| **Operating income** | **5,830** | **3,751** | **7,459** | **6,198** |
| Interest expense | 52 | 37 | 117 | 67 |
| Interest income | (1) | (3) | (3) | (12) |
| Other expense (income), net | 174 | (62) | 159 | (171) |
| **Income before income taxes** | **5,605** | **3,779** | **7,186** | **6,314** |
| Income tax expense | 2,271 | 1,959 | 2,861 | 2,828 |
| **Net income** | **$ 3,334** | **$ 1,820** | **$ 4,325** | **$ 3,486** |
| **Income per common share:** | | | | |
| **Basic** | **$ 0.12** | **$ 0.06** | **$ 0.16** | **$ 0.12** |
| **Diluted** | **$ 0.12** | **$ 0.06** | **$ 0.15** | **$ 0.12** |
| **Weighted-average common shares outstanding:** | | | | |
| Basic | 26,864 | 27,385 | 27,022 | 27,385 |
| Diluted | 27,177 | 27,745 | 27,362 | 27,729 |
| **Net Income** | **$ 3,334** | **$ 1,820** | **$ 4,325** | **$ 3,486** |
| Other comprehensive income (loss) | 6 | (6) | 8 | 10 |
| **Comprehensive income** | **$ 3,340** | **$ 1,814** | **$ 4,333** | **$ 3,496** |

See accompanying Notes to Summary Consolidated Financial Statements.

**CRYOLIFE, INC. AND SUBSIDIARIES**
**SUMMARY CONSOLIDATED BALANCE SHEETS**
**(IN THOUSANDS)**

| | June 30, 2012 | December 31, 2011 |
|---|---|---|
| | (Unaudited) | |
| **ASSETS** | | |
| **Current assets:** | | |
| Cash and cash equivalents | $ 3,999 | $ 21,705 |
| Restricted securities | 312 | 312 |
| Trade receivables, net | 17,409 | 15,767 |
| Other receivables | 7,320 | 1,738 |
| Deferred preservation costs | 28,535 | 29,039 |
| Inventories | 9,672 | 7,320 |
| Deferred income taxes | 3,982 | 5,247 |
| Prepaid expenses and other | 3,976 | 2,742 |
| **Total current assets** | **75,205** | **83,870** |
| Property and equipment, net | 12,069 | 12,308 |
| Investment in equity securities | 6,248 | 6,248 |
| Restricted cash and securities | 5,000 | 5,000 |
| Goodwill | 11,790 | 4,220 |
| Patents, net | 2,349 | 2,739 |
| Trademarks and other intangibles, net | 22,818 | 17,656 |
| Deferred income taxes | 18,229 | 13,265 |
| Other | 2,801 | 2,558 |
| **Total assets** | **$ 156,509** | **$ 147,864** |
| **LIABILITIES AND SHAREHOLDERS' EQUITY** | | |
| **Current liabilities:** | | |
| Accounts payable | $ 8,149 | $ 4,370 |
| Accrued compensation | 3,456 | 3,946 |
| Accrued procurement fees | 3,952 | 3,982 |
| Accrued expenses and other | 7,649 | 7,269 |
| Deferred income | 1,625 | 1,890 |
| **Total current liabilities** | **24,831** | **21,457** |
| Other | 7,524 | 4,869 |
| **Total liabilities** | **32,355** | **26,326** |
| **Commitments and contingencies** | | |
| **Shareholders' equity:** | | |
| Preferred stock | — | — |
| Common stock (issued shares of 30,103 in 2012 and 30,067 in 2011) | 301 | 301 |
| Additional paid-in capital | 135,709 | 135,003 |
| Retained earnings (deficit) | 3,288 | (1,037) |
| Accumulated other comprehensive income (loss) | 2 | (6) |
| Treasury stock at cost (shares of 2,687 in 2012 and 2,265 in 2011) | (15,146) | (12,723) |
| **Total shareholders' equity** | **124,154** | **121,538** |
| **Total liabilities and shareholders' equity** | **$ 156,509** | **$ 147,864** |

See accompanying Notes to Summary Consolidated Financial Statements.

**CRYOLIFE, INC. AND SUBSIDIARIES**
**SUMMARY CONSOLIDATED STATEMENTS OF CASH FLOWS**
**(IN THOUSANDS)**

| | Six Months Ended June 30, | |
|---|---|---|
| | **2012** | **2011** |
| | (Unaudited) | |
| **Net cash flows from operating activities:** | | |
| Net income | $ 4,325 | $ 3,486 |
| Adjustments to reconcile net income to net cash from operating activities: | | |
| Depreciation and amortization | 2,735 | 2,195 |
| Non-cash compensation | 1,496 | 1,444 |
| Deferred income taxes | 1,264 | 434 |
| Other non-cash adjustments to income | 457 | 210 |
| Changes in operating assets and liabilities: | | |
| Receivables | (6,711) | (560) |
| Deferred preservation costs and inventories | (1,293) | 3,114 |
| Prepaid expenses and other assets | (1,256) | (1,028) |
| Accounts payable, accrued expenses, and other liabilities | 3,911 | (1,403) |
| **Net cash flows provided by operating activities** | **4,928** | **7,892** |
| **Net cash flows from investing activities:** | | |
| Acquisition of Hemosphere, net of cash acquired | (17,055) | — |
| Acquisition of Cardiogenesis, net of cash acquired | — | (21,062) |
| Capital expenditures | (1,548) | (1,186) |
| Other | (723) | (108) |
| **Net cash flows used in investing activities** | **(19,326)** | **(22,356)** |
| **Net cash flows from financing activities:** | | |
| Proceeds from exercise of stock options and issuance of common stock | 146 | 415 |
| Repurchases of common stock | (3,389) | (1,572) |
| Other | (74) | (58) |
| **Net cash flows used in financing activities** | **(3,317)** | **(1,215)** |
| **Decrease in cash and cash equivalents** | **(17,715)** | **(15,679)** |
| Effect of exchange rate changes on cash | 9 | (17) |
| Cash and cash equivalents, beginning of period | 21,705 | 35,497 |
| **Cash and cash equivalents, end of period** | **$ 3,999** | **$ 19,801** |

See accompanying Notes to Summary Consolidated Financial Statements.

**CRYOLIFE, INC. AND SUBSIDIARIES**
**NOTES TO SUMMARY CONSOLIDATED FINANCIAL STATEMENTS**
**(UNAUDITED)**

## 1. Basis of Presentation

The accompanying summary consolidated financial statements include the accounts of CryoLife, Inc. and its subsidiaries ("CryoLife," the "Company," "we," or "us"). All significant intercompany accounts and transactions have been eliminated in consolidation. The accompanying Summary Consolidated Balance Sheet as of December 31, 2011 has been derived from audited financial statements. The accompanying unaudited summary consolidated financial statements as of and for the three and six months ended June 30, 2012 and 2011 have been prepared in accordance with (i) accounting principles generally accepted in the U.S. for interim financial information and (ii) the instructions to Form 10-Q and Rule 10-01 of Regulation S-X of the U.S. Securities and Exchange Commission ("SEC"). Accordingly, such statements do not include all of the information and disclosures required by accounting principles generally accepted in the U.S. for a complete presentation of financial statements. In the opinion of management, all adjustments (including those of a normal, recurring nature) considered necessary for a fair presentation have been included. Operating results for the three and six months ended June 30, 2012 are not necessarily indicative of the results that may be expected for the year ending December 31, 2012. These summary consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in CryoLife's Annual Report on Form 10-K for the year ended December 31, 2011.

## 2. Financial Instruments

The Company's financial instruments include cash equivalents, marketable securities, restricted securities, accounts receivable, and accounts payable. The Company typically values financial assets and liabilities such as receivables, accounts payable, and debt obligations at their carrying values, which approximate fair value due to their generally short-term duration.

The Company records certain financial instruments at fair value, including: cash equivalents, certain marketable securities, and certain restricted securities. These financial instruments are discussed in further detail in the notes below. The Company may make an irrevocable election to measure other financial instruments at fair value on an instrument-by-instrument basis, although as of June 30, 2012 the Company has not chosen to make any such elections. Fair value financial instruments are recorded in accordance with the fair value hierarchy that prioritizes observable and unobservable inputs used to measure fair values in their broad levels.

The following is a summary of the Company's financial instruments measured at fair value (in thousands):

| **June 30, 2012** | **Level 1** | **Level 2** | **Level 3** | **Total** |
|---|---|---|---|---|
| Cash equivalents: | | | | |
| Money market funds | $ — | $ 1,811 | $ — | $ 1,811 |
| Restricted securities: | | | | |
| Money market funds | — | 312 | — | 312 |
| Total assets | — | 2,123 | — | 2,123 |
| Long-term liabilities: | | | | |
| Contingent consideration | — | — | (1,865) | (1,865) |
| Total liabilities | — | — | (1,865) | (1,865) |
| Net assets (liabilities) | $ — | $ 2,123 | $(1,865) | $ 258 |

| **December 31, 2011** | **Level 1** | **Level 2** | **Level 3** | **Total** |
|---|---|---|---|---|
| Cash equivalents: | | | | |
| Money market funds | $ — | $ 7,334 | $ — | $ 7,334 |
| Restricted securities: | | | | |
| Money market funds | — | 5,312 | — | 5,312 |
| Total assets | $ — | $12,646 | $ — | $12,646 |

The Company used prices quoted from its investment management companies to determine the Level 2 valuation of its investments in money market funds and securities. The Company recorded contingent consideration, classified as Level 3, as a result of its acquisition of Hemosphere, Inc. ("Hemosphere") in May 2012. Refer to Note 4 for further discussion of the Level 3 contingent consideration liability. Changes in fair value of Level 3 liabilities are listed below (in thousands):

| | Contingent Consideration |
|---|---|
| Balance as of December 31, 2011 | $ — |
| Discounted value of contingent consideration at acquisition | 1,840 |
| Loss on revaluation of contingent consideration | 25 |
| Balance as of June 30, 2012 | $ 1,865 |

The Company also measures certain non-financial assets at fair value on a non-recurring basis when applying accounting for business combinations or when asset impairments are recorded. The Company uses the fair value hierarchy to value these assets and reports these fair values in the periods in which they are recorded or written down. During the quarter ended June 30, 2012 the Company initially recorded certain non-financial assets at fair value related to the acquisition of Hemosphere. Refer to the discussion of the inputs and methods used in the non-recurring valuation of the Company's assets acquired from Hemosphere in Note 4. During the year ended December 31, 2011 the Company initially recorded certain non-financial assets at fair value related to the acquisition of Cardiogenesis Corporation ("Cardiogenesis"). Refer to the discussion of the inputs and methods used in the non-recurring valuation of the Company's assets acquired from Cardiogenesis in Note 6. No non-financial assets were measured at fair value on a non-recurring basis after initial recognition in the Company's Summary Consolidated Balance Sheets as of June 30, 2012 and December 31, 2011.

### 3. Cash Equivalents and Restricted Cash and Securities

The following is a summary of cash equivalents and restricted cash and securities (in thousands):

| June 30, 2012 | Cost Basis | Unrealized Holding Gains | Estimated Market Value |
|---|---|---|---|
| Cash equivalents: | | | |
| Money market funds | $ 1,811 | $ — | $ 1,811 |
| Restricted cash and securities: | | | |
| Cash | 5,000 | — | 5,000 |
| Money market funds | 312 | — | 312 |
| **December 31, 2011** | | | |
| Cash equivalents: | | | |
| Money market funds | $ 7,334 | $ — | $ 7,334 |
| Restricted securities: | | | |
| Money market funds | 5,312 | — | 5,312 |

As of June 30, 2012 and December 31, 2011 $312,000 of the Company's money market funds were designated as short-term restricted securities due to a contractual commitment to hold the securities as pledged collateral relating to international tax obligations. As of June 30, 2012 $5.0 million of the Company's cash was designated as long-term restricted cash and securities due to a financial covenant requirement under the Company's credit agreement with General Electric Capital Corporation ("GE Capital") as discussed in Note 12. As of December 31, 2011 $5.0 million of the Company's money market funds were designated as long-term restricted cash and securities under the same covenant. This restriction lapses upon expiration of the credit agreement with GE Capital on October 28, 2014.

There were no material realized gains or losses on cash equivalents in the six months ended June 30, 2012 and 2011. As of June 30, 2012 $312,000 of restricted securities had a maturity date of between three months and one year. As of December 31, 2011 $5.0 million of the Company's restricted securities had no maturity date, and $312,000 of restricted securities had a maturity date within three months.

**4. Hemosphere Acquisition**

***Overview***

On May 16, 2012 CryoLife completed its acquisition of 100% of the outstanding equity of Hemosphere, a privately held company, for $17.1 million in cash, an additional $3.1 million to pay for cash acquired, and contingent consideration with a fair value estimated to be approximately $1.8 million at acquisition, for a total purchase price of approximately $22.0 million. CryoLife used cash on hand to fund the transaction and operates Hemosphere as a wholly owned subsidiary.

Hemosphere is the developer and marketer of the Hemodialysis Reliable Outflow Graft ("HeRO ® Graft"), a proprietary graft-based solution for end-stage renal disease hemodialysis patients with limited access options and central venous obstruction. Hemosphere markets the HeRO Graft for end-stage renal disease in certain hemodialysis patients. CryoLife believes that the HeRO Graft will fit well into its product portfolio of medical devices for cardiac and vascular surgery and believes that there is a significant opportunity for CryoLife's sales team to leverage their strong relationships with vascular surgeons to introduce and to expand utilization of the HeRO Graft in the U.S.

***Contingent Consideration***

As of the acquisition date, CryoLife recorded a contingent liability of $1.8 million in other long-term liabilities on its Summary Consolidated Balance Sheet, representing the estimated fair value of the contingent consideration expected to be paid to the former shareholders of Hemosphere upon the achievement of certain revenue-based milestones. The acquisition agreement provides for a maximum of $4.5 million in future consideration payments through December 2015 based on specified sales targets.

The fair value of the contingent consideration liability was estimated by discounting, to present value, the contingent payments expected to be made based on a probability-weighted scenario approach. The Company applied a risk-based estimate of the probability of achieving each scenario and then applied a cost of debt based discount rate of 8%. This fair value measurement is based on unobservable inputs, including management estimates and assumptions, and is, therefore, classified as Level 3 within the fair value hierarchy presented in Note 2 above. The Company will re-measure this liability at each reporting date and will record changes in the fair value of the contingent consideration in other expense (income) on the Company's Consolidated Statement of Operations and Comprehensive Income. Increases or decreases in the fair value of the contingent consideration liability can result from changes in discount periods and rates, as well as changes in the timing and amount of Company revenue estimates.

***Accounting for the Transaction***

The Company has recorded a preliminary allocation of the $22.0 million purchase price to Hemosphere's tangible and identifiable intangible assets acquired and liabilities assumed based on their fair values as of May 16, 2012. Goodwill has been recorded based on the amount by which the purchase price exceeds the fair value of the net assets acquired, and is not deductible for tax purposes. Goodwill from this transaction has been allocated to the Company's medical devices segment. The preliminary purchase price allocation is as follows (in thousands):

| | Opening Balance Sheet |
|---|---|
| Cash and cash equivalents | $ 3,140 |
| Receivables | 653 |
| Inventories | 554 |
| Intangible assets | 5,790 |
| Goodwill | 7,570 |
| Net deferred tax assets | 4,963 |
| Other assets | 330 |
| Liabilities assumed | (965) |
| Total purchase price | $ 22,035 |

The preliminary allocation of the purchase price to intangible assets is based on preliminary valuations performed to determine the fair value of such assets as of the acquisition date. The Company may adjust the amounts recorded as of June 30, 2012 to reflect any revised evaluations of the assets acquired or liabilities assumed.

CryoLife incurred approximately $1.0 million in transaction and integration costs related to the acquisition in the six months ended June 30, 2012. These costs are expensed as incurred and are primarily recorded as general, administration, and marketing expenses on the Company's Summary Consolidated Statement of Operations and Comprehensive Income.

***Pro Forma Results***

Hemosphere's revenues of $635,000 from the date of acquisition for the second quarter of 2012 are included in the Summary Consolidated Statement of Operations and Comprehensive Income. The Company's selected unaudited pro forma results of operations for the six months ended June 30, 2012 and 2011, assuming the Hemosphere acquisition had occurred as of January 1, 2011 are presented for comparative purposes below. These amounts are based on available information of the results of operations of Hemosphere prior to the acquisition date and are not necessarily indicative of what the results of operations would have been had the acquisition been completed on January 1, 2011. This unaudited pro forma information does not project operating results post acquisition. This pro forma information is as follows (in thousands, except per share amounts):

| | Six Months Ended June 30, | |
|---|---|---|
| | **2012** | **2011** |
| Total revenues | $ 67,493 | $ 62,227 |
| Net income | 4,314 | 1,820 |
| Pro forma income per common share - basic | $ 0.16 | $ 0.07 |
| Pro forma income per common share - diluted | $ 0.15 | $ 0.06 |

Pro forma results for the six months ended June 30, 2011 include the Company's acquisition and integration related costs of approximately $1.0 million, on a pre-tax basis, and other costs as appropriate. Pro forma disclosures were calculated using a tax rate of approximately 38%.

**5. ValveXchange Investment**

In July 2011 the Company purchased approximately 2.4 million shares of series A preferred stock of ValveXchange, Inc. ("ValveXchange") for approximately $3.5 million. ValveXchange is a private medical device company that was spun off from Cleveland Clinic to develop a lifetime heart valve replacement technology platform featuring exchangeable bioprosthetic leaflets. The Company's carrying value of this investment includes the purchase price and certain transaction costs, and CryoLife's investment represents an approximate 19% equity ownership in ValveXchange. As ValveXchange's stock is not actively traded on any public stock exchange and as the Company's investment is in preferred stock, the Company accounts for this investment using the cost method. The Company recorded its investment as a long-term asset, investment in equity securities, on the Company's Summary Consolidated Balance Sheets.

The Company will evaluate the carrying value of the ValveXchange preferred stock investment if factors become known that indicate an impairment review is warranted. If ValveXchange does not continue to make advances in developing its technology, if ValveXchange sells additional securities at a price less than the book value of the Company's investment, if the Company subsequently determines that the value of its ValveXchange stock has been impaired, or if the Company decides to sell its ValveXchange preferred stock for less than the carrying value, the Company would record an impairment charge or realized loss on sale of the investment in ValveXchange, which could be material. During the quarter ended June 30, 2012 the Company reviewed available information and determined that no factors were present indicating that the Company should evaluate its investment in ValveXchange preferred stock for impairment.

***Loan Agreement***

In July 2011 the Company entered into an agreement with ValveXchange to make available up to $2.0 million to ValveXchange in debt financing through a revolving credit facility ("ValveXchange Loan"). The ValveXchange Loan includes various affirmative and negative covenants, including financial covenant requirements, and expires on July 30, 2018, unless terminated earlier. Amounts loaned under the ValveXchange Loan will earn interest at an 8% annual rate and will be secured by substantially all of the tangible and intangible assets of ValveXchange. The Company incurred loan origination costs, net of fees charged to ValveXchange, of approximately $117,000, which are being expensed on a straight-line basis over the life of the loan facility. The Company will record advances to ValveXchange as long-term notes receivable. As of June 30, 2012 there were no outstanding receivable balances under the ValveXchange Loan, and the remaining availability was $2.0 million. CryoLife advanced $1.0 million to ValveXchange on this loan in mid July 2012.

***Option Agreement***

Concurrently with the ValveXchange Loan described above, CryoLife entered into an option agreement with ValveXchange through which CryoLife obtained the right of first refusal to acquire ValveXchange during a period that extends through the completion of initial commercialization milestones and the right to negotiate with ValveXchange for European distribution rights.

**6. Cardiogenesis Acquisition**

***Overview***

On May 17, 2011 CryoLife completed its acquisition of all of the outstanding shares of Cardiogenesis for $0.457 per share or approximately $21.7 million. CryoLife used cash on hand to fund the transaction and operates Cardiogenesis as a wholly owned subsidiary.

Cardiogenesis is a leading developer of surgical products used in the treatment of patients with severe angina resulting from diffuse coronary artery disease. Cardiogenesis markets its revascularization technologies, which include the Holmium: YAG laser console and single use, fiber-optic handpieces. These products are U.S. Food and Drug Administration ("FDA") approved for performing a surgical procedure known as Transmyocardial Revascularization, used for treating patients with stable angina that is not responsive to conventional therapy.

***Accounting for the Transaction***

The Company recorded an allocation of the $21.7 million purchase price to Cardiogenesis' tangible and identifiable intangible assets acquired and liabilities assumed based on their acquisition date fair values. The allocation of the purchase price to intangible assets was based on valuations performed to determine the fair value of such assets as of the acquisition date. Goodwill was recorded based on the amount by which the purchase price exceeded the fair value of the net assets acquired. The liability amounts recorded included the Company's estimate of contingent liabilities assumed. The purchase price allocation was finalized as of December 31, 2011.

CryoLife incurred approximately $1.4 million in transaction and integration costs related to the acquisition in the six months ended June 30, 2011 and $3.0 million in the year ended December 31, 2011. The Company does not expect to continue to incur significant transaction or integration costs in 2012.

***Legal Action***

As previously discussed in CryoLife's Form 10-Q for the quarter ended March 31, 2012 and its prior filings, in 2008 CardioFocus, Inc. ("CardioFocus") filed a complaint in the U.S. District Court for the District of Massachusetts ("Massachusetts Court") against Cardiogenesis and a number of other companies. The litigation related to an alleged infringement by Cardiogenesis of two patents held by CardioFocus that have now expired.

On June 14, 2012 Cardiogenesis entered into a settlement agreement with respect to its litigation with CardioFocus. The settlement provides that each party release the other from all claims and liabilities related to the patents in question and that all claims and counterclaims in the litigation be withdrawn with prejudice. Pursuant to the terms of the settlement agreement, Cardiogenesis would pay $4.5 million in cash to CardioFocus. Cardiogenesis and CardioFocus agreed and acknowledged that each party would bear its own costs and expenses, including attorneys' fees, incurred in or as a result of the litigation.

On June 14, 2012 the parties filed a stipulation of dismissal with prejudice in the Massachusetts Court.

***Accounting for the Settlement***

As a result of the settlement described above, the Company recorded an additional loss of $3.6 million in general, administrative, and marketing expenses on its Summary Consolidated Statement of Operations and Comprehensive Income for the three months ended June 30, 2012. The Company recorded $4.1 million in legal settlement expenses for the six months ended June 30, 2012. The settlement amount of $4.5 million is recorded as a payable on the Company's Summary Consolidated Balance Sheet as of June 30, 2012. The Company paid the $4.5 million settlement payment to CardioFocus in July 2012 using cash on hand.

## 7. PerClot® Technology Acquisition

***Overview***

On September 28, 2010 CryoLife entered into a worldwide distribution agreement (the "Distribution Agreement") and a license and manufacturing agreement (the "License Agreement") with Starch Medical, Inc. ("SMI") of San Jose, California for PerClot, a polysaccharide hemostatic agent used in surgery. PerClot is an absorbable powdered hemostat that has CE Mark designation allowing commercial distribution into the European Community and other markets. It is indicated for use in surgical procedures, including cardiac, vascular, orthopaedic, neurological, gynecological, ENT, and trauma surgery, as an adjunct hemostat when control of bleeding from capillary, venous, or arteriolar vessels by pressure, ligature, and other conventional means is either ineffective or impractical. Under the terms of the agreements, CryoLife received the worldwide rights, subject to certain exclusions, to commercialize PerClot for all approved surgical indications and a license to manufacture the PerClot product. CryoLife also received an assignment of the PerClot trademark from SMI as part of the terms of the agreements.

The Distribution Agreement contains certain minimum purchase requirements and has a term of 15 years. CryoLife may begin manufacturing PerClot under the terms of the License Agreement, which extends for an indefinite period. Upon FDA approval, the Company may terminate such minimum purchase requirements. Following the start of manufacturing and U.S. regulatory approval, CryoLife may terminate the Distribution Agreement and sell PerClot pursuant to the License Agreement. CryoLife will pay royalties to SMI at stated rates on net revenues of products manufactured under the License Agreement. In addition to allowing CryoLife to manufacture PerClot, the License Agreement granted CryoLife a three-year option to purchase certain remaining related technology from SMI, which the Company exercised in September 2011.

As part of the initial transaction, CryoLife paid SMI $6.75 million in cash, which included $1.5 million in cash for prepaid royalties, and approximately 209,000 shares of restricted CryoLife common stock. CryoLife made an additional contingent payment of $250,000 in 2011, made payments related to the additional technology purchase in 2011 and 2012 totaling $1.0 million, and will pay additional contingent amounts of up to $2.5 million to SMI if certain FDA regulatory and other commercial milestones are achieved.

***Accounting for the Transaction***

CryoLife accounted for the agreements discussed above as an asset acquisition. The initial consideration aggregated approximately $8.0 million, including: $6.75 million in cash, restricted common stock valued at approximately $1.0 million, and direct transaction costs. CryoLife recorded a non-current asset for the $1.5 million in prepaid royalties, recorded a deferred tax asset of $145,000, and allocated the remaining consideration to the individual intangible assets acquired based on their relative fair values as determined by a valuation study. As a result, CryoLife recorded intangible assets of $327,000 for the PerClot trademark, $2.6 million for the PerClot distribution and manufacturing rights in certain international countries, and $3.5 million for the PerClot distribution and manufacturing rights in the U.S. and certain other countries which do not have current regulatory approvals. This $3.5 million was considered in-process research and development, as it is dependent upon regulatory approvals which have not yet been obtained. Therefore, CryoLife expensed the $3.5 million as in-process research and development upon acquisition in the third quarter of 2010. The PerClot trademark acquired by the Company has an indefinite useful life; therefore, that asset will not be amortized, but will instead be subject to annual impairment testing. The $2.6 million intangible asset will be amortized over its useful life of 15 years.

In the year ended December 31, 2011 CryoLife recorded research and development expenses of $250,000 for the contractual milestone payment due to SMI upon filing of the investigational device exemption. The Company recorded the additional technology purchased in 2011 and 2012 as an intangible asset, which will be amortized over its useful life of 14 years. CryoLife expects to record future contingent payment amounts of up to $2.5 million initially as research and development expense or, after FDA approval or issuance of a patent, as acquired intangible assets.

## 8. Medafor Matters

***Overview***

CryoLife began distributing HemoStase in 2008 for Medafor, Inc. ("Medafor") under an Exclusive Distribution Agreement ("EDA"). In November 2009 and in 2010 the Company executed stock purchase agreements to purchase a total of approximately 2.4 million shares of common stock in Medafor for $4.9 million. The Company's carrying value of this investment included the purchase price and adjustments to record certain of the stock purchase agreements' embedded derivative liabilities at the fair market value on the purchase date, as discussed further below. As Medafor's common stock is not actively traded on any public stock exchange, because Medafor is a non-reporting company for which financial information is not readily available, and as the Company does not exert significant influence over the operations of Medafor, the Company accounted for this investment using the cost method and recorded it as the long-term asset, investment in equity securities, on the Company's Summary Consolidated Balance Sheets.

***HemoStase Inventory***

Based on Medafor's final termination of the EDA in late September 2010, the Company performed a review of its HemoStase inventory and determined that the carrying value was impaired. As a result CryoLife wrote down the value of this inventory in the third quarter of 2010. The amount of this write-down reflected management's estimate based on information available at that time. The Company was able to sell more HemoStase than it originally estimated and that had previously been written down; therefore, cost of products in the first quarter of 2011 was favorably impacted by approximately $330,000. As of June 30, 2012 and December 31, 2011 the Company had zero in remaining value of HemoStase inventory on its Summary Consolidated Balance Sheets.

***Investment in Medafor Common Stock***

During the quarter ended June 30, 2012 the Company reviewed available information and determined that no factors were present indicating that the Company should evaluate the carrying value of its investment in Medafor common stock for impairment. The carrying value of the Company's 2.4 million shares of Medafor common stock was approximately $2.6 million as of both June 30, 2012 and December 31, 2011.

The Company will continue to evaluate the carrying value of this investment if factors become known that indicate the Company should evaluate its investment in Medafor common stock for impairment. If the Company subsequently determines that the value of its Medafor common stock has been impaired, or if the Company decides to sell its Medafor common stock for less than the carrying value, the resulting impairment charge or realized loss on sale of the investment in Medafor could be material. If the Company subsequently sells its Medafor common stock for higher than the carrying value, the resulting gain on the sale of the investment in Medafor could be material.

***Medafor Derivative***

Per the terms of certain of the stock purchase agreements for the Medafor shares discussed above, in the event that CryoLife acquires more than 50% of the diluted outstanding stock of Medafor or merges with Medafor within a three-year period from each respective agreement date (a "Triggering Event"), CryoLife is required to make a future per share payment (the "Purchase Price Make-Whole Payment") to such sellers. The Company was required to account for these Purchase Price Make-Whole Payment provisions as embedded derivatives (collectively the "Medafor Derivative").

CryoLife performed a valuation of the Medafor Derivative using a Black-Scholes model to estimate the future value of the shares on the purchase date. Management's assumptions as to the likelihood of a Triggering Event occurring coupled with the valuation of the Purchase Price Make-Whole Payment were then used to calculate the derivative liability. The fair value of the Medafor Derivative was initially recorded as an increase to the investment in equity securities and a corresponding derivative liability on the Company's Summary Consolidated Balance Sheets.

As of June 30, 2012 and December 31, 2011 the Company believed that the likelihood of a Triggering Event was remote and the value of the Medafor Derivative was zero.

***Legal Action***

As previously discussed in CryoLife's Form 10-Q for the quarter ended March 31, 2012 and its prior filings, CryoLife filed a lawsuit against Medafor in 2009 in the U.S. District Court for the Northern District of Georgia ("Georgia Court"). In 2010 Medafor filed counterclaims against CryoLife in the same case. The litigation related to an exclusive distribution agreement that the parties entered into in April 2008.

On July 14, 2011 Medafor filed a lawsuit against CryoLife in the U.S. District Court for the District of Minnesota ("Minnesota Court") seeking a declaratory judgment that its December 31, 2010 reverse stock split reduced the number of Medafor shareholders to less than 500 and that, therefore, Medafor is not required to comply with the registration requirements of Section 12(g) of the Securities Exchange Act of 1934. On March 30, 2012 the Minnesota Court granted CryoLife's motion to dismiss this lawsuit, although it did grant Medafor 30 days to file an amended lawsuit. Medafor did not file an amended lawsuit.

On June 8, 2012 the parties agreed to a settlement of their litigation and entered into a further settlement agreement on June 25, 2012. The settlement provided that Medafor would pay $3.5 million in cash to CryoLife, with half of the payment made on July 9, 2012, and the remainder to be made on or before September 6, 2012. Pursuant to the terms of the settlement, all claims and counterclaims in the litigation were dismissed with prejudice, including Medafor's counterclaim for payment of approximately

$1.2 million for product purchased by CryoLife, which amount had been recorded as a payable on CryoLife's March 31, 2012 balance sheet. Each party also released the other from all claims and liabilities, except with respect to possible claims that Medafor may have against CryoLife regarding certain patent-related rights, which were not counterclaims filed by Medafor. CryoLife and Medafor agreed and acknowledged that each party would bear its own costs and expenses, including attorneys' fees, incurred in or as a result of the litigation.

On June 29, 2012 the parties jointly filed stipulated dismissals with prejudice with the Georgia Court.

***Accounting for the Settlement***

As a result of the settlement described above, CryoLife recorded a gain of $4.7 million as a reduction in general, administrative, and marketing expenses on its Summary Consolidated Statement of Operations and Comprehensive Income and recorded on its Summary Consolidated Balance Sheet a receivable of $3.5 million for settlement payments due from Medafor, and a reduction in accounts payable of $1.2 million to write off a payable for previous inventory purchases, which was discharged pursuant to the settlement agreement. CryoLife received its first settlement payment of $1.75 million from Medafor in early July and anticipates receiving the remaining payment in September 2012.

**9. Inventories**

Inventories are comprised of the following (in thousands):

| | June 30, 2012 | December 31, 2011 |
|---|---|---|
| Raw materials and supplies | $ 5,622 | $ 4,759 |
| Work-in-process | 576 | 218 |
| Finished goods | 3,474 | 2,343 |
| Total inventories | $ 9,672 | $ 7,320 |

**10. Goodwill and Other Intangible Assets**

The Company's intangible assets consist of goodwill, patents, trademarks, and other intangible assets, as discussed further below. These assets include assets acquired from Hemosphere, as discussed in Note 4 above, assets acquired from Cardiogenesis, as discussed in Note 6 above, and PerClot assets acquired from SMI as discussed in Note 7 above.

***Indefinite Lived Intangible Assets***

The carrying values of the Company's indefinite lived intangible assets are as follows (in thousands):

| | June 30, 2012 | December 31, 2011 |
|---|---|---|
| Goodwill | $ 11,790 | $ 4,220 |
| Procurement contracts and agreements | 2,013 | 2,013 |
| Trademarks | 857 | 847 |
| Other | 250 | 250 |

Based on its experience with similar agreements, the Company believes that its acquired contracts and procurement agreements have an indefinite useful life, as the Company expects to continue to renew these contracts for the foreseeable future. Accordingly, the Company's indefinite lived intangible assets do not amortize, but are instead subject to periodic impairment testing.

***Definite Lived Intangible Assets***

The Company generally amortizes its definite lived intangible assets over their expected useful lives using the straight-line method. The gross carrying values, accumulated amortization, and approximate amortization periods of the Company's definite lived intangible assets are as follows (in thousands):

| June 30, 2012 | Gross Carrying Value | Accumulated Amortization | Amortization Period |
|---|---|---|---|
| Acquired technology | $ 14,020 | $ 969 | 11-16 Years |
| Patents | 4,931 | 2,582 | 17 Years |
| Distribution and manufacturing rights and know-how | 3,559 | 352 | 15 Years |
| Customer lists and relationships | 3,370 | 210 | 13-17 Years |
| Non-compete agreement | 381 | 210 | 10 Years |
| Other | 194 | 85 | 1-3 Years |

| December 31, 2011 | Gross Carrying Value | Accumulated Amortization | Amortization Period |
|---|---|---|---|
| Acquired technology | $ 9,230 | $ 524 | 11 Years |
| Patents | 5,610 | 2,871 | 17 Years |
| Distribution and manufacturing rights and know-how | 3,559 | 231 | 15 Years |
| Customer lists and relationships | 2,370 | 114 | 13 Years |
| Non-compete agreement | 381 | 191 | 10 Years |
| Other | 114 | 48 | 2-3 Years |

***Amortization Expense***

The following is a summary of amortization expense (in thousands):

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2012 | 2011 | 2012 | 2011 |
| Amortization expense | $ 474 | $ 306 | $ 933 | $ 481 |

As of June 30, 2012 scheduled amortization of intangible assets for the next five years is as follows (in thousands):

| | Remainder of 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|---|
| Amortization expense | $ 1,040 | $2,022 | $1,968 | $1,920 | $1,911 | $1,863 |

**11. Deferred Income Taxes**

Deferred income taxes reflect the net tax effect of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and tax return purposes. The Company generates deferred tax assets primarily as a result of write-downs of deferred preservation costs, inventory, and in-process research and development; accruals for tissue processing and product liability claims; asset impairments; and operating losses. The Company acquired significant deferred tax assets, primarily net operating loss carryforwards, from its acquisitions of Hemosphere and Cardiogenesis in the second quarters of 2012 and 2011, respectively, as discussed below.

As of June 30, 2012 the Company maintained a total of $2.5 million in valuation allowances against deferred tax assets, related to state net operating loss carryforwards, and a net deferred tax asset of $22.2 million. As of December 31, 2011 the Company had a total of $2.4 million in valuation allowances against deferred tax assets and a net deferred tax asset of $18.5 million.

The Company believes that the realizability of its acquired net operating loss carryforwards will be limited in future periods due to a change in control of its subsidiaries Hemosphere and Cardiogenesis, as mandated by Section 382 of the Internal Revenue Code of 1986, as amended. The Company believes that its acquisition of Hemosphere constituted a change in control and that prior to the Company's acquisition, Hemosphere had experienced other equity ownership changes that should be considered a change in control. The Company also believes that its acquisition of Cardiogenesis constituted a change in control. The deferred tax assets recorded on the Company's Summary Consolidated Balance Sheets do not include amounts that it expects will not be realizable due to these changes in control. A portion of the acquired net operating loss carryforwards is related to state income taxes and can only be used by the Company's subsidiaries Hemosphere and Cardiogenesis. Due to the history of losses of these

subsidiaries when operated as stand-alone companies, management believes it is more likely than not that these deferred tax assets will not be realized. Therefore, the Company recorded a valuation allowance against these state net operating loss carryforwards. See also Notes 4 and 6 above for a further discussion of the Company's acquisitions of Hemosphere and Cardiogenesis, respectively.

The Company's effective income tax rate was approximately 41% for the three months ended June 30, 2012 as compared to 52% for the three months ended June 30, 2011. The Company's effective income tax rate was approximately 40% for the six months ended June 30, 2012 as compared to 45% for the six months ended June 30, 2011.

The Company's tax years 2008 through 2011 generally remain open to examination by the major taxing jurisdictions to which the Company is subject. However, certain returns from years prior to 2008, in which net operating losses and tax credits have arisen, are still open for examination by the tax authorities.

## 12. Debt

### *GE Credit Agreement*

On October 28, 2011 CryoLife amended and restated its March 26, 2008 credit agreement with GE Capital (the "GE Credit Agreement") which provides revolving credit for working capital, acquisitions, and other corporate purposes. The amendment increased the borrowing capacity under the GE Credit Agreement from $15.0 million to $20.0 million (including a letter of credit subfacility) and extended the expiration from October 31, 2011 to October 28, 2014. The initial commitment may continue to be reduced or increased from time to time pursuant to the terms of the GE Credit Agreement. Since 2009, as requested by the German courts, the Company has been maintaining a letter of credit relating to the Company's patent infringement legal proceeding against Tenaxis, Inc. ("Tenaxis") in Germany, which reduces the aggregate borrowing capacity. The letter of credit had a one-year initial term and automatically renews for additional one-year periods. The Company plans to terminate the letter of credit in the third quarter of 2012 due to the settlement agreement with Tenaxis as discussed in Part II, Item 1, "Legal Proceedings."

The GE Credit Agreement places limitations on the amount that the Company may borrow and includes various affirmative and negative covenants, including financial covenants such as a requirement that CryoLife (i) not exceed a defined leverage ratio, (ii) maintain a minimum adjusted earnings subject to defined adjustments as of specified dates, and (iii) not make or commit capital expenditures in excess of a defined limitation. As required under the terms of the GE Credit Agreement, the Company is maintaining cash and cash equivalents of at least $5.0 million in accounts in which GE Capital has a first priority perfected lien. These amounts are recorded as restricted cash and securities as of June 30, 2012 and December 31, 2011 on the Company's Summary Consolidated Balance Sheets, as they are restricted for the term of the GE Credit Agreement. Also, the GE Credit Agreement requires that after giving effect to a stock repurchase the Company maintain liquidity, as defined within the agreement, of at least $20.0 million. The GE Credit Agreement includes customary conditions on incurring new indebtedness and prohibits payments of cash dividends on the Company's common stock. There is no restriction on the payment of stock dividends. Commitment fees are paid based on the unused portion of the facility. As of June 30, 2012 the Company was in compliance with the covenants of the GE Credit Agreement.

Amounts borrowed under the GE Credit Agreement are secured by substantially all of the tangible and intangible assets of CryoLife and its subsidiaries and bear interest as determined by GE Capital at either LIBOR, with a minimum rate of 4.25%, or GE Capital's base rate, with a minimum rate of 3.25% each, plus the applicable margin. As of June 30, 2012 and December 31, 2011 the outstanding balance of the GE Credit Agreement was zero, the aggregate interest rate was 6.50%, and the remaining availability was $19.8 million.

### *Other*

Interest expense was $52,000 and $117,000 for the three and six months ended June 30, 2012, respectively, and $37,000 and $67,000 for the three and six months ended June 30, 2011, respectively. Interest expense for the three and six months ended June 30, 2012 and 2011 included interest on debt, capital leases, and uncertain tax positions.

## 13. Commitments and Contingencies

***Liability Claims***

The estimated unreported tissue processing and product loss liability and any related recoverable insurance amounts are as follows (in thousands):

| | June 30, 2012 | December 31, 2011 |
|---|---|---|
| Short-term liability | $ 937 | $ 1,030 |
| Long-term liability | 895 | 960 |
| Total liability | 1,832 | 1,990 |
| | | |
| Short-term recoverable | 320 | 350 |
| Long-term recoverable | 330 | 350 |
| Total recoverable | 650 | 700 |
| | | |
| Total net unreported loss liability | $ 1,182 | $ 1,290 |

Further analysis indicated that the liability as of June 30, 2012 could be estimated to be as high as $3.4 million, after including a reasonable margin for statistical fluctuations calculated based on actuarial simulation techniques.

***Employment Agreement***

The Company has an employment agreement with its Chief Executive Officer ("CEO") that confers benefits which become payable upon a change in control or upon certain termination events, such as voluntary retirement. As of both June 30, 2012 and December 31, 2011 the Company has recorded $2.1 million in accrued expenses and other current liabilities on the Summary Consolidated Balance Sheets representing benefits payable upon the CEO's voluntary retirement, for which he is currently eligible.

## 14. Common Stock Repurchase

On June 1, 2010 the Company announced that its Board of Directors had authorized the purchase of up to $15.0 million of its common stock over the course of the following two years. On November 1, 2011 the Company announced that its Board of Directors had authorized the Company's purchase of $15.0 million of its common stock through December 31, 2012, which included approximately $7.7 million remaining from the June 1, 2010 repurchase program and an additional $7.3 million, for a total authorization of $22.3 million. The purchase of shares may be made from time to time in the open market or through privately negotiated transactions, on such terms as management deems appropriate, and will be dependent upon various factors, including: price, regulatory requirements, and other market conditions.

For the six months ended June 30, 2012 the Company purchased approximately 626,000 shares for an aggregate purchase price of $3.2 million. For the year ended December 31, 2011 the Company purchased approximately 593,000 shares for an aggregate purchase price of $2.9 million. These shares were accounted for as part of treasury stock, carried at cost, and reflected as a reduction of shareholders' equity on the Company's Summary Consolidated Balance Sheets.

As of June 30, 2012 the Company had purchased a total of 2.2 million shares for an aggregate purchase price of $11.9 million and had $10.4 million in remaining authorizations under these programs.

## 15. Stock Compensation

***Overview***

The Company has stock option and stock incentive plans for employees and non-employee Directors that provide for grants of restricted stock awards ("RSA"s), restricted stock units ("RSU"s), performance stock units ("PSU"s), and options to purchase shares of Company common stock at exercise prices generally equal to the fair values of such stock at the dates of grant. The Company also maintains a shareholder approved Employee Stock Purchase Plan (the "ESPP") for the benefit of its employees. The ESPP allows eligible employees the right to purchase common stock on a regular basis at the lower of 85% of the market price at the beginning or end of each offering period.

***Equity Grants***

The Compensation Committee of the Company's Board of Directors authorized awards from approved stock incentive plans of RSAs to non-employee directors and RSAs and PSUs to certain Company officers, which together totaled 387,000 shares and had an aggregate market value of $2.1 million during the six months ended June 30, 2012. The performance component of PSU awards granted in 2012 is based on attaining specified levels of adjusted EBITDA, as defined in the grant, for the 2012 calendar year. The

Company currently believes that achievement of the performance component is probable, and will reevaluate this likelihood on a quarterly basis.

The Compensation Committee of the Company's Board of Directors authorized awards from approved stock incentive plans of RSAs to non-employee Directors and certain Company officers, which totaled 360,000 shares and had an aggregate market value of $1.9 million during the six months ended June 30, 2011.

The Compensation Committee of the Company's Board of Directors authorized grants of stock options from approved stock incentive plans to certain Company officers totaling 159,000 and 599,000 shares during the six months ended June 30, 2012 and 2011, respectively, with exercise prices equal to the stock prices on the respective grant dates.

Employees purchased common stock totaling 35,000 and 33,000 shares in the six months ended June 30, 2012 and 2011, respectively, through the Company's ESPP.

***Stock Compensation Expense***

The Company values its RSAs, RSUs, and PSUs based on the stock price on the date of grant. The Company expenses the related compensation cost of RSAs and RSUs and of PSUs, for which achievement of the performance component is probable, using the straight-line method over the vesting period. The Company uses a Black-Scholes model to value its stock option grants and expenses the related compensation cost using the straight-line method over the vesting period. The fair value of the Company's ESPP options is also determined using a Black-Scholes model and is expensed over the vesting period. The fair value of stock options and ESPP options is determined on the grant date using assumptions for the expected term, expected volatility, dividend yield, and the risk-free interest rate. The period expense is then determined based on this valuation and, at that time, an estimated forfeiture rate is used to reduce the expense recorded. The Company's estimate of pre-vesting forfeitures is primarily based on the recent historical experience of the Company and is adjusted to reflect actual forfeitures at each vesting date.

The following weighted-average assumptions were used to determine the fair value of options:

| | Three Months Ended June 30, 2012 | | Six Months Ended June 30, 2012 | |
|---|---|---|---|---|
| | **Stock Options** | **ESPP Options** | **Stock Options** | **ESPP Options** |
| Expected life of options | N/A | .50 Years | 4.25 Years | .50 Years |
| Expected stock price volatility | N/A | 0.54 | 0.60 | 0.54 |
| Risk-free interest rate | N/A | 0.06% | 0.71% | 0.06% |

| | Three Months Ended June 30, 2011 | | Six Months Ended June 30, 2011 | |
|---|---|---|---|---|
| | **Stock Options** | **ESPP Options** | **Stock Options** | **ESPP Options** |
| Expected life of options | 4.00 Years | .50 Years | 4.00 Years | .50 Years |
| Expected stock price volatility | 0.65 | 0.43 | 0.65 | 0.43 |
| Risk-free interest rate | 1.35% | 0.19% | 1.25% | 0.19% |

The following table summarizes stock compensation expenses (in thousands):

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | **2012** | **2011** | **2012** | **2011** |
| RSA, RSU, and PSU expense | $ 529 | $ 328 | $ 1,020 | $ 669 |
| Stock option and ESPP option expense | 263 | 398 | 580 | 882 |
| Total stock compensation expense | $ 792 | $ 726 | $ 1,600 | $ 1,551 |

Included in the total stock compensation expense, as applicable in each period, were expenses related to RSAs, RSUs, PSUs, and stock options issued in each respective year, as well as those issued in prior periods that continue to vest during the period, and compensation related to the Company's ESPP. These amounts were recorded as stock compensation expense and were subject to the Company's normal allocation of expenses to deferred preservation costs and inventory costs. The Company capitalized $49,000 and $55,000 in the three months ended June 30, 2012 and 2011, respectively, and $104,000 and $107,000 in the six months ended June 30, 2012 and 2011, respectively, of the stock compensation expense into its deferred preservation costs and inventory costs.

As of June 30, 2012 the Company had total unrecognized compensation costs of $1.6 million related to unvested stock options and $3.2 million related to RSAs, RSUs, and PSUs, before considering the effect of expected forfeitures. As of June 30, 2012 this expense is expected to be recognized over a weighted-average period of 1.68 years for stock options, 1.59 years for RSAs, 1.98 years for RSUs, and 1.43 years for PSUs.

## 16. Income Per Common Share

The following table sets forth the computation of basic and diluted income per common share (in thousands, except per share data):

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| **Basic income per common share** | **2012** | **2011** | **2012** | **2011** |
| Net income | $ 3,334 | $ 1,820 | $ 4,325 | $ 3,486 |
| Net income allocated to participating securities | (77) | (40) | (96) | (67) |
| Net income allocated to common shareholders | $ 3,257 | $ 1,780 | $ 4,229 | $ 3,419 |
| Basic weighted-average common shares outstanding | 26,864 | 27,385 | 27,022 | 27,385 |
| Basic income per common share | $ 0.12 | $ 0.06 | $ 0.16 | $ 0.12 |

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| **Diluted income per common share** | **2012** | **2011** | **2012** | **2011** |
| Net income | $ 3,334 | $ 1,820 | $ 4,325 | $ 3,486 |
| Net income allocated to participating securities | (76) | (39) | (95) | (66) |
| Net income allocated to common shareholders | $ 3,258 | $ 1,781 | $ 4,230 | $ 3,420 |
| Basic weighted-average common shares outstanding | 26,864 | 27,385 | 27,022 | 27,385 |
| Effect of dilutive stock options and awards [a] | 313 | 360 | 340 | 344 |
| Diluted weighted-average common shares outstanding | 27,177 | 27,745 | 27,362 | 27,729 |
| Diluted income per common share | $ 0.12 | $ 0.06 | $ 0.15 | $ 0.12 |

[a] The Company excluded stock options from the calculation of diluted weighted-average common shares outstanding if the per share value, including the sum of (i) the exercise price of the options and (ii) the amount of the compensation cost attributed to future services and not yet recognized, was greater than the average market price of the shares, because the inclusion of these stock options would be antidilutive to income per common share. Accordingly, stock options to purchase a weighted-average 1.8 million shares for both the three and six months ended June 30, 2012 and 1.9 million for both the three and six months ended June 30, 2011 were excluded from the calculation of diluted weighted-average common shares outstanding.

## 17. Segment Information

The Company has two reportable segments organized according to its services and products: Preservation Services and Medical Devices. The Preservation Services segment includes external services revenues from the preservation of cardiac and vascular tissues. The Medical Devices segment includes external revenues from product sales of BioGlue® Surgical Adhesive ("BioGlue"), BioFoam® Surgical Matrix ("BioFoam"), PerClot, HemoStase, revascularization technologies, and HeRO Graft. There are no intersegment revenues.

The primary measure of segment performance, as viewed by the Company's management, is segment gross margin, or net external revenues less cost of preservation services and products. The Company does not segregate assets by segment; therefore, asset information is excluded from the segment disclosures below. The following table summarizes revenues, cost of services and products, and gross margins for the Company's operating segments (in thousands):

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2012 | 2011 | 2012 | 2011 |
| Revenues: | | | | |
| Preservation services | $ 16,313 | $ 14,688 | $ 31,972 | $ 30,362 |
| Medical devices | 16,696 | 14,580 | 33,150 | 29,009 |
| Other[a] | 179 | 111 | 367 | 204 |
| Total revenues | 33,188 | 29,379 | 65,489 | 59,575 |
| Cost of preservation services and products: | | | | |
| Preservation services | 9,144 | 8,164 | 17,640 | 17,360 |
| Medical devices | 2,673 | 2,162 | 5,186 | 4,658 |
| Total cost of preservation services and products | 11,817 | 10,326 | 22,826 | 22,018 |
| Gross margin: | | | | |
| Preservation services | 7,169 | 6,524 | 14,332 | 13,002 |
| Medical devices | 14,023 | 12,418 | 27,964 | 24,351 |
| Other[a] | 179 | 111 | 367 | 204 |
| Total gross margin | $ 21,371 | $ 19,053 | $ 42,663 | $ 37,557 |

The following table summarizes net revenues by product (in thousands):

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2012 | 2011 | 2012 | 2011 |
| Preservation services: | | | | |
| Cardiac tissue | $ 7,343 | $ 6,691 | $ 14,423 | $ 13,225 |
| Vascular tissue | 8,970 | 7,997 | 17,549 | 17,137 |
| Total preservation services | 16,313 | 14,688 | 31,972 | 30,362 |
| Products: | | | | |
| BioGlue and BioFoam | 13,437 | 12,772 | 27,133 | 24,746 |
| PerClot | 691 | 631 | 1,335 | 1,291 |
| HemoStase | — | — | — | 1,795 |
| Revascularization technologies | 1,933 | 1,177 | 4,047 | 1,177 |
| HeRO Graft | 635 | — | 635 | — |
| Total products | 16,696 | 14,580 | 33,150 | 29,009 |
| Other[a] | 179 | 111 | 367 | 204 |
| Total revenues | $ 33,188 | $ 29,379 | $65,489 | $59,575 |

[a] For the three and six months ended June 30, 2012 and 2011, the “Other” designation includes grant revenue.

**PART I - FINANCIAL INFORMATION**

**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.**

**Overview**

CryoLife, Inc. ("CryoLife," the "Company," "we," or "us"), incorporated in 1984 in Florida, preserves and distributes human tissues for transplantation and develops, manufactures, and commercializes medical devices for cardiac and vascular applications. The cardiac and vascular human tissues distributed by CryoLife include the CryoValve® SG pulmonary heart valve ("CryoValve SGPV") and the CryoPatch® SG pulmonary cardiac patch tissue ("CryoPatch SG"), both processed using CryoLife's proprietary SynerGraft® technology. CryoLife's surgical sealants and hemostats include BioGlue® Surgical Adhesive ("BioGlue"), BioFoam® Surgical Matrix ("BioFoam"), and PerClot®, an absorbable powdered hemostat, which the Company distributes for Starch Medical, Inc. ("SMI") in the European Community and other select international markets. CryoLife's subsidiary, Cardiogenesis Corporation ("Cardiogenesis"), specializes in the treatment of coronary artery disease using a laser console system and single use, fiber-optic handpieces to treat patients with severe angina. CryoLife's subsidiary, Hemosphere, Inc. ("Hemosphere"), markets the Hemodialysis Reliable Outflow Graft ("HeRO® Graft"), which is a solution for end-stage renal disease in certain hemodialysis patients.

During the quarter ended June 30, 2012 CryoLife settled a number of ongoing lawsuits. Under terms of the Company's settlement of the litigation with Medafor, Inc. ("Medafor"), Medafor agreed to pay CryoLife $3.5 million in cash and give up the right to receive an additional $1.2 million in payables related to prior inventory purchases. The Company also settled its lawsuit with CardioFocus, Inc. ("CardioFocus") to resolve an ongoing lawsuit that was filed prior to the Company's acquisition of its Cardiogenesis subsidiary. In July 2012 the Company paid CardioFocus $4.5 million in cash related to that settlement.

In May 2012 CryoLife completed the acquisition of Hemosphere, the developer and marketer of the HeRO Graft, a proprietary graft-based solution for end-stage renal disease hemodialysis patients with limited access options and central venous obstruction.

During the quarter ended June 30, 2012 CryoLife reported record quarterly revenues of $33.2 million. This is the third quarter in succession that CryoLife has set a new Company record for quarterly revenue performance. The Company increased revenues for its cardiac tissue, vascular tissue, BioGlue, and PerClot for both the quarter and year to date periods over the respective prior year periods. The Company's newer product lines, revascularization technologies and HeRO Grafts, also contributed to the Company's increase in revenues, as the comparative prior year periods did not include full periods of revascularization technologies revenues and did not include any HeRO Graft sales.

See the "Results of Operations" section below for additional analysis of the results of operations for the three and six months ended June 30, 2012.

**Critical Accounting Policies**

A summary of the Company's significant accounting policies is included in Note 1 of the "Notes to Consolidated Financial Statements," contained in the Company's Form 10-K for the year ended December 31, 2011. Management believes that the consistent application of these policies enables the Company to provide users of the financial statements with useful and reliable information about the Company's operating results and financial condition. The summary consolidated financial statements are prepared in accordance with accounting principles generally accepted in the U.S., which require the Company to make estimates and assumptions. The Company did not experience any significant changes during the quarter ended June 30, 2012 in any of its Critical Accounting Policies from those contained in the Company's Form 10-K for the year ended December 31, 2011.

**New Accounting Pronouncements**

In January 2012 the Company adopted Accounting Standards Update ("ASU") 2011-04, Fair Value Measurement (Topic 820): *Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRSs* which clarifies some existing concepts and expands the disclosures for fair value measurements that are estimated using significant unobservable (Level 3) inputs. The adoption of ASU 2011-04 did not have a material effect on the Company's financial condition, profitability, and cash flows.

In January 2012 the Company adopted ASU 2011-05, Comprehensive Income (Topic 220): *Presentation of Comprehensive Income* and ASU 2011-12 related to presentation of comprehensive income in interim and annual financial statements.

In January 2012 the Company adopted ASU 2011-08, Intangibles-Goodwill and Other (Topic 350): *Testing Goodwill for Impairment* which gives entities testing goodwill for impairment the option of performing a qualitative assessment before calculating the fair value of a reporting unit in step 1 of the goodwill impairment test. The adoption of ASU 2011-08 did not have a material effect on the Company's financial condition, profitability, and cash flows.

**Results of Operations**
***(Tables in thousands)***

**Revenues**

| | Revenues for the Three Months Ended June 30, | | Revenues as a Percentage of Total Revenues for the Three Months Ended June 30, | |
|---|---|---|---|---|
| | **2012** | **2011** | **2012** | **2011** |
| Preservation services: | | | | |
| Cardiac tissue | $ 7,343 | $ 6,691 | 22% | 23% |
| Vascular tissue | 8,970 | 7,997 | 27% | 27% |
| Total preservation services | 16,313 | 14,688 | 49% | 50% |
| Products: | | | | |
| BioGlue and BioFoam | 13,437 | 12,772 | 40% | 44% |
| PerClot | 691 | 631 | 2% | 2% |
| Revascularization technologies | 1,933 | 1,177 | 6% | 4% |
| HeRO Graft | 635 | — | 2% | —% |
| Total products | 16,696 | 14,580 | 50% | 50% |
| Other | 179 | 111 | 1% | —% |
| Total | $ 33,188 | $ 29,379 | 100% | 100% |

| | Revenues for the Six Months Ended June 30, | | Revenues as a Percentage of Total Revenues for the Six Months Ended June 30, | |
|---|---|---|---|---|
| | **2012** | **2011** | **2012** | **2011** |
| Preservation services: | | | | |
| Cardiac tissue | $ 14,423 | $ 13,225 | 22% | 22% |
| Vascular tissue | 17,549 | 17,137 | 27% | 29% |
| Total preservation services | 31,972 | 30,362 | 49% | 51% |
| Products: | | | | |
| BioGlue and BioFoam | 27,133 | 24,746 | 41% | 42% |
| PerClot | 1,335 | 1,291 | 2% | 2% |
| HemoStase | — | 1,795 | —% | 3% |
| Revascularization technology | 4,047 | 1,177 | 6% | 2% |
| HeRO Graft | 635 | — | 1% | —% |
| Total products | 33,150 | 29,009 | 50% | 49% |
| Other | 367 | 204 | 1% | —% |
| Total | $ 65,489 | $ 59,575 | 100% | 100% |

Revenues increased 13% for the three months and 10% for the six months ended June 30, 2012 as compared to the three and six months ended June 30, 2011, respectively. A detailed discussion of the changes in preservation services revenues, product revenues, and other revenues is presented below.

***Preservation Services***

Revenues from preservation services for the three months ended June 30, 2012 increased 11% over revenues for the three months ended June 30, 2011. The increase was for both cardiac and vascular preservation services revenues.

Preservation services revenues, particularly revenues for certain high demand tissues, can vary from quarter-to-quarter due to a variety of factors including: quantity and type of incoming tissues, yields of tissue through the preservation process, timing of receipt of donor information, timing of the release of tissues to an implantable status, demand for certain tissue types due to the number and type of procedures being performed, and pressures from competing products or services. The Company believes that preservation services revenues for the full year of 2012 will show a slight increase over revenues for the full year of 2011. See further discussion of any specific items affecting cardiac and vascular preservation services revenues for the three and six months ended June 30, 2012 below.

*Cardiac Preservation Services*

Revenues from cardiac preservation services, consisting of revenues from the distribution of heart valves and cardiac patch tissues, increased 10% for the three months ended June 30, 2012 as compared to the three months ended June 30, 2011. This increase was primarily due to the aggregate impact of an increase in volume and tissue mix, which increased revenues by 7%, and by an increase in average service fees, which increased revenues by 3%.

Revenues from cardiac preservation services increased 9% for the six months ended June 30, 2012 as compared to the six months ended June 30, 2011. This increase was primarily due to the aggregate impact of an increase in volume and tissue mix, which increased revenues by 6%, and by an increase in average service fees, which increased revenues by 3%.

The increase in revenues from volume and tissue mix was primarily due to an increase in volume of cardiac valve shipments, partially offset by decreases in the volume of lower fee cardiac patch tissues. The Company believes that the increase in unit shipments of cardiac valves was due to the activities of its expanded sales staff, increased as a result of the Company's acquisition of Cardiogenesis, and the Company's ongoing physician education activities. The Company's cardiac valves are primarily used in cardiac replacement and reconstruction surgeries for patients with congenital heart defects.

The increase in average service fees for the three and six months ended June 30, 2012 was due to an increase in the list fees charged for certain cardiac tissues in domestic markets and the routine negotiation of pricing contracts with certain customers.

Revenues from SynerGraft processed tissues, including the CryoValve SGPV and CryoPatch SG, accounted for 50% and 43% of total cardiac preservation services revenues for the three and six months ended June 30, 2012, respectively, and 36% of total cardiac preservation services revenues for both the three and six months ended June 30, 2011. Domestic revenues accounted for 92% and 90% of total cardiac preservation services revenues for the three and six months ended June 30, 2012, respectively, and 92% and 91% of total cardiac preservation services revenues for the three and six months ended June 30, 2011, respectively.

*Vascular Preservation Services*

Revenues from vascular preservation services increased 12% for the three months ended June 30, 2012 as compared to the three months ended June 30, 2011. This increase was primarily due to an 11% increase in unit shipments of vascular tissues, which increased revenues by 14%, partially offset by a decrease in average service fees, which decreased revenues by 2%.

Revenues from vascular preservation services increased 2% for the six months ended June 30, 2012 as compared to the six months ended June 30, 2011. This increase was primarily due to a 3% increase in unit shipments of vascular tissues, which increased revenues by 4%, partially offset by a decrease in average service fees, which decreased revenues by 2%.

The increase in vascular volume for the three and six months ended June 30, 2012 was primarily due to increases in shipments of saphenous veins and aortoiliac grafts which increased due to improved availability of certain tissues. Saphenous veins are primarily used in peripheral vascular reconstruction surgeries to avoid limb amputations and aortoiliac grafts are primarily used in surgeries to treat abdominal aortic aneurisms. These tissues are primarily distributed in domestic markets.

The decrease in average service fees for the three and six months ended June 30, 2012 was due in part to a list fee decrease for certain vascular tissues in 2012 and fee differences due to physical characteristics of vascular tissues, partially offset by the routine negotiation of pricing contracts with certain customers.

***Products***

Revenues from products increased 15% for the three months ended June 30, 2012 as compared to the three months ended June 30, 2011. Revenues from products increased 14% for the six months ended June 30, 2012 as compared to the six months ended June 30, 2011. This increase was primarily due to an increase in revenues from revascularization technologies as a result of the Company's acquisition of Cardiogenesis in the second quarter of 2011, the addition of HeRO Graft revenues as a result of the Company's acquisition of Hemosphere in the second quarter of 2012, and an increase in BioGlue revenues. These increases were partially offset by a lack of HemoStase revenues for the year to date period as the Company is no longer distributing this product. A detailed discussion of the changes in product revenues for BioGlue and BioFoam; PerClot and HemoStase; revascularization technologies; and HeRO Grafts are presented below.

*BioGlue and BioFoam*

Revenues from the sale of surgical sealants, consisting of BioGlue and BioFoam, increased 5% for the three months ended June 30, 2012 as compared to the three months ended June 30, 2011. This increase was primarily due to a 6% increase in the volume of milliliters sold, which increased revenues by 4% and by an increase in average sales prices, which increased revenues by 3%, partially offset by the unfavorable impact of foreign exchange rates, which decreased revenues by 2%.

Revenues from the sale of surgical sealants, consisting of BioGlue and BioFoam, increased 10% for the six months ended June 30, 2012 as compared to the six months ended June 30, 2011. This increase was primarily due to a 12% increase in the volume of milliliters sold, which increased revenues by 8% and by an increase in average sales prices, which increased revenues by 3%, partially offset by the unfavorable impact of foreign exchange rates, which decreased revenues by 1%.

The increase in sales volume of surgical sealants for the three and six months ended June 30, 2012 was due to an increase in shipments of BioGlue in certain international markets, primarily Japan. The Company began shipping BioGlue to Japan in April 2011, following the Japanese approval of BioGlue for use in the repair of aortic dissections. Revenues from shipments to Japan were $1.1 million and $518,000 for the three months ended June 30, 2012 and 2011, respectively, and $2.3 million and $518,000 for the six months ended June 30, 2012 and 2011, respectively. These increases were partially offset by a slight volume decrease in the Company's more mature domestic markets.

Management believes that the decrease in BioGlue shipments in its domestic markets is a result of various factors, including: the U.S. market introduction of sealant products with approved indications for use in clinical applications in which BioGlue has been used off-label previously, poor economic conditions and their constraining effect on hospital budgets, the resulting attempts by hospitals to control costs by reducing spending on consumable items such as BioGlue, and the efforts of some large competitors in imposing and enforcing contract purchasing requirements for competing non-CryoLife products.

The Company's sales of surgical sealants through its direct sales force to United Kingdom hospitals are denominated in British Pounds, and its sales to German hospitals and certain distributors are denominated in Euros and are, therefore, subject to changes in foreign exchange rates. If the exchange rates between the U.S. Dollar and the Euro or British Pound decline materially for the remainder of 2012 as compared to the corresponding periods in 2011, this would have a material adverse impact on the Company's revenues denominated in these currencies.

Domestic revenues accounted for 58% and 59% of total BioGlue revenues for the three and six months ended June 30, 2012, respectively, and 62% and 65% of total BioGlue revenues for the three and six months ended June 30, 2011, respectively. BioFoam sales accounted for less than 1% of surgical sealant sales for each of the three and six month periods ended June 30, 2012 and 2011. BioFoam is currently approved for sale in certain international markets.

BioGlue is a mature product that has experienced increasing competitive pressures. Management believes that BioGlue sales volume in domestic markets will continue to be impacted by the factors discussed above. Management believes that poor economic conditions in Europe could negatively impact sales during the second half of 2012. Management believes that international BioGlue sales will be positively impacted by increased shipments to Japan in 2012 as compared to the corresponding periods in 2011.

*PerClot and HemoStase*

Revenues from the sale of PerClot increased 10% for the three months ended June 30, 2012 as compared to the three months ended June 30, 2011. This increase was primarily due to an 8% increase in the volume of grams sold, which increased revenues by 14% and by an increase in average sales prices, which increased revenues by 2%, partially offset by the unfavorable impact of foreign exchange rates, which decreased revenues by 6%. Revenues during these three month periods were for sales in certain international markets, as PerClot is not yet approved for domestic distribution or widespread international distribution. HemoStase was not distributed during the three months ended June 30, 2012 or 2011.

Revenues from the sale of hemostats, consisting of PerClot and HemoStase, decreased 57% for the six months ended June 30, 2012 as compared to the six months ended June 30, 2011. The revenue decrease in the six months ended June 30, 2012 was primarily due to a decrease in hemostat sales volume in domestic markets, as discussed further below.

International hemostat revenues decreased 26% for the six months ended June 30, 2012 as compared to the six months ended June 30, 2011. This decrease was primarily due to a decrease in sales in certain international markets, particularly in Canada and South America due to large HemoStase orders filled in the first quarter of 2011 in anticipation of a disruption in the availability of hemostats to the Company's distributors in these countries beginning in 2011. This disruption was due to the Company's planned March 2011 discontinuance of HemoStase sales subsequent to the termination of its Exclusive Distribution Agreement ("EDA") for this product.

The decrease in domestic sales volume for the six months ended June 30, 2012 was due to the Company's discontinuation of sales of HemoStase as discussed above. The Company recognized domestic hemostat sales in the first quarter of 2011 and recognized no domestic hemostat sales in the corresponding period in 2012. Domestic hemostat sales ended with the discontinuance of HemoStase sales, as PerClot is not yet approved for commercial distribution in domestic markets.

The Company will not be able to sell PerClot in the U.S. in future years unless and until U.S. Food and Drug Administration ("FDA") approval is granted. On March 30, 2012 CryoLife refiled for an investigational device exemption ("IDE") with the FDA seeking approval to begin clinical trials for the purpose of obtaining Premarket Approval to distribute PerClot in the U.S. The FDA responded to the Company's IDE during the second quarter of 2012, and the Company is currently in the process of addressing comments made by the FDA in that response.

Management believes that economic conditions in Europe could negatively impact hemostat sales in 2012. Poor economic conditions and their constraining effect on hospital budgets are expected to drive continued pricing pressures, especially due to the many hemostatic agents currently competing for market share in Europe. The Company's sales of hemostats through its direct sales force to United Kingdom hospitals are denominated in British Pounds, and its sales to German hospitals and certain distributors are denominated in Euros and are, therefore, subject to changes in foreign exchange rates. If the exchange rates between the U.S. Dollar and the Euro or British Pound decline materially for the remainder of 2012 as compared to the corresponding periods in 2011, this would have a material adverse impact on the Company's revenues denominated in these currencies. Changes in exchange rates will have a more material impact on hemostat revenues than the Company's other product lines, as a larger percentage of the Company's hemostat sales are denominated in foreign currencies.

*Revascularization Technologies*

Revenues from revascularization technologies for the three and six months ended June 30, 2012 increased over the corresponding periods in 2011 as revascularization technologies were not marketed by the Company for the full prior year periods. The Company began marketing revascularization technologies following its acquisition of Cardiogenesis in May 2011. Revenues from revascularization technologies include revenues related to the sale of laser consoles, handpieces, and related products.

Revascularization technologies revenues for the three and six months ended June 30, 2012 and 2011 consisted primarily of handpiece sales. Revenues from the sale of laser consoles accounted for 7% of total revascularization technologies revenues for both the three and six months ended June 30, 2012. There were no revenues from the sale of laser consoles in the corresponding prior year periods. The amount of revenue from console sales can vary significantly from quarter-to-quarter due to the long lead time to generate sales of capital equipment and due to the higher selling price of consoles as compared to handpieces. Handpieces and laser consoles are primarily distributed in domestic markets.

Revascularization technologies revenues for the six months ended June 30, 2012 decreased when compared to the combined pre- and post-acquisition revenues for the six months ended June 30, 2011. This decrease is primarily due to increasing competitive pressures and challenges in selling laser consoles, both of which have negatively impacted console and handpiece revenues. Revenues from laser consoles have been negatively impacted by the current economic environment, which makes hospitals reluctant to invest in large capital purchases. The Company believes that these effects may continue into the second half of 2012.

*HeRO Graft*

Revenues from HeRO Grafts for the three and six months ended June 30, 2012 were a result of the Company's acquisition of Hemosphere in May 2012. Revenues from HeRO Grafts include revenues related to the sale of vascular grafts, venous outflow components, and accessories, which are generally sold together as a kit. HeRO Grafts are primarily distributed in domestic markets.

***Other Revenues***

Other revenues for the three and six months ended June 30, 2012 and 2011 included revenues related to funding allocated from U.S. Congress Defense Appropriations Conference Reports in 2005 through 2008, collectively the ("DOD Grants"). As of June 30, 2012 CryoLife has been awarded $6.1 million and has received a total of $5.4 million for the development of protein hydrogel technology, which the Company is currently developing for use in organ sealing. At June 30, 2012 CryoLife had $1.3 million included in deferred income on the Company's Summary Consolidated Balance Sheet from the DOD Grants, of which $878,000 remains in unspent cash advances recorded as cash and cash equivalents.

**Cost of Preservation Services and Products**

***Cost of Preservation Services***

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2012 | 2011 | 2012 | 2011 |
| Cost of preservation services | $ 9,144 | $ 8,164 | $ 17,640 | $ 17,360 |
| Cost of preservation services as a percentage of preservation services revenues | 56% | 56% | 55% | 57% |

Cost of preservation services increased 12% for the three months and 2% for the six months ended June 30, 2012 as compared to the three and six months ended June 30, 2011, respectively. Cost of preservation services includes costs for cardiac and vascular tissue preservation services.

The increase in cost of preservation services in the three and six months ended June 30, 2012 was primarily due to increased shipments of cardiac and vascular tissues during these periods. Cost of preservation services as a percentage of preservation services revenues for the three and six months ended June 30, 2012 was comparable to the corresponding prior year periods.

***Cost of Products***

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2012 | 2011 | 2012 | 2011 |
| Cost of products | $ 2,673 | $ 2,162 | $ 5,186 | $ 4,658 |
| Cost of products as a percentage of product revenues | 16% | 15% | 16% | 16% |

Cost of products increased 24% for the three months and 11% for the six months ended June 30, 2012 as compared to the three and six months ended June 30, 2011, respectively. Cost of products in 2012 includes costs related to BioGlue, BioFoam, PerClot, revascularization technologies, and HeRO Grafts. Cost of products in 2011 includes costs related to BioGlue, BioFoam, PerClot, HemoStase, and revascularization technologies.

The increase in cost of products in the three and six months ended June 30, 2012 was primarily due to the increase in revascularization technologies handpiece revenues, the increase in BioGlue sales volume, and the addition of HeRO Graft revenues. These increases were partially offset by the discontinuation of HemoStase sales for the six months ended June 30, 2012.

Cost of products as a percentage of product revenues for the three and six months ended June 30, 2012 was comparable to the corresponding prior year periods.

**Operating Expenses**

***General, Administrative, and Marketing Expenses***

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2012 | 2011 | 2012 | 2011 |
| General, administrative, and marketing expenses | $ 13,871 | $ 13,659 | $ 31,841 | $ 27,950 |
| General, administrative, and marketing expenses as a percentage of total revenues | 42% | 46% | 49% | 47% |

General, administrative, and marketing expenses increased 2% for the three months and 14% for the six months ended June 30, 2012 as compared to the three and six months ended June 30, 2011, respectively.

General, administrative, and marketing expenses for both the three and six months ended June 30, 2012 were reduced by a $4.7 million gain on the settlement of the Medafor lawsuit. General, administrative, and marketing expenses for the three and six months ended June 30, 2012 includes losses of $3.6 million and $4.1 million, respectively, for the lawsuit with CardioFocus related to patent infringement by the Company's Cardiogenesis laser products, which was settled in the second quarter of 2012. Legal fees related to lawsuits, primarily the Medafor and CardioFocus lawsuits, were $2.1 million and $3.6 million for the three and six months ended June 30, 2012, respectively, and reductions to legal fees for insurance reimbursements to be received for certain litigation expenses were $3.1 million and $3.4 million for the three and six months ended June 30, 2012, respectively. See also Part II, Item I, "Legal Proceedings."

Business development costs, primarily related to the acquisition of Hemosphere, were $1.0 million and $1.1 million for the three and six months ended June 30, 2012, respectively. Business development costs primarily related to the acquisition of Cardiogenesis were $1.8 million and $2.9 million for the three and six months ended June 30, 2011, respectively.

The Company expects that it will incur additional general, administrative, and marketing expenses for the full year of 2012 as compared to 2011 related to its expanded sales staff and the ongoing operations of Hemosphere, which the Company acquired in May 2012, and the expanded sales staff of Cardiogenesis, which was not part of the Company's business until May 2011.

***Research and Development Expenses***

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2012 | 2011 | 2012 | 2011 |
| Research and development expenses | $ 1,670 | $ 1,643 | $ 3,363 | $ 3,409 |
| Research and development expenses as a percentage of total revenues | 5% | 6% | 5% | 6% |

Research and development expenses increased 2% for the three months ended June 30, 2012 as compared to the three months ended June 30, 2011. Research and development expenses decreased 1% for the six months ended June 30, 2012 as compared to the six months ended June 30, 2011. Research and development spending in these periods was primarily focused on PerClot, the Company's SynerGraft tissues and products, and BioFoam. The Company expects that research and development spending for the full year of 2012 will increase compared to the full year of 2011 due to planned increases in spending on clinical studies related to PerClot and BioFoam.

**Earnings**

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2012 | 2011 | 2012 | 2011 |
| Income before income taxes | $ 5,605 | $ 3,779 | $ 7,186 | $ 6,314 |
| Income tax expense | 2,271 | 1,959 | 2,861 | 2,828 |
| Net income | $ 3,334 | $ 1,820 | $ 4,325 | $ 3,486 |
| Diluted income per common share | $ 0.12 | $ 0.06 | $ 0.15 | $ 0.12 |
| Diluted weighted-average common shares outstanding | 27,177 | 27,745 | 27,362 | 27,729 |

Income before income taxes increased 48% for the three months and 14% for the six months ended June 30, 2012 as compared to the three and six months ended June 30, 2011. The increase in income before income taxes for the three and six months ended June 30, 2012 was primarily caused by an increase in revenues, partially offset by an increase in costs and expenses, particularly for the six month period, as discussed above.

The Company's effective income tax rate was approximately 41% and 40% for the three and six months ended June 30, 2012, respectively, as compared to 52% and 45% for the three and six months ended June 30, 2011, respectively. The income tax rates in the second quarters of 2012 and 2011 were impacted by the unfavorable tax treatment of certain acquisition related expenses related to the acquisitions of Hemosphere and Cardiogenesis, respectively. The Cardiogenesis acquisition costs were significantly higher than the acquisition costs for Hemosphere, and therefore, had a larger impact on the effective tax rate.

Net income and diluted income per common share for the three and six months ended June 30, 2012 increased compared to the corresponding periods in 2011 due to the increase in income before income taxes, adjusted by the effect of income tax expense, as discussed above.

Diluted income per common share could be unfavorably impacted in future periods by the issuance of additional shares of common stock and favorably impacted by the Company's repurchase of its common stock. Stock repurchases are impacted by many factors, including: stock price, available funds, and competing demands for such funds, and as a result, may be suspended or discontinued at any time.

**Seasonality**

The Company's demand for its cardiac preservation services has traditionally been seasonal, with peak demand generally occurring in the third quarter. Management believes this trend for cardiac preservation services is primarily due to the high number of surgeries scheduled during the summer months for school-aged patients. Management believes that this trend is lessening in recent years as the Company is distributing a higher percentage of its tissues to adult populations.

The Company believes the demand for its vascular preservation services is seasonal, with lowest demand generally occurring in the fourth quarter. Management believes this trend for vascular preservation services is primarily due to fewer surgeries being scheduled during the winter holiday months.

The Company believes the demand for BioGlue is seasonal, with a decline in demand generally occurring in the third quarter followed by stronger demand in the fourth quarter. Management believes that this trend for BioGlue may be due to the summer holiday season in Europe and fewer surgeries being performed on adult patients in the summer months in the U.S.

The Company is uncertain whether the demand for PerClot will be seasonal, as PerClot is a new product and the nature of any seasonal trends in PerClot sales may be obscured.

The Company is uncertain whether the demand for revascularization technologies will be seasonal, as the Company only recently acquired this product line in May 2011 and the historical data does not indicate a significant trend.

The Company is uncertain whether the demand for HeRO Grafts will be seasonal, as the Company only recently acquired this product line in May 2012 and the historical data does not indicate a significant trend.

**Liquidity and Capital Resources**

***Net Working Capital***

At June 30, 2012 net working capital (current assets of $75.2 million less current liabilities of $24.8 million) was $50.4 million, with a current ratio (current assets divided by current liabilities) of 3 to 1, compared to net working capital of $62.4 million and a current ratio of 4 to 1 at December 31, 2011.

***Overall Liquidity and Capital Resources***

The Company's largest cash requirements for the six months ended June 30, 2012 were the acquisition of Hemosphere and the related transaction and integration costs. The total acquisition cost, net of cash acquired, was $17.1 million. CryoLife used cash on hand to fund the acquisition and will operate Hemosphere as a wholly owned subsidiary. The Company's other cash requirements included cash for general working capital needs and repurchases of the Company's common stock. The Company funded its cash requirements through its existing cash reserves and its operating activities, which generated cash during the period.

CryoLife's credit agreement with GE Capital (the "GE Credit Agreement") provides revolving credit for working capital, acquisitions, and other corporate purposes. The borrowing capacity under the GE Credit Agreement is $20.0 million (including a letter of credit subfacility) and the GE Credit Agreement expires October 28, 2014. The borrowing capacity may be reduced or increased from time to time pursuant to the terms of the GE Credit Agreement. As required under the terms of the GE Credit Agreement, the Company is maintaining cash and cash equivalents of at least $5.0 million in accounts in which GE Capital has a first priority perfected lien. As a result, these funds will not be available to meet the Company's liquidity needs during the term of the GE Credit Agreement and, as such, have been recorded as restricted cash and securities on the Company's Summary Consolidated Balance Sheets. Also, the GE Credit Agreement requires that, after giving effect to a stock repurchase, the Company maintain liquidity, as defined in the agreement, of at least $20.0 million. As of June 30, 2012 the outstanding balance under the GE Credit Agreement was zero and $19.8 million was available for borrowing.

In the six months ended June 30, 2012 the Company purchased approximately 626,000 shares of its common stock for an aggregate purchase price of $3.2 million. As of June 30, 2012 the Company had $10.4 million in remaining authorizations under common stock repurchase programs authorized by the Company's Board of Directors. The purchase of shares may be made from time to time in the open market or through privately negotiated transactions, on such terms as management deems appropriate, and will be dependent upon various factors, including: price, regulatory requirements, and other market conditions. As of June 30, 2012 the Company was no longer actively repurchasing shares of its common stock. The Company cannot currently anticipate if it will continue to repurchase common shares under this authorization or when such purchases could be initiated.

The Company's cash equivalents include advance funding received under the DOD Grants for the continued development of protein hydrogel technology. As of June 30, 2012 $878,000 of the Company's cash equivalents were related to these DOD Grants, which must be used for the specified purposes. As of June 30, 2012 less than 12% of the Company's cash and cash equivalents were held in foreign jurisdictions.

The Company has agreed to provide funding of up to $2.0 million in debt financing to ValveXchange, Inc. ("ValveXchange") through a revolving credit facility. The Company advanced $1.0 million to ValveXchange on this loan in mid July 2012, and believes that ValveXchange may draw additional funds during the remainder of 2012, but actual timing may be different than the Company's current expectations.

The Company believes that its anticipated cash from operations and existing cash and cash equivalents will enable the Company to meet its current operational liquidity needs for at least the next twelve months. The Company's future cash requirements will include cash to fund the integration of Hemosphere and may include cash to fund clinical trials, including the PerClot, BioFoam, and revascularization technologies clinical trials, and other business development activities, to purchase license agreements, for general working capital needs, to fund the ValveXchange revolving credit facility, to repurchase the Company's common stock, to fund a cash dividend to common shareholders, and for other corporate purposes. The Company believes that these items could have a significant impact on its cash flows in the remainder of 2012. The Company may seek additional borrowing capacity or financing pursuant to its shelf registration statement, for general corporate purposes, or to fund other future cash requirements. If the Company undertakes further significant business development activity in 2012, it will likely need to finance such activities by drawing down monies under the GE Credit Agreement, obtaining additional debt financing, or using its shelf registration statement to sell equities.

The Company acquired net operating loss carryforwards from its acquisitions of Hemosphere and Cardiogenesis that the Company believes will reduce required cash payments for federal income taxes by approximately $1.2 million for the 2012 tax year.

***Liability Claims***

In the second quarter of 2012 the Company settled a lawsuit with CardioFocus related to patent infringement by the Company's Cardiogenesis laser products. In accordance with this settlement, the Company made a payment of $4.5 million in July 2012 to CardioFocus using cash on hand. Also in the second quarter of 2012, the Company settled its lawsuit with Medafor. Per the terms of the settlement agreement, CryoLife will receive $3.5 million in the third quarter of 2012, of which $1.75 million was received in July 2012. As of June 30, 2012 the Company had $3.2 million in legal expenses recoverable from insurance carriers recorded as a receivable on the Summary Consolidated Balance Sheet, of which $1.6 million was received in July 2012. The Company believes that the remainder will be received in the second half of 2012.

See also Part II, Item I, "Legal Proceedings."

***Net Cash Flows from Operating Activities***

Net cash provided by operating activities was $4.9 million for the six months ended June 30, 2012 as compared to $7.9 million for the six months ended June 30, 2011. The decrease in cash provided in the current year period is primarily due to the effect of working capital needs, which had an unfavorable impact on cash during the period.

The Company uses the indirect method to prepare its cash flow statement and, accordingly, the operating cash flows are based on the Company's net income, which is then adjusted to remove non-cash items and for changes in operating assets and liabilities from the prior year end. For the six months ended June 30, 2012 these non-cash items included a favorable $2.7 million in depreciation and amortization expenses, $1.5 million in non-cash stock based compensation, and $1.3 million in deferred income taxes.

The Company's working capital needs, or changes in operating assets and liabilities, also affected cash from operations. For the six months ended June 30, 2012 these changes included unfavorable adjustments of $6.7 million due to the timing differences between the recording of revenue or gains and the receipt of cash, primarily due to the $3.5 million legal settlement receivable

from Medafor and $3.2 million for insurance reimbursements to be received for certain litigation expenses, and due to recent increase in revenues, partially offset by a favorable adjustment of $3.9 million due to the timing differences between the recording of accounts payable, accrued expenses, and other liabilities and the actual payment of cash, primarily due to the $4.5 million legal settlement payable to CardioFocus.

***Net Cash Flows from Investing Activities***

Net cash used in investing activities was $19.3 million for the six months ended June 30, 2012 as compared to $22.4 million for the six months ended June 30, 2011. The current year cash used was primarily due to the payment of $17.1 million for the acquisition of Hemosphere, net of cash acquired.

***Net Cash Flows from Financing Activities***

Net cash used in financing activities was $3.3 million for the six months ended June 30, 2012 as compared to $1.2 million for the six months ended June 30, 2011. The current year cash used was primarily due to $3.4 million in purchases of treasury stock, largely related to the Company's publicly announced stock repurchase plan.

**Off-Balance Sheet Arrangements**

The Company has no off-balance sheet arrangements.

**Scheduled Contractual Obligations and Future Payments**

Scheduled contractual obligations and the related future payments as of June 30, 2012 are as follows (in thousands):

| | Total | Remainder of 2012 | 2013 | 2014 | 2015 | 2016 | Thereafter |
|---|---|---|---|---|---|---|---|
| Operating leases | $ 25,744 | $ 1,174 | $ 2,708 | $ 2,655 | $ 2,609 | $ 2,633 | $ 13,965 |
| Purchase commitments | 8,368 | 2,951 | 3,586 | 1,831 | — | — | — |
| Contingent payments | 4,500 | 500 | — | 500 | 3,500 | — | — |
| Settlement payment | 4,500 | 4,500 | — | — | — | — | — |
| Research obligations | 4,227 | 1,157 | 2,083 | 939 | 48 | — | — |
| Compensation payments | 1,985 | — | 992 | 993 | — | — | — |
| Total contractual obligations | $ 49,324 | $ 10,282 | $ 9,369 | $ 6,918 | $ 6,157 | $ 2,633 | $ 13,965 |

The Company's operating lease obligations result from the lease of land and buildings that comprise the Company's corporate headquarters and manufacturing facilities, leases related to additional office and warehouse space, leases on Company vehicles, and leases on a variety of office equipment.

The Company's purchase commitments include minimum purchase requirements for PerClot related to the Company's transaction with SMI. These minimum purchases are included through 2014, as the Company expects to receive FDA approval for PerClot in late 2014. Upon FDA approval, the Company may terminate its minimum purchase requirements, which it expects to do. However, if the Company does not terminate this provision, it will have minimum purchase obligations of $1.75 million per year through the end of the contract term in 2025. The Company's purchase commitments also include obligations from agreements with suppliers and contractual payments for licensing computer software and telecommunication services.

The contingent payment obligations include obligations related to the Company's acquisition of Hemosphere and transaction with SMI. The contingent payment obligation for Hemosphere represents the payments that the Company will make if certain revenue milestones are achieved. The schedule includes one contingent milestone payment for $2.5 million that the Company believes it is likely to pay in 2015, although the timing of this payment may change. The schedule excludes one contingent milestone payment of up to $2.0 million, as the Company cannot make a reasonably reliable estimate of when this future payment may be made, if at all. The contingent payment obligation for PerClot represents the payments that the Company will make if certain FDA regulatory approvals and other commercial milestones are achieved. The schedule excludes one contingent milestone payment of $500,000, as the Company cannot make a reasonably reliable estimate of timing of this future payment.

The Company's settlement payment of $4.5 million is due to CardioFocus for the settlement of a lawsuit related to patent infringement by the Company's Cardiogenesis laser products and was paid in July 2012.

The Company's research obligations represent commitments for ongoing studies and payments to support research and development activities, which will be partially funded by the advances received under the DOD Grants.

The Company's compensation payment obligations represent estimated payments for post-employment benefits for the Company's Chief Executive Officer ("CEO"). The timing of the CEO's post-employment benefits is based on the December 2012 expiration date of the CEO's employment agreement. Payment of this benefit may be accelerated by a change in control or by the voluntary retirement of the CEO, or may be delayed if the Company and the CEO execute a new employment agreement that changes the payment terms.

The schedule of contractual obligations above excludes (i) obligations for estimated liability claims unless they are due as a result of a settlement agreement or other contractual obligation and (ii) any estimated liability for uncertain tax positions and interest and penalties, currently estimated to be $2.4 million, because the Company cannot make a reasonably reliable estimate of the amount and period of related future payments as no specific assessments have been made for specific litigation or by any taxing authorities.

**Capital Expenditures**

Capital expenditures for the six months ended June 30, 2012 were $1.5 million compared to $1.2 million for the six months ended June 30, 2011. Capital expenditures in the six months ended June 30, 2012 were primarily related to the routine purchases of manufacturing, tissue processing, computer, and office equipment; computer software; and renovations to the Company's corporate headquarters needed to support the Company's business.

## Forward-Looking Statements

This Form 10-Q includes "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Exchange Act. Forward-looking statements give the Company's current expectations or forecasts of future events. The words "could," "may," "might," "will," "would," "shall," "should," "pro forma," "potential," "pending," "intend," "believe," "expect," "anticipate," "estimate," "plan," "future," and other similar expressions generally identify forwarding-looking statements. These forward-looking statements are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Readers are cautioned not to place undue reliance on these forward-looking statements, which are made as of the date of this Form 10-Q. Such forward-looking statements reflect the views of management at the time such statements are made and are subject to a number of risks, uncertainties, estimates, and assumptions, including, without limitation, in addition to those identified in the text surrounding such statements, those identified under "Risks and Uncertainties" and elsewhere in this Form 10-Q.

All statements, other than statements of historical facts, included herein that address activities, events, or developments that the Company expects or anticipates will or may occur in the future, are forward-looking statements, including statements regarding:

- Expectations regarding the accounting treatment and costs of certain transactions;
- Expectations regarding the renewal of certain contracts;
- Expectations regarding net operating loss carryforwards and the related impact on the Company's taxes;
- Expectations regarding the attainment of the performance component of 2012 equity grants;
- Expectations regarding the recognition of expenses related to equity grants;
- The Company's belief that preservation services revenues over the full year of 2012 will show a slight increase over revenues for the full year of 2011;
- Anticipated impact of changes in interest rates and foreign currency exchange rates;
- The Company's belief that the HeRO Graft will fit well into its product portfolio of medical devices;
- The Company's belief that there is a significant opportunity for CryoLife's sales team to leverage their strong relationships with vascular surgeons to introduce and expand utilization of the HeRO Graft in the U.S.;
- Expectations regarding payments to former shareholders of Hemosphere upon the achievement of certain revenue-based milestones, and management's estimates and assumptions regarding the achievement of such milestones;
- Management's beliefs regarding BioGlue sales volume in domestic and international markets and the factors impacting such sales;
- Management's beliefs regarding hemostat sales in 2012 and the factors impacting such sales;
- The Company's beliefs regarding factors that may impact revascularization technologies revenues in the second half of 2012;
- Anticipated cost of preservation services as a percentage of preservation services revenues;
- Expectations regarding general, administrative, and marketing expenses for the remainder of 2012 and the factors impacting such costs;
- The Company's expectations that research and development expenses for the full year of 2012 will increase compared to 2011, and the factors impacting such expenses;
- Expectations regarding business development opportunities and related costs;
- The Company's beliefs regarding the seasonal nature of the demand for some of its preservation services and products;
- The Company's belief that it will have sufficient cash to meet its operational liquidity needs for at least the next twelve months;
- The Company belief that the remaining legal recoverable from insurance carriers will be received in the second half of 2012;
- Expectations regarding the Company's future cash requirements and the impact of certain items on the Company's cash flows;
- The Company's belief that it may seek additional borrowing capacity or financing for general corporate purposes or to fund other future cash requirements;

- The Company's belief that further significant business development activity in 2012 would likely require the Company to draw down monies on its credit facility, obtain additional debt financing, or sell equity under its shelf registration statement;
- The Company's expectation that it will receive FDA approval for PerClot in late 2014;
- The Company's expectation that it will terminate its minimum purchase requirements for PerClot after the product receives FDA approval;
- The Company's belief that ValveXchange may draw additional funds on its credit facility with CryoLife during the remainder of 2012;
- Expectations regarding obligations for certain contingent payments and purchase commitments related to asset purchases and acquisitions, and the timing of such payments and purchases;
- Estimated liability for uncertain tax positions and interest and penalties;
- Expectations regarding the timing of payments from the Medafor settlement;
- The Company's plans to terminate its letter of credit related to the Tenaxis litigation in the third quarter of 2012;
- Expectations regarding the impact of new accounting pronouncements; and
- Other statements regarding future plans and strategies, anticipated events, or trends.

These statements are based on certain assumptions and analyses made by the Company in light of its experience and its perception of historical trends, current conditions, and expected future developments as well as other factors it believes are appropriate in the circumstances. However, whether actual results and developments will conform with the Company's expectations and predictions is subject to a number of risks and uncertainties which could cause actual results to differ materially from the Company's expectations, including, without limitation, in addition to those specified in the text surrounding such statements, the risk factors set forth below, the risk factors set forth under Part I, Item 1A of the Company's Form 10-K for the year ended December 31, 2011, the risk factors set forth under Part II, Item 1A of this Form 10-Q, and other factors, many of which are beyond the control of the Company. Consequently, all of the forward-looking statements made in this Form 10-Q are qualified by these cautionary statements, and there can be no assurance that the actual results or developments anticipated by the Company will be realized or, even if substantially realized, that they will have the expected consequences to or effects on the Company or its business or operations. The Company assumes no obligation to update publicly any such forward-looking statements, whether as a result of new information, future events, or otherwise.

**Risks and Uncertainties**

The risks and uncertainties which might impact the forward-looking statements and the Company, its ability to continue as a going concern, and the trading value of its common stock include concerns that:

- We are significantly dependent on our revenues from BioGlue and are subject to a variety of risks affecting this product;
- The continued introduction into the market of products that compete with BioGlue could have an irreversible adverse impact on our sales of BioGlue;
- Our BioGlue patent has expired in the U.S. and will expire in the rest of the world in mid-2013;
- Our tissues and products allegedly have caused, and may in the future cause, injury to patients, and we have been, and may in the future be, exposed to tissue processing and product liability claims, including one currently outstanding product liability lawsuit, and additional regulatory scrutiny as a result;
- Our investment in Medafor has been impaired due to Medafor's termination of our Exclusive Distribution Agreement with Medafor and our investment could be further impaired by risks associated with Medafor's business or by Medafor's actions, which could have a material adverse impact on our financial condition and profitability;
- We will not fully realize the benefit of our investment in our distribution and license and manufacturing agreements with Starch Medical, Inc. unless we are able to obtain FDA approval for PerClot in the U.S., which will require an additional commitment of funds;
- The receipt of impaired materials or supplies that do not meet our standards or the recall of materials or supplies by our vendors or suppliers could have a material adverse impact on our revenues, financial condition, profitability, and cash flows;
- Our sales are impacted by challenging domestic and international economic conditions and their constraining effect on hospital budgets and demand for our tissues and products could decrease in the future, which could have a material adverse impact on our business;
- Healthcare policy changes, including recent federal legislation to reform the U.S. healthcare system, may have a material adverse impact on us;
- The loss of any of our sole-source suppliers could have a material adverse impact on our revenues, financial condition, profitability, and cash flows;
- We may be unsuccessful in our efforts to market and sell PerClot in the U.S. and internationally;
- Factors that have negatively impacted revascularization technologies revenues in the first half of 2012 may continue into the second half of 2012;
- We have inherited risks and uncertainties related to Cardiogenesis' business;
- We have inherited risks and uncertainties related to Hemosphere's business;
- We may expand through acquisitions, or licenses of, or investments in, other companies or technologies, which may result in additional dilution to our stockholders and consume resources that may be necessary to sustain our business;
- We may not realize the anticipated benefits from acquisitions and we may find it difficult to integrate recent or potential future acquisitions of technology or business combinations, which could disrupt our business, dilute stockholder value, and adversely impact our operating results;
- We are subject to stringent domestic and foreign regulation which may impede the approval process of our tissues and products, hinder our development activities and manufacturing processes, and, in some cases, result in the recall or seizure of previously cleared or approved tissues and products;
- Our HemoStase sales ceased in late March 2011, and we will not be able to participate in the hemostats market in the U.S. or other markets where we lack regulatory approval unless we can obtain FDA or other regulatory approval for PerClot;
- We may not be successful in obtaining necessary clinical results and regulatory approvals for services and products in development, and our new services and products may not achieve market acceptance;
- Uncertainties related to patents and other proprietary technology rights may adversely impact the value of our intellectual property or may result in our payment of significant monetary damages and/or royalty payments, negatively impact our ability to sell current or future products, or prohibit us from enforcing our patent and other proprietary technology rights against others;
- Intense competition may impact our ability to operate profitably;
- If we are not successful in expanding our business activities in international markets, we may be unable to increase our revenues;
- We are dependent on the availability of sufficient quantities of tissue from human donors;
- Key growth strategies may not generate the anticipated benefits;
- Investments in new technologies and acquisitions of products or distribution rights may not be successful;

- Regulatory action outside of the U.S. has affected our business in the past and may affect our business in the future;
- Consolidation in the healthcare industry could continue to result in demands for price concessions, limits on the use of our tissues and products, and limitations on our ability to sell to certain of our significant market segments;
- Extensive government regulations may adversely impact our ability to develop and market services and products;
- The success of many of our tissues and products depends upon strong relationships with physicians;
- Our existing insurance policies may not be sufficient to cover our actual claims liability;
- We may be unable to obtain adequate insurance at a reasonable cost, if at all;
- We are not insured against all potential losses. Natural disasters or other catastrophes could adversely impact our business, financial condition, and profitability;
- We may be unsuccessful in our attempts to recover certain insurance reimbursements to be received;
- Our credit facility, which expires in October of 2014, limits our ability to pursue significant acquisitions;
- Our ability to borrow under our credit facility may be limited;
- Continued fluctuation of foreign currencies relative to the U.S. Dollar could materially adversely impact our business;
- Rapid technological change could cause our services and products to become obsolete;
- Our CryoValve SGPV post-clearance study may not provide expected results;
- Our investment in ValveXchange, Inc. may become impaired, which could have a material adverse impact on our earnings; and
- We are dependent on our key personnel.

## Item 3. Quantitative and Qualitative Disclosures About Market Risk.

### Interest Rate Risk

The Company's interest income and interest expense are sensitive to changes in the general level of U.S. interest rates. In this regard, changes in U.S. interest rates affect the interest earned on the Company's cash and cash equivalents of $4.0 million and restricted cash and securities of $5.0 million and interest paid on the Company's variable rate line of credit as of June 30, 2012. A 10% adverse change in interest rates as compared to the rates experienced by the Company in the six months ended June 30, 2012, affecting the Company's cash and cash equivalents, restricted cash and securities, and line of credit would not have a material impact on the Company's financial position, profitability, or cash flows.

### Foreign Currency Exchange Rate Risk

The Company has balances, such as cash, accounts receivable, accounts payable, and accruals that are denominated in foreign currencies. These foreign currency denominated balances are sensitive to changes in exchange rates. In this regard, changes in exchange rates could cause a change in the U.S. Dollar equivalent of cash or funds that the Company will receive in payment for assets or that the Company would have to pay to settle liabilities. As a result, the Company could be required to record these changes as gains or losses on foreign currency translation.

The Company has revenues and expenses that are denominated in foreign currencies. Specifically, a significant portion of the Company's international BioGlue revenues are denominated in British Pounds and Euros, and a portion of the Company's general, administrative, and marketing expenses are denominated in British Pounds and Euros. These foreign currency transactions are sensitive to changes in exchange rates. In this regard, changes in exchange rates could cause a change in the U.S. Dollar equivalent of net income from transactions conducted in other currencies. As a result, the Company could recognize a reduction in revenues or an increase in expenses related to a change in exchange rates.

An additional 10% adverse change in exchange rates from the exchange rates in effect on June 30, 2012 affecting the Company's balances denominated in foreign currencies would not have had a material impact on the Company's financial position or cash flows. An additional 10% adverse change in exchange rates from the weighted-average exchange rates experienced by the Company for the six months ended June 30, 2012 affecting the Company's revenue and expense transactions denominated in foreign currencies, would not have had a material impact on the Company's financial position, profitability, or cash flows.

## Item 4. Controls and Procedures.

The Company maintains disclosure controls and procedures ("Disclosure Controls") as such term is defined under Rule 13a-15(e) promulgated under the Securities Exchange Act of 1934. These Disclosure Controls are designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized, and reported within the time periods specified in the Commission's rules and forms, and that such information is accumulated and communicated to management, including the Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), as appropriate, to allow timely decisions regarding required disclosures.

The Company's management, including the Company's President and CEO and the Company's Executive Vice President of Finance, Chief Operating Officer, and CFO, does not expect that its Disclosure Controls will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. The design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Due to the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdown can occur because of simple error or mistake. The Company's Disclosure Controls have been designed to provide reasonable assurance of achieving their objectives.

Based upon the most recent Disclosure Controls evaluation conducted by management with the participation of the CEO and CFO, as of June 30, 2012 the CEO and CFO have concluded that the Company's Disclosure Controls were effective at the reasonable assurance level to satisfy their objectives and to ensure that the information required to be disclosed by the Company in its periodic reports is accumulated and communicated to management, including the CEO and CFO, as appropriate to allow timely decisions regarding disclosure and is recorded, processed, summarized, and reported within the time periods specified in the U.S. Securities and Exchange Commission's rules and forms.

The Securities and Exchange Commission's general guidance permits the exclusion of an assessment of the effectiveness of a registrant's disclosure controls and procedures as they relate to its internal control over financial reporting for an acquired business during the first year following such acquisition if, among other circumstances and factors, there is not adequate time between the acquisition date and the date of assessment. As previously noted in this Form 10-Q, the Company completed the acquisition of Hemosphere, Inc. ("Hemosphere") during the second quarter of 2012. Management's assessment and conclusion on the effectiveness of the Company's disclosure controls and procedures as of June 30, 2012 excludes an assessment of the internal control over financial reporting of Hemosphere. See Note 4 of the Notes to Summary Consolidated Financial Statements contained in this Form 10-Q for a description of the significance of the acquired business to the Company.

During the quarter ended June 30, 2012 there were no other changes in the Company's internal control over financial reporting that materially affected or that are reasonably likely to materially affect the Company's internal control over financial reporting.

**Part II - OTHER INFORMATION**

**Item 1. Legal Proceedings.**

**Medafor**

As previously discussed in CryoLife's Form 10-Q for the quarter ended March 31, 2012 and its prior filings, CryoLife filed a lawsuit against Medafor, Inc. ("Medafor") in 2009 in the U.S. District Court for the Northern District of Georgia ("Georgia Court"). In 2010 Medafor filed counterclaims against CryoLife in the same case. The litigation related to an exclusive distribution agreement that the parties entered into in April 2008.

On July 14, 2011 Medafor filed a lawsuit against CryoLife in the U.S. District Court for the District of Minnesota ("Minnesota Court") seeking a declaratory judgment that its December 31, 2010 reverse stock split reduced the number of Medafor shareholders to less than 500 and that, therefore, Medafor is not required to comply with the registration requirements of Section 12(g) of the Securities Exchange Act of 1934. On March 30, 2012 the Minnesota Court granted CryoLife's motion to dismiss this lawsuit, although it did grant Medafor 30 days to file an amended lawsuit. Medafor did not file an amended lawsuit.

On June 8, 2012 the parties agreed to a settlement of their litigation and entered into a further settlement agreement on June 25, 2012. The settlement provided that Medafor will pay $3.5 million in cash to CryoLife, with half of the payment made on July 9, 2012, and the remainder to be made on or before September 6, 2012. Pursuant to the terms of the settlement, all claims and counterclaims in the litigation were dismissed with prejudice, including Medafor's counterclaim for payment of approximately $1.2 million for product purchased by CryoLife, which amount had been recorded as a payable on CryoLife's March 31, 2012 balance sheet. Each party also released the other from all claims and liabilities, except with respect to possible claims that Medafor may have against CryoLife regarding certain patent-related rights, which were not counterclaims filed by Medafor. CryoLife and Medafor agreed and acknowledged that each party would bear its own costs and expenses, including attorneys' fees, incurred in or as a result of the litigation.

On June 29, 2012 the parties jointly filed stipulated dismissals with prejudice with the Georgia Court.

CryoLife received its first settlement payment of $1.75 million from Medafor in early July.

**CardioFocus**

As previously discussed in CryoLife's Form 10-Q for the quarter ended March 31, 2012 and its prior filings, in 2008 CardioFocus, Inc. ("CardioFocus") filed a complaint in the U.S. District Court for the District of Massachusetts ("Massachusetts Court") against Cardiogenesis Corporation ("Cardiogenesis") and a number of other companies. The litigation related to an alleged infringement by Cardiogenesis of two patents held by CardioFocus that have now expired.

On June 14, 2012 Cardiogenesis entered into a settlement agreement with respect to its litigation with CardioFocus. The settlement provides that each party release the other from all claims and liabilities related to the patents in question and that all claims and counterclaims in the litigation be withdrawn with prejudice. Pursuant to the terms of the settlement agreement, Cardiogenesis would pay $4.5 million in cash to CardioFocus. Cardiogenesis and CardioFocus agreed and acknowledged that each party would bear its own costs and expenses, including attorneys' fees, incurred in or as a result of the litigation.

On June 14, 2012 the parties filed a stipulation of dismissal with prejudice in the Massachusetts Court.

CryoLife paid the $4.5 million settlement payment to CardioFocus in July 2012 using cash on hand.

**Tenaxis**

As previously discussed in CryoLife's Form 10-Q for the quarter ended March 31, 2012 and its prior filings, Tenaxis, Inc. ("Tenaxis") in October of 2008 filed a nullity action against CryoLife's main BioGlue patent in Federal Patent Court in the State of Bavaria in the Federal Republic of Germany that sought to invalidate this patent in Germany. The Federal Patent Court held a hearing on the nullity action on November 24, 2009. On April 22, 2010 the Federal Patent Court in Munich issued a judgment declaring the German part of this BioGlue patent as void. CryoLife filed an appeal against this judgment with the German Supreme Court.

In October of 2008 CryoLife filed a patent infringement action in a Patent Court in the State of North Rhein-Westphalia in Düsseldorf in the Federal Republic of Germany. This complaint alleged that Tenaxis was infringing CryoLife's main BioGlue patent by selling a surgical adhesive made up of a mixture of, among other things, bovine serum albumin and glutaraldehyde. CryoLife sought an injunction, damages, and a list of customers to which Tenaxis has sold or is planning to sell its products. The District Court stayed the proceedings pending the issuance of judgment of the German Supreme Court in the nullity appeal proceeding.

On June 20, 2012 the parties entered into a settlement agreement whereby CryoLife covenanted not to sue Tenaxis for the infringement of the main BioGlue patent or any patents that would issue from the main BioGlue patent in Germany, the U.S., or the rest of the world, and Tenaxis agreed to not challenge the validity or enforceability of any of those patents. The parties further agreed to release each other from their respective claims relating to or arising from the infringement action and the nullity action. The parties also agreed to file papers to withdraw the infringement action and the nullity action with the appropriate German courts, which they did on July 2, 2012 and July 4, 2012, respectively.

**Item 1A. Risk Factors.**

The risks relating to the Medafor and CardioFocus litigation described in Part I, Item 1A, "Risk Factors" in our Form 10-K for the year ended December 31, 2011 are no longer applicable because of the settlements described elsewhere in this Form 10-Q.

**We Have Inherited Risks And Uncertainties Related To Hemosphere's Business.**

In May 2012 we acquired Hemosphere, and Hemosphere is now operating as a subsidiary of CryoLife. We have inherited certain risks and uncertainties related to Hemosphere's business. These risks and uncertainties include the following:

- We may be unable to maintain existing HeRO Graft sales and/or expand into new territories;
- Sales growth via product enhancements will be subject to regulatory approvals and physician and patient acceptance, as well as successful innovation within our research and development department;
- Even if we experience successful sales growth for HeRO Graft, our margins would be impacted if we experience increased costs related to the manufacturing and distribution of HeRO Graft;
- HeRO Graft may not continue to experience continued reimbursement in the U.S. and existing reimbursement rates may not continue to expand due to regulatory or other reasons, and if patients are not able to receive reimbursement from their insurance providers for this product, sales could be materially adversely impacted;
- HeRO Graft may not continue to provide the anticipated medical benefits or may not be perceived as a safe and effective product, which may mean that our sales could be materially impacted or we may experience lawsuits;
- Hemosphere integration costs could be much higher than expected or integration could be more time consuming or difficult than anticipated;
- Third-party intellectual property rights may limit the development and protection of intellectual property acquired from Hemosphere, which could adversely affect its value to us;
- Hemosphere's business relies on patent and trade secret laws, which are complex and may be difficult to enforce;
- Hemosphere may have liability for actions that occurred prior to our acquisition of Hemosphere, which could adversely affect us; and
- Hemosphere may have had undisclosed weaknesses in its internal controls, which could impact our internal controls over financial reporting or adversely impact the value of the Hemosphere acquisition to us, which could have a material adverse effect on us.

Any of these conditions or contingencies could have a material adverse effect on our revenues, financial condition, profitability, and cash flows.

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

(c) The following table provides information about purchases by the Company during the quarter ended June 30, 2012 of equity securities that are registered by the Company pursuant to Section 12 of the Securities Exchange Act of 1934:

**Issuer Purchases of Equity Securities**

**Common Stock**

| Period | Total Number of Common Shares Purchased | Average Price Paid per Common Share | Total Number of Common Shares Purchased as Part of Publicly Announced Plans or Programs | Dollar Value of Common Shares That May Yet Be Purchased Under the Plans or Programs |
|---|---|---|---|---|
| 04/01/2012 - 04/30/2012 | 142,400 | $ 5.24 | 142,400 | $ 11,337,649 |
| 05/01/2012 - 05/31/2012 | 147,124 | 5.09 | 147,124 | 10,588,820 |
| 06/01/2012 - 06/30/2012 | 53,709 | 4.67 | 53,709 | 10,338,165 |
| Total | 343,233 | 5.09 | 343,233 | 10,338,165 |

On June 1, 2010 the Company announced that its Board of Directors had authorized the purchase of up to $15.0 million of its common stock over the course of the following two years. On November 1, 2011 the Company announced that its Board of Directors had authorized the Company's purchase of $15.0 million of its common stock through December 31, 2012, which included approximately $7.7 million remaining from the June 1, 2010 repurchase program and an additional $7.3 million, for a total authorization of $22.3 million. The purchase of shares may be made from time to time in the open market or through privately negotiated transactions, on such terms as management deems appropriate, and will be dependent upon various factors, including: price, regulatory requirements, and other market conditions. The purchase of shares may be made from time to time in the open market or through privately negotiated transactions, on such terms as management deems appropriate, including pursuant to Rule 10b5-1 plans, at management's discretion, and will be dependent upon various factors, including: price, regulatory requirements, and other market conditions. Under the Company's credit agreement with GE Capital, the Company is required, after giving effect to stock repurchases, to maintain liquidity, as defined within the agreement, of at least $20.0 million.

The common shares purchased that were not part of a publically announced plan or program were tendered to the Company in payment of the exercise price of outstanding options and taxes on stock compensation.

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

None.

**Item 4. Mine Safety Disclosures.**

None.

**Item 5. Other information.**

None.

**Item 6. Exhibits.**

The exhibit index can be found below.

| Exhibit Number | Description |
|---|---|
| 2.1* | Agreement and Plan of Merger, dated May 14, 2012, by and among CryoLife, Inc., CL Crown, Inc., Hemosphere, Inc. and a Stockholder Representative. |
| 3.1 | Amended and Restated Articles of Incorporation of the Company. (Incorporated herein by reference to Exhibit 3.1 to the Registrant's Form S-3 filed February 22, 2012.) |
| 3.2 | Amended and Restated By-Laws. (Incorporated herein by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed July 27, 2011.) |
| 4.1 | Form of Certificate for the Company's Common Stock. (Incorporated herein by reference to Exhibit 4.2 to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 1997.) |
| 4.2 | First Amended and Restated Rights Agreement, dated as of November 2, 2005, between CryoLife, Inc. and American Stock Transfer & Trust Company. (Incorporated herein by reference to Exhibit 4.1 to Registrant's Current Report on Form 8-K filed November 3, 2005.) |
| 10.1 | Amended and Restated CryoLife, Inc. 2009 Stock Incentive Plan. (Incorporated herein by reference to Exhibit 99.1 to the Registrant's Form S-8 filed June 22, 2012.) |
| 10.2* | Waiver Agreement, dated May 14, 2012, by and among CryoLife, Inc. and certain of its subsidiaries, as borrowers, and General Electric Capital Corporation, as lender and administrative agent for all lenders, under the Amended and Restated Credit Agreement between the parties, dated October 28, 2011. |
| 10.3* | Final Settlement Agreement, dated June 28, 2012, by and among CryoLife, Inc. and Medafor, Inc. |
| 10.4* | Settlement Agreement, dated June 14, 2012, by and among CryoLife, Inc. and CardioFocus, Inc. |
| 31.1* | Certification by Steven G. Anderson pursuant to section 302 of the Sarbanes-Oxley Act of 2002. |
| 31.2* | Certification by D. Ashley Lee pursuant to section 302 of the Sarbanes-Oxley Act of 2002. |
| 32* | Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002. |
| 101.INS** | XBRL Instance Document |
| 101.SCH** | XBRL Taxonomy Extension Schema Document |
| 101.CAL** | XBRL Taxonomy Extension Calculation Linkbase Document |
| 101.DEF** | XBRL Taxonomy Extension Definition Linkbase |
| 101.LAB** | XBRL Taxonomy Extension Label Linkbase Document |
| 101.PRE** | XBRL Taxonomy Extension Presentation Linkbase Document |

* Filed herewith.

** Furnished herewith. Pursuant to applicable securities laws and regulations, the Company is deemed to have complied with the reporting obligation relating to the submission of interactive data files in such exhibits and is not subject to liability under any anti-fraud provisions of the federal securities laws as long as the Company has made a good faith attempt to comply with the submission requirements and promptly amends the interactive data files after becoming aware that the interactive data files fail to comply with the submission requirements. Users of this data are advised that, pursuant to Rule 406T, these interactive data files are deemed not filed and otherwise are not subject to liability.

**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.

CRYOLIFE, INC.
(Registrant)

/s/ STEVEN G. ANDERSON
STEVEN G. ANDERSON
Chairman, President, and
Chief Executive Officer
(Principal Executive Officer)

/s/ D. ASHLEY LEE
D. ASHLEY LEE
Executive Vice President,
Chief Operating Officer, and
Chief Financial Officer
(Principal Financial and
Accounting Officer)

July 31, 2012
DATE

**EXHIBIT 2.1**

# AGREEMENT AND PLAN OF MERGER

**BY AND AMONG**

**CRYOLIFE, INC.,**

**CL CROWN, INC.,**

**HEMOSPHERE, INC.**

**AND**

**STOCKHOLDER REPRESENTATIVE**

**DATED AS OF MAY 14, 2012**

**NOTE: THIS AGREEMENT AND PLAN OF MERGER IS SUBJECT TO REVISION BY THE COMPANY AT ANY TIME AND MUST BE KEPT CONFIDENTIAL IN ACCORDANCE WITH THE TERMS OF THE CONFIDENTIALITY AGREEMENT ENTERED INTO BETWEEN THE RECIPIENT OF THIS AGREEMENT AND THE COMPANY.**

**AGREEMENT AND PLAN OF MERGER**

**THIS AGREEMENT AND PLAN OF MERGER** (this "Agreement") is made and entered into as of May 14, 2012 by and among Cryolife, Inc. a Florida corporation (the "Parent"), CL Crown, Inc., a Delaware corporation ("Merger Sub"), Hemosphere, Inc., a Delaware corporation (the "Company"), and Mitchell Dann, solely in his capacity as the Company Stockholders' representative (the "Stockholder Representative").

WHEREAS, Merger Sub is a wholly-owned subsidiary of the Parent and was formed to merge with and into the Company (the "Merger") so that, as a result of the Merger, the Company will survive and become a wholly-owned subsidiary of the Parent;

WHEREAS, the respective boards of directors of the Parent, Merger Sub and the Company have (a) determined that this Agreement and the consummation of the Merger in accordance with the Laws of the State of Delaware and subject to the terms and conditions of this Agreement are advisable, (b) each duly approved and adopted this Agreement and the proposed Merger, and (c) in the case of the Company, resolved to recommend that the Company Stockholders vote to approve and adopt this Agreement and the Merger upon the terms and subject to the conditions contained herein;

WHEREAS, concurrently with the execution and delivery of this Agreement, as a condition and inducement to the willingness of Parent and Merger Sub to enter into this Agreement, certain stockholders of the Company holding approximately 35% of the voting power of the Company's outstanding capital stock have entered into Tender and Voting Agreements with Parent substantially in the form attached hereto as Exhibit A; and

WHEREAS, the Parent, Merger Sub, the Company and the Stockholder Representative desire to make certain representations and warranties, covenants and agreements in connection with the Merger and also to set forth the terms and conditions of the Merger, all as set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound do hereby agree as follows:

## ARTICLE I.

## DEFINITIONS

1.1. Defined Terms. As used in this Agreement, the following terms have the meanings set forth below:

(a) "Affiliate" of any particular Person shall mean any other Person controlling, controlled by or 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 ownership of fifty percent (50%) or more of the aggregate voting power of such Person's equity securities.

(b) "Business Day" shall mean a day other than a Saturday, Sunday or any other day on which the New York Stock Exchange is not open for trading.

(c) "Carve-Out Incentive Plan" shall mean the Company's Carve-Out Incentive Plan, dated May 14, 2012.

(d) "Clamshell Connector" shall mean the medical device known as the 6.0 Universal Connector that is intended to connect outflow catheters to a range of commercially available grafts.

(e) "Closing Carve-Out Amount" shall mean $350,000.

(f) "Closing Cash" shall mean, as of the close of business on the day immediately preceding the Closing Date, the amount of cash and cash equivalents and all checks and funds received by the Company or their banks (e.g., checks deposited or funds paid to "lock-box" or holding accounts) prior to the close of business on the day immediately preceding the Closing Date, regardless of whether cleared, determined in accordance with Section 3.6. Any amounts deemed received and included in Closing Cash shall be set-off against the applicable receivable in determining Closing Net Working Capital Amount.

(g) "Closing Indebtedness" shall mean the outstanding Indebtedness of the Company as of the close of business on the day immediately preceding the Closing Date.

(h) "Closing Net Working Capital Amount" shall mean (i) the aggregate dollar amount of all current assets of the Company (but excluding Closing Cash and deferred income tax assets), less (ii) the aggregate dollar amount of all current Liabilities of the Company (excluding deferred income taxes payable, Liabilities or obligations related to any of the Company Capital Stock or Company Options, contingent Liabilities, Closing Indebtedness and Company Transaction Expenses), in each case as of the close of business on the day immediately preceding the Closing Date determined in accordance with Section 3.6

(i) "Closing Stockholder Vote" means ninety-five percent (95%) of the issued and outstanding Company Capital Stock, including holders constituting the Required Stockholder Vote.

(j) "Code" shall mean the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

(k) "Company Business" shall mean the conduct of the business of the Company as presently conducted and the development and commercialization of the Company Products.

(l) "Company Capital Stock" shall mean shares of Company Common Stock, Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series Z Preferred Stock.

(m) "Company Common Stock" shall mean shares of common stock, par value $.01 per share, of the Company.

(n) "Company Option Holders" shall mean holders of any Outstanding Company Options. Once the Company has cancelled the Company Options in the manner provided in Section 3.1(d), the term "Company Option Holders" shall thereafter refer to those persons who were Company Option Holders immediately prior to the Effective Time and who, by virtue of the actions taken in accordance with Section 3.1(d), thereafter have a right to receive cash as provided in Section 3.1(d).

(o) "Company Products" means the Company's Hemodialysis Reliable Outflow ("HeRO") Graft, including its component parts and accessories and the Clamshell Connector.

(p) "Company Stockholders" shall mean holders of any Outstanding Shares.

(q) "Company Transaction Expenses" shall mean the unpaid amount of any out-of-pocket fees, costs and expenses of counsel, accountants, investment bankers, experts and consultants to the Company incurred by the Company in connection with the preparation of this Agreement, the carrying out of the provisions of this Agreement and the consummation of the transactions contemplated hereby for which the Company is liable as of the Effective Time, including any such fees, costs and expenses that are contingent upon the consummation of the Merger; provided, however, that the foregoing shall not include any fees, expenses or disbursements incurred by Parent or its Affiliates, including the fees and expenses of Parent's attorneys, accountants and other advisors, and shall not include one-half of the fees, costs and expenses of the Escrow Agent and the Paying Agent, which shall be borne by the Parent.

(r) "Conflict Minerals" shall mean columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives, which originate in the Democratic Republic of the Congo or a country that shares an internationally recognized border with the Democratic Republic of the Congo.

(s) "DGCL" shall mean the Delaware General Corporation Law, as amended.

(t) "Disclosure Schedules" shall mean the disclosure schedules attached hereto being delivered by the Company on the date hereof which is divided into sections and subsections that correspond to the sections and subsections of Article IV. Any item, information or facts set forth in any section or subsection of the Disclosure Schedules (by cross-reference or otherwise) will be deemed to disclose an exception to or qualify the related representation and warranty or any other representation or warranty in which such information is cross-referenced in the Disclosure Schedule, except that the information set forth in Sections 4.5(e), 4.14(b) and 4.24(b) of the Disclosure Schedule have been provided for disclosure purposes only and shall not be treated as an exception to or a qualification of the related representation or warranty of the Company. The disclosure of any matter or item in the Disclosure Schedule will not be deemed to constitute an acknowledgement that any such matter or item is material or is required to be disclosed. Capitalized terms used in the Disclosure Schedules and not otherwise defined herein have the meanings ascribed to them in this Agreement. The Disclosure Schedules and the information therein are confidential.

(u) "Earnout Carve-Out Amount" shall mean 15% of the amount of any Earnout Payments earned pursuant to Section 3.7, if any.

(v) "Earnout Qualified Products" means (A) the Company Products, as well as improved, modified or updated embodiments of the Company Products and (B) any next generation products or devices and any future products, in each case, that are covered by, or have an associated method covered by, a valid claim of an issued patent included within, or issuing from a patent application now pending or a patent application later filed but claiming priority to an application now pending included within, the Company Intellectual Property as of the Effective Time. "Earnout Qualified Products" do not include any products acquired after the Effective Time by Parent or the Surviving Corporation from third parties that are not Affiliates of

Parent or the Surviving Corporation. For the purposes of this definition, a valid claim shall mean a claim in any issued patent that has not expired or been held invalid or unenforceable by a decision of a court or other governmental agency of competent jurisdiction, unappealable or unappealed within the time period allowed for appeal, or which has not been admitted to be invalid through reissue, reexamination or disclaimer.

(w) "Earnout Sales" shall mean, for each calendar month, the aggregate amount of revenue invoiced by the Surviving Corporation and each of its Affiliates from the sale of all Earnout Qualified Products (excluding transactions between the Surviving Corporation and its Affiliates) less all of the following: (i) any refunds, credits or allowances actually given or credited by the Surviving Subsidiary to any third party due to rejections, defects or returns of any Earnout Qualified Products; (ii) any discounts or rebates actually given or credited by the Surviving Subsidiary to third parties, provided that the extent of such discounts or rebates are consistent with discounts or rebates given on other products of the Surviving Corporation and each of its Affiliates; (iii) any value added, sales, use, occupation or excise taxes, duties or other governmental charges imposed on the production, importation, exportation, use or sale of any Earnout Qualified Products the obligation of payment of which is the Surviving Subsidiary; and (iv) any freight, postage, transportation, restocking, or insurance revenues billed by the Surviving Subsidiary with respect to the sale of any Earnout Qualified Products. In the case of a Bundled Sale, the Earnout Sales to be attributed as having been received by the Parent hereunder will be calculated by determining the relevant proportion that the standard list price of the Earnout Qualified Product bears to the standard list price of the Non-Eligible Products in such Bundled Sale. For purposes of this Agreement, "Bundled Sale" shall mean the sale or reimbursement of one or more of the Earnout Qualified Products together with one or more Non-Eligible Products, where the prices of the separate products are not separately stated, and "Non-Eligible Product" shall mean a product or service sold by the Surviving Corporation or its Affiliates other than the Earnout Qualified Products. For purposes of calculating Earnout Sales, any currency translations will be consistent with how the Parent reports its quarterly revenue in its filings with the Securities and Exchange Commission.

(x) "Environmental Laws" shall mean all applicable international, federal, state and local statutes, Laws, regulations, ordinances, orders, common law, and similar provisions having the force or effect of Law, concerning public health, or pollution or protection of the environment, including the Clean Air Act, 42 U.S.C. §7401 et seq., the Clean Water Act 33 U.S.C. §1251 et seq., the Resource Conservation Recovery Act, 42 U.S.C. §6901 et seq., the Toxic Substances Control Act, 15 U.S.C. §2601 et seq., and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9601 et seq. or which govern; (i) the existence, cleanup, removal and/or remediation of contamination or threat of contamination on or about the Leased Real Property; (ii) the emission or discharge of Hazardous Materials or (iii) the use, generation, transport, treatment, storage, disposal, removal, recycling, handling or recovery of Hazardous Materials, including building materials, provided that "Environmental Laws" shall not include Laws governing worker health and safety or conditions inside structures or buildings.

(y) "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

(z) "GAAP" shall mean generally accepted accounting principles in the United States, consistently applied.

(aa) "Governmental Authority" shall mean any government or any court, arbitral tribunal, administrative agency or commission or other governmental or other regulatory authority or agency, federal, state, local, or foreign.

(bb) "Hazardous Materials" shall mean any waste or other substance that is listed, defined, designated, or classified as, or otherwise determined to be, hazardous, radioactive, or toxic or a pollutant or a contaminant under or pursuant to any Environmental Law, including any mixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor and asbestos or asbestos-containing materials.

(cc) "Healthcare Laws" mean any Laws relating to the provision, administration, and/or payment for healthcare or healthcare-related products or services, including, but not limited to, the following: (i) rules and regulations governing the operation and administration of Medicare, Medicaid or other federal and state health care programs; (ii) 42 U.S.C. § 1320a-7b(b), commonly referred to as the "Federal Anti-Kickback Statute" and the regulations promulgated pursuant thereto; (iii) 42 U.S.C. § 1395nn, commonly referred to as the "Federal Stark Law" and the regulations promulgated pursuant thereto; (iv) 31 U.S.C. §§ 3729 et seq., commonly referred to as the "False Claims Act"; (v) 31 U.S.C. §§ 3801 et seq., commonly referred to as the "Program Fraud Civil Penalties Act"; (vi) 21 U.S.C. §§ 801 et seq., commonly referred to as the "Controlled Substance Act and the Comprehensive Methamphetamine Control Act of 1996"; (vii) the rules and regulations of the U.S. Food and Drug Administration; (viii) the rules and regulations of the U.S. Drug Enforcement Administration; and (ix) the rules and regulations of the state boards of medicine, state boards of pharmacy, state boards of wholesaling, state departments of health and state controlled substance agencies, in each case, as such Laws, rules and regulations may be amended from time to time.

(dd) "Indebtedness" shall mean (i) all obligations for borrowed money (specifically excluding trade or accounts payables and other ordinary course accrued expenses), (ii) any reimbursement obligations in respect of letters of credit, surety bonds or obligations in respect of bankers acceptances, whether or not matured, and (iii) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (iv) all off-balance sheet financings of the Company including, without limitation, synthetic leases and project financing, (v) any payment obligations of the Company with respect to interest rate swaps, collars, caps and similar hedging obligations, (vi) any present, future or contingent obligations of the Company existing as of the date hereof under (A) any phantom stock or equity appreciation rights, plan or agreement or (B) any consulting, deferred pay-out or earn-out arrangements in connection with the purchase by the Company of any business or entity, (vii) any bonuses accrued or earned as of the Effective Time payable by the Company, other than reserved for in the Closing Net Working Capital Amount, (viii) direct or indirect guarantee by the Company of any Indebtedness of any other Person, (ix) all Liabilities of the Company secured by any Liens, other than Permitted Liens and (x) any interest, principal, prepayment penalty, fees or expenses, to the extent due or owing in respect of those items listed in clauses (i) through (ix) above. Indebtedness shall not include the Closing Carve-Out Amount or the Earnout Carve-Out Amount.

(ee) "Information Laws" means all Laws concerning the privacy and/or security of personal information, including, but not limited to, the following: (i) the Health Insurance Portability and Accountability Act of 1996, as amended by the American Recovery and Reinvestment Act (ARRA), and the regulations promulgated pursuant thereto, including the Privacy Standards (45 C.F.R. Parts 160 and 164, Subparts A, D, and E), the Electronic Transactions Standards (45 C.F.R. Parts 160 and 162) and the Security Standards (45 C.F.R. Parts

160 and 164, Subparts A and C) promulgated under the Administrative Simplifications subtitle of the Health Insurance Portability and Accountability Act of 1996; (ii) any other statutory or regulatory requirements arising from the Health Information Technology for Economic and Clinical Health Act (the HITECH Act) or any other provision of ARRA; (iii) state security breach and data breach notification Laws; (iv) state social security number protection and other state privacy Laws; (v) the FTC Act, (vi) the Gramm-Leach-Bliley Act, (viii) the Fair Credit Reporting Act, (viii) the Fair and Accurate Credit Transaction Act and (ix) state consumer protection Laws, in each case, as such Laws, rules, and regulations may be amended from time to time.

(ff) "Intellectual Property" means any and all intellectual property rights under the Laws of any jurisdiction, whether registered or unregistered, whether owned or held for use under license, and including without limitation all rights and interests pertaining to or deriving from: (i) patents, patent applications, patent disclosures (whether or not patented) inventions and statutory invention registrations (in each case including all reissuances, revisions, continuations, divisionals, continuations-in-part, reexaminations, extensions and counterparts claiming priority therefrom); (ii) computer programs, software and firmware, including without limitation data files, source code, object code and software-related specifications and documentation (collectively "Software"); (iii) works of authorship, including all copyrights, copyrightable works, moral rights, mask work rights, database rights and design rights and registrations and applications therefor; (iv) confidential and proprietary information, including trade secrets (including, those trade secrets defined in the Uniform Trade Secrets Act and under corresponding foreign statutory Law and common law), business, technical and know-how information, and, to the extent confidential or proprietary, ideas, research and development, compositions, methods, schematics, technology, designs, drawings, charts, diagrams, pricing and cost information, business and marketing plans and proposals, specifications, processes, rights in databases and data collections and inventions (whether patentable or unpatentable and whether or not reduced to practice), non-public information, and confidential information and rights to limit the use or disclosure thereof by any Person (collectively "Trade Secrets"); (v) trademarks, trade names, service marks, certification marks, service names, corporate names, brands, trade dress and logos and the goodwill associated therewith, and designs and identifiers of same, and all applications, registrations, reissues, extensions, variations, derivations, combinations and renewals thereof; (vi) rights in Internet websites and Internet domain names and world wide web addresses; including in each case any registrations of, applications to register, and renewals and extensions of, any of the foregoing with or by any Governmental Authority in any jurisdiction; and (vii) all rights now known or hereafter recognized in respect of the foregoing.

(gg) "Knowledge," "to the Knowledge of" or words of like import shall mean, with respect to the Company, the knowledge, after reasonable inquiry, of the officers of the Company listed in Schedule 1.1(gg)(1) to the Agreement, and, with respect to the Parent, the knowledge, after reasonable inquiry, of the officers of the Parent listed in Schedule 1.1(gg)(2) to the Agreement, in each case without such individual being obligated to conduct any special inquiry or investigation; provided, however, that "Knowledge," "to the Knowledge of Company" or words of like import with respect to the Company in Section 4.12 (Patents and Other Intangible Rights) shall mean the actual knowledge of the officers of the Company listed in Schedule 1.1(gg)(1) to the Agreement.

(hh) "Laws" shall mean all constitutions, laws, statutes, ordinances, rules, rulings, regulations, orders, charges, directives, determinations, executive orders, writs, judgments, injunctions, decrees, restrictions or similar pronouncements of any Governmental Authority.

(ii) "Liabilities" shall mean liabilities, costs, debts, claims, demands, expenses, commitments, Losses and obligations, whether known or unknown, contingent or absolute, of every kind and description.

(jj) "Liens" shall mean any mortgage, pledge, security interest, conditional sale or other title retention agreement, encumbrance, lien, easement, option, debt, charge, claim or restriction of any kind.

(kk) "Machinery and Equipment" shall mean machinery, equipment, furniture and fixtures (including all dies, jigs, and tooling), owned, used or held for use or planned to be used or held for use in connection with the design, development, manufacture, operation, sale or use of any of the Company Products.

(ll) "Manufacturing Documentation" shall mean any and all patterns, plans, designs, research data, formulae, technical information, blueprints, technical designs, specifications, manufacturing processes, vendor and raw material and component lists and specifications, quality testing procedures, process validations, environmental control documentation, operating manuals, blueprints, sketches, drawings, manuals, data, records, procedures, research and development records, compositions, improvements, proposals, technical and computer data, and related documentation, process descriptions and other technical data (including chemical formulations, design specifications, standard operating procedures and manufacturing protocols) used in or useful for the development, manufacture or quality assurance testing of Company Products (including any portions of such procedures that may be or have been outsourced to others) and in each case that are material to the ongoing operation of the Company Business. The term "Manufacturing Documentation" shall include all manufacturing documentation used or held for use by the Company in the manufacture of the Company Products on or before the date of this Agreement that are material to the ongoing operation of the Company Business. The term "Manufacturing Documentation" shall refer to the Manufacturing Documentation as revised and updated through and including the Closing Date.

(mm) "Material Adverse Effect" with respect to the Company, shall mean any result, occurrence, fact, change, event or effect that is or could reasonably be expected to be materially adverse to the business, prospects, assets, condition (financial or otherwise), results of operations or properties of the Company; provided to the extent any effect results from (i) changes in the United States or foreign economies in general, (ii) changes in the Company's industries in general and not specifically relating to the Company, (iii) any actual or proposed change to a Law or Order after Closing except for judgments or awards or decrees that relate specifically to the Company, (iv) the execution of this Agreement and the consummation of the transactions contemplated by this Agreement and (v) effects of an act or acts of war or terrorism, such effect shall not be taken into account in determining whether there has been a Material Adverse Effect.

(nn) "Merger Fund" shall mean all amounts held by the Paying Agent from time to time for payment to Company Stockholders and Company Option Holders as provided herein.

(oo) "Modified GAAP Method" shall mean and refer to a computation made in accordance with GAAP and, to the extent consistent with GAAP, in a manner consistent with, and using the same accounting methods, historical policies, practices, principles and procedures with consistent classifications, judgments and estimation methodologies as were used in the preparation of the Audited Financial Statements but which excludes any increase to inventory balances to capitalize additional inventoriable cost.

(pp) "Outstanding Company Options" means all Company Options issued and outstanding immediately prior to their cancellation pursuant to Section 3.1(d), regardless of whether or not vested.

(qq) "Outstanding Shares" shall mean all shares of Company Capital Stock outstanding immediately prior to the Effective Time.

(rr) "Permits" shall mean all licenses, permits, certificates, approvals, consents and other authorizations that the Company owns, holds or possesses.

(ss) "Permitted Liens" shall mean (a) mechanics', materialmens', landlord's, workmens', repairmens', contractors' or other similar Liens arising or incurred in the ordinary course of business and not in connection with borrowed money, (b) easements, rights-of-way, covenants, conditions, restrictions and other similar charges and encumbrances of record not interfering materially with the ordinary conduct of the business of the Company or detracting materially from the use, occupancy, value or marketability of title of the assets subject thereto, (c) Liens for Taxes not yet due and payable, (d) purchase money Liens or Liens securing rental payments under capital lease arrangements and (e) other Liens arising in the ordinary course of business and not incurred in connection with the borrowing of money.

(tt) "Person" shall mean any individual, sole proprietorship, partnership, joint venture, trust, unincorporated association, corporation, limited liability company, entity or Governmental Authority.

(uu) "Product Specifications" shall mean the written description of each of the Company Products, including a description of its design, raw materials and components and technical and performance specifications, together with all related plans, drawings and standard operating procedures. The "Product Specifications" shall include all patterns, plans, designs, research data, operating manuals, drawings, manuals, data, records, procedures and research and development records, design history files, compositions, drawings, specifications, improvements, proposals, technical and computer data, and related documentation in each case that are owned by the Company and used or held for use in the Business or in connection with any Company Product. The term "Product Specifications" shall refer to the Product Specifications as revised and updated through the Closing Date.

(vv) "Release" has the definition set forth in Section 101(22) of CERCLA (42 U.S.C. §9601(22)).

(ww) "Series A-1 Preferred Stock" means shares of Series A-1 Convertible Preferred Stock of the Company, par value $.01 per share.

(xx) "Series A-2 Preferred Stock" means shares of Series A-2 Convertible Preferred Stock of the Company, par value $.01 per share.

(yy) "Series Z Preferred Stock" means shares of Series Z Non-Convertible Preferred Stock of the Company, par value $.01 per share.

(zz) "Stock Option Plan" means the Company's 2003 Stock Option Plan, as amended.

(aaa) "Targeted Net Working Capital Amount" means Seven Hundred Forty One Thousand Six Hundred Fifty and 00/100 Dollars ($741,650.00).

(bbb) "Tax" shall mean all taxes, assessments, charges, duties, fees, levies or other governmental charges imposed by any United States federal, state, local or non-U.S. Taxing Authority, including, but not limited to, any income, payroll, excise, stamp, franchise, withholding, social security, real property, sales, use, transfer, value added, or other similar taxes, including any interest or penalty attributable thereto. For purposes of Sections 4.20(j), 7.1(a)(i)(A) and 7.1(a)(i)(D) only, "Tax" shall not include sales or use taxes owed to any state Taxing Authority resulting from the sale of any Company Products.

(ccc) "Tax Return" shall mean any return, declaration, report, claim for refund, or information return or statement required to be filed with any Taxing Authority with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

(ddd) "Taxing Authority" means any branch, office, department, agency, instrumentality, court, tribunal, officer, employee, designee, representative, or other Person that is acting for, on behalf of, or as a part of, any foreign or domestic government (or any political subdivision thereof) that is engaged in or has any power, duty, responsibility or obligation relating to the legislation, promulgation, interpretation, enforcement, regulation, monitoring, supervision or collection of, or any other activity relating to, any Tax.

1.2. Additional Terms. The following additional terms are defined elsewhere in this Agreement, as indicated below:

## ARTICLE II.

## THE MERGER; ADDITIONAL ACTIONS

2.1. The Merger. At the Effective Time, upon the terms and subject to the conditions of this Agreement and the applicable provisions of the DGCL, Merger Sub shall be merged with and into the Company, the separate corporate existence of the Merger Sub shall cease, and the Company shall continue as the surviving corporation in the Merger (the "Surviving Corporation"). As a result of the Merger, all of the respective outstanding shares of capital stock of the Company and Merger Sub, and all options to acquire shares of capital stock of the Company, shall be converted or cancelled in the manner provided in Article III.

2.2. Effective Time. On the Closing Date, the parties hereto shall (a) file, or cause to be filed, a certificate of merger (the " Certificate of Merger") in such form as is required by and executed in accordance with the relevant provisions of the DGCL and (b) make, or cause to be made, all other filings or recordings required under the DGCL. The Merger shall become effective at 6:00 p.m. Eastern Standard Time on the Closing Date pursuant to the Certificate of Merger duly filed with the Delaware Secretary of State (the date and time the Merger becomes effective being the " Effective Time").

2.3. Closing. The closing of the Merger (the "Closing") shall take place at the offices of Oppenheimer Wolff & Donnelly LLP, Plaza VII, 45 Seventh Street South, Suite 3300, Minneapolis, Minnesota 55402 at 10:00 a.m., local time, on a date specified by the parties which will be no later than the second Business Day after the satisfaction or waiver of the conditions set forth in Article VIII (excluding conditions that, by their nature, cannot be satisfied until the Closing Date, but subject to the

satisfaction and waiver of such conditions) or at such other place or such other time or on such other date as is mutually agreeable to the parties following satisfaction or waiver, as applicable, of the last to occur of the conditions set forth in Article VIII hereof. The date of the Closing is referred to herein as the "Closing Date."

2.4. Effects of the Merger. At the Effective Time, the effects of the Merger shall be as provided in this Agreement, the Certificate of Merger and the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time all the property, rights, interests, privileges, powers and franchises of the Company and Merger Sub shall be vested in the Surviving Corporation, and all debts, Liabilities and duties of the Company and Merger Sub shall become the debts, Liabilities and duties of the Surviving Corporation.

2.5. Certificate of Incorporation, Bylaws and Officers and Directors of the Surviving Corporation .

(a) The certificate of incorporation of the Surviving Corporation as in effect immediately prior to the Effective Time shall be the certificate of incorporation of the Surviving Corporation until thereafter amended as provided by Law and such certificate of incorporation.

(b) The bylaws of Merger Sub as in effect immediately prior to the Effective Time shall be the bylaws of the Surviving Corporation until thereafter amended as provided by Law, the certificate of incorporation of the Surviving Corporation and such bylaws.

(c) The directors and officers of Merger Sub immediately prior to the Effective Time shall be the directors and officers of the Surviving Corporation, until their respective successors are duly elected and qualified or until their earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Corporation.

2.6. Further Assurances. At and after the Effective Time, each party hereto shall, and shall cause its Affiliates to, execute and deliver such further instruments and take such additional action as any other party hereto may reasonably request to effect or consummate the transactions contemplated hereby. The Company shall execute and deliver any further documents and take such further actions as reasonably requested to vest, perfect or confirm of record or otherwise in the Surviving Corporation any and all right, title and interest in, to and under any of the rights, properties or assets acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger.

## ARTICLE III.

## EFFECT OF MERGER ON SHARES; EXCHANGE AND PAYMENT

3.1. Effect on Capital Shares. At the Effective Time, by virtue of the Merger and without any further action on the part of the Parent, Merger Sub, the Company or the holders of the following securities:

(a) Capital Stock of Merger Sub. Each issued and outstanding share of capital stock of Merger Sub (" Merger Sub Shares") shall be converted into and become one fully paid and nonassessable common share, par value $.01 per share, of the Surviving Corporation (" Surviving Corporation Common Shares"). Each certificate representing Merger Sub Shares shall at the Effective Time represent an equal number of shares of Surviving Corporation Common Shares.

(b) Cancellation of Treasury Shares of the Company. All shares of capital stock of the Company that are owned by the Company as treasury shares automatically shall be cancelled and shall cease to exist and no consideration shall be delivered in exchange therefor.

(c) Conversion of Company Capital Stock.

(i) Definitions.

(A) The "Aggregate Consideration Amount" shall be the cash amount that is equal to (A) Seventeen Million and 00/100 Dollars ($17,000,000.00), plus (B) the total amount of Closing Cash, plus (C) if the Closing Net Working Capital Amount exceeds the Targeted Net Working Capital Amount by an amount greater than Twenty-Five Thousand Dollars ($25,000), the amount, if any, by which the Closing Net Working Capital Amount exceeds the Targeted Net Working Capital Amount, minus (D) if the Targeted Net Working Capital Amount exceeds the Closing Net Working Capital Amount by an amount greater than Twenty-Five Thousand Dollars ($25,000), the amount, if any, by which the Targeted Net Working Capital Amount exceeds the Closing Net Working Capital Amount, minus (E) the total amount of Closing Indebtedness, minus (F) the total amount of Company Transaction Expenses, minus (G) the Closing Carve-Out Amount, plus (H) the total amount of any Earnout Payments earned pursuant to Section 3.7, in the case of (B) – (F) as adjusted pursuant to Section 3.6.

(B) "Liquidation Preference Payment" of a share of Company Capital Stock shall mean the liquidation preference that, under the terms set forth in Section V of the Company's Amended and Restated Certificate of Incorporation (the " Company Certificate"), are payable in respect of the applicable Company Capital Stock.

(C) "Aggregate Liquidation Preference" means the aggregate Liquidation Preference Payments payable to all shares of Company Capital Stock outstanding at the Effective Time.

(D) The "Aggregate Common Per Share Amount" shall be the cash amount that is equal to the quotient of (i) (A) the Aggregate Consideration Amount; plus (B) the aggregate exercise prices of all Outstanding Company Options in respect of which consideration is to be paid pursuant to Section 3.1(d), less (C) the Aggregate Liquidation Preference (the amount calculated pursuant to (A)-(C), the "Total Common Consideration") divided by (ii) the number of Fully Diluted Shares.

(E) "Fully Diluted Shares" shall mean the sum of (i) the aggregate number of shares of Company Common Stock that are issued and outstanding immediately prior to the Effective Time, (ii) the aggregate number of shares of Company Common Stock in respect of which shares of Company Preferred Stock are entitled to participate on an as-converted basis in amounts distributable to holders of Company Common Stock, and (iii) the aggregate number of shares of Company Common Stock that would have been issuable upon the exercise of Outstanding Company Options had they not been cancelled as provided in Section 3.1(d) in exchange for rights to receive consideration as provided in Section 3.1(d).

(ii) Each share of Series A-1 Preferred Stock, Series A-2 Preferred Stock and Series Z Preferred Stock (the " Company Preferred Stock") that is issued and outstanding immediately prior to the Effective Time (other than any shares of Company Preferred Stock to be cancelled pursuant to Section 3.1(b) and any Appraisal Shares) shall be cancelled and extinguished and be converted into the right to receive (A) the Liquidation Preference Payment applicable to such share in cash, without interest, if such share of Company Preferred Stock is entitled to be paid a Liquidation Preference Payment in connection with the Merger, and (B) if such share of Company Preferred Stock is entitled to participate on an as-converted basis in amounts distributable to holders of Company Common Stock, then, for each share of Company Common Stock in respect of which it is entitled to participate, the Aggregate Common Per Share Amount, subject to the provisions with respect to the escrow at Closing of the Escrow Amount, the contribution at Closing of the Reserve Amount, the distribution of any such remaining amounts out of the Escrow Funds and the Reserve Account as set forth in Section 3.3(b) and Section 3.3(c), respectively, and the distribution of any Earnout Payments in accordance with Section 3.7.

(iii) Each share of Company Common Stock that is issued and outstanding immediately prior to the Effective Time (other than any shares of Company Common Stock to be cancelled pursuant to Section 3.1(b) and any Appraisal Shares) shall be cancelled and extinguished and be converted into the right to receive (A) the Liquidation Preference Payment applicable to such share in cash, without interest, if such share of Company Common Stock is entitled to be paid a Liquidation Preference Payment in connection with the Merger, and (B) the Aggregate Common Per Share Amount, subject to the provisions with respect to the escrow at Closing of the Escrow Amount, the contribution at Closing of the Reserve Amount, the distribution of any such remaining amounts out of the Escrow Funds and the Reserve Account as set forth in Section 3.3(b) and Section 3.3(c), respectively, and the distribution of any Earnout Payments in accordance with Section 3.7.

(iv) The parties acknowledge that Sections V.A., B. and C. of Article IV of the Company Certificate provide for the allocation of the consideration payable in connection with a "Liquidation Event," as such term is defined in the Company Certificate.

(d) Cancellation of the Company Options. As soon as reasonably practicable following the date of this Agreement, and in any event prior to the Effective Time, the board of directors of the Company (the "Company Board") (or, if appropriate, any committee administering the Stock Option Plan) shall adopt appropriate resolutions and take all other actions as may be required to provide that each Outstanding Company Option will by virtue of the Merger, and without any action on the part of the holder thereof, be terminated and cancelled as of the Effective Time and converted into, and represent only, the right to receive from the Aggregate Consideration Amount an amount in cash equal to (A) the number of shares of Company Common Stock previously subject to such cancelled Outstanding Company Option, multiplied by (B) the excess, if any, of the amounts payable with respect to a share of Company Common Stock in Section 3.1(c)(iii) over the exercise price per share thereof (such payment to be net of applicable withholding taxes), subject to the provisions with respect to the escrow at Closing of the Escrow Amount, the contribution at Closing of the Reserve Amount, the distribution of any such remaining amounts out of the Escrow Amount and the Reserve Account as set forth in Section 3.3(b) and Section 3.3(c), respectively, and the distribution of any Earnout Payments in accordance with Section 3.7. Any Outstanding Company Option with an exercise price greater than the per share amount payable with respect to a share of Company Common Stock hereunder shall be cancelled and no consideration shall be paid therefor.

(e) Appraisal Shares. Notwithstanding any provision of this Agreement to the contrary, each outstanding share of Company Capital Stock held by a Company Stockholder who has not voted in favor of the Merger or consented thereto in writing and who has properly demanded appraisal for such shares in accordance with all of the relevant provisions of Section 262 of the DGCL (each share an " Appraisal Share"), shall not be converted into or represent a right to receive payments under Section 3.1(c). Holders of Appraisal Shares shall be entitled only to such rights as are granted by the applicable provisions of the DGCL; provided, however, that any holder of Appraisal Shares who, after the Effective Time, withdraws the demand for appraisal or loses the right of appraisal shall be deemed to be entitled, as of the Effective Time, to receive the amounts payable with respect to such Appraisal Shares under Section 3.1(c), as applicable, subject to the terms of this Article III.

3.2. Appointment of Paying Agent. Prior to the Effective Time, Parent shall appoint a bank or trust company reasonably acceptable to the Company to act as paying agent in connection with the consideration to be paid to the Company Stockholders and Company Option Holders (the " Paying Agent") pursuant to a paying agent agreement reasonably satisfactory to the Company.

3.3. Payment of Funds at the Closing; Escrow; Transaction Expenses and Indebtedness.

(a) On the Closing Date, Parent shall deposit with the Paying Agent a cash amount equal to the Estimated Aggregate Consideration Amount less the Escrow Amount less the Reserve Amount less the Earnout Payments plus the Carve-Out Amount.

(b) At the Closing, Parent shall deposit with Wells Fargo Bank, National Association (the " Escrow Agent"), a portion of the Total Common Consideration equal to One Million Five Hundred Thousand and 00/100 Dollars ($1,500,000.00) in cash (the " Escrow Amount"), which shall be held in trust in a separate account pursuant to the terms of an escrow agreement in substantially the form of Exhibit B (the "Escrow Agreement"). The Escrow Amount shall be used to provide the exclusive source of funding to the Parent Indemnitees for any Losses for which such Parent Indemnitees are entitled to be indemnified pursuant to Section 7.1 and for certain amounts after the Reserve Account has been exhausted as provided in Section 3.3(c) hereof. In accordance with the terms set forth in the Escrow Agreement, the Escrow Amount, as increased from time to time by interest accruing thereon and as reduced from time to time by any indemnifiable Losses under Section 7.1 paid out of the escrow account (the "Escrow Fund"), shall be held by the Escrow Agent until the first anniversary of the Closing Date (the " Escrow Release Date"), at which time the Escrow Agent shall distribute the Escrow Fund, less a reserve equal to the amount of any pending or disputed Losses for which Parent Indemnitees claim in good faith to be entitled to be indemnified pursuant to Section 7.1, to the Paying Agent. Thereafter, Parent shall cause the Paying Agent to promptly after such Escrow Release Date distribute to the Company Stockholders (other than holders of Appraisal Shares) and the Company Option Holders (or to the Company's payroll provider who will in turn pay the applicable amount, less all required withholdings, to the appropriate Company Option Holder) that are entitled to receive the Aggregate Common Per Share Amount under Section 3.1(c) or Section 3.1(d), respectively, their respective share of any remaining amounts distributed under this Section 3.3(b). Amounts reserved for pending or disputed Losses shall be applied to such Losses or remitted to the Paying Agent for distribution to such Company Stockholders (other than holders of Appraisal Shares) and Company Option Holders as and when such pending or disputed Losses have been resolved pursuant to the Escrow Agreement, as applicable.

(c) At the Closing, Parent shall pay to the Stockholder Representative out of the Total Common Consideration and for the benefit of the Company Stockholders and Company Option Holders, to such account as shall be specified in writing by the Stockholder Representative, the amount of Five Hundred Thousand Dollars ($500,000) in cash (the "Reserve Amount"), which amount shall be held in a separate account established by the Stockholder Representative (the "Reserve Account"). The Stockholder Representative shall first, use the funds in the Reserve Account and second, to the extent the Reserve Account has been exhausted, remaining Escrow Funds to satisfy to the extent there are sufficient funds therefor (i) all Liabilities of the Stockholder Representative incurred by the Stockholder Representative in its capacity as such or on behalf of the Company Stockholders and Company Option Holders (including reasonable fees and expenses of attorneys, accountants and other advisors and any fees and expenses of the Designated Accounting Firm that are payable by the Company Stockholders and Company Option Holders as set forth in Section 3.6(c)(iv)) in connection with the performance of his duties under this Agreement and the other agreements entered into in connection herewith, and (ii) any payments to be made pursuant to Section 3.6(e). The funds in the Reserve Account shall be held by the Stockholder Representative until all amounts in the Escrow Account have been distributed pursuant to the terms of the Escrow Agreement and after satisfaction of all Stockholder Representative Liabilities incurred prior to such date, except that after distribution of all funds that may due and payable from the Reserve Account to Parent under Section 3.6(e), the Stockholder Representative may, in his discretion, distribute any amounts or portions of amounts in excess of Two Hundred Fifty Thousand Dollars ($250,000) by distribution of amounts in excess thereof to the Paying Agent pursuant to the following sentence. Any distribution of the Reserve Account pursuant to the previous sentence shall be made to the Paying Agent who shall promptly distribute to the Company Stockholders (other than holders of Appraisal Shares) and the Company Option Holders that are entitled to receive the Aggregate Common Per Share Amount under Section 3.1(c) or Section 3.1(d), respectively, their respective share of any remaining amounts distributed under this Section 3.3(c).

(d) At the Effective Time, the Parent will pay the amount of the Estimated Company Transaction Expenses payable to each payee thereof by wire transfer of immediately available funds to such payee's account as specified in instructions delivered to Parent by the Company prior to the Closing.

3.4. Exchange of Certificates; Payment Procedures.

(a) Payment Procedures. Prior to the Effective Time, the Company shall instruct the Paying Agent to mail to each Company Stockholder and each Company Option Holder entitled to receive any amounts under Section 3.1(c) or 3.1(d), respectively, (i) a letter of transmittal in a form approved by the Company (the "Letter of Transmittal"), which will include, as applicable (A) an acknowledgement of the Company Option Holder of the cancellation of all Company Options held by such Company Option Holder in exchange for the right to receive the consideration payable under Section 3.1(d), if any, and (B) a provision confirming the appointment of the Stockholder Representative pursuant to Section 3.5, (ii) instructions for effecting the surrender of the certificates evidencing Outstanding Shares (the "Certificates") and/or receiving payment for Outstanding Company Options and (iii) a form of Lost Share Affidavit. Upon surrender of a Certificate (other than Certificates representing Outstanding Shares to be cancelled pursuant to Section 3.1(b) and any Appraisal Shares) or the submission of a Lost Share Affidavit to the Paying Agent, together with such Letter of Transmittal, duly executed and completed in accordance with its terms, as soon as reasonably practicable, the Paying Agent shall pay to the former holder of such Certificate in exchange therefor a check representing the amounts under Section 3.1(c), as applicable, that become payable with respect to

the applicable Outstanding Shares, and the Certificate so surrendered shall be cancelled. In no event shall the holder of any Certificate be entitled to receive interest on any monies to be received in the Merger. Until surrendered as contemplated by this Section 3.4(a), each Certificate shall be deemed at all times from and after the Effective Time to represent only the right to receive upon such surrender the amounts under Section 3.1(c), as applicable, that become payable with respect to the applicable Outstanding Shares. Upon delivery by a Company Option Holder of a Letter of Transmittal duly executed and completed in accordance with its terms, as soon as reasonably practicable the Paying Agent will pay to each Company Option Holder the amounts under Section 3.1(d) that become payable with respect to the applicable Outstanding Company Option; provided, however, that Parent may instruct the Paying Agent to pay the amounts payable to holders of Outstanding Company Options to the Company's payroll provider who will in turn pay the amount to the applicable Company Option Holder through a special payroll run and effect all applicable withholdings.

(b) Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed (the "Lost Share Affidavit"), the Paying Agent will deliver in exchange for such lost, stolen or destroyed Certificate (other than Certificates representing Outstanding Shares to be cancelled pursuant to Section 3.1(b) and any Appraisal Shares) the amounts under Section 3.1(c), as applicable, that become payable with respect to the applicable Outstanding Shares formerly represented thereby.

(c) Termination of Merger Fund. Any portion of the Merger Fund that remains undistributed to Company Stockholders and Company Option Holders on the earlier of (i) two (2) years following the date such funds were deposited in the Merger Fund and (ii) September 1, 2016 shall be delivered to the Surviving Corporation or otherwise on the instruction of the Surviving Corporation. Thereafter, a holder of an unsurrendered Certificate (other than Certificates representing Outstanding Shares to be cancelled pursuant to Section 3.1(b) and any Appraisal Shares) may surrender the same to Parent and upon such surrender (subject to applicable abandoned property, escheat or similar Laws) shall receive the applicable portion of the merger consideration then payable with respect thereto pursuant to the terms of this Agreement (less any amounts required to be withheld pursuant to applicable Laws), and each unpaid Company Option Holder that is entitled to receive the consideration under Section 3.1(d) may look to Parent for payment.

(d) No Further Ownership Rights in Company Capital Stock . From and after the Effective Time, the share transfer books of the Company shall be closed and there shall be no further registration of transfers on the share transfer books of the Surviving Corporation of the Company Capital Stock that was outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation for any reason, they shall be cancelled and the Paying Agent or the Parent, as the case may be, shall then pay the amounts under Section 3.1(c), as applicable, that become payable with respect to the applicable Outstanding Shares represented by such Certificates as provided in this Section 3.4.

(e) Withholding Rights. Parent and the Paying Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any Company Stockholder or any Company Option Holder such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code and the rules and treasury regulations promulgated thereunder, or any provision of state, local or foreign Tax Law. To the extent that amounts are so withheld by Parent or the Paying Agent, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Company Stockholder or the Company Option Holder in respect of which such deduction and withholding was made by Parent or the Paying Agent, and such amounts shall be delivered by Parent or the Paying Agent to the applicable Taxing Authority.

3.5. Stockholder Representative.

(a) In connection with and by virtue of the approval of this Agreement by the Company Stockholders, the action of the Company Board to provide the consideration to the Company Option Holders set forth in Section 3.1(d) in consideration of the cancellation of the Outstanding Company Options pursuant to the terms of the Stock Option Plan, and the Letter of Transmittal, immediately prior to the Effective Time, each Company Stockholder and each Company Option Holder hereby irrevocably constitutes and appoints the Stockholder Representative as the true and lawful agent and attorney-in-fact of such Company Stockholder or Company Option Holder with full powers of substitution to act in the name, place and stead of such Company Stockholder or Company Option Holder with respect to the performance on behalf of such Company Stockholder or Company Option Holder under the terms and provisions of this Agreement and the Escrow Agreement, as the same may be from time to time amended, and to do or refrain from doing all such further acts and things, and to execute all such documents on behalf of such Company Stockholder or Company Option Holder, as the Stockholder Representative shall deem necessary or appropriate in connection with any of the transactions contemplated under this Agreement and the Escrow Agreement, including:

(i) execute and deliver this Agreement and the Escrow Agreement (and any amendments thereto),

(ii) to do or refrain from doing any act or deed in respect of the exchange procedures contemplated by Section 3.4 or related thereto,

(iii) give and receive notices and communications and receive service of process on behalf of each of the Company Stockholders and Company Option Holders relating to this Agreement, the Escrow Agreement or any of the transactions and other matters contemplated hereby or thereby (except to the extent that this Agreement or the Escrow Agreement expressly contemplates that any such notice or communication shall be given or received by such persons individually),

(iv) act on behalf of the Company Stockholders and Company Option Holders with respect to all indemnification matters referred to in this Agreement, including the right to compromise on behalf of such Company Stockholder or Company Option Holder any indemnification claim made by or against such Company Stockholder or Company Option Holder involving this Agreement,

(v) act for such Company Stockholders and Company Option Holders with respect to all post-Closing matters,

(vi) initiate, defend, resolve, settle or compromise any legal proceeding to enforce the rights of Company Stockholders and Company Option Holders arising out of or relating to this Agreement;

(vii) authorize deliveries to Parent of cash from the Escrow Amount in satisfaction of claims asserted by Parent (on behalf of itself or any other Parent Indemnitee, including by not objecting to claims thereto),

(viii) object to any claims by Parent to the Escrow Amount,

(iv) terminate, amend, or waive any provision of this Agreement or the Escrow Agreement; provided, however, that any such action, if material to the rights and obligations of such Company Stockholder or Company Option Holder in the reasonable judgment of the Stockholder Representative, shall be taken in the same manner with respect to all Company Stockholders or Company Option Holders, unless otherwise agreed by such such Company Stockholder or Company Option Holder who is subject to any disparate treatment of a potentially adverse nature;

(x) employ and obtain the advice of legal counsel, accountants and other professional advisors as the Stockholder Representative, in its sole discretion deems necessary or advisable in the performance of its duties as the Stockholder Representative and to rely on their advice and counsel,

(xi) to establish the Reserve Account and to use the funds in the Reserve Account as contemplated by Section 3.3(c),

(xii) incur expenses, including fees of brokers, attorneys and accountants incurred pursuant to the transactions contemplated by this Agreement, including the Merger, and any other fees and expenses allocable or in any way relating to the transactions contemplated by this Agreement and the Escrow Agreement, including the Merger, or any indemnification claim, whether incurred prior or subsequent to Closing, and

(xiii) to do or refrain from doing any further act or deed on behalf of such Company Stockholders and Company Option Holders that the Stockholder Representative deems necessary or appropriate in its sole discretion relating to the subject matter of this Agreement as fully and completely as any of such Company Stockholders or Company Option Holders could do if personally present and acting.

(b) No bond shall be required of the Stockholder Representative, and the Stockholder Representative shall receive no compensation for its services.

(c) The appointment of the Stockholder Representative shall be deemed coupled with an interest and shall be irrevocable, and any other Person may conclusively and absolutely rely, without inquiry, upon any actions of the Stockholder Representative as the acts of Company Stockholders and Company Option Holders hereunder appointing the Stockholder Representative in all matters referred to in this Agreement. Each of the Company Stockholders and Company Option Holders appointing the Stockholder Representative hereby ratifies and confirms all that the Stockholder Representative shall do or cause to be done by virtue of such Stockholder Representative's appointment as Stockholder Representative of such Company Stockholder or Company Option Holder. The Stockholder Representative shall act for the Company Stockholders and Company Option Holders appointing the Stockholder Representative on all of the matters set forth in this Agreement in the manner the Stockholder Representative believes to be in the best interest of such Company Stockholders and Company Option Holders, but the Stockholder Representative shall not be responsible to any such Company Stockholders or Company Option Holders for any loss or damage any such Company Stockholders or Company Option Holders may suffer by reason of the performance by the Stockholder Representative of such Stockholder Representative's duties under this Agreement, other than loss or damage arising from willful misconduct in the performance of such Stockholder Representative's duties under this Agreement.

(d) Each of the Company Stockholders and Company Option Holders appointing the Stockholder Representative hereunder hereby expressly acknowledges and agrees that the Stockholder Representative is authorized to act on behalf of such Company Stockholder or Company Option Holder notwithstanding any dispute or disagreement among such Company Stockholders or Company Option Holders, and that any Person shall be entitled to rely on any and all action taken by the Stockholder Representative under this Agreement without liability to, or obligation to inquire of, any of such Company Stockholders or Company Option Holders. If the Stockholder Representative resigns or ceases to function in such capacity for any reason whatsoever, then the successor Stockholder Representative shall be the Person that the majority of voting power of the Company Capital Stock, held by the Company Stockholders at the Closing, appoint. The Company Stockholders and Company Option Holders appointing the Stockholder Representative do hereby severally (pro rata in accordance with their aggregate share of the distributions of the merger consideration hereunder) agree to indemnify and hold the Stockholder Representative harmless from and against any and all Liabilities (including attorneys' fees) reasonably incurred or suffered as a result of the performance of such Stockholder Representative's duties under this Agreement except for any such Liability arising out of the gross negligence or willful misconduct of the Stockholder Representative.

3.6. Purchase Price Adjustment.

(a) The Company shall deliver to the Parent, at least three (3) Business Days prior to the Closing Date, a certificate of the Company (the "Company Pre-Closing Certificate") certifying in reasonable detail the Company's good faith estimates of the Closing Net Working Capital Amount (the "Estimated Net Working Capital Amount"), the Closing Cash (the "Estimated Closing Cash"), Closing Indebtedness (the "Estimated Closing Indebtedness"), and Company Transaction Expenses (the "Estimated Company Transaction Expenses"), along with the supporting detail therefor, such estimates to be prepared in accordance with this Agreement using the Modified GAAP Method. The amount that is equal to the calculation of clauses (A)-(F) of the Aggregate Consideration Amount set forth in Section 3.1(c)(i)(A) shall be estimated at Closing based on the Estimated Net Working Capital Amount, the Estimated Closing Cash, the Estimated Closing Indebtedness and the Estimated Company Transaction Expenses and such estimate shall be the "Estimated Aggregate Consideration Amount" and subject to adjustment as set forth in this Section 3.6.

(b) As soon as reasonably practicable, but no later than July 31, 2012, Parent shall, at its expense, (i) cause to be prepared an unaudited balance sheet of the Company as of the close of business on the day immediately preceding the Closing Date, but which shall not reflect the transactions occurring at the Closing or any purchase accounting or similar adjustments resulting from the consummation of the transactions contemplated herein (the "Closing Balance Sheet"), together with a statement (the "Closing Date Schedule") setting forth in reasonable detail the Parent's calculation of the Closing Net Working Capital Amount, Closing Cash, Closing Indebtedness, and Company Transaction Expenses and (ii) deliver to the Stockholder Representative the Closing Balance Sheet and the Closing Date Schedule, together with a certificate of the Parent confirming that the Closing Balance Sheet and the Closing Date Schedule were properly prepared in good faith and in accordance with this Section 3.6(b). The accounts included in the Closing Balance Sheet and the Closing Date Schedule, including the Closing Net Working Capital Amount, Closing Cash, Closing Indebtedness and Company Transaction Expenses, shall be prepared in accordance with this Agreement using the Modified GAAP Method. Valuations and estimates for the Closing Balance Sheet shall not reflect or take into account developments between the day immediately preceding the Closing Date and the date of preparation or completion of the Closing Balance Sheet except for those developments that

provide additional evidence with respect to conditions that existed as of the close of business on the day immediately preceding the Closing Date. Solely in connection with the preparation of the Closing Balance Sheet and Closing Date Schedule, Parent agrees that it shall not, and shall cause the Surviving Corporation not to, take any actions with respect to the accounting books and records of the Surviving Corporation on which the Closing Balance Sheet or Closing Date Schedule are to be based that are not consistent with the Modified GAAP Method.

(c) Review; Disputes.

(i) From and after the Effective Time, the Parent and the Surviving Corporation shall provide the Stockholder Representative and any accountants or advisors retained by the Stockholder Representative with full access to the books and records and personnel of the Surviving Corporation for the purposes of: (A) enabling the Stockholder Representative and its accountants and advisors to calculate, and to review the Parent's calculation of, the Closing Net Working Capital Amount, Closing Cash, Closing Indebtedness and Company Transaction Expenses; and (B) identifying any dispute related to the calculation of any of the Closing Net Working Capital Amount, Closing Cash, Closing Indebtedness and Company Transaction Expenses in the Closing Date Schedule. The reasonable fees and expenses of any such accountants and advisors retained by the Representative shall be reimbursable expenses pursuant to Section 3.3(c) of this Agreement.

(ii) If the Stockholder Representative disputes the calculation of any of the Closing Net Working Capital Amount, Closing Cash, Closing Indebtedness or Company Transaction Expenses set forth in the Closing Date Schedule, then the Stockholder Representative shall deliver a written notice (a "Dispute Notice") to the Parent at any time during the forty-five (45) day period commencing upon receipt by the Stockholder Representative of the Closing Balance Sheet, the Closing Date Schedule and the related certificate of the Parent, all as prepared by the Parent in accordance with the requirements of Section 3.6(b) (subject to extension for any period of inadequate access to the underlying records) (the "Review Period"). The Dispute Notice shall set forth the basis for the dispute of any such calculation in reasonable detail.

(iii) If the Stockholder Representative does not deliver a Dispute Notice to the Parent prior to the expiration of the Review Period, the Parent's calculation of Closing Net Working Capital Amount, Closing Cash, Closing Indebtedness and/or Company Transaction Expenses set forth in the Closing Date Schedule shall be deemed final and binding on the Parent and Surviving Corporation, the Stockholder Representative and each Stockholder for all purposes of this Agreement.

(iv) If the Stockholder Representative delivers a Dispute Notice to the Parent prior to the expiration of the Review Period, then the Stockholder Representative and the Parent shall use commercially reasonable efforts to reach agreement on the Closing Net Working Capital Amount, Closing Cash, Closing Indebtedness and/or Company Transaction Expenses that are in dispute. If the Stockholder Representative and the Parent are unable to reach agreement on the Closing Net Working Capital Amount, Closing Cash, Closing Indebtedness and/or Company Transaction Expenses that are in dispute within twenty (20) days after the end of the Review Period, either party shall have the right to refer such dispute to McGladrey, LLC (such firm, or any successor thereto, being referred to herein as the " Designated Accounting Firm") after such twentieth (20th) day, and neither party shall allow the Designated Accounting Firm to perform audit or accounting work for it to any material degree (other than as the Designated Accounting

Firm under this Agreement) from the date of submission of any dispute to the Designated Accounting Firm through the date of final resolution of such claim. In connection with the resolution of any such dispute by the Designated Accounting Firm: (1) each of the Stockholder Representative and the Surviving Corporation shall have a reasonable opportunity to meet with the Designated Accounting Firm to provide its views as to any disputed issues with respect to the calculation of any of the Closing Net Working Capital Amount, Closing Cash, Closing Indebtedness and/or Company Transaction Expenses; (2) each of the Stockholder Representative and the Parent shall promptly provide, or cause to be provided, to the Designated Accounting Firm all information and make available as are reasonably necessary to permit the Designated Accounting Firm to resolve such disputes; (3) the Designated Accounting Firm shall determine the Closing Net Working Capital Amount, Closing Cash, Closing Indebtedness and/or Company Transaction Expenses in accordance with the terms of this Agreement within thirty (30) days after such referral, and upon reaching such determination shall deliver a copy of its calculations to the Stockholder Representative and the Parent; and (4) the determination made by the Designated Accounting Firm of the Closing Net Working Capital Amount, Closing Cash, Closing Indebtedness and/or Company Transaction Expenses that are in dispute shall be conclusive, binding upon the parties, nonappealable, and not be subject to further review, and shall be considered a final arbitration award that is enforceable pursuant to the terms of the Federal Arbitration Act. In calculating the Closing Net Working Capital Amount, Closing Cash, Closing Indebtedness and Company Transaction Expenses, the Designated Accounting Firm (A) shall be limited to addressing only those particular disputed items referred to in the Dispute Notice; and (B) such calculation shall, with respect to any disputed item, be no greater than the higher amount calculated by the Parent or Stockholder Representative, as the case may be, and no lower than the lower amount calculated by the Parent or the Stockholder Representative, as the case may be. The Expert Calculations shall reflect in detail the differences, if any, between the Closing Net Working Capital Amount, Closing Cash, Closing Indebtedness and/or Company Transaction Expenses reflected therein and the Closing Net Working Capital Amount, Closing Cash, Closing Indebtedness and/or Company Transaction Expenses set forth in the Closing Date Schedule. The fees and expenses of the Designated Accounting Firm shall be allocated between the Parent, on the one hand, and the Company Stockholders and Company Option Holders, on the other hand, based upon the percentage which the portion of the contested amount not awarded to each party bears to the amount actually contested by such party. If the Company Stockholders and Company Option Holders shall be required to pay any such fees or expenses, such fees or expenses shall be first paid out of the Reserve Account and then out of the Escrow Fund.

(d) If (1) the amount that is equal to the calculation of clauses (A)-(F) of the Aggregate Consideration Amount calculated as set forth in Section 3.1(c)(i)(A) using the Closing Net Working Capital Amount, Closing Cash, Closing Indebtedness and Company Transaction Expenses as finally determined in accordance with this Section 3.6 is greater than (2) the Estimated Aggregate Consideration Amount calculated as set forth in Section 3.6(a) using the Estimated Net Working Capital Amount, Estimated Closing Cash, Estimated Closing Indebtedness and Estimated Company Transaction Expenses as estimated in accordance with Section 3.6(a), by an amount greater than Twenty-Five Thousand and 00/100 Dollars ($25,000.00), then the Parent shall, no later than five (5) Business Days after such determination, cause to be paid to the Paying Agent by delivery of immediately available funds an amount equal to such excess amount. The Paying Agent shall distribute to the Company Stockholders (other than holders of Appraisal Shares) and the Company Option Holders that are entitled to receive the Aggregate Common Per Share Amount under Section 3.1(c) or Section 3.1(d), respectively, their respective share of any remaining amounts distributed under this Section 3.6(d).

(e) If (1) the amount that is equal to the calculation of clauses (A)-(F) of the Aggregate Consideration Amount calculated as set forth in Section 3.1(c)(i)(A) using the Closing Net Working Capital Amount, Closing Cash, Closing Indebtedness and Company Transaction Expenses as finally determined in accordance with this Section 3.6 is less than (2) the Estimated Aggregate Consideration Amount calculated as set forth in Section 3.6(a) using the Estimated Net Working Capital Amount, Estimated Closing Cash, Estimated Closing Indebtedness and Estimated Company Transaction Expenses as estimated in accordance with Section 3.6(a), by an amount greater than Twenty-Five Thousand and 00/100 Dollars ($25,000.00), then the Stockholder Representative shall, no later than five (5) Business Days after such determination, cause to be paid to Parent out of the Reserve Account an amount equal to such deficiency. If the Reserve Account holds insufficient funds to satisfy the deficiency calculated pursuant to this Section 3.6, then the Stockholder Representative shall distribute the entire amount of the Reserve Account to the Parent and the Stockholder Representative and Parent shall deliver joint written instructions to the Escrow Agent directing payment from the Escrow Fund to Parent of an amount of the deficiency in excess of the Reserve Account within five (5) Business Days after such determination of the amount payable under this Section 3.6(e).

(f) Any payments made pursuant to Section 3.6 shall constitute an adjustment of the Aggregate Consideration Amount for Tax purposes and shall be treated as such by the parties on their Tax Returns to the extent permitted by law.

3.7. Earnout Consideration.

(a) Parent shall pay or cause to be paid to the Paying Agent (in accordance with Section 3.7(b)), on behalf of all Company Stockholders and Company Option Holders, the following amounts (each, an "Earnout Payment" and together, the "Earnout Payments"):

(i) Two Million Five Hundred Thousand and 00/100 Dollars ($2,500,000.00) in the event and after such time as the aggregate Earnout Sales first exceeds Ten Million and 00/100 Dollars ($10,000,000.00) for any twelve (12) consecutive calendar month period that commences after the Closing Date and ends on or before December 31, 2015; and

(ii) (A) Two Million and 00/100 Dollars ($2,000,000.00) in the event, but only in the event, aggregate Earnout Sales first meets or exceeds Fifteen Million and 00/100 Dollars ($15,000,000) for any twelve (12) consecutive calendar month period that commences after the Closing Date and ends on or before December 31, 2015, or (B) if Earnout Sales do not meet or exceed Fifteen Million and 00/100 Dollars ($15,000,000) for any twelve (12) consecutive calendar month period that commences after the Closing Date and ends on or before December 31, 2015, an amount equal to eighty percent (80%) of an amount equal to (x) the highest Earnout Sales for any twelve (12) consecutive calendar month period that commences after the Closing Date and ends on or before December 31, 2015, minus (y) Twelve Million Five Hundred Thousand and 00/100 Dollars ($12,500,000); provided, however, that if the highest aggregate Earnout Sales under Clause (B)(2)(x) shall be less than Twelve Million Five Hundred Thousand and 00/100 Dollars ($12,500,000) no payment shall be payable under this Section 3.7(a)(ii).

(iii) In no event shall more than Two Million Five Hundred Thousand and 00/100 Dollars ($2,500,000.00) be payable pursuant to Section 3.7(a)(i) or more than Two Million and 00/100 Dollars ($2,000,000.00) be payable pursuant to Section 3.7(a)(ii).

(b) Payment of Earnout Consideration. Subject to set-off pursuant to Section 7.1(e), payment of any Earnout Payment coming due under (i) Section 3.7(a)(i) shall be paid within sixty (60) days after the end of the consecutive twelve (12) month period in which the payment is earned and (ii) Section 3.7(a)(ii)(B) shall be paid by March 1, 2016, or if Earnout Sales meet or exceed the requirements of Section 3.7(a)(ii)(A) prior to the month ending December 31, 2015, within sixty (60) days after the end of the month in which such requirement has been met or exceeded. Payments shall be by wire transfer of immediately available funds to the Paying Agent and accompanied with a certificate, executed by the Surviving Corporation, setting forth in reasonable detail the payment computation. The Paying Agent shall distribute to the Company Stockholders (other than holders of Appraisal Shares), and the Company Option Holders that are entitled to receive the Aggregate Common Per Share Amount under Section 3.1(c) or Section 3.1(d), respectively, their respective share of any amounts distributed under this Section 3.7 and to any participant under the Carve-Out Incentive Plan their portion of the Earn-Out Carve-Out Amount pursuant to the Carve-Out Incentive Plan. None, of Parent, Merger Sub or the Surviving Corporation shall have any Liability to any participant under the Carve-Out Incentive Plan, other than paying any amounts payable to the Paying Agent as provided herein.

(c) Review; Objection to Earnout Consideration. From and after the Effective Time, upon reasonable prior written notice to the Parent and the Surviving Corporation, the Surviving Corporation shall permit the Stockholder Representative and any accountants or advisors retained by the Stockholder Representative (which execute a confidentiality agreement with the Surviving Corporation) (a) reasonable access to its books and records (including Tax records) and all other documents or agreements relevant to the calculation of Earnout Sales and any Earnout Payment under this Section 3.7 during normal business hours. The Stockholder Representative hereby agrees that it is not authorized to and will not (and will not permit any of its consultants or representatives to) contact any then current employees of the Surviving Corporation. If the Stockholder Representative does not challenge the calculation of any Earnout Payment amount made by Parent under Section 3.7(b) or the failure to make any Earnout Payment in writing within sixty (60) days after the later of (i) the date such Earnout Payment was required to be paid pursuant to Section 3.7(b) or (ii) the date such Earnout Payment, if any, was actually paid, then such Earnout Payment amount shall be deemed to be final and correct. If the Stockholder Representative delivers a written objection notice to the Surviving Corporation prior to the expiration of the applicable period set forth above with respect to any Earnout Payment or nonpayment, then the Stockholder Representative and the Parent shall use commercially reasonable efforts to reach agreement on the Earnout Payment that is in dispute. If the Stockholder Representative and the Parent are unable to reach agreement on the Earnout Payment calculation that is in dispute, either party shall have the right to refer the dispute to the Designated Accounting Firm to review and audit the accounting records and work papers relevant to the calculation of Earnout Sales and the Earnout Payment in dispute. In connection with the resolution of any such dispute by the Designated Accounting Firm: (A) each of the Stockholder Representative and the Parent shall have a reasonable opportunity to meet with the Designated Accounting Firm to provide its views as to any disputed issues with respect to the calculation of the Earnout Sales and the Earnout Payment; (B) each of the Stockholder Representative and the Parent shall promptly provide, or cause to be provided, to the Designated Accounting Firm all information and make available as are reasonably necessary to permit the Designated Accounting Firm to resolve such disputes; (C) the Designated Accounting Firm shall determine the Earnout

Sales based on its review and audit and calculate the Earnout Payment in accordance with Section 3.7(a) of this Agreement within sixty (60) days after such referral, and upon reaching such determination shall deliver the results of its audit and a copy of its calculations (the " Expert Calculations") to the Stockholder Representative and the Parent; and (D) the determination made by the Designated Accounting Firm of the Earnout Sales and the calculation of the Earnout Payment that is in dispute shall be conclusive, binding upon the parties, nonappealable, and not be subject to further review, and shall be considered a final arbitration award that is enforceable pursuant to the terms of the Federal Arbitration Act. The fees and expenses of the Designated Accounting Firm shall be allocated between the Parent, on the one hand, and the Company Stockholders and Company Option Holders, on the other hand, based upon the percentage which the portion of the contested amount not awarded to each party bears to the amount actually contested by such party. If it is finally determined that Parent owes any amount to the Company Stockholders and Company Option Holders under this Section 3.7(c), then Parent shall pay such amount to the Paying Agent who shall promptly distribute such amount to the Company Stockholders and Company Option Holders that are entitled to receive the Aggregate Common Per Share Amount under Section 3.1(c) or Section 3.1(d), respectively, their respective share of such amount. If it is finally determined that the Company Stockholders or Company Option Holders owe any amounts to Parent or the Surviving Corporation under this Section 3.7(c) (including any reimbursement for overpayment of any Earnout Payment), then Parent shall have the right, at its option, to be paid or reimbursed for such amounts from the Reserve Account, the Escrow Account or by offset against any future Earnout Payment.

(d) Earnout Consideration as Merger Consideration. The Earnout Payments provided for pursuant to this Section 3.7 are provided as a result of bona fide difficulties in determining the value of the Company. The Earnout Payments under this Section 3.7 represent additional consideration for the shares of Company Capital Stock and are not intended to be royalty payments.

(e) Conduct of Business After the Closing. During the period commencing on the Closing Date and ending on December 31, 2015, Parent will use commercially reasonable efforts to promote, market and sell currently manufactured Company Products and the HeRO Graft Connector Component and the Clamshell Connector, and will not undertake any action the primary purpose of which is to materially negatively impact the Company Stockholders or the Company Option Holder's right or ability to receive Earnout Payments hereunder. Without limiting, but in furtherance of the foregoing, Parent covenants and agrees that it will not (i) enter into any sales agreements with respect to the Earnout Qualified Product with any Affiliates of Parent whose revenues are not consolidated with Parent's revenues; or (ii) enter into any sales agreements with respect to the Earnout Qualified Product on pricing and other terms that have not been negotiated at "arms length."

(f) Subsequent Change of Control. Notwithstanding any other provision of this Agreement, if, prior to December 31, 2015, (i) the Parent or any Affiliate of Parent (A) ceases to be (either directly, or indirectly through one or more wholly owned subsidiaries) the owner of the controlling interest in the outstanding capital stock of or other equity interests in the Surviving Corporation or substantially all of the Company's assets or Company Intellectual Property that exist as of the Effective Time or (B) exclusively licenses substantially all of the Company Intellectual Property related to the Earnout Qualified Products to any third party that is not an Affiliate of Parent ("Change of Control"), and (ii) such acquiring Person or licensee does not expressly assume the obligations of Parent under this Section 3.7 in writing, then, the definition of Earnout Sales shall be deemed to include sales by such acquiring Person or licensee and Parent shall remain obligated to pay the Paying Agent, on behalf of the Company Stockholders and

Company Option Holders, the amounts, if any, payable under this Section 3.7 based on such modified definition of Earnout Sales less any amounts paid by the acquiring Person or any other party to the Paying Agent with respect to such Earnout Sales.

(g) Earnout Reporting. After the Closing Date and until December 31, 2015, Parent shall deliver to the Stockholder Representative on, a quarterly basis within five (5) Business Days after filing of its quarterly and annual filings with the Securities Exchange Commission, a report setting forth in reasonable detail Earnout Sales of Earnout Products for each month during the immediately preceding quarterly period covered by such filing.

## ARTICLE IV.

## REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to the Parent and Merger Sub (except as disclosed in the Disclosure Schedules) that:

4.1. Organization and Power; and Investments. The Company is a corporation validly existing and in good standing under Delaware Law, the jurisdiction of its incorporation. The Company is qualified to do business as a foreign entity and is in good standing in each jurisdiction in which the failure to so qualify would have a Material Adverse Effect on the Company. The Company has all requisite corporate power and corporate authority to carry on its business as currently conducted. The Company has all requisite corporate power and corporate authority to execute and deliver this Agreement and the other agreements contemplated hereby and to perform its obligations hereunder and thereunder. The Company does not own or control (directly or indirectly) any shares, partnership interest, joint venture interest, equity participation or other security or interest in any other Person. The Company Certificate and bylaws of the Company previously furnished to the Parent reflect all amendments thereto and are correct and complete.

4.2. Authorization.

(a) The execution, delivery and performance by the Company of this Agreement, the other agreements contemplated hereby and each of the transactions contemplated hereby or thereby have been duly authorized by all necessary corporate action on the part of the Company; provided prior to the Closing, holders of shares of capital stock constituting the Required Stockholder Vote will have delivered valid stockholder consents approving this Agreement and the transactions contemplated hereby. The affirmative vote or consent of the holders of shares of capital stock constituting the Required Stockholder Vote is the only vote of the holders of any Company Capital Stock necessary under Delaware Law and the Company Certificate and bylaws of the Company to adopt this Agreement, approve the Merger and consummate the Merger and the other transactions contemplated hereby. This Agreement has been duly executed and delivered by the Company and this Agreement constitutes, and each of the other agreements contemplated hereby upon execution and delivery by the Company will constitute, a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as the enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other Laws relating to or limiting creditors' rights generally or by general principles of equity, regardless of whether such enforceability is considered in a proceeding at law or in equity.

(b) The Company Board has unanimously (a) determined that this Agreement and the consummation of the Merger are advisable, (b) approved and adopted this Agreement and the transactions contemplated by this Agreement, including the Merger and (c) recommended that the holders of the Company Capital Stock vote to approve and adopt this Agreement and the Merger.

(c) The affirmative vote or consent of (a) the holders of a majority of the outstanding shares of Company Common Stock, Series A-1 Preferred Stock and Series A-2 Preferred Stock, voting together as a single class on an as-converted to Company Common Stock basis and (b) a majority of the outstanding shares of Series A-1 Preferred Stock and Series A-2 Preferred Stock, voting together as a single class on an as-converted to Company Common Stock basis (the "Required Stockholder Vote") are the only votes of the holders of any class or series of capital stock of the Company necessary under Delaware Law and the Company's organizational documents to adopt this Agreement and approve the transactions contemplated hereby, including the Merger.

4.3. Capitalization. The authorized capital stock of Company consists of 41,452,254 shares of Company Capital Stock, of which 21,000,000 shares are designated Company Common Stock, and 20,452,254 shares are designated Company Preferred Stock. With respect to the authorized Company Preferred Stock, 12,000,000 shares are designated Series A-1 Preferred Stock, 5,202,254 shares are designated Series A-2 Preferred Stock, and 3,250,000 shares are designated Series Z Preferred Stock. Section 4.3 of the Disclosure Schedules accurately sets forth the authorized and outstanding capital stock of the Company and the class and number of shares held by each holder of the capital stock of the Company. All of the issued and outstanding shares of capital stock of the Company have been duly authorized, are validly issued, fully paid and nonassessable, and were not issued in violation of any Law or the preemptive rights or rights of first refusal created by statute, the Company Certificate or bylaws of Company or any agreement to which Company is a party or by which it is bound. As of the date of this Agreement, there were 2,559,131 shares of Company Common Stock reserved for issuance under Stock Option Plan, of which 1,570,586 shares of Company Common Stock were subject to outstanding Company Options and 988,545 shares of Company Common Stock were reserved for future option grants. Company has delivered to Parent or its advisors (or made available in a data room for review by Parent or its advisors) true and complete copies of Company's standard form(s) of stock option agreement evidencing Company Options, as well as any stock option agreement evidencing Company Options that materially deviates from Company's standard form, and each Stock Option Plan. Section 4.3 of the Disclosure Schedules accurately sets forth all of the issued and outstanding options (each, a " Company Option" and collectively, the "Company Options") to acquire capital stock of the Company and the number of issued and outstanding Company Options held by each holder. The Company Options are duly authorized and were not issued in violation of any applicable Laws or the preemptive or similar rights of any Person. Except for this Agreement or as disclosed in Section 4.3 of the Disclosure Schedules, there are no outstanding or authorized options, warrants, rights, contracts, pledges, calls, puts, rights to subscribe, conversion rights, rights to purchase, exchange rights, phantom stock or other agreements or commitments to which the Company is a party or which is binding upon the Company providing for the issuance, disposition or acquisition of any of its equity or any rights or interests exercisable therefor. The allocations of consideration payable among Company Stockholders and Company Option Holders set forth on Schedule 4.3 and delivered to the Paying Agent by the Company comply with the Company Certificate.

4.4. No Violation.

(a) Except as set forth in Section 4.4(a) of the Disclosure Schedules, the execution, delivery and performance by the Company of this Agreement and the other agreements contemplated hereby and the consummation of each of the transactions contemplated hereby or thereby will not (i) violate or conflict with any provision of the Company Certificate or bylaws of the Company, (ii) assuming satisfaction of the requirements set forth in Section 4.4(b), materially violate any Law or Order to which the Company is subject or (iii) violate, breach or constitute a

default under or give rise to a right of termination, modification, cancellation or acceleration of any right or obligation of the Company under, or result in the creation of a Lien or encumbrance on any of the properties or assets of the Company or require any notice or consent pursuant to, any provision of any agreement, contract, note, bond, mortgage, indenture, lease or other instrument, license, franchise, commitment, guarantee, purchase order, obligation or undertaking binding upon the Company or any license, franchise, Permit or other similar authorization held by the Company or otherwise cause such agreement to cease to be legal, valid, binding and enforceable and in full force and effect following the Closing.

(b) The execution, delivery and performance by the Company of this Agreement and the other agreements contemplated hereby and the consummation of each of the transactions contemplated hereby or thereby will not require any authorization, consent, approval, exemption or other action by or notice to any Governmental Authority or other Person under the provisions of any Law (except as required under or in relation to the DGCL with respect to the filing of the Certificate of Merger).

4.5. Financial Statements and Financial Data. Section 4.5 of the Disclosure Schedules contains the following financial statements:

(a) Interim Financial Statements. The unaudited balance sheet of the Company as of April 30, 2012 and the related statements of income for the four-month period ended April 30, 2012 (the "Interim Financial Statements"). The unaudited balance sheet of the Company as of April 30, 2012 shall be referred to herein as the "Unaudited Balance Sheet".

(b) Annual Financial Statements. The audited balance sheet of the Company as of December 31, 2011, December 31, 2010 and as of December 31, 2009 and the related audited statements of income and cash flows for the annual period then ended (the " Annual Financial Statements" and together with the Interim Financial Statements, the "Financial Statements"). The audited balance sheet of the Company as of December 31, 2011 shall be referred to herein as the "Audited Balance Sheet".

(c) Each of the foregoing Financial Statements (including in all cases the notes thereto, if any) has been prepared in accordance with GAAP consistently applied throughout the periods involved (subject, in the case of the Interim Financial Statements, to routine year-end adjustments that are not material to the Company and the absence of footnotes) and presents fairly in all material respects the financial condition, results of operations and cash flows of the Company as of the date indicated and throughout the periods covered thereby.

(d) Section 4.5 of the Disclosure Schedules sets forth, as of a recent date as set forth therein, an accurate aging (indicating accounts 30, 60 and 90 or more days past due) of all accounts receivable of the Company as of such date. The accounts and notes receivable of the Company (the "Accounts Receivable") (i) arose from bona fide transactions in the ordinary course of business and are payable on ordinary trade terms consistent with the Company's past practice, (ii) to the Knowledge of the Company, are legal, valid and binding obligations of the respective debtors enforceable in accordance with their terms and are not subject to any set-off, counterclaim or other defense based on circumstances as of the date hereof, (iii) are not the subject of any claims by or on behalf of the Company and (iv) will be collectible in accordance with their terms at their recorded amounts, subject only to any reserve for doubtful accounts included in the calculation of the Closing Net Working Capital Amount, assuming that Parent uses at least the same level of effort to collect the Accounts Receivable as Parent uses to collect its other accounts and notes receivable.

(e) The amount of the Company's net operating losses are set forth in the Annual Financial Statements. The Company has provided the following information: the dates of issuances of each series of preferred stock of the Company (including series of preferred stock outstanding prior to the issuance of the Series A-1 Preferred Stock and Series A-2 Preferred Stock), the per share price at which such shares were issued and the number of shares of capital stock outstanding at the time of such issuance and all of such information is true, complete and correct. The Company has provided all documents in its possession or under its control that have been requested by Parent in connection with its review of net operating loss issues and such documents are true, complete and correct.

4.6. Absence of Certain Developments. Except as set forth in Section 4.6 of the Disclosure Schedules or as permitted or contemplated by this Agreement, since the date of the Annual Financial Statements, the Company has conducted its business in the ordinary course consistent with past practice, and there has not been:

(a) any change in the assets, Liabilities, financial condition or operating results of the Company, except changes in the ordinary course of business that have not been, in the aggregate, materially adverse and operating losses incurred in the ordinary course of business;

(b) any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the assets, properties, financial condition, operating results, or business of the Company (as such business is presently conducted);

(c) any waiver by the Company of a valuable right or of a material debt owed to it;

(d) any satisfaction or discharge of any Lien or payment of any obligation by the Company, except in the ordinary course of business and that is not material to the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted);

(e) any material change or amendment to a material contract or arrangement by which the Company or any of its assets or properties is bound or subject;

(f) any material change in any compensation arrangement or agreement with any employee, officer, director or stockholder;

(g) any sale, assignment or transfer of any patents, trademarks, copyrights, trade secrets or other intangible assets;

(h) any resignation or termination of employment of any key officer of the Company;

(i) any Lien created by the Company with respect to any of its material properties or assets, except Permitted Liens;

(j) any loans or guarantees made by the Company to or for the benefit of its employees, officers or directors, or any members of their immediate families, other than travel advances and other advances made in the ordinary course of its business;

(k) any declaration, setting aside or payment of any dividend or other distribution in respect of any of the Company's capital stock, or any direct or indirect redemption, purchase or other acquisition of any of such stock by the Company;

(l) to the Company's Knowledge, any other event or condition of any character that might materially and adversely affect the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted); or

(m) any agreement or commitment by the Company to do any of the things described in this Section 4.6.

4.7. Title to Properties.

(a) Owned Real Property. The Company does not own and had never owned any land, buildings, structures, easements and other rights and interests appurtenant thereto (including air, oil, gas, mineral and water rights) (" Real Property").

(b) Leased Real Property.

(i) Leased Real Property. Section 4.7(b)(i) of the Disclosure Schedules sets forth a list of all leases of Real Property (including all amendments, guaranties and other agreements with respect thereto) to which the Company is a party (such property, the " Leased Real Property") and the address of each parcel of Leased Real Property. Except as set forth in Section 4.7(b)(i) of the Disclosure Schedules, with respect to each of such leases, (A) such lease is legal, valid, binding and enforceable against the Company, and is in full force and effect; and (B) neither the Company nor, to the Company's Knowledge, any other party to such lease, is in breach or default under such lease, and no event has occurred or circumstance exists that, with the delivery of notice, passage of time or both, would constitute a breach or default or permit the termination or modification of, or acceleration of rent under, such lease.

(ii) Sufficiency of Leased Real Property. The Leased Real Property comprises all of the Real Property used in, or otherwise related to, the Company's business; and Company is not a party to any agreement or option to purchase any Real Property or interest therein.

4.8. FIRPTA. The Company is not a "foreign person" within the meaning of Section 1445 of the Code, and is not a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code.

4.9. Inventory. Except as set forth in Section 4.9 of the Disclosure Schedules and to the extent of the Company's obsolescence reserve in the Closing Balance Sheet, all inventory of the Company, whether or not reflected on the Unaudited Balance Sheet, has a useful shelf-life of at least twelve (12) months and consists of a quality and quantity usable in the ordinary course of business, except for obsolete items and items of below-standard quality, all of which have been written off or written down to net realizable value on the Unaudited Balance Sheet.

4.10. Title to Assets; Condition and Sufficiency of Assets. The Company owns its property and assets free and clear of all Liens, except for (i) Permitted Liens, and (ii) such Liens described in Section 4.10 of the Disclosure Schedules. With respect to the property and assets it leases, the Company is in compliance with such leases and holds a valid leasehold interest free of any Liens. Except for reasonable wear and tear, the assets, buildings, structures and equipment of the Company currently used

in the operation of the business are in good operating condition and repair and are adequate for the uses and purposes for which they are presently used and are sufficient for the conduct of the Company's business as currently conducted.

4.11. Contracts and Commitments.

(a) Contracts and Commitments. Section 4.11(a) of the Disclosure Schedules lists all of the following agreements, contracts, notes, bonds, mortgages, indentures, leases or other instruments, licenses, franchises, commitments, guarantees, purchase orders, obligations or undertakings, whether written or oral, to which the Company is a party and which are currently in effect:

(i) contracts that provide for the purchase of goods or services, including license agreements, by the Company from any Person that contemplate the expenditure by the Company in excess of $25,000;

(ii) contracts relating to the borrowing of money by the Company, to the granting by the Company of a Lien on any of its material assets, or any guaranty by the Company of any obligation in respect of borrowed money or otherwise;

(iii) contracts continuing over a period of more than one year from the date thereof that are not terminable by the Company upon thirty (30) or fewer days' notice without penalty;

(iv) agreements with any employee, officer or consultant that require the Company to pay compensation to such employee, officer or consultant; and

(v) powers of attorney executed on behalf of the Company.

(b) No Breach, Etc. Except as set forth in Section 4.11(b) of the Disclosure Schedules, (i) the Company has not breached any contract set forth in Section 4.11(a) of the Disclosure Schedules, and to the Company's Knowledge, no contract set forth in Section 4.11(a) of the Disclosure Schedules has been materially breached in any respect or cancelled by the other party and has not been duly cured or reinstated, (ii) the Company is not in receipt of any written claim of default under any such contract, agreement or arrangement and (iii) to the Company's Knowledge, no event has occurred that with the passage of time or the giving of notice or both would result in a material breach or default under any such contract, agreement, matter or arrangement. To the Company's Knowledge, each contract and commitment listed in Section 4.11(a) of the Disclosure Schedules is valid, binding, in full force and effect, and enforceable against the Company and against the other party thereto and will continue to be legal, valid, binding, in full force and effect, and enforceable following the consummation of the transactions contemplated by this Agreement without obtaining any consent, including with respect to any deemed assignment or transfer, and without the payment of any penalties, special assessments, or other amounts as a result of the Company entering into this Agreement or the consummation of the transactions contemplated hereby. With respect to each contract and commitment listed in Section 4.11(a) of the Disclosure Schedules, the Company has delivered to the Parent a correct and complete copy of each written contract and commitment (as amended to date) and a written summary setting forth the terms and conditions of each oral contract and commitment.

4.12. Patents and Other Intangible Rights.

(a) Disclosure. Section 4.12(a) of the Disclosure Schedules sets forth a complete and accurate list of all (i) patents and pending patent applications, registered trademarks and pending trademark applications, registered service marks and pending service mark applications, registered copyrights and pending copyright applications, trade names, domain names and material unregistered trademarks owned by the Company (collectively, along with the other Intellectual Property owned by the Company, the "Company Intellectual Property") and (ii) material licenses and releases of rights to the Intellectual Property of others (collectively, the "Licensed Intellectual Property") and assignments. The Company Intellectual Property and the Licensed Intellectual Property include all Intellectual Property necessary for operation of the Company Business, except as set forth in Section 4.12(d) of the Disclosure Schedules.

(b) Title. Except as set forth in Section 4.12(b) of the Disclosure Schedules, the Company owns full and unencumbered right to the Company Intellectual Property, free and clear of all Liens other than Permitted Liens and Liens described in Section 4.12(b) of the Disclosure Schedules. The Company has the right to use pursuant to a valid and enforceable written license, sublicense, agreement or permission all Licensed Intellectual Property. The inventorship named in each patent and patent application listed in Section 4.12(a) of the Disclosure Schedules is correct and complete. The Company Intellectual Property (other than Software and unregistered trademarks and trade names) identified on Section 4.12(a) of the Disclosure Schedules is validly registered, held and/or recorded in the name of the Company, and not subject to any pending cancellation or reexamination proceeding. No college, university or other educational or research institution or agency, Governmental Authority, or other organization which sponsored research and development conducted by the Company has any claim of right or license to, or ownership of, or other encumbrance upon the Company Intellectual Property. Each item of Company Intellectual Property and Licensed Intellectual Property owned or used by the Company immediately prior to the Closing will be owned or available for use by the Company on identical terms and conditions immediately subsequent to the Closing.

(c) Licenses. All Intellectual Property licenses granted to the Company by third parties are in full force and effect and, to the Company's Knowledge, enforceable in accordance with their terms, and no material default exists or is threatened thereunder by the Company, or to the Knowledge of the Company, by any other Person. The Company has not granted any right or license to any of the Company Intellectual Property to any Person.

(d) No Infringement. To the Knowledge of the Company, the Company Intellectual Property, Company Products and services and the Company Business as presently conducted and presently proposed to be conducted do not infringe or misappropriate or otherwise violate the valid Intellectual Property rights of any other Person. Except as set forth in Section 4.12(d) of the Disclosure Schedules, there is no Proceeding pending, or, to the Knowledge of the Company, threatened against the Company, and no third party is or has asserted in writing any claim against the Company (i) challenging or seeking to deny or restrict the rights of the Company in any Company Intellectual Property, or (ii) alleging that the Company or any employee or independent contractor or agent of the Company has infringed, misappropriated or otherwise violated any Intellectual Property right of any other Person. To the Knowledge of the Company, there is no fact or basis for any such claim, including those described in Section 4.12(d) of the Disclosure Schedules. The Company has never tendered a defense of any other Person for or against any claim related to any claim that any Company Intellectual Property infringed, misappropriated or otherwise violated any Intellectual Property right of any other Person. To the Company's Knowledge, the Company is not making unlawful or unauthorized use of any Intellectual Property of any past or present employees, founders, consultants, or independent contractor of the

Company. The Company is not undertaking, or contemplating the undertaking of, any patent interference proceedings with respect to the Intellectual Property of any third party. To the Knowledge of the Company, no third party has infringed upon, misappropriated, or otherwise violated any Company Intellectual Property right. The Company has not sent any written notice to any Person alleging that such Person infringed upon, misappropriated or otherwise violated any Company Intellectual Property right.

(e) Assignment of Rights. All right, title and interest to the Company Intellectual Property conceived or developed by any employee, officer, independent contractor, consultant or other Person during the period of his, her or its employment, contracting, consulting or advisory relationship with the Company has been properly assigned to the Company.

(f) Protection of Intellectual Property.

(i) To the Company's Knowledge, all Trade Secrets and other confidential information of the Company are not part of the public domain or public knowledge, nor, to the Knowledge of the Company, have they been used, divulged or appropriated for the benefit of any Person other than the Company or otherwise to the detriment of the Company. To the Company's Knowledge, no employee or consultant of the Company has, without proper authorization, used any Trade Secrets or other confidential information or Intellectual Property of any third party in the course of their work for the Company.

(ii) The Company has taken all commercially reasonable steps necessary to protect and maintain all Company Intellectual Property, other than certain patent or trademark applications the Company has decided to abandon. Section 4.12(f) of the Disclosure Schedules lists such applications that the Company has abandoned. The Company has taken all commercially reasonable steps necessary to preserve the confidentiality of all Company confidential information and Trade Secrets. Without limiting the foregoing, (i) each current and former employee of the Company, has assigned or otherwise transferred to the Company in writing all ownership and other rights of any nature whatsoever (to the extent permitted by Law) of such employee in any Intellectual Property arising from or directed to any activities in which such employee was engaged during its employment with the Company, (ii) each current and former consultant and independent contractor of the Company has assigned or transferred to the Company in writing all ownership and other rights of any nature whatsoever (to the extent permitted by Law) of such Person in any Intellectual Property arising from or directed to any activities it performed for the Company and (iii) each current and former employee, consultant and independent contractor that has had access to confidential information or Trade Secrets of the Company has entered into a confidentiality agreement with the Company which requires such Person to protect the confidential information and Trade Secrets of the Company, including source code.

(g) Licensed Intellectual Property. Section 4.12(g) of the Disclosure Schedules contains a complete and correct list of all Software owned by the Company or licensed to the Company (other than off the shelf, shrink wrap Software purchased for less than $1,000), specifying as to each such item, as applicable, the name of the owner, registered owner, jurisdiction of application and/or registration, application and/or registration number and date of application or registration.

(h) Open Source. None of the material Company Intellectual Property constitutes, incorporates, integrates, bundles or uses open source, or freeware software code or any

modification or derivative work thereof, including any version of any software licensed pursuant to any GNU general public license or limited general public license, or other software that is licensed pursuant to a license that purports to require the distribution of, or access to, source code of any Company Intellectual Property or purports to restrict the Company's ability to charge for distribution or use of Software.

4.13. Permits. Except as set forth in Section 4.13 of the Disclosure Schedules, the Company owns or possesses all right, title and interest in and to all of the material Permits that are necessary to own and operate the business of the Company as presently conducted. The Company is in compliance with the material terms and conditions of such Permits and the Company has received no written notices that it is in violation of any of the terms or conditions of such Permits.

4.14. Litigation; Proceedings. Except as set forth in Section 4.14 of the Disclosure Schedules, there are no actions, suits, proceedings, hearings, orders, investigations, charges, complaints or claims ("Actions") pending or, to the Knowledge of the Company, threatened against the Company, any of its assets or the business of the Company.

4.15. Compliance with Laws. Except as set forth in Section 4.15 of the Disclosure Schedules, the Company is in compliance with each applicable Law relating to the Company or its business or properties, including, but not limited to, applicable Healthcare Laws and Information Laws. Except as set forth in Section 4.15 of the Disclosure Schedules, no written notice has been received by the Company from any Governmental Authority or any Person alleging a violation of or Liability under any applicable Law.

4.16. Environmental Matters. Except as set forth in Section 4.16 of the Disclosure Schedules, (a) the Company is in compliance with all Environmental Laws, (b) the Company has not received any written notice from any Governmental Authority regarding any violation of, or any Liability for property damage, penalties, response costs or investigatory or remedial obligations arising under, any Environmental Law with respect to the Leased Real Property or the operations of the Company and (c) the Company has not handled or Released any Hazardous Materials so as to give rise to any Liabilities for remedial obligations pursuant to Environmental Laws.

4.17. Labor Matters. The Company is not bound by or subject to (and none of its assets or properties is bound by or subject to) any written or oral, express or implied, contract, commitment or arrangement with any labor union, and no labor union has requested or, to the Company's Knowledge, has sought to represent any of the employees, representatives or agents of the Company. There is no strike or other labor dispute involving the Company pending, or to the Company's Knowledge, threatened, nor does the Company have Knowledge of any labor organization activity involving its employees. To the Company's Knowledge, no officer or key employee, or any group of key employees, intends to terminate their employment with the Company, nor does the Company have a present intention to terminate the employment of any of the foregoing. The employment of each officer and employee of the Company is terminable at the will of the Company. To its Knowledge, the Company has complied in all material respects with all applicable state and federal equal employment opportunity and other laws related to employment. Other than as contemplated by the Stock Option Plan or as set forth in Section 4.7 of the Disclosure Schedules, the Company is not a party to or bound by any currently effective separation, severance, deferred compensation agreement, bonus plan, incentive plan, profit sharing plan, retirement agreement, or other employee compensation or benefit agreement. Except as set forth in Section 4.17 of the Disclosure Schedules, the Company is current in its payments to its employees for any wages, salaries, commissions, bonuses or other direct compensation for any services performed by them to date or amounts required to be reimbursed to such employees or upon any termination of the employment of any such employee.

4.18. Employee Benefit Plans.

(a) Section 4.18(a) of the Disclosure Schedules sets forth a true and complete list or description of each material employee benefit plan, arrangement, policy, program or agreement and any amendments or modifications thereof (including any stock purchase, stock option, stock incentive, severance, employment, change-in-control, health/welfare plans, fringe benefit, bonus, incentive, deferred compensation, pension and other agreements, programs, policies and arrangements), whether formal or informal, oral or written, whether or not subject to ERISA, which is currently in effect and sponsored, maintained, contributed to, or required to be contributed to by Company and, with respect to any such plans which are subject to Section 401(a) of the Code, any trade or business (whether or not incorporated) that is or at any relevant time was treated as a single employer with Company within the meaning of Section 414(b), (c), (m) or (o) of the Code (an " ERISA Affiliate"), for the benefit of any person who performs or who has performed services for Company and with respect to which Company or any ERISA Affiliate has any material Liability or obligation (collectively, the "Company Benefit Plans").

(b) Except as set forth in Section 4.18(b) of the Disclosure Schedule, the Company has previously provided or made available to Parent true and complete copies of each of the Company Benefit Plans and each of the following (if applicable): (i) the most recent actuarial valuation report for each Company Benefit Plan, (ii) the most recent determination letter from the Internal Revenue Service (" IRS") for each Company Benefit Plan, (iii) any summary plan description by the Company concerning the extent of the benefits provided under a Company Benefit Plan, (iv) any related trust agreement or other funding instrument, and (v) the Form 5500, including the attached schedules, required to have been filed with the IRS filed for the last three (3) plan years.

(c) Neither the Company nor any ERISA Affiliate has ever maintained or is required to contribute to any Company Benefit Plan that (i) is a "multiemployer plan" as defined in Sections 3(37) of ERISA, (ii) is subject to the funding requirements of Section 412 of the Code or Title IV of ERISA, or (iii) provides for post-retirement medical, life insurance or other welfare-type benefits (other than as required by Part 6 of Subtitle B of Title I of ERISA or Section 4980B of the Code or under a similar state Law).

(d) The Company Benefit Plans and their related trusts intended to qualify under Sections 401 and 501(a) of the Code are subject to current favorable determination or opinion letters from the IRS and, to the Company's Knowledge, nothing has occurred that is reasonably likely to result in the revocation of such letter, except where the failure to so comply would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect on the Company.

(e) The Company Benefit Plans have been maintained and administered in all material respects in accordance with their terms and applicable Laws. Company and each ERISA Affiliate are not in material default under or material violation of, and have no knowledge of any material default or material violation by any other party to, any of the Company Benefit Plans. Company has not engaged in, or participated in, any transaction

which would be considered a non-exempt "prohibited transaction," as such term is defined in Section 406 of ERISA or Section 4975 of the Code, and to Company's knowledge, no other third-party fiduciary and/or party-in-interest has engaged in any such "prohibited transaction" with respect to any Company Benefit Plan. Neither Company nor any ERISA Affiliate is subject to any Liability or penalty under Sections 4976 through 4980 of the Code or Title I of ERISA with respect to any Company Benefit Plan. All contributions required to have been made by Company or any ERISA Affiliate to any Company Benefit Plan as of the date of this Agreement have been paid or accrued. Each Company Benefit Plan subject to ERISA has prepared in good faith and timely filed all requisite governmental reports, which were true and correct in all material respects as of the date filed, and has properly and timely filed and distributed or posted all notices and reports to employees required to be filed, distributed or posted with respect to each such Company Benefit Plan.

(f) There are no suits, actions, disputes, claims (other than routine claims for benefits), arbitrations, administrative or other proceedings pending or, to the Company's Knowledge, threatened with respect to any Company Benefit Plan or any related trust or other funding medium thereunder or with respect to the Company as the sponsor or fiduciary thereof or with respect to any other fiduciary thereof, which would reasonably be expected to have a Material Adverse Effect on the Company.

4.19. Absence of Undisclosed Liabilities. Except as set forth in Section 4.19 of the Disclosure Schedules, the Company does not have any Liabilities or obligations other than (a) as reflected in the Interim Financial Statements (including the related notes thereto), (b) Liabilities incurred after the date of such Interim Financial Statements in the ordinary course of business, (c) contractual and other liabilities of a type not required to be reflected on a consolidated balance sheet of the Company prepared in accordance with GAAP to the extent that such contract liabilities exist under contracts are listed on Schedule 4.11, except that no representation is made with respect to contract liabilities under contracts not required to be listed under Section 4.11, and (d) Company Transaction Expenses.

4.20. Tax Matters.

(a) The Company has filed all Tax Returns as required by Law. These Tax Returns are correct and complete in all material respects. The Company has paid all Taxes due (whether or not shown on any Tax Return), except those contested by it in good faith that are listed in Section 4.20 of the Disclosure Schedules. The Company has not elected pursuant to the Code to be treated as a Subchapter S corporation or a collapsible corporation pursuant to Section 1362(a) or Section 341(f) of the Code, nor has it made any other elections pursuant to the Code (other than elections that relate solely to methods of accounting, depreciation or amortization) that would have a Material Adverse Effect on the Company. The Company has never had any Tax deficiency proposed or assessed against it and has not executed any waiver or extension of any statute of limitations on the assessment or collection of any Tax. None of the Company's Tax Returns have ever been audited by any Taxing Authority, and no audit by any Taxing Authority of the Company's Tax Returns is pending. Section 4.20 of the Disclosure Schedules lists all federal, state, local, and non-U.S. income Tax Returns filed with respect to the Company for taxable periods ending on or after December 31, 2005. The Company has delivered to Parent correct and complete copies of all federal, state, local and non-U.S. income Tax Returns of the Company filed since December 31, 2005. No claim has ever been made by an authority in a jurisdiction where the Company does not file Tax Returns that the Company is or may be subject to taxation by that jurisdiction. There are no Liens for Taxes (other than Taxes not yet due and

payable) upon any of the assets of the Company. Since December 31, 2010, the Company has not incurred any Taxes other than in the ordinary course of business and the Company has made adequate provisions on its books of account for all Taxes with respect to its business, properties and operations for such period. The Company has withheld or collected from each payment made to each of its employees, consultants, contractors, stockholders, creditors and other third parties the amount of all Taxes (including, but not limited to, income taxes, Federal Insurance Contribution Act taxes and Federal Unemployment Tax Act taxes) required to be withheld or collected therefrom, and has paid the same to the proper tax receiving officers or authorized depositories.

(b) Except as set forth on Section 4.20 of the Disclosure Schedules, the Company is not a party to any agreement, plan, arrangement or other contract covering any employee or independent contractor or former employee or independent contractor that, individually or collectively with any other such contracts, would reasonably be expected to give rise directly or indirectly to the payment of (i) any amount that would not be deductible pursuant to Section 280G of the Code (or any comparable provision of state or foreign Tax laws), or (ii) any amount that will not be fully deductible as a result of Section 162(m) of the Code (or any comparable provision of state or foreign Tax laws). The Company has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code. The Company has disclosed on its federal income Tax Returns all positions taken therein which could give rise to a substantial understatement of federal income Tax within the meaning of Section 6662 of the Code. The Company is not a party to nor is it bound by any Tax allocation or sharing agreement. The Company (A) has not been a member of an affiliated group (within the meaning of Section 1504(a) of the Code) filing a consolidated federal income Tax Return and (B) has no Liability for the taxes of any Person other than the Company under Treasury Regulation Section 1.1502-6 (or any comparable provision of state or foreign Tax laws), as a transferee or successor, by contract or otherwise.

(c) Section 4.20 of the Disclosure Schedules sets forth the following information with respect to the Company as to the date set forth therein: the amount of any net operating loss, net capital loss, unused investment or other credit, or unused foreign tax credit, and information, including dates amounts of all material changes in capitalization and the enterprise valuation on each such date, to determine the portion of any such net operating loss that is subject to limitation under Section 382 and 383 of the Code.

(d) The Company will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or a portion thereof) ending after the Closing Date as a result of any:

(A) change in method of accounting for a taxable period ending on or prior to the Closing Date;

(B) "closing agreement" as described in Section 7121 of the Code (or any comparable provision of state or foreign Tax laws) executed on or prior to the Closing Date;

(C) installment sale or open transaction disposition made on or prior to the Closing Date;

(D) prepaid amounts for the sale of Company Products received on or prior to the Closing Date; or

(E) election under Section 108(i) of the Code.

(e) The Company has not distributed stock of another Person and has not had its stock distributed by any other Person, in a transaction that was purported or intended to be governed in whole or in part by Sections 355 or 361 of the Code.

(f) The Company has not been a party to any "reportable transaction" as defined in Section 6707(A)(c)(1) of the Code and Treasury Regulation Section 1.6011-4(b).

(g) The Company does not have a permanent establishment (within the meaning of an applicable Tax treaty) or otherwise have an office or fixed place of business in a country other than the United States.

(h) The Company has not received any private letter ruling from the Internal Revenue Service (or any comparable ruling from any other Taxing Authority).

(i) Except as set forth in Section 4.20(h) of the Disclosure Schedules, neither Company nor any of its subsidiaries is a party to any Contract that is a "nonqualified deferred compensation plan" subject to Section 409A of the Code and the regulations and other guidance promulgated thereunder (unless such Contract complies with an exemption or exception to Code Section 409A). Neither Company nor any of its subsidiaries is a party to, or otherwise obligated under, any Contract that provides for a gross up of Taxes imposed by Section 409A of the Code. Each nonqualified deferred compensation plan maintained or sponsored by Company or any of its subsidiaries (as defined in Section 409A(d)(1) of the Code) has since (i) January 1, 2005, been maintained and operated in good faith compliance with Section 409A of the Code and Notice 2005-1, (ii) October 3, 2004, not been "materially modified" (within the meaning of Notice 2005-1), and (iii) January 1, 2009, been in documentary and operational compliance with Section 409A of the Code.

(j) As of the Closing, the unpaid Taxes of the Company do not exceed the reserve for Tax Liabilities set forth on the Closing Balance Sheet.

4.21. Insurance. The Company has in full force and effect fire and casualty insurance policies sufficient in amount (subject to reasonable deductibles) to allow it to replace any of its properties that might be damaged or destroyed. Section 4.21 of the Disclosure Schedules sets forth a list of all policies of fire, casualty, general liability, worker's compensation, vehicular or other insurance held by the Company and all of such policies are in full force and effect, are from established insurers of recognized responsibility insuring against such losses and risks, are in coverage amounts customary for corporations engaged in a similar business with similar resources and provide insurance adequate to comply with all contracts of the Company and all applicable requirements of Law. The Company is not in default with respect to any material provision contained in any such policy and has not failed to give any notice or present any material claim of which it has notice under any such policy in a timely fashion. The Company has not received or given a notice of cancellation or nonrenewal with respect to any such policy and all premiums for such policies have been paid when due. Except as set forth in Section 4.21 of the Disclosure Schedules, none of such policies will be affected by, or terminate or lapse by reason of, any transaction contemplated by this Agreement or the transactions contemplated hereby.

4.22. Related Party Transactions. Except as set forth in Section 4.22 of the Disclosure Schedule, no employee, officer, or director of the Company (a "Related Party") or member of such Related Party's immediate family, or any corporation, partnership or other entity in which such Related Party is an officer, director, member or partner, or in which such Related Party has significant ownership interests or otherwise controls, is indebted to the Company, nor is the Company indebted to any of them. To the Company's Knowledge, none of such Persons has any direct or indirect ownership or voting interest in any Person (including as a director or manager) with which the Company is affiliated or with which the Company has a business relationship, or any Person that competes with the Company, except that employees, officers, or directors of the Company and members of such Related Party's immediate families may own stock in publicly traded companies that may compete with the Company. No Related Party or member of their immediate family is directly or indirectly interested in any contract set forth in Section 4.11(a) of the Disclosure Schedules.

4.23. Books and Records. In all material respects: the copies of the minute books of the Company provided to Parent are true and accurate copies; contain a complete summary of all meetings and actions of the Company Board and stockholders since the date of incorporation of the Company; and reflect all transactions referred to in such minutes accurately.

4.24. Product Regulatory Review. Section 4.24 of the Disclosure Schedules sets forth a true, complete and accurate list of the Company Products together with the status of each filing or application filed with the United States Food and Drug Administration (the " FDA") and any other comparable foreign Governmental Authority with respect to the Company Products. Except as set forth on Schedule 4.24 of the Disclosure Schedules:

(a) The Company Business is being conducted in substantial compliance with all medical device Laws, including (i) the federal Food, Drug, and Cosmetic Act, as amended (including the rules and regulations promulgated thereunder, the " FDCA"), (ii) any comparable foreign Laws and (iii) state licensing, disclosure and reporting requirements

(b) All such Company Products are being researched, developed, manufactured, tested, distributed and/or marketed in compliance in all material respects with all applicable requirements under the FDCA and similar Laws and regulations applicable to such Company Products, including those relating to investigational use, premarket approval, good manufacturing practices, labeling, advertising, record keeping, filing of reports and security. All pre-clinical and clinical investigations conducted or sponsored by the Company are being conducted in compliance in all material respects with all applicable Laws administered or issued by the applicable Governmental Authorities, including (i) FDA standards for conducting non-clinical laboratory studies contained in Title 21 part 58 of the Code of Federal Regulations and (ii) applicable FDA standards for the design, conduct, performance, monitoring, auditing, recording, analysis and reporting of clinical trials contained in Title 21 parts 50, 54, 56, 812 and 820 of the Code of Federal Regulations. The Company has not received any written information from the FDA or any other Governmental Authority with jurisdiction over the marketing, sale, use handling and control, safety, efficacy, reliability, or manufacturing of the Company Products which expressly threatened the denial of any application for marketing approval currently pending before the FDA or such other Governmental Authority.

(c) As to each of the Company Products subject to the FDCA and the regulations of the FDA promulgated thereunder, or similar foreign Laws and regulations that is or has been developed, manufactured, tested, distributed and/or marketed by or on behalf of the Company, each such Company Product is being or has been developed, manufactured, tested, distributed and/or marketed in substantial compliance with all applicable requirements under the FDCA and the regulations of the FDA promulgated thereunder, and similar foreign Laws and regulations,

including those relating to investigational use, or marketing approval to market a Company Product, good manufacturing practices, good clinical practices, good laboratory practices, labeling, advertising, record keeping, filing of reports and security.

(d) There have been no recalls, field notifications or seizures ordered or adverse regulatory actions taken or threatened in writing by the FDA or any other Governmental Authority with respect to any of the Company Products, including any facilities where any such products are produced, processed, packaged or stored.

(e) The Company has not received any written notice or other written communication that (i) the FDA or any other Governmental Authority has commenced, or threatened to initiate, any action to withdraw its investigational device exemption, premarket clearance, premarket approval, CE marking, rights or other approval or request the recall of any Company Product or (ii) alleges any violation of applicable Law by the Company. The Company has not received any notice or other communication from the FDA or any other federal, state or foreign Governmental Authority (i) contesting the premarket approval of, the uses of or the labeling and promotion of any such product or (ii) otherwise alleging any violation by the Company of any Law, regulation or other legal provision applicable to any such Company Product.

(f) Neither the Company, nor any officer, employee or agent of the Company, has made an untrue statement of a material fact or fraudulent statement to the FDA or other federal, state or foreign Governmental Authority performing similar functions or failed to disclose a material fact required to be disclosed to the FDA or such other federal, state or foreign Governmental Authority or committed an act, made a statement, or failed to make a statement that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA or any other Governmental Authority to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities", set forth in 56 Fed. Reg. 46191 (September 10, 1991) or any similar policy. All material reports, documents, claims, permits and notices required to be filed, maintained or furnished to the FDA or any other Governmental Authority by the Company and have been so filed, maintained or furnished. All such reports, documents, claims, permits and notices were complete and accurate in all material respects on the date filed (or were corrected in or supplemented by a subsequent filing) such that no Liability exists with respect to such filing.

(g) The Company has not applied for, and its business and activities with respect to such Company Product does not require, any approvals, clearances, authorizations, licenses and registrations required by the U.S. Federal Government or its agencies to permit the activities (including pre-clinical testing) undertaken by the Company to date (the " Activities to Date") in jurisdictions where the Company currently conducts, in the past conducted or currently proposes to conduct such activities. The Company is in compliance with all applicable Laws, rules and regulations pertaining to the Activities to Date.

(h) The studies, non-clinical laboratory studies, tests, preclinical trials, and clinical trials, if any, conducted by or on behalf of, or (if applicable) sponsored by, the Company were and, to the extent still pending, are being, conducted in accordance with experimental protocols, procedures and controls pursuant to, where applicable, standard medical and accepted professional scientific research procedures and standards. The Company has not received any notices or correspondence from the FDA or any other Governmental Authority exercising comparable authority requiring or requesting the termination, suspension or material modification of any such study, test or trial. The Company has no Knowledge of any other studies or tests the results of which are inconsistent with or otherwise call into question the results of the above

referenced tests. The Company has operated and currently is in compliance with all applicable FDA rules and regulations and the Company has not received any notices or other correspondence from the FDA or any other Governmental Authority requiring the termination, suspension or modification of any of the above referenced feasibility, preclinical or clinical studies or tests.

4.25. Products and Materials.

(a) The Company has disclosed to Parent:

(i) To the Knowledge of the Company, all sole sources of supply for any raw material, supply or component part required in connection with any of the Company Products or the Company Business, indicating the contractual arrangements for continued supply from each such Person, and whether practical alternative sources of supply are available on comparable terms and conditions;

(ii) All locations at which assets, tangible and intangible, of the Company are located (including locations owned or controlled by third parties); and

(iii) All locations at which any of the Company Products clinical or other trials (including observational studies) are being conducted.

(b) The Company has granted access to, or made available to Parent a true, correct and complete copy of full documentation in the Company's possession, relating to all present and past Company Products clinical or other human trials (including observational studies), consistent with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended, and other such laws governing privacy of human subjects.

(c) Except as set forth in the Disclosure Schedules, with respect to any raw material, supply or component part for which the Company relies on a single source of supply, to the Company's Knowledge, no facts or circumstances exist, that with the passage of time or notice, after the Closing, the Company would not be able to obtain such item(s) from the sole source supplier(s) on comparable terms and in reasonably sufficient amounts to conduct the Company Business in the ordinary course.

(d) Section 4.25(d) of the Disclosure Schedules is a true, correct and complete list of the Machinery and Equipment as of the date of this Agreement, including, with respect to each item, the original cost, the acquisition date, the accumulated depreciation and the net book value of each such item.

(e) Each of the Company Products manufactured, sold, leased, or delivered by the Company has been in conformity with all applicable contractual commitments and all express and implied warranties with respect to such product. To the Company's Knowledge, the Company has no Liability (and there is no basis for any present or future action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand against any of them giving rise to any Liability) for replacement or repair of any of the Company Products or other damages in connection therewith, subject only to the reserve for product warranty claims set forth on the face of the Unaudited Balance Sheet. Section 4.25(e) of the Disclosure Schedules includes copies of the standard terms and conditions of sale for each of the Company Products (containing applicable guaranty, warranty, and indemnity provisions). None of the Company Products manufactured, sold, leased, or delivered by the Company is subject to any guaranty, warranty, or other indemnity beyond the applicable standard terms and conditions of sale forth in Section 4.25(e) of the Disclosure Schedules.

(f) The Product Specifications and Manufacturing Documentation (a copy of which has been made available to Parent) is complete and accurate in all material respects. The Product Specifications and Manufacturing Documentation includes all data and know-how used or held for use by the Company to manufacture the Company Products and is current, accurate in all material respects, and sufficient in detail and content to identify and explain the designs, concepts and processes described therein and to permit a reasonably skilled person to manufacture any Company Product immediately following the Closing without requiring assistance or information from the Company or any other Person.

(g) No Conflict Minerals are necessary to the functionality or production of or are used in the production of any product manufactured or contracted to be manufactured by the Company, or currently proposed to be manufactured by the Company or on its behalf in the future.

4.26. Internal Controls. The Company maintains accurate books and records reflecting their assets and Liabilities and maintain proper and adequate internal accounting controls which provide reasonable assurance that (a) transactions are executed with management's authorization; (b) transactions are recorded as necessary to permit preparation of the consolidated financial statements of the Company in accordance with GAAP and to maintain accountability for the Company's consolidated assets; (c) access to the Company's assets is permitted only in accordance with management's authorization; (d) the reporting of the Company's assets is compared with existing assets as necessary to permit preparation of the consolidated financial statements of the Company in accordance with GAAP and to maintain accountability for the Company's consolidated assets; (e) accounts, notes and other receivables, inventory and payables are recorded accurately, and adequate procedures are implemented to effect the collection and payment thereof, as applicable, on a timely basis; and (f) there are adequate procedures in place regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets. Except as set forth in Section 4.26 of the Disclosure Schedules, as of the date of this Agreement, (i) there are no deficiencies in the design or operation of the Company's internal controls over financial reporting which could have an adverse effect in any respect on the Company's ability to record, process, summarize and report consolidated financial data or material weaknesses in internal controls over financial reporting and (ii) there has been no fraud, whether or not material, that involved management or other employees of the Company who have a significant role in the Company's internal controls over financial reporting.

4.27. Commercial Relationships. Except as set forth in Section 4.27 of the Disclosure Schedules, no supplier that is material to the Company Business has terminated or adversely modified its relationship with the Company and the Company has not received nor does the Company have Knowledge that any material supplier intends to terminate or materially adversely modify such relationship, in any event since the date of the Interim Financial Statements.

4.28. No Brokers. Except as disclosed in Section 4.28 of the Disclosure Schedules, no Person is entitled to receive any brokerage commissions, finders fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made or alleged to have been made by or on behalf of the Company.

4.29. Indebtedness. As of the date of this Agreement, all Indebtedness of the Company is listed in Section 4.29 of the Disclosure Schedules. Notwithstanding the foregoing, in no event will any item actually included in the computation of the final Closing Net Working Capital Amount or the final Closing Indebtedness amount that is not disclosed in Section 4.29 of the Disclosure Schedules be considered a breach of this Section 4.29.

4.30. Anti-Bribery Laws. The Company has not received any written communication from any Governmental Authority that alleges that the Company, or any current or former employee, agent, representative, sales person or consultant thereof, is or may be, in material violation of, or has, or may have, any material Liability under, Anti-Bribery Laws in relation to the Company's Business, and, to the Knowledge of the Company, no such potential violation of Anti-Bribery Laws has been discovered by or brought to the attention of the Company at any time during the past five years. The Company has no pending or anticipated disclosures to any Governmental Authority for potential violations of Anti-Bribery Laws. The Company has not, nor to the Company's Knowledge has, any of their respective current or former officers, directors, employees, contractors, subcontractors, leased employees, consultants, agents or representatives, directly or indirectly, offered, given, reimbursed, paid or promised to pay, or authorized the payment of, any money or other thing of value (including any fee, gift, sample, travel expense or entertainment with a value in excess of one hundred dollars ($100.00) in the aggregate to any one individual in any year) or any commission payment payable to (i) any Person who is an official, officer, agent, employee or representative of any Governmental Authority or of any existing or prospective customer (whether or not owned by a Governmental Authority), (ii) any political party or official thereof, (iii) any candidate for political office or political party office or (iv) any other Person affiliated with any such customer, political party or official or political office, in each case while knowing or having reason to believe that all or any portion of such money or thing of value would be offered, given, reimbursed, paid or promised, directly or indirectly, for purposes not allowable under the Anti-Bribery Laws, to any such official, officer, agent, employee, representative, political party, political party official, candidate, individual, or other Person affiliated with any such customer, political party or official or political office. For the purposes of this Section of the Agreement, "Anti-Bribery Laws" shall mean the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., the Anti-Kickback Act of 1986, the UK Bribery Act of 2010, the Organization for Economic Cooperation and Development Convention Against Bribery of Foreign Public Officials in International Business Transactions and legislation implementing such convention, all other international anti-bribery conventions and all applicable anti-corruption or bribery Laws (including any applicable written statements, requirements, directives or policies of any Governmental Authority) in any jurisdiction in which the Company has conducted its business. Except as set forth in Section 4.30 of the Disclosure Schedules, the Company has not sold, directly or indirectly, any Company Product to any foreign Person.

4.31. No Other Representations and Warranties. Except for the representations and warranties expressly set forth in this Article IV (as modified by the Disclosure Schedules), none of the Company, the Company Stockholders or any of their respective Affiliates or any Person acting on behalf of any of the foregoing makes or has made any other express or any implied representation or warranty to Parent as to the accuracy or completeness of any information regarding the Company, the Company Stockholders, the transactions contemplated by this Agreement or any other matter, and the Company disclaims any other representations or warranties, whether made by the Company, the Company Stockholders or any of their respective Affiliates, officers, directors, employees, agents or representatives. No statement in Article IV of this Agreement or in the Disclosure Schedules contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements contained herein or therein not misleading as of the date hereof.

## ARTICLE V.

## REPRESENTATIONS AND WARRANTIES OF THE PARENT AND MERGER SUB

Each of the Parent and Merger Sub represents and warrants to the Company that:

5.1. Organization and Power. The Parent is a corporation validly existing and in good standing under the Laws of the State of Florida. Merger Sub is a corporation validly existing and in good standing under the Laws of the State of Delaware. Each of the Parent and Merger Sub has all requisite corporate power and corporate authority to execute and deliver this Agreement and to perform its obligations hereunder.

5.2. Authorization. The execution, delivery and performance by the Parent and Merger Sub of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all requisite corporate action. This Agreement has been duly executed and delivered by the Parent and Merger Sub, and this Agreement upon execution and delivery by the Parent and Merger Sub will constitute valid and binding obligations of both the Parent and Merger Sub, enforceable against both the Parent and Merger Sub in accordance with the terms hereof, except as the enforcement may be affected by bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other Laws relating to or limiting creditors' rights generally or by general principles of equity, regardless of whether such enforceability is considered in a proceeding at law or in equity.

5.3. Board Approval. The respective boards of directors of the Parent and Merger Sub have (a) determined that this Agreement and the consummation of the Merger are advisable, and (b) approved and adopted this Agreement and the transactions contemplated by this Agreement, including the Merger. No other corporate proceedings on the part of the Parent or Merger Sub are necessary to authorize the Merger.

5.4. No Violation.

(a) The execution, delivery and performance by the Parent and Merger Sub of this Agreement and the consummation of each of the transactions contemplated hereby will not (i) violate or conflict with any provision of the certificate of incorporation or bylaws (or similar governing documents) of either the Parent or Merger Sub, (ii) assuming satisfaction of the requirements set forth in Section 5.4(b), violate any Law or Order to which either the Parent or Merger Sub is subject or (iii) violate, breach or constitute a default under or give rise to a right of termination, modification, cancellation or acceleration of any right or obligation of either the Parent or Merger Sub under, or result in the creation of a Lien on any of the properties or assets of either the Parent or Merger Sub pursuant to, any provision of any agreement, contract, note, bond, mortgage, indenture, or lease or other instrument binding upon either the Parent or Merger Sub or any license, franchise, permit or other similar authorization held by the Parent or Merger Sub.

(b) The execution, delivery and performance by the Parent or Merger Sub of this Agreement and the consummation of each of the transactions contemplated hereby will not require any authorization, consent, approval, exemption or other action by or notice to any Governmental Authority or other Person under the provisions of any Law (except as required under or in relation to the DGCL with respect to the filing of the Certificate of Merger).

5.5. Litigation. There are no Actions pending or, to the Parent's Knowledge, threatened against or affecting either the Parent or Merger Sub, at law or in equity, or before or by any Governmental Authority, domestic or foreign, which would adversely affect either the Parent's or Merger Sub's ability to consummate the Merger contemplated hereby.

5.6. No Brokers. There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made or alleged to have been made by or on behalf of either the Parent or Merger Sub.

5.7. No Business Activities of Merger Sub. All of the outstanding capital stock of the Merger Sub is owned by the Parent. The Merger Sub is not a party to any contract and has not conducted any activities other than in connection with the organization of the Merger Sub, the negotiation and execution of this Agreement and the consummation of the transactions contemplated hereby. The Merger Sub has no Subsidiaries.

5.8. Financing. The Parent has sufficient cash on hand and available credit facilities to pay the Aggregate Consideration Amount hereunder and to pay all of its related fees and expenses.

5.9. Acknowledgement of Parent.

(a) Parent is an informed and sophisticated purchaser and has engaged expert advisors who are experienced in the evaluation of the business, assets, condition and operations of the Company, and has had such access to the personnel and properties of the Company as it deems necessary and appropriate to make such evaluation and purchase.

(b) Parent acknowledges that it has conducted, to its satisfaction, an independent investigation and has agreed to enter into this Agreement based on its own inspection, examination and determination with respect to all matters and without reliance upon any representations, warranties, communications or disclosures of any nature other than those expressly set forth in Article IV of this Agreement (as modified by the Disclosure Schedules).

(c) Except for the representations and warranties expressly set forth in this Article V (as modified by the Disclosure Schedules), none of the Parent or Merger Sub or any of their respective Affiliates or any Person acting on behalf of any of the foregoing makes or has made any other express or any implied representation or warranty to the Company or the Company Stockholders as to the accuracy or completeness of any information regarding Parent, Merger Sub, the transactions contemplated by this Agreement or any other matter, and the Parent and Merger Sub disclaim any other representations or warranties, whether made by the Parent, Merger Sub or any of their respective Affiliates, officers, directors, employees, agents or representatives. No statement in Article V of this Agreement or the Disclosure Schedules contains any untrue statement of a fact or omits to state any fact necessary to make the statements contained herein or therein not misleading as of the date hereof.

## ARTICLE VI.

## COVENANTS

6.1. Commercially Reasonable Efforts. From the date hereof and prior to the Closing Date, each of the parties will take all commercially reasonable efforts to take all actions and to do all things reasonably necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this Agreement (including the satisfaction, but not waiver, of the conditions to Closing set forth in Article VIII). In case, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement, the proper officers and directors of each party to

this Agreement shall use their commercially reasonable efforts to take all such action; provided such covenant shall not be deemed to create any obligation on the part of Parent or Surviving Corporation or any of their respective Affiliates with respect to accomplishing any Earnout Sales or the further marketing or development of any Earnout Qualified Products other than as set forth in Section 3.7(e).

6.2. Conduct of Company Business. From the date hereof and prior to the Closing Date, the Company shall conduct its business only in the usual and ordinary course of business in accordance with the past practice, except (a) as consented to in writing by the Parent (which consent shall not be unreasonably withheld), (b) to the extent required to comply with any Law, (c) as set forth on any of the Disclosure Schedules hereto in the form that have been delivered by the Company on the date of this Agreement or (d) as otherwise contemplated by this Agreement. Without limiting the generality of the foregoing, from the date hereof and prior to the Closing Date, except (i) as consented to in writing by Parent, (ii) to the extent required to comply with any Law, (iii) as set forth in Section 6.3 of the Disclosure Schedules (and subject to any limitations on Section 6.3 of the Disclosure Schedules) or (iv) as otherwise contemplated by this Agreement, the Company shall not:

(a) sell, lease, assign, license or transfer any of its assets, tangible or intangible, other than sales of Company Products in the ordinary course of business consistent with past practices of the Company, or mortgage, pledge or subject them to any Lien;

(b) transfer, assign, or grant any license or sublicense of any of the Company Intellectual Property or any rights thereunder or abandon, dedicate to the public or fail to take action that may result in abandonment or dedication to the public of any of the Company Intellectual Property;

(c) make, grant, promise, adopt, amend or modify any bonus or any wage or salary increase to any employee, officer or director, or make, grant or promise any other change in employment terms for any employee, officer or director, other than benefits or payments in accordance with the terms of any Company Benefit Plan as in effect as of the date hereof;

(d) make any capital investment, expenditure or commitment (or a series of related capital investments, expenditures or commitments) or any loan to any Person;

(e) declare, set aside or pay any dividend or distribution of cash or other property to any Company Stockholder with respect to its equity or purchase, redeem or otherwise acquire any of its equity or any warrants, options or other rights to acquire its equity, or make any other payments to any Company Stockholder;

(f) issue, sell, or otherwise dispose of any of its capital stock (other than shares of Company Common Stock issued upon exercise of a Company Option or conversion of any share of Company Capital Stock);

(g) make any change in any method of accounting or accounting practice, principle or method used by the Company;

(h) make, change or revoke any election or method of accounting with respect to Taxes affecting or relating to the Company;

(i) amend or authorize the amendment of its certificate of incorporation or bylaws;

(j) merge, invest in, consolidate with or acquire the business of any other Person or acquire any property or assets of any other Person;

(k) adopt a plan of complete or partial liquidation or resolutions providing for or authorizing such a liquidation or dissolution, restructuring, recapitalization or reorganization;

(l) settle or compromise any litigation;

(m) enter into or otherwise become party to any contract, arrangement, commitment or understanding, other than sales agreements with respect to the Company's sale of Company Products in the ordinary course of business and on terms and conditions consistent with past practices of the Company; or

(n) commit or agree to do any of the foregoing.

6.3. Access. From the date hereof and prior to the Closing, subject to the provisions of the Confidentiality Agreement, the Company shall permit the Parent and Parent's Affiliates, employees, agents, consultants, accountants and legal counsel to (a) have reasonable access to its premises, facilities, books and records (including Tax records) and all other documents or agreements pertaining to the Company or its business during normal business hours, and (b) visit and inspect any of its properties during normal business hours. The Company will cause the officers, employees, consultants, agents, accountants, attorneys and other representatives of the Company to cooperate with the Parent and the Parent's representatives in connection with such investigation and examination, and the Parent and its representatives will cooperate with the Company and its representatives and will use its commercially reasonable efforts to minimize any disruption to the business. The Parent hereby agrees that it is not authorized to and will not (and will not permit any of its employees, agents, representatives or Affiliates to) contact any supplier, distributor, customer or other material business relation of the Company prior to the Closing without the prior written consent of the Company.

6.4. No Solicitation or Negotiation. The Company will, and will cause its respective officers, directors, representatives and agents (including any investment banker, attorney or accountant retained by it) (collectively, "Company Representatives") to, immediately cease any existing discussions or negotiations, if any, with any Person that may be ongoing with respect to an Acquisition Proposal. The Company will not, and will use its commercially reasonable efforts to cause its Company Representatives not to, directly or indirectly, from the date hereof until the Effective Time or, if earlier, the termination of this Agreement in accordance with the terms of Article IX: (i) solicit, initiate or knowingly encourage an Acquisition Proposal, (ii) furnish or disclose to any Person non-public information with respect to an Acquisition Proposal, (iii) negotiate or engage in substantive discussions with any Person with respect to an Acquisition Proposal, or (iv) enter into any agreement (whether or not binding) or agreement in principle with respect to an Acquisition Proposal. As used in this Agreement: "Acquisition Proposal" means any proposal or offer made by any Person or Persons other than the Parent or any of its Affiliates relating to (A) any merger, consolidation or other business combination to which the Company is a party, (B) any sale, dividend, split or other disposition of any capital stock or other equity interests of the Company (except for issuances of shares of Company Common Stock upon exercise of a Company Option or conversion of any share of Company Capital Stock), (C) any tender offer (including a self tender), exchange offer, recapitalization, restructuring, liquidation, dissolution or similar extraordinary transaction, (D) any sale, dividend or other disposition of all or a material portion of the assets of the Company (including by way of exclusive license or joint venture formation) or (E) any combination of the foregoing.

6.5. Employee Benefit Plans.

(a) As of the Closing Date Parent will (or will cause the Surviving Corporation to) continue the Company Benefit Plans, except as provided in Section 6.6, on substantially the same terms and at the same cost to the employees of the Company as in effect on the Closing Date through at least December 31, 2012.

(b) In the event any Company employee first becomes eligible to participate under any employee benefit plans, programs and policies (including without limitation any plan intended to qualify within the meaning of Section 401(a) of the Code and any vacation, sick, personal time off plans or programs) of Parent ("Parent Benefit Plans") on or prior to the first anniversary of the Effective Time, Parent shall, or shall cause the Surviving Corporation or Merger Sub to: (i) use its commercially reasonable efforts to waive any preexisting condition exclusions and waiting periods with respect to participation and coverage requirements applicable to any Company employee under any Parent Benefit Plan providing medical, dental, or vision benefits to the same extent such limitation would have been waived or satisfied under the Company Benefit Plan the Company employee participated in immediately prior to coverage under the Parent Benefit Plan; and (ii) use its commercially reasonable efforts to provide each Company employee with credit for any copayments and deductibles paid prior to Company employee's coverage under any Parent Benefit Plan during the fiscal year in which such amount was paid, to the same extent such credit was given under the Company Benefit Plan the Company employee participated in immediately prior to coverage under the Parent Benefit Plan, in satisfying any applicable deductible or out-of-pocket requirements under the Parent Benefit Plan. The Surviving Corporation shall use its commercially reasonable efforts to recognize all service of each Company employee prior to the Effective Time for vesting and eligibility purposes (but not for benefit accrual purposes, other than for purposes of calculating vacation, sick leave, paid time off and severance benefits). In no event shall anything contained in this Section 6.5 result in any duplication of benefits for the same period of service.

(c) Nothing in this Section 6.5 or Section 6.6 shall (i) be treated as an amendment of any Company Benefit Plan or any Parent Benefit Plan (or an undertaking to amend any such plan), (ii) prohibit Parent or the Surviving Corporation from amending, modifying or terminating any Company Benefit Plan after the Effective Time or Parent Benefit Plan pursuant to, and in accordance with, the terms thereof (except as may be required in Section 6.5(a) above) or (iii) confer any rights or benefits on any person other than the parties hereto.

6.6. Termination of 401(k) Plans. Effective as of effective as of May 15, 2012, each of Company and any ERISA Affiliate shall terminate (or, if applicable, terminate its participating employer status under) any and all Company Benefit Plans intended to include a Code Section 401(k) arrangement (each, a "401(k) Plan"). Company shall provide Parent with evidence that each 401(k) Plan has been terminated (or, if applicable, that Company has terminated its status as a participating employer in such plans) effective as of May 15, 2012, pursuant to resolutions of the Board of Directors of Company or such ERISA Affiliate, as the case may be; provided, however, that such termination may be made contingent upon the consummation of the transactions contemplated by this Agreement. The form and substance of such resolutions shall be subject to the prior review and approval of Parent (which approval shall not be unreasonably withheld, conditioned or delayed). Company shall take such other actions in furtherance of terminating (or terminating its participating employer status under) each 401(k) Plan as Parent may reasonably require. Employees who are participants in the Company 401(k) Plan will be allowed to rollover their distributions (including any outstanding plan loan that is not in default) from the Company 401(k) Plan into the Parent 401(k) Plan (to the extent such distributions are allowed pursuant to the Company 401(k) Plan).

6.7. Stockholder Approval. As soon as practicable after execution of this Agreement, and in any event on the date hereof:

(a) Company shall use its reasonable best efforts to obtain the Required Stockholder Vote, pursuant to a written stockholder consent, all in accordance with Delaware Law and the Company Certificate or bylaws of Company. In connection with such written stockholder consent, Company shall submit to such stockholders the Soliciting Materials, which shall (i) include a solicitation of the approval of the holders of Company Capital Stock to this Agreement and the Merger, (ii) specify that adoption of this Agreement shall constitute approval by Company stockholders of the appointment of Mitchell Dann as Stockholder Representative, under and as defined in this Agreement, (iii) include a summary of the Merger and this Agreement, (iv) include all of the information required by applicable federal and state securities laws and the DGCL (with any information regarding Parent or the Subs being provided by Parent, for which Parent shall be solely responsible), and (v) include a statement that appraisal rights are available for Company Capital Stock pursuant to Section 262 of the DGCL and a copy of such Section 262. Any materials to be submitted to the Stockholders in connection with the solicitation of their approval of the Merger and this Agreement (the " Soliciting Materials") shall be subject to review and approval by Parent prior to distribution, such approval not to be unreasonably withheld or delayed, and shall also include the unanimous recommendation of the board of directors of Company in favor of the Merger, this Agreement, and the transactions contemplated hereby.

(b) Promptly upon receipt of written consents of its stockholders constituting the Closing Stockholder Vote, Company shall deliver notice of the approval of the Merger by written consent of Company's stockholders, pursuant to the applicable provisions of the DGCL and Company Certificate and bylaws of the Company (the "Stockholder Notice"), to all holders of Company Capital Stock that did not execute such written consent informing them that this Agreement and the Merger were adopted and approved by the stockholders of Company and that appraisal rights are available for their Company Capital Stock pursuant to Section 262 of the DGCL (which notice shall include a copy of such Section 262), and shall promptly inform Parent of the date on which the Stockholder Notice was sent. Notwithstanding the foregoing, Company shall give Company stockholders sufficient notice to the effect that no stockholder will be able to exercise appraisal rights if such stockholder has not perfected such appraisal rights in accordance with Section 262 of the DGCL.

## ARTICLE VII.

## ADDITIONAL AGREEMENTS; COVENANTS AFTER CLOSING

7.1. Indemnification.

(a) Indemnification Obligation.

(i) Indemnification of Parent. Subject to the limitations in this Section 7.1, from and after the Closing, each Company Stockholder and each Company Option Holder (each, a "Company Indemnifying Party"), each of whom shall be severally, and not jointly, liable only to the extent of each Company Indemnifying Party's pro rata interest in the Escrow Amount shall indemnify and hold harmless the Parent, Merger Sub, the Surviving Corporation and their respective Affiliates, officers, directors, employees, stockholders, agents and representatives (each a "Parent Indemnitee" and collectively, the "Parent Indemnitees") against any loss, Liability, fine, penalty, deficiency, damage or expense (including reasonable outside legal and accounting, and

outside professional services expenses and costs, but excluding consequential, punitive, indirect, exemplary damages or any damages measured by lost profits or a multiple of earnings) (each a "Loss" or collectively, "Losses") that any Parent Indemnitee suffers, sustains or becomes subject to as a result of:

(A) any breach by the Company of any representation or warranty contained in Article IV of this Agreement;

(B) any breach by the Company or the Stockholder Representative of any covenant or agreement contained in this Agreement;

(C) any breach by the Stockholder Representative of any of its obligations to the Company Stockholders or Company Option Holders;

(D) any failure to pay, to the extent not reserved for on the Closing Balance Sheet, any Tax accruing prior to the Effective Time or accruing as a consequence of the consummation of the transactions contemplated by this Agreement including, but not limited to, the Company's share of FICA and Medicare taxes on any option payments made at or after the Effective Time; and

(E) any Action brought against the Company, Surviving Corporation, Merger Sub, Parent or any of their respective Affiliates, directors, officers, employees, representatives or shareholders, by any Company Stockholder or Company Option Holder with respect to (i) such Company Stockholder or Company Option Holder's ownership of or rights with respect to any equity securities of the Company, (ii) any issuance of any equity securities of the Company, (iii) the merger of the Company on March 11, 2010 in connection with the issuance of Series A-1 Preferred Stock, or (iv) the allocation of the merger consideration amongst any Persons pursuant to terms hereof.

(ii) Indemnification of Company and Company Stockholders. Subject to the limitations in this Section 7.1, from and after the Closing, the Parent shall indemnify the Company Stockholders and the Company Option Holders, and the officers, directors, employees, agents and representatives of the Company (each a "Company Indemnitee" and collectively, the "Company Indemnitees") and hold each Company Indemnitee harmless against any Loss that any Company Indemnitee may suffer, sustain or become subject to, as a result of:

(A) any breach by the Parent or Merger Sub of any representation or warranty contained in Article V of this Agreement, or

(B) any breach by the Parent or Merger Sub of any covenant or agreement contained in this Agreement.

(b) Indemnity Survival Dates.

(i) Parent Indemnity Survival Date. A Parent Indemnitee shall not be entitled to indemnification under Section 7.1(a)(i) unless a Claim Certificate is delivered by the claiming Parent Indemnitee to the Stockholder Representative on or before the Parent Indemnity Survival Date, it being understood that so long as such Claim Certificate is delivered on or prior to the Parent Indemnity Survival Date, such representations and warranties and covenants shall continue to survive until such matter

is resolved. For purposes of this Agreement, the term "Parent Indemnity Survival Date" shall mean the Escrow Release Date except (A) the Parent Indemnity Survival Date for (1) any breach of any covenant of the Stockholder Representative, (2) any representations and warranties of the Company in Sections 4.1 (Organization and Power; and Investments), Section 4.2 (Authorization), and Section 4.5 (Capitalization), and (3) fraud or Intentional Breach (each a "Fraud Claim") on the part of any Company Stockholder, Company Option Holder, the Company or the Stockholder Representative, shall be indefinite and a Parent Indemnitee may deliver a Claim Certificate with respect to such claims at any time and (B) the Parent Indemnity Survival Date for representations and warranties of the Company in the first sentence of Section 4.10 (Title to Assets), Section 4.20 (Tax Matters), and Section 4.22 (Related Party Transactions), shall be the date that is thirty days after the expiration of the applicable statutes of limitation (the Article IV sections referred to in (A) and (B) collectively, the "Fundamental Representations"). For purposes of this Agreement, "Intentional Breach" means a breach of any covenant or representation and warranty set forth in this Agreement that is a consequence of an act or failure to act by the breaching party with the actual knowledge of such breaching party that such act or failure to act would reasonably be likely to cause a breach of this Agreement.

(ii) Company Indemnity Survival Date. A Company Indemnitee shall not be entitled to indemnification under Section 7.1(a)(ii) unless a Claim Certificate is delivered by the claiming Company Indemnitee to the Parent on or before the Company Indemnity Survival Date, it being understood that so long as such Claim Certificate is delivered on or prior to the Company Indemnity Survival Date, such representations and warranties and covenants shall continue to survive until such matter is resolved. For purposes of this Agreement, the term "Company Indemnity Survival Date" shall mean the Escrow Release Date except the Company Indemnity Survival Date for any breach of any covenant or Fraud Claim on the part of Parent shall be indefinite and a Company Indemnitee may deliver a Claim Certificate with respect to such claims at any time.

(c) Indemnification Limitations. The indemnification provided for in Section 7.1(a)(i) above is subject to each of the following limitations:

(i) Parent Indemnification Deductible. No Parent Indemnitee shall be entitled to assert any claim for indemnification under Section 7.1(a)(i)(A) (other than with respect to (x) any Fraud Claim, (y) breach of the representation set forth in Section 4.5(e), or (z) breach of any Fundamental Representation) or Section 7.1(a)(i)(B) until such time as the aggregate of all Losses that Parent Indemnitees may have under these Sections exceed One Hundred Fifty Thousand and 00/100 Dollars ($150,000.00) (the " Parent Indemnification Deductible"), and then only for the amount by which such Losses exceed the Parent Indemnification Deductible.

(ii) Parent Indemnification Cap. Except for any breach of the Fundamental Representations or any Fraud Claim, the aggregate liability of the Company Indemnifying Parties for Losses indemnifiable under Sections 7.1(a)(i)(A), (B) and (C) shall not exceed at any time the balance of the Escrow Account, including the Escrow Amount and any earnings earned thereon in the Escrow Account (the " Parent Cap"); provided, however, that Losses incurred by any Parent Indemnitee arising out of or otherwise by virtue of any breach of any of the Fundamental Representations or a Fraud Claim shall not be subject to the Parent Cap and shall not count toward the attainment of the Parent Cap. For the avoidance of doubt, the parties agree and acknowledge that the Escrow Account shall be the exclusive source of funding to reimburse the Parent

Indemnitees for any Losses for which they are entitled to be indemnified pursuant to Section 7.1(a)(i), other than any breach of Section 7.1(a)(i)(D), any breach of any Fundamental Representation or any Fraud Claim.

(iii) Not withstanding any other provision of this Agreement, no Parent Indemnitee shall be entitled to assert any claim for indemnification under Section 7.1(a)(i) for any failure to pay or collect sales or use tax related to the sale of Company Products prior to the Effective Time.

(d) Procedures.

(i) Promptly after the discovery by any Parent Indemnitee or Company Indemnitee (each, an " Indemnified Party") of any Loss or Losses, claim or breach, that might give rise to indemnification hereunder, the Indemnified Party shall deliver to the party obligated to provide indemnification under this Agreement (the "Indemnifying Party") a certificate (a "Claim Certificate") that:

(A) states that the Indemnified Party has paid or properly accrued Losses, or reasonably anticipates that it may or will incur liability for Losses, for which such Indemnified Party is entitled to indemnification pursuant to this Agreement; and

(B) specifies in reasonable detail, to the extent practicable and available, each individual item of Loss included in the amount so stated, the basis for any anticipated liability and the nature of the misrepresentation, default, breach of warranty or breach of covenant or claim to which each such item is related and, to the extent computable, the computation of the amount to which such Indemnified Party claims to be entitled hereunder.

(ii) If the Indemnifying Party objects to the indemnification of an Indemnified Party in respect of any claim or claims specified in any Claim Certificate, the Indemnifying Party shall deliver a written notice to such effect to the Indemnified Party within thirty (30) days after receipt by the Indemnifying Party of such Claim Certificate. Thereafter, the Indemnifying Party and the Indemnified Party shall attempt in good faith to agree upon the rights of the respective parties within thirty (30) days of receipt of such Claim Certificate with respect to each of such claims to which the Indemnifying Party has objected. If the Indemnified Party and the Indemnifying Party agree with respect to any of such claims, the Indemnified Party and the Indemnifying Party shall promptly prepare and sign a memorandum setting forth such agreement and, if applicable, an instruction to the Escrow Agent. Should the Indemnified Party and the Indemnifying Party fail to agree as to any particular item or items or amount or amounts, then either party shall be entitled to pursue its available remedies for resolving its claim for indemnification.

(e) Satisfaction of Claims. To the extent that any Parent Indemnitee is entitled to indemnification for any Losses under Section 7.1(a)(i) with respect to any Fundamental Representations such indemnification payments shall be satisfied:

(i) if there are funds remaining in the Escrow Account, the Seller Representative and Parent shall execute and cause a joint written direction (a "Joint Direction") to be delivered to the Escrow Agent pursuant to the Escrow Agreement, which Joint Direction shall direct the Escrow Agent to make such payment out of the Escrow Account; or

(ii) if and only if there are no funds available in the Escrow Account which are not subject to any claim made by the Surviving Corporation pursuant to the Escrow Account, then, at the sole option of Parent, (A) through the setoff or other reduction of any portion of the Earnout Payments, whether earned or unearned, by the amount of all or any portion of such Losses or (B) in cash, by wire transfer of immediately available funds, by the Company Stockholders and Company Option Holders, on a several, not joint basis, in accordance with the portion of the Merger Consideration received by such Company Stockholder or Company Option Holder.

Parent may delay the payment of any or all of the Earnout Payments in the event Parent determines in good faith that any Buyer Indemnitee has incurred or is reasonably likely to incur Losses which such Buyer Indemnitee is entitled to receive indemnification payments for under Section 7.1(a)(i) with respect to any Fundamental Representations and there are insufficient funds in the Escrow Account not subject to valid claims pursuant to the Escrow Agreement to satisfy such Losses; provided in no event shall any payment be delayed beyond the later of (x) 180 days after the date such payment is due or (y) if a claim related to such Losses is filed by any Party or any third party, five Business Days after the date of a final non-appealable judgment determining such payment is required to be paid to the Stockholder Representative.

(f) Determination of Damages. For purposes of Sections 7.1(a)(i) and 7.1(a)(ii) only: all references to "material," "materially," "material to the Company" or any terms used with similar meaning or effect in the Company's representations and warranties in Article IV and any references to "Material Adverse Effect" contained in the Company's representations and warranties in Article IV shall be taken into account solely for purposes of determining whether such representations or warranties have been breached or violated, but not for purposes of calculating the Loss resulting from such breach or violation or for purposes of determining whether the Parent Indemnification Deductible or the Parent Cap have been exceeded (it being agreed that, for both of such purposes of calculating the Loss and determining whether the Parent Indemnification Deductible or the Parent Cap have been exceeded, all such qualifications as to Material Adverse Effect and materiality contained in the Company's representations and warranties shall be ignored).

(g) Third-Party Claims. With respect to any third-party claim that Parent believes, in good faith, may result in a demand by it for indemnification hereunder, the Stockholder Representative shall be entitled to participate, at his or her sole cost and expense, in any defense of such claim. Notwithstanding the immediately preceding sentence, Parent shall conduct and control such defense, but shall not settle any such claim without the consent of the Stockholder Representative, such consent not to be unreasonably withheld.

(h) Net Recovery. The amount of any Loss for which indemnification is provided under this Section 7.1 shall be net of any amounts actually recovered by the Indemnified Party under insurance policies with respect to such Loss. The amount of any Loss claimed by any Indemnified Party hereunder shall be reduced to the extent the Indemnified Party recovers any amounts from third parties (including insurers) with respect to the matters relating to such Loss. If the amount to be netted hereunder from any payment required under this Section 7.1 is determined after payment by the Indemnifying Party of any amount otherwise required to be paid to an Indemnified Party pursuant to this Section 7.1, the Indemnified Party shall repay to the Indemnifying Party, promptly after such determination, any amount that the Indemnifying Party

would not have had to pay pursuant to this Section 7.1 had such determination been made at the time of such payment. No Losses may be claimed under Section 7.1(a)(i) or 7.1(a)(ii) by any Indemnified Party to the extent such Losses are included in the calculation of Closing Net Working Capital Amount, Closing Cash, Closing Indebtedness or Company Transaction Expenses for purposes of determining the Aggregate Consideration Amount such that such Indemnified Party has already been compensated for such Losses.

(i) Exclusive Remedy. The parties each acknowledge and agree that, except as otherwise provided in this Agreement, the indemnification provisions in this Section 7.1 shall be the exclusive remedy with respect to claims made after the Closing that relate to the transactions contemplated by this Agreement, except for any Fraud Claim. Notwithstanding the foregoing, the parties may pursue injunctive relief for breach of any covenant or agreement contained herein.

7.2. Expenses. Except as otherwise set forth in this Agreement, each party to this Agreement shall be solely responsible for and shall bear all of its own costs and expenses incident to its obligations under and in respect of this Agreement and the transactions contemplated hereby, including any such costs and expenses incurred by any party in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement (including the fees and expenses of legal counsel, accountants, investment bankers or other representatives and consultants), whether or not the transactions contemplated hereby are consummated.

7.3. Transfer Taxes; Recording Charges. Notwithstanding anything to the contrary herein, all transfer, documentary, sales, use, stamp, registration and other such Taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with consummation of the transactions contemplated by this Agreement shall be borne by Parent. The Parent shall cause the Surviving Corporation to prepare and file all necessary Tax Returns and other documentation with respect to all such Taxes, fees and charges; provided, however, that the Stockholder Representative shall have the right to examine such Tax Returns and other documentation no less than five (5) Business Days prior to filing.

7.4. Directors' and Officers' Indemnification and Insurance .

(a) From and after the Effective Time, the Parent and the Surviving Corporation shall indemnify and hold harmless each Person who served as a director or officer of the Company on or before the Effective Time (the "D&O Indemnified Persons") to the same extent they are currently indemnified and held harmless pursuant to the Company's Articles of Incorporation, Bylaws or currently effective written agreement in connection with any acts or omissions of such D&O Indemnified Persons committed or omitted in their capacities as Company officers or directors prior to the Closing Date. All rights to indemnification and advancement conferred hereunder will continue as to an individual who has ceased to be a director or officer of the Company prior to the Effective Time and will inure to the benefit of such individual's heirs, executors and personal and legal representatives. In connection with any determination as to whether the D&O Indemnified Persons, the Surviving Corporation and its board of directors shall act in good faith consistent with the undertakings set forth above.

(b) From and after the Effective Time, the Parent and the Surviving Corporation will assume and comply with the terms and conditions of, any agreement in effect as of the date of this Agreement between or among the Company and any D&O Indemnified Person providing for the indemnification of such D&O Indemnified Person.

(c) Without limiting any of the obligations under paragraph (a) of this Section 7.4, the Parent agrees that all rights to indemnification and all limitations of liability existing in favor

of the D&O Indemnified Persons as provided in the Company Certificate or bylaws of the Company as in effect as of April 15, 2012 and the date of this Agreement with respect to matters occurring on or prior to the Effective Time will survive the Merger and will continue in full force and effect thereafter, without any amendment thereto.

(d) If the Parent or the Surviving Corporation or any of its successors or assigns will (i) consolidate with or merge into any other Person and will not be the continuing or surviving Person of such consolidation or merger or (ii) transfer all or substantially all of its properties and assets to any Person, then, in each such case, proper provisions will be made so that the successors and assigns of the Parent and the Surviving Corporation, as the case may be (including the Parent's ultimate parent entity, if applicable), assume all of the obligations of the Parent and the Surviving Corporation set forth in this Section 7.4.

(e) For a period of six years after the Effective Time, the Parent, at its sole cost and expense, shall cause to be maintained in effect the current policies of directors' and officers' liability insurance maintained by the Company (the "D&O Policy") (provided that the Surviving Corporation may substitute therefor policies with a substantially comparable insurer of at least the same coverage and amounts containing terms and conditions which are no less advantageous to the insured) with respect to claims arising from facts or events which occurred at or before the Effective Time. Prior to the Effective Time, notwithstanding anything to the contrary in this Agreement, in lieu of its obligations under the first sentence of this Section 7.4(e), the Surviving Corporation may purchase a six-year "tail" prepaid policy on the D&O Policy on terms and conditions no less advantageous than such policy, and in the event that the Surviving Corporation shall purchase such a "tail" policy prior to the Effective Time, the Surviving Corporation shall maintain such "tail" policy in full force and effect and continue to honor its obligations thereunder, in lieu of all other obligations of the Surviving Corporation under the first sentence of this Section 7.4(e) for so long as such "tail" policy shall be maintained in full force and effect.

(f) This Section 7.4 shall survive the consummation of the Merger at the Effective Time, is intended to benefit the Company, the Surviving Corporation and the D&O Indemnified Persons, shall be binding on all successors and assigns of the Surviving Corporation and shall be enforceable by the D&O Indemnified Persons.

## ARTICLE VIII.

## CONDITIONS TO CLOSING

8.1. Condition to the Obligations of the Company, the Parent and Merger Sub. The respective obligations of the Company, the Parent and Merger Sub to consummate the transactions contemplated by this Agreement are subject to the satisfaction of, or waiver by such parties of, the following conditions on or before the Closing Date:

(a) No Injunctions, Orders or Governmental Actions. No (i) Law that restrains, enjoins or otherwise prohibits consummation of the transactions contemplated by this Agreement shall have been enacted, adopted or promulgated and be in full force and effect, (ii) temporary restraining order, preliminary or permanent injunction or other order of a court of competent jurisdiction or other Governmental Authority which restrains, enjoins or otherwise prohibits consummation of the transactions contemplated by this Agreement (an "Order") shall have been issued, entered or enforced and be in effect and (iii) no Action or proceeding by a Governmental Authority seeking such an Order shall be pending; and

(b) Company Stockholder Approval Minimum. This Agreement shall have been duly approved and adopted by written consent of Company Stockholders representing the Required Stockholder Vote.

8.2. Additional Conditions to the Obligations of the Company. The obligation of the Company to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or waiver by the Company of, the following conditions on or before the Closing Date:

(a) Accuracy of Representations and Warranties. Each of the representations and warranties of the Parent and Merger Sub set forth in Article V that is qualified by reference to a materiality qualifier shall be true and correct in all respects and each of the representations and warranties of the Parent and Merger Sub not so qualified shall be true and correct in all material respects, in each case, as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout Article V), except that such representations and warranties that are made as of a specific date need only be true and correct as of such date;

(b) Performance by Parent and Merger Sub. The Parent and Merger Sub shall have performed in all material respects all the covenants and agreements required to be performed by them under this Agreement prior to the Closing;

(c) Certified Documents. The Parent and Merger Sub shall have delivered to the Company a certificate from an officer of each of the Parent and Merger Sub in a form reasonably acceptable to the Company, dated as of the Closing Date, delivering the following:

(i) certified copies of the resolutions duly adopted by the respective boards of directors of the Parent and Merger Sub authorizing the execution, delivery and performance of this Agreement and the consummation of all transactions contemplated hereby;

(ii) true and correct copies of the Parent's and Merger Sub's certificates of incorporation, together with all amendments in effect, certified by the Secretary of the State of Delaware, dated no more than five (5) Business Days prior to the Closing Date;

(iii) true and correct copies of the Parent's and Merger Sub's bylaws, as amended and in effect as of the Closing Date; and

(iv) a certificate of good standing from the Secretary of the State of Delaware with respect to the Parent and the Merger Sub, dated no more than five (5) Business Days prior to the Closing Date.

(d) Certificate of Merger. The Parent and Merger Sub shall have delivered a copy of the Certificate of Merger executed by Merger Sub;

(e) Delivery of Payments. The Parent shall have delivered the amounts described in Section 3.3; and

(f) Escrow Agreement. The Parent and Escrow Agent shall have delivered a copy of the Escrow Agreement executed by the Parent and the Escrow Agent.

8.3. Additional Conditions to the Obligations of the Parent and Merger Sub. The respective obligations of the Parent and Merger Sub to consummate the transactions contemplated by this Agreement are subject to the satisfaction of, or waiver by such parties of, the following conditions on or before the Closing Date:

(a) Accuracy of Representations and Warranties. Each of the representations and warranties of the Company set forth in Article IV that is qualified by reference to a materiality qualifier shall be true and correct in all respects and each of the representations and warranties of the Company not so qualified shall be true and correct in all material respects, in each case, as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout Article IV), except that such representations and warranties that are made as of a specific date need only be true and correct as of such date;

(b) Performance by Company. The Company shall have performed in all material respects all of the covenants and agreements required to be performed by it under this Agreement prior to the Closing;

(c) Certified Documents. The Company shall have delivered to the Parent each of the following a certificate from an officer of the Company in a form reasonably acceptable to the Parent, dated as of the Closing Date, delivering the following:

(i) a certified copy of the resolutions duly adopted by the Company Board authorizing the execution, delivery and performance of this Agreement and the consummation of all transactions contemplated hereby;

(ii) a true and correct copy of the Company Certificate certified by the Secretary of State of Delaware, dated no more than five (5) Business Days prior to the Closing Date;

(iii) a true and correct copy of the Company's bylaws, together with all amendments in effect as of the Closing Date; and

(iv) a certificate of good standing from the Secretary of the State of Delaware with respect to the Company, dated no more than five (5) Business Days prior to the Closing Date.

(d) Certificate of Merger. The Company shall have delivered a copy of the Certificate of Merger executed by the Company;

(e) Required Consents. The Company shall have delivered to Parent, in forms reasonably satisfactory to Parent, copies of all third-party consents and all authorizations, consents, approvals, exemptions or other actions by or notice to any Governmental Authority set forth in Schedule 8.3(e); and

(f) Escrow Agreement. The Company and Stockholder Representative shall have delivered a copy of the Escrow Agreement executed by the Company and the Stockholder Representative.

(g) Legal Opinion. An opinion from legal counsel to the Company, dated as of the Closing Date, in a form reasonably acceptable to the Parent.

(h) Company Stockholder Approval. This Agreement shall have been duly approved and adopted in a meeting or by written consent of Company Stockholders representing the Closing Stockholder Vote.

## ARTICLE IX.

## TERMINATION

9.1. Termination. This Agreement may be terminated at any time prior to the Closing only as follows:

(a) by mutual consent of the Parent, on the one hand, and the Company, on the other hand;

(b) by the Parent, if the Company shall have breached any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach would cause a condition set forth in Sections 8.3(a) or 8.3(b) not to be satisfied, and such condition cannot reasonably be satisfied by the Termination Date;

(c) by Parent if stockholders representing at least the Required Company Vote do not deliver valid written consents approving this Agreement and the Merger prior to 12:00 p.m., Central Time, on the date hereof;

(d) by either the Parent, on the one hand, or the Company, on the other hand, if the Merger has not been consummated by May 31, 2012 (the "Termination Date") (provided that the right to terminate this Agreement under this clause (d) shall not be available to any party whose willful failure to fulfill any obligation hereunder has been the cause of, or resulted in, the failure of the Merger to occur on or before such date); or

(e) by either the Parent, on the one hand, or the Company, on the other hand, if any court or other Governmental Authority shall have issued, enforced or entered any final and non-appealable Order that is in effect and prohibits the consummation of the Merger, so long as the existence of any such Order is not due to a breach of this Agreement by the terminating party.

Where action is taken to terminate this Agreement pursuant to this Section 9.1, it shall be sufficient for such action to be authorized by the Board of Directors (as applicable) of the party taking such action.

9.2. Termination Fee. The Company shall pay to Parent (or its designee) a fee equal to Six Hundred Forty-Five Thousand and 00/100 Dollars ($645,000) (the "Termination Fee Amount"), by wire transfer of immediately available funds to an account or accounts designated in writing by Parent, within one Business Day after demand by Parent, in the event that this Agreement is terminated pursuant to Section 9.1(c) and at the time of such termination stockholders representing at least the Required Company Vote shall have not delivered written consents approving this Agreement and the Merger.

9.3. Effect of Termination. In the event of termination of this Agreement as provided in Section 9.1, this Agreement shall forthwith become void and there shall be no liability or obligation hereunder on the part of the Company or the Parent (other than Section 6.2 (Press Releases and Public Announcements), Section 7.2 (Expenses), Article X (Miscellaneous) and this Section 9.2, which shall survive any such termination), except in the case of Intentional Breaches of this Agreement prior to the time of such termination.

## ARTICLE X.

## MISCELLANEOUS

10.1. Amendment and Waiver. Prior to the Effective Time, this Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance. Any waiver by any party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be nor construed as a further or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement. From and after the Effective Time, this Agreement may only be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by Parent and the Stockholder Representative; provided, further, however, that no such amendment, modification or waiver shall be made that has a material effect on a Company Stockholder or Company Option Holder that is disproportionate to the shares of Company Capital Stock held, or subject to a Company Option held, by such Person.

10.2. Notices. All notices, requests, demands and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next Business Day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt, in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as a party may designate by notice to the other party):

If to the Parent or Merger Sub, to:

CryoLife, Inc.
1655 Roberts Boulevard, NW
Kennesaw, Georgia 30144
Attention: General Counsel
Facsimile: (770) 462-0031

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

Womble Carlyle Sandridge, Rice, LLP
271 17th Street, NW
Suite 2400
Atlanta, Georgia 30363
Attention: Clinton D. Richardson, Esq.
Facsimile: (404) 888-7490

If to the Stockholder Representative:

Mitchell Dann
Sapient Capital Management
P.O. Box 1590
Wilson, Wyoming 83014
Telephone: (307) 733-3806
Facsimile: (307) 733-4630

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

Oppenheimer Wolff & Donnelly LLP
Attention: Thomas A. Letscher, Esq.
Address: Plaza VII, Suite 3300
45 South Seventh Street
Minneapolis, Minnesota 55402
Telephone: (612) 607-7443
Facsimile: (612) 607-7100

If, prior to Closing, to the Company:

Hemosphere, Inc.
Attention: Chief Executive Officer
Address: 6545 City West Parkway
Eden Prairie, MN 55344
Telephone: (952) 582-6900
Facsimile: (952) 582-6956

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

Oppenheimer Wolff & Donnelly LLP
Attention: Thomas A. Letscher, Esq.
Address: Plaza VII, Suite 3300
45 South Seventh Street
Minneapolis, Minnesota 55402
Telephone: (612) 607-7443
Facsimile: (612) 607-7100

10.3. Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors. Neither this Agreement nor any rights, benefits or obligations set forth herein may be assigned by any of the parties hereto, other than by Parent, Merger Sub or the Surviving Corporation to (i) any institutional lender of any Affiliate of Parent or (ii) subject to Section to Section 3.7(f), any other Person.

10.4. Severability. Whenever 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 is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

10.5. No Strict Construction. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied against any Person.

10.6. Captions. The captions used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and shall not be deemed to limit, characterize or in any way affect any provision of this Agreement, and all provisions of this Agreement shall be enforced and construed as if no caption had been used in this Agreement.

10.7. No Third-Party Beneficiaries. Except as otherwise expressly set forth in this Agreement, including as provided in Section 7.4 (which is intended for the benefit of the Company's former and current officers and directors and other indemnitees, all of whom shall be third-party beneficiaries of

these provisions), nothing herein expressed or implied is intended or shall be construed to confer upon or give to any Person, other than the parties hereto and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement, such third parties specifically including employees or creditors of the Company.

10.8. Complete Agreement. This Agreement and the documents referred to herein contain the complete agreement between the parties and supersede any prior understandings, agreements or representations by or between the parties, written or oral, which may have related to the subject matter hereof in any way.

10.9. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms of this Agreement to produce or account for more than one of such counterparts. The exchange of copies of this Agreement and of signature pages by facsimile transmission, PDF or other electronic file shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile, PDF or other electronic file shall be deemed to be their original signatures for all purposes.

10.10. Confidentiality. Each of the Parent and Merger Sub acknowledges that confidential information provided to it by the Company, including information provided pursuant to Section 6.4, is subject to the terms of a confidentiality agreement dated March 11, 2012 between the Company and the Parent (the "Confidentiality Agreement"), the terms of which are incorporated herein by reference.

10.11. Interpretation. References in this Agreement to any gender include references to all genders, and references to the singular include references to the plural and vice versa. The words "include," "includes" and "including," when used in this Agreement, shall be deemed to be followed by the phrase "without limitation." Unless the context otherwise requires, references in this Agreement to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement. Unless the context otherwise requires, the words "hereof," "hereby" and "herein" and words of similar meaning when used in this Agreement refer to this Agreement in its entirety and not to any particular Article, Section or provision of this Agreement. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any references to payments to be made hereunder or to dollars shall be made in and means United States dollars.

10.12. Specific Performance. Each of the parties to this Agreement acknowledges and agrees that the other parties to this Agreement would be irreparably harmed in the event that any of the terms or provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Therefore, notwithstanding anything to the contrary set forth in this Agreement, each of the parties to this Agreement hereby agrees that the other parties to this Agreement shall be entitled to an injunction or injunctions to prevent breaches of any of the terms or provisions of this Agreement, and to enforce specifically the performance by such first party under this Agreement, and each party to this Agreement hereby agrees to waive the defense in any such suit that the other parties to this Agreement have an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of injunction or specific performance as a remedy, and hereby agrees to waive any requirement to post any bond in connection with obtaining such relief. The equitable remedies described in this Section 10.12 shall be in addition to, and not in lieu of, any other remedies at law or in equity that the parties to this Agreement may elect to pursue.

10.13. Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the domestic Laws of the State of Delaware, without giving effect to any choice of Law or conflict of Law provision or rule (whether of the State of Delaware or any other jurisdiction) that

would cause the application of the Laws of any jurisdiction other than the State of Delaware. To the extent permitted by Law, each of the parties hereto hereby irrevocably submits to the exclusive jurisdiction of any state court or United States federal court, in either case sitting in the State of Minnesota, over any Action brought by any party arising out of or relating to this Agreement, and each of the parties hereto hereby irrevocably agrees that all claims with respect to any such suit, action or other proceeding shall be heard and determined in such courts.

10.14. Waiver of Jury Trial. Each of the parties to this Agreement hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or related to this Agreement or the transactions contemplated hereby.

10.15. Waiver of Conflict Regarding Representation; Non-Assertion of Attorney Client Privilege .

(a) Parent and Merger Sub waive and will not assert, and each agrees to cause the Surviving Corporation, to waive and to not assert, any conflict of interest arising out of or relating to the representation after the Effective Time (the " Post-Closing Representation") of any Company Stockholder or Company Option Holder or Affiliate thereof, the Stockholder Representative, or any former officer, employee or director of the Company (any such Person, a "Designated Person") in any matter or Action involving this Agreement, any agreements entered into pursuant hereto or the transactions contemplated hereby and thereby by Oppenheimer Wolff & Donnelly LLP or any other legal counsel currently representing the Company in connection with this Agreement, any agreements entered into pursuant hereto or the transactions contemplated hereby and thereby (the " Current Representation").

(b) Parent and Merger Sub waive and will not assert, and each agrees to cause the Surviving Corporation, to waive and to not assert, any attorney-client privilege with respect to any communication between Oppenheimer Wolff & Donnelly LLP or any legal counsel, on the one hand, and any Designated Person, on the other hand, occurring during the Current Representation, including in connection with a dispute with Parent, and following the Closing, with the Surviving Corporation, it being the intention of the parties hereto that all such rights to such attorney-client privilege and to control such attorney-client privilege will be retained by such Designated Person; provided that the foregoing waiver and acknowledgment and retention will not extend to any communication not involving this Agreement, any agreement entered into pursuant hereto or the transactions contemplated hereby and thereby, or to communications with any Person other than the Designated Persons and their advisors.

*[Signature Page Follows]*

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

**CRYOLIFE, INC.**

By:
Name: /s/ Steven G. Anderson
Title: Chief Executive Officer

**CL CROWN, INC.**

By:
Name: /s/ Steven G. Anderson
Title: Chief Executive Officer

**HEMOSPHERE, INC.**

By:
Name: /s/ Patrick Wethington
Title: Chief Executive Officer

Acknowledged and Agreed

**STOCKHOLDER REPRESENTATIVE**

/s/ Mitchell Dann
Mitchell Dann, in his capacity as Stockholder Representative

**List of Omitted Schedules and Exhibits**

Exhibit A – Form of Tender and Voting Agreements
Exhibit B – Form of Escrow Agreement
Disclosure Schedule – Disclosure of various items related to Article IV of this Agreement
Schedule 1.1(gg)(1) – List of Hemosphere officers
Closing Date Schedule – Schedule regarding timeline for closing
Schedule 8.3(e) – List of certain Governmental Authorities

Registrant agrees to furnish supplementally a copy of any omitted schedule or exhibit to the Commission upon request.

**Exhibit 10.2**

# WAIVER AGREEMENT

THIS WAIVER AGREEMENT (the "Agreement") is entered into as of May 14, 2012, by and among CryoLife, Inc., a Florida corporation ("CryoLife"), AuraZyme Pharmaceuticals, Inc., a Florida corporation (" AuraZyme"), CryoLife International, Inc., a Florida corporation ("International"), Cardiogenesis Corporation, a Florida corporation (" Cardiogenesis") (CryoLife, AuraZyme, International and Cardiogenesis are sometimes referred to herein together as the " Borrowers" and individually as a "Borrower"), CryoLife, as Borrower Representative, the other Credit Parties party hereto, General Electric Capital Corporation, a Delaware corporation (the "Agent"), as administrative agent for the several financial institutions from time to time party to this Agreement (collectively, the "Lenders" and individually each a "Lender") and for itself as a Lender and L/C Issuer, and such Lenders.

## RECITALS

A. The Borrowers, the other Credit Parties signatory thereto, the Lenders signatory thereto from time to time and Agent are parties to that certain Amended and Restated Credit Agreement, dated as of October 28, 2011 (as amended, supplemented, revised, restated, replaced or otherwise modified, the " Credit Agreement"). Capitalized terms used in this Agreement without definition shall have the meanings ascribed to such terms in the Credit Agreement.

B. The Borrowers have requested that Lenders waive certain requirements under the Credit Agreement and consent to certain actions by the Borrowers under the Credit Agreement, and Lenders have agreed to do so, subject to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, and intending to be legally bound, the parties hereto agree as follows:

## A. WAIVERS AND AMENDMENTS

Subject to the satisfaction of the conditions precedent set forth in Section B below, the Lenders and the Agent hereby

(i) waive the $15,000,000 aggregate limit for all Acquisitions as set forth in clause (g) of the definition of "Permitted Acquisition" in the Credit Agreement, solely with respect to the Acquisition (the " Hemosphere Acquisition") of Hemosphere, Inc., a Delaware corporation ("Hemosphere"), provided that the total consideration paid or payable (including without limitation, any deferred payment, but excluding royalties and earn-out payments that are performance based) in respect of the Hemosphere Acquisition does not exceed $20,500,000,

(ii) waive the requirement for delivery of the certificate of a Responsible Officer of the Borrower Representative required under clause (b)(3) of the definition of "Permitted Acquisition" in the Credit Agreement solely with respect to the Hemosphere Acquisition;

(iii) agree with the Borrowers that the consideration paid in respect of the Hemosphere Acquisition shall not be included in determining compliance with such $15,000,000 aggregate limit in clause (g) of the definition of "Permitted Acquisition" in the Credit Agreement with respect to future Acquisitions,

(iv) agree with the Borrowers that the aggregate amount of transaction costs and expenses (including integration costs) associated with potential and completed acquisitions and other Investments (in each case, whether or not successful) that may be added back in the calculation of Adjusted EBITDA pursuant to Exhibit A to Exhibit 4.2(b) of the Credit Agreement (w) for the twelve (12) month period ending June 30, 2012 will be $2,900,000, instead of $2,375,000, (x) for the twelve (12) month period ending September 30, 2012 will be $2,400,000, instead of $1,625,000, (y) for the twelve (12) month period ending December 31, 2012 will be $3,000,000, instead of $1,500,000, and (z) for the twelve (12) month period ending March 31, 2012 will be $3,000,000, instead of $1,500,000,

(v) agree with the Borrowers that the Pro Forma EBITDA of Hemosphere will be excluded from the calculation of Adjusted EBITDA pursuant to Exhibit A to Exhibit 4.2(b) of the Credit Agreement,

(iv) waive the requirement that CL Crown, Inc., a Delaware corporation (" CL Crown"), join the Credit Agreement as a Borrower and the Guaranty and Security Agreement as a Grantor as required pursuant to Section 4.13 of the Credit Agreement; provided, that no later than (ten) 10 Business Days after its formation, CL Crown shall either (a) join the Credit Agreement as a Borrower and the Guaranty and Security Agreement as a Grantor, (b) merge with and into Hemosphere, with Hemosphere being the surviving entity, substantially contemporaneously with the joining of Hemosphere to the Credit Agreement as a Borrower and the Guaranty and Security Agreement as a Grantor, or (c) be dissolved, and

(v) agree that the Borrowers shall not be required to comply with the requirements of Section 4.11 of the Credit Agreement with respect to accounts of Hemosphere held at Silicon Valley Bank until 45 days after the consummation of the Hemosphere Acquisition; provided, that until the Borrowers are in full compliance with Section 4.11 with respect to such accounts, no more than $500,000 in the aggregate may be maintained in such accounts at any time.

By their countersignature to this Agreement, each Borrower and other Credit Party acknowledges and agrees to the foregoing waivers and amendments to the Credit Agreement.

B. CONDITIONS TO EFFECTIVENESS

Notwithstanding any other provision of this Agreement and without affecting in any manner the rights of the Lenders hereunder, it is understood and agreed that this Agreement shall not become effective, and the Borrower shall have no rights under this Agreement, until Agent shall have received (a) duly executed signature pages to this Agreement from the Lenders, Borrowers, Agent and each Credit Party, and (b) an amendment fee in the amount of $35,000.

C. REPRESENTATIONS

Each Credit Party hereby represents and warrants to Lenders, L/C Issuer and Agent that:

1. The execution, delivery and performance by such Credit Party of this Agreement (a) are within such Credit Party's power; (b) have been duly authorized by all necessary corporate, limited liability company or limited partnership action; (c) are not in contravention of any provision of such Credit Party's certificate of incorporation or bylaws or other organizational documents; (d) do not violate any law or regulation, or any order or decree of any Governmental Authority; (e) do not conflict with or result in the breach or termination of, constitute a default under or accelerate any performance required by, any indenture, mortgage, deed of trust, lease, agreement or other instrument to which such Credit Party or any of its Subsidiaries is a party or by which such Credit Party or any such Subsidiary or any of their respective property is bound; (f) do not result in the creation or imposition of any Lien upon any of the property of such Credit Party or any of its Subsidiaries other than those in favor of Agent, on behalf of itself and the Lenders, pursuant to the Loan Documents; and (g) do not require the consent or approval of any Governmental Authority or any other Person.

2. This Agreement has been duly executed and delivered for the benefit of or on behalf of each Credit Party and constitutes a legal, valid and binding obligation of each Credit Party, enforceable against such Credit Party in accordance with its terms except as the enforceability hereof may be limited by bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights and remedies in general.

3. Both before and after giving effect to this Agreement, the representations and warranties contained in the Credit Agreement and the other Credit Documents are true and correct in all material respects and no Default or Event of Default has occurred and is continuing as of the date hereof.

D. OTHER AGREEMENTS

1. Continuing Effectiveness of Loan Documents. As amended hereby, all terms of the Credit Agreement and the other Loan Documents shall be and remain in full force and effect and shall constitute the legal, valid, binding and enforceable obligations of the Credit Parties party thereto. To the extent any terms and conditions in any of the other Loan Documents shall contradict or be in conflict with any terms or conditions of the Credit Agreement, after giving effect to this Agreement, such terms and conditions are hereby deemed modified and amended accordingly to reflect the terms and conditions of the Credit Agreement as modified and amended hereby. Upon the effectiveness of this Agreement such terms and conditions are hereby deemed modified and amended accordingly to reflect the terms and conditions of the Credit Agreement as modified and amended hereby.

2. Reaffirmation of Loan Documents. Each Credit Party consents to the execution and delivery of this Agreement by all parties hereto and the consummation of the transactions described herein, and ratifies and confirms the terms of the Credit Agreement, Guaranty and Security Agreement and each other Loan Document to which such Credit Party is a party with respect to the indebtedness now or hereafter outstanding under the Credit Agreement as amended hereby and all promissory notes issued thereunder. Each Credit Party acknowledges

that, notwithstanding anything to the contrary contained herein or in any other document evidencing any indebtedness of any Borrower to the Lenders or any other obligation of Borrowers, or any actions now or hereafter taken by the Lenders with respect to any obligation of Borrowers, the Guaranty and Security Agreement (i) is and shall continue to be a primary obligation of such Credit Party, (ii) is and shall continue to be an absolute, unconditional, continuing and irrevocable guaranty of payment, and (iii) is and shall continue to be in full force and effect in accordance with its terms. Nothing contained herein to the contrary shall release, discharge, modify, change or affect the original liability of any Credit Party under the Guaranty and Security Agreement.

3. Acknowledgment of Perfection of Security Interest. Each Credit Party hereby acknowledges that, as of the date hereof, the security interests and liens granted to Agent, the L/C Issuer and the Lenders under the Credit Agreement and the other Loan Documents are in full force and effect, are properly perfected and are enforceable in accordance with the terms of the Credit Agreement and the other Loan Documents.

4. Effect of Agreement. Except as set forth expressly herein, all terms of the Credit Agreement, as amended hereby, and the other Loan Documents shall be and remain in full force and effect and shall constitute the legal, valid, binding and enforceable obligations of the Borrowers to the Lenders, the L/C Issuer and Agent. The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of the Lenders under the Credit Agreement, nor constitute a waiver of any provision of the Credit Agreement. This Agreement shall constitute a Loan Document for all purposes of the Credit Agreement.

5. Governing Law**.** This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York and all applicable federal laws of the United States of America.

6. No Novation**.** This Agreement is not intended by the parties to be, and shall not be construed to be, a novation of the Credit Agreement and the other Loan Documents or an accord and satisfaction in regard thereto.

7. Costs and Expenses. The Borrowers agree to pay on demand all costs and expenses of Agent in connection with the preparation, execution and delivery of this Agreement, including, without limitation, the reasonable fees and out-of-pocket expenses of outside counsel for Agent with respect thereto.

8. Counterparts. This Agreement may be executed by one or more of the parties hereto in any number of separate counterparts, each of which shall be deemed an original and all of which, taken together, shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile transmission, Electronic Transmission or containing an E-Signature shall be as effective as delivery of a manually executed counterpart hereof.

9. Binding Nature. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors, successors-in-titles, and assigns.

10. Entire Understanding. This Agreement sets forth the entire understanding of the parties with respect to the matters set forth herein, and shall supersede any prior negotiations or agreements, whether written or oral, with respect thereto.

[signature pages to follow]

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

**BORROWERS:**

CRYOLIFE, INC.

By: /s/ D. Ashley Lee
Title: EVP, COO and CFO

AURAZYME PHARMACEUTICALS, INC.

By: /s/ D. Ashley Lee
Title: VP, Finance, CFO & Treasurer

CRYOLIFE INTERNATIONAL, INC.

By: /s/ D. Ashley Lee
Title: Vice President, CFO & Treasurer

CARDIOGENESIS CORPORATION

By: /s/ D. Ashley Lee
Title: EVP, COO, CFO & Treasurer

**AGENT, L/C ISSUER AND LENDERS:**

GENERAL ELECTRIC CAPITAL
CORPORATION, as Agent, L/C Issuer and sole Lender

By: /s/ Andrew Moore
Its Duly Authorized Signatory

**Exhibit 10.3**

# SETTLEMENT AGREEMENT AND MUTUAL RELEASES

This Settlement Agreement and Mutual Releases ("Agreement") is made on this 28th day of June 2012 (the "Effective Date") by and between CryoLife, Inc. ("CryoLife"), a Florida corporation, and Medafor, Inc. ("Medafor"), a Minnesota corporation (collectively the "Parties").

## RECITALS:

WHEREAS, the Parties are involved in litigation pending in the United States District Court for the Northern District of Georgia, styled *CryoLife, Inc. v. Medafor, Inc.*, Civil Action No. 1:09-cv-1150 (the "Litigation");

WHEREAS, the Parties desire to settle all claims between them, including all claims and counterclaims asserted or that might have been asserted in the Litigation except as expressly described herein, without admission of liability or fault by any of them, on the terms and conditions as hereinafter set forth, thereby avoiding the burdens, risks and expenses of further court litigation and/or administrative action;

NOW, THEREFORE, in consideration of the mutual releases and other promises, obligations, agreements and covenants made hereunder and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## 1. Settlement Payments to CryoLife

Medafor shall pay to CryoLife the total amount of Three Million Five Hundred Thousand Dollars ($3,500,000) according to the following schedule:

(a) $1,750,000 on or before Monday, July 9, 2012; and

(b) $1,750,000 on or before Thursday, September 6, 2012.

The payments described above shall be delivered to CryoLife via wire transfer pursuant reasonable instructions to be provided by CryoLife.

## 2. Mutual Releases

**a.** CryoLife, for itself, its officers, directors, successors and assigns, employees, and agents, does hereby release, remise, acquit, and forever discharge Medafor and its officers, directors, employees, agents, and attorneys, of and from any and all actions, causes of action, claims, suits, demands, rights, damages, losses, costs, expenses, fees, accounts, judgments, executions, debts, obligations, and any and all other liabilities of any kind or nature whatsoever either in law or in equity whether known or unknown, suspected or unsuspected that CryoLife, to the date of this Agreement, ever had or now has against Medafor.

**b.** Except as expressly provided below, Medafor, for itself, its officers, directors, successors and assigns, employees, and agents, does hereby release, remise, acquit and forever discharge CryoLife and its officers, directors, employees, agents, and attorneys of and from any and all actions, causes of action, claims, suits, demands, rights, damages, losses, costs, expenses, fees, accounts, judgments, executions, debts, obligations, and any and all other liabilities of any kind or nature whatsoever either in law or in equity whether known or unknown, suspected or unsuspected that Medafor, to the date of this Agreement, ever had or now has against CryoLife.

Notwithstanding the mutual releases described above, Medafor does not release and expressly reserves any and all claims relating to patent rights related to: (1) United States patent number 6,060,461; (2) all patents or patent applications claiming priority to the file date of United States patent number 6,060,461; and (3) all foreign counterparts, reissues, reexaminations, extensions, continuations, continuations in part, continuing prosecution applications, and divisions of United States patent number 6,060,461.

**3. Mutual Dismissal of Claims/Counterclaims**

Both Parties agree to have their attorneys execute and file with the appropriate court a mutual dismissal with prejudice of any and all claims and counterclaims asserted in this Litigation, in the form of the Mutual Dismissal with Prejudice attached hereto as Exhibit A. The Parties agree and acknowledge that the Court is to retain jurisdiction of this matter for the purpose of enforcing this binding settlement.

**4. Notice; Recipients of Payments**

All notices contemplated by this Agreement shall be sent to the following addressees:

If to CryoLife, Inc.:

Jeff W. Burris, Esq.
Vice President and General Counsel
CryoLife, Inc.
1655 Roberts Blvd., N.W.
Kennesaw, Georgia 30144

and

Henry R. Chalmers, Esq.
Arnall Golden Gregory LLP
171 17th Street, N.W., Suite 2100
Atlanta, Georgia 30363

If to Medafor, Inc.:

Mr. Gary J. Shope
Chief Executive Officer
Medafor, Inc.
2700 Freeway Boulevard
Suite 800
Minneapolis, Minnesota 55430

and

Lisa L. Heller, Esq.
Robins, Kaplan, Miller & Ciresi LLP
One Atlantic Center
1201 West Peachtree Street, Suite 2200
Atlanta, Georgia 30300

**5. Attorneys' Fees and Costs.**

The Parties agree and acknowledge that each shall bear its own costs and expenses, including attorneys' fees and filing fees, incurred in or as a result of the Litigation.

**6. Capacity to Execute.**

Each Party represents and warrants that it has the full right, power, capacity and authority to execute this Agreement and to consummate the transactions contemplated hereby, and that this Agreement has been duly executed by it so as to constitute its legal, valid, and binding obligation in accordance with its terms.

**7. No Assignment.**

The Parties represent and warrant that they hold all claims or causes of action that are covered by the mutual releases set forth above, including, but not limited to, any and all claims or causes of action that were asserted, or could have been asserted, in the Litigation, and that they have not sold, transferred or otherwise conveyed any of such claims or rights (including the power or authority to bring such claims in its name, as its representative, or otherwise) against the other Party to any other person or entity.

**8. Incorporation of the Parties' Stipulated Protective Order.**

The Parties agree to negotiate a proposed amendment to the Stipulated Protective Order to address the retention and destruction of documents subject thereto.

**9. Entire Agreement.**

This Agreement constitutes the entire agreement of the Parties. This Agreement cannot be modified, supplemented, or amended unless agreed in advance, in writing, by all of the Parties.

**10. Construction.**

The Parties and their counsel participated in the negotiation and drafting of this Agreement. If any ambiguity or question of intent or interpretation arises, the Parties intend that (a) this Agreement be construed as if they had drafted it together, and (b) no presumption or burden of proof arises favoring or disfavoring any party by virtue of its role in drafting any provision of this Agreement.

**11. Binding Effect.**

This Agreement shall be binding upon and inure to the benefit of the Parties, their successors, affiliates, licensees and assigns.

**12. Waiver.**

Waiver by any Party of any breach or failure by another Party to enforce the terms and conditions of this Agreement, at any time, shall not in any way effect, limit, or waive the right of that Party thereafter to enforce or compel strict compliance with any term or condition thereof.

**13. Governing Law.**

This Agreement is made and entered into in the State of Georgia and shall, in all respects, be interpreted, enforced and governed under the laws of the State of Georgia.

**14. Representation by Legal Counsel.**

The undersigned represent and agree that they have discussed all aspects of this Agreement with their respective attorneys and that they have carefully read and fully understand all of the provisions of this Agreement and that it is entered into voluntarily for the purposes of making full and final compromise settlement of any and all claims, disputed or otherwise, on account of the matters set out hereinabove; that, in entering into this settlement and in executing this Agreement, they have taken into consideration all past, present and future losses, damages, expenses, and consequences; that, except as set forth in Paragraph 2.b above, this Agreement shall apply to all such losses, damages, expenses, and consequences; and that this settlement is made and this Agreement executed to terminate and forever foreclose said alleged claims made by the undersigned and their subrogees, successors, and assigns as a result of the matters set out herein.

**15. Further Assurances.**

The Parties agree to execute such other documents as may be reasonably necessary to carry out the intent and purpose of this Agreement.

**16. Headings.**

The headings that have been used to designate the various sections of this Agreement are solely for convenience in reading and for ease of reference and shall not be construed in any event or manner as interpretive of this Agreement.

**17. Counterparts.**

This Agreement may be executed in two (2) counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this instrument to be duly executed and delivered as of the Effective Date.

Accepted and agreed by the Parties:

**CryoLife, Inc.**

/s/ Steven G. Anderson
By: Steven G. Anderson
Its: CEO, Chairman and President
Date: 6-25-12

Sworn to and subscribed before
me this 25th day of June, 2012.

/s/ Suzanne K Gabbert
Notary Public

My Commission Expires:

[ Notarial Seal ]

**Medafor, Inc.**

/s/ Gary J. Shope
By: Gary J. Shope
Its: CEO
Date: June 28, 2012

Sworn to and subscribed before
me this 28th day of June, 2012.

/s/ Colleen Mary Law
Notary Public

My Commission Expires: 1/31/13

[ Notarial Seal ]

**EXHIBIT A**

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION**

| | | |
|---|---|---|
| CRYOLIFE, INC., | ) | |
| | ) | |
| *Plaintiff,* | ) | |
| | ) | CIVIL ACTION NO. |
| v. | ) | |
| | ) | 1:09-CV-1150-AT |
| MEDAFOR, INC., | ) | |
| | ) | |
| *Defendant.* | ) | |
| | ) | |

**STIPULATED DISMISSALS WITH PREJUDICE**

COME NOW, Plaintiff CryoLife, Inc. ("CryoLife") and Defendant Medafor, Inc. ("Medafor"), and, pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, hereby stipulate that the above cause be dismissed with prejudice with regard to all claims and counterclaims that have been raised between the parties to this lawsuit, and that each party will bear its own costs and attorneys' fees. The Parties further agree that this Court will retain jurisdiction of this matter solely for the purpose of enforcing the terms of the Settlement Agreement.

This the __ day of June, 2012.

Respectfully Submitted By:

**ARNALL GOLDEN GREGORY LLP**

**ROBINS, KAPLAN, MILLER & CIRESI LLP**

**Exhibit 10.4**

# SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is effective as of June 14 th, 2012 (the "Effective Date"), by and between CardioFocus, Inc. ("CardioFocus" or a "Party"), a Massachusetts corporation, and Cardiogenesis Corporation ("Cardiogenesis" or a "Party"), a Florida corporation. CardioFocus and Cardiogenesis are sometimes referred to hereinafter collectively as the "Parties."

## 1. Background of the Agreement

1.1. CardioFocus and Cardiogenesis are parties to the civil action captioned *CardioFocus, Inc. v. Candela Corporation, et al.,* Case No.: 08-CV-10285NMG, pending in the United States District Court Massachusetts (hereinafter, "the Litigation").

1.2. The Parties wish to compromise and settle the Litigation and to fully and finally release and forever discharge each other of all possible claims on the terms and conditions stated herein.

1.3. This Agreement sets forth Cardiogenesis' entire liability, if any, and CardioFocus' sole and exclusive remedy in connection with the Litigation.

1.4. The Parties enter into the Agreement in consideration of the mutual covenants and promises set forth herein.

## 2. Definitions

2.1. In addition to the terms defined elsewhere herein, each of the following terms shall have the meaning set forth below:

2.1.1. "CardioFocus Patents in Suit" means United States Patent Nos. 6,547,780 ("the'780 patent"), 6,159,203 ("the'203 Patent") and 5,843,073 ("the '073

patent") and all continuations, continuations-in-part, divisionals, reissues, and reexamination certificates of the '780, '203 and '073 patents, and including any counterparts thereof in any country of the world in which there are counterparts of the '780, '203 and '073 patents.

2.1.2. "Accused Products" means the Cardiogenesis TMR 2000, Solargen 2100, SoloGrip III, Pearl 5.0 and Pearl 8.0.

2.1.3. "Parents" with respect to Cardiogenesis means, at any time, any person or entity, whether previously, now or hereafter existing, which directly or indirectly owns or controls at least fifty percent (50%) of Cardiogenesis' outstanding shares, securities or ownership interest (representing the right to vote for the election of directors or other managing authority), or which directly or indirectly owns or controls the maximum percentage permitted under local laws or regulations in those countries where fifty percent (50%) ownership or control by a foreign entity is not permitted. "Parents" with respect to CardioFocus means, at any time, any person or entity, whether previously, now or hereafter existing, which directly or indirectly owns or controls at least fifty percent (50%) of CardioFocus' outstanding shares, securities or ownership interest (representing the right to vote for the election of directors or other managing authority), or which directly or indirectly owns or controls the maximum percentage permitted under local laws or regulations in those countries where fifty percent (50%) ownership or control by a foreign entity is not permitted.

2.1.4. "Subsidiaries" with respect to Cardiogenesis means, at any time, whether previously, now or hereafter existing, any person or entity at least fifty percent (50%), or the maximum percentage permitted under local laws or regulations in those countries where fifty percent (50%) ownership by a foreign entity is not permitted, of whose outstanding shares, securities or ownership interest (representing the right to vote for the election of directors or other managing authority) are directly or indirectly owned or controlled by Cardiogenesis.

"Subsidiaries" with respect to CardioFocus means, at any time, whether previously, now or hereafter existing, any person or entity at least fifty percent (50%), or the maximum percentage permitted under local laws or regulations in those countries where fifty percent (50%) ownership by a foreign entity is not permitted, of whose outstanding shares, securities or ownership interest (representing the right to vote for the election of directors or other managing authority) are directly or indirectly owned or controlled by CardioFocus.

2.1.5. "Affiliates" with respect to Cardiogenesis means, at any time, whether previously, now or hereafter existing, any person or entity at least fifty percent (50%), or the maximum percentage permitted under local laws or regulations in those countries where fifty percent (50%) ownership by a foreign entity is not permitted, of whose outstanding shares, securities or ownership interest (representing the right to vote for the election of directors or other managing authority) are directly or indirectly owned or controlled by any of Cardiogenesis' Parents or Subsidiaries. "Affiliates" with respect to CardioFocus means, at any time, whether previously, now or hereafter existing, any person or entity at least fifty percent (50%), or the maximum percentage permitted under local laws or regulations in those countries where fifty percent (50%) ownership by a foreign entity is not permitted, of whose outstanding shares, securities or ownership interest (representing the right to vote for the election of directors or other managing authority) are directly or indirectly owned or controlled by any of CardioFocus' Parents or Subsidiaries.

## 3. Payment by Cardiogenesis

3.1. Within thirty (30) days of execution of the Agreement by all Parties, Cardiogenesis will pay the sum of Four Million Five Hundred Thousand Dollars ($4,500,000.00 U.S.) to CardioFocus and its attorneys, Niro, Haller & Niro, by wire transfer to a client account provided by Niro, Haller & Niro.

3.2. The Parties acknowledge and agree that all conditions precedent for the payment obligation set forth in paragraph 3.1 above have been fully satisfied, and such payment obligation cannot hereafter be forfeited, extinguished, or rendered null and void for any reason, including but not limited to a subsequent finding of invalidity, unenforceability, or non-infringement of the CardioFocus Patents in Suit. The Parties further acknowledge and agree that Cardiogenesis' failure to make the payment pursuant to paragraph 3.1 above shall constitute a material breach of the provisions of this Agreement, and shall render null and void the releases and covenants granted in this Agreement.

**4. Releases**

4.1. CardioFocus and its officers, directors, managers, shareholders, employees, agents, principals, successors, assigns, representatives, insurers, and attorneys knowingly, voluntarily, unconditionally, fully and finally release, acquit, and forever discharge Cardiogenesis, its Subsidiaries, all Affiliates of Cardiogenesis and its Subsidiaries, and all Parents of Cardiogenesis and its Subsidiaries, and all officers, directors, managers, shareholders, employees, agents, principals, successors, assigns, representatives, insurers, and attorneys of any of the foregoing, and all purchasers, distributors, sellers, manufacturers, importers, and users of the Accused Products of and from any and all claims, actions, causes of action, demands, suits, liabilities, damages, losses, costs and expenses of any and every kind and nature whatsoever, whether known or unknown, actual or potential, suspected or unsuspected, fixed or contingent (collectively, "Claims"), which Claims have been made as of the date of this Agreement, or which might be made at any time in the future, that arise out of, or relate to, directly or indirectly, the CardioFocus

Patents in Suit as defined in paragraph 2.1.1 above and/or the Accused Products as defined in paragraph 2.1.2 above, including, but not limited to: (a) any Claims related to alleged infringement, inducement of infringement, or contributory infringement of any of the claims of the CardioFocus Patents in Suit, as defined in paragraph 2.1.1 above; (b) any Claims that the Accused Products, as defined in paragraph 2.1.2 above, infringe any valid claim of any patent that is currently owned by CardioFocus, including all parents, continuations, continuations-in-part, divisionals, reissues, and reexamination certificates and foreign counterparts; and (c) any Claims which by pleading, amendment, or supplement were or could be or could have been alleged in the Litigation, provided, however, that nothing in this paragraph shall be construed to release, acquit, or discharge Cardiogenesis from any obligation it has expressly assumed in the Agreement.

4.2. Cardiogenesis and its officers, directors, managers, shareholders, employees, agents, principals, successors, assigns, representatives, insurers, and attorneys knowingly, voluntarily, unconditionally, fully and finally release, acquit, and forever discharge CardioFocus, its Subsidiaries, all Affiliates of CardioFocus and its Subsidiaries, and all Parents of CardioFocus and its Subsidiaries, and all officers, directors, managers, shareholders, employees, agents, principals, successors, assigns, representatives, insurers, and attorneys of any of the foregoing, of and from any and all claims, actions, causes of action, demands, suits, liabilities, damages, losses, costs and expenses of any and every kind and nature whatsoever, whether known or unknown, actual or potential, suspected or unsuspected, fixed or contingent (collectively, “Claims”), which Claims have been made as of the date of this Agreement, or which might be made at any time in the future, that

arise out of, or relate to, directly or indirectly, the CardioFocus Patents in Suit as defined in paragraph 2.1.1 above, including, but not limited to: (a) any Claims related to alleged invalidity, inequitable conduct, or misuse of any of the claims of the CardioFocus Patents in Suit as defined in paragraph 2.1.1 above, and (b) any Claims which by pleading, amendment, or supplement were or could be or could have been alleged in the Litigation, provided, however, that nothing in this paragraph shall be construed to release, acquit, or discharge CardioFocus from any obligation it has expressly assumed in the Agreement.

**5. Dismissal of Litigation**

5.1. Promptly upon the execution of this Agreement by both Parties, counsel for the Parties shall cause to be filed in the Litigation a Final Order and Dismissal with Prejudice of all of CardioFocus' claims against Cardiogenesis and all of Cardiogenesis' claims against CardioFocus.

5.2. Each Party will pay its own attorneys' fees and costs incurred in connection with the Litigation.

5.3. Each Party agrees that this Agreement does not constitute evidence of, or any admission of any liability, omission, or wrongdoing of any kind, and it shall not be offered or received into evidence or otherwise filed or lodged in any proceeding against any Party except as maybe necessary to prove and enforce its terms. It is expressly understood and agreed that neither this Agreement nor any consideration provided pursuant to the Agreement are to be construed as an admission of liability on the part of Cardiogenesis or any related entity. This Agreement represents a settlement and compromise and is not intended to be a recognition of either the validity, enforceability or

infringement of the CardioFocus Patents in Suit and is a compromise and settlement under Rule 408 of the Federal Rules of Evidence and shall not be introduced into evidence by either party except in connection with a claim of breach of this Agreement.

**6. Entire Agreement and Amendments**

6.1. The Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior representations, discussions, negotiations, agreements, and understandings, whether written or oral, with respect thereto.

6.2. The Agreement may be modified only by a written amendment signed by all Parties, and no waiver of any provision of the Agreement or the breach thereof shall be effective unless expressed in a writing signed by the waiving party. The waiver by any party hereto of any of the provisions of the Agreement or of the breach thereof shall not operate or be construed as a waiver of any other provision or breach thereof.

**7. Assignment and Transfer**

7.1. The covenants and releases granted herein by CardioFocus to Cardiogenesis are personal and are non-transferable by Cardiogenesis to a third party without CardioFocus' express written consent, which shall not be unreasonably withheld, except the rights of Cardiogenesis may be transferred or assigned to (1) another entity in connection with a reorganization, merger, consolidation, acquisition or other restructuring involving all or substantially all of the voting securities and/or assets of Cardiogenesis; or (2) any successor entity or entities that acquire all or any part of Cardiogenesis' applicable business(es) to which the CardioFocus Patents in Suit as defined in paragraph 2.1.1 above may relate, provided that the transfer or assignment is limited to the past, present and future products and/or services of the transferred business(es) only and not to any past, present,

or future products and/or services of any acquiring company. In the event of any transfer or assignment, the covenants and releases granted to Cardiogenesis in this Agreement shall remain in full force and effect and shall not be affected by such transfer or assignment.

**8. Authority, Representations, and Warranties**

8.1. The persons executing this Agreement represent and warrant that they have read the agreement, have the authority to execute it on behalf of the Party for which they have signed and understand its contents and are executing it freely and voluntarily with an intent to bind their respective Party to its terms.

8.2. The Parties represent and warrant that they have the authority, without joinder by others, to grant the releases and covenants provided for in this Agreement. The Parties further represent and warrant that they have not assigned or otherwise transferred, either in whole or in part, any claim released in the Agreement, and that there are no outstanding agreements, assignments, or encumbrances inconsistent with the provisions of the releases and covenants provided for in this Agreement.

8.3. CardioFocus represents and warrants that it has sole ownership in the CardioFocus Patents in Suit as defined in paragraph 2.1.1 above, and has the sole right to collect damages, including past damages for infringement, and has the sole right to grant the rights granted herein and to enter into this Agreement, and shall defend, indemnify and hold harmless Cardiogenesis and its Parents, Subsidiaries and Affiliates from and against any claims from a third party claiming a right to payment of any portion of the settlement agreement, or for infringement of the CardioFocus Patents in Suit.

**9. Notice and Right to Cure**

9.1. In the event that a party ("Complaining Party") considers that another party hereto ("Allegedly Breaching Party") has breached a term or provision of the Agreement, the Complaining Party shall give written notice to the Allegedly Breaching Party describing the nature of the breach in reasonable detail. The Allegedly Breaching Party shall then have ten (10) days to cure the alleged breach to the reasonable satisfaction of the Complaining Party.

9.2. The provisions of paragraph 9.1 shall be followed by the Parties prior to the initiation of any suit or legal proceeding relating to the Agreement, including any suit or legal proceeding to enforce the terms of the Agreement.

9.3. All notices, requests, or demands relating to the Agreement shall be in writing and shall be deemed to have been adequately given and delivered (a) upon personal delivery (including personal delivery by overnight mail or courier) to the party to be notified, (b) five (5) business days after deposit with certified mail, return receipt requested, prepaid and addressed to the party to be notified at the address set forth herein, or (c) immediately upon transmission and receipt of confirmation if sent by facsimile to the receiving party at the facsimile number set forth herein.

9.4. All notices, requests, or demands hereunder shall be made to the following representatives of the Parties at the address set forth below, unless another address is specified hereafter in writing by a Party:

9.4.1. If to Cardiogenesis:

Jeff Burris
Vice President & General Counsel
CryoLife
1655 Roberts Boulevard, N.W.
Kennesaw, Georgia 30144

with a copy to:

Bart L. Kessel
Tucker Ellis LLP
515 South Flower Street
42nd Floor
Los Angeles, California 90071

9.4.2. If to CardioFocus:

Steve Sagon
Chief Executive Officer
CardioFocus, Inc.
500 Nickerson Rd.
Marlborough, Massachusetts 01752

with a copy to:

Gregory P. Casimer
Frederick C. Laney
Niro, Haller & Niro
181 West Madison Street, Suite 4600
Chicago, Illinois 60602

**10. General**

10.1. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which counterparts taken together shall constitute one and the same instrument. Facsimile and electronically scanned signatures shall be deemed original signatures. It shall not be necessary in making proof of this document or any counterpart hereof to produce or account for any of the other counterparts.

10.2. The Parties agree not to make any public statements that defame or disparage the business reputation, practices or conduct of the other party, its directors or officers.

10.3. Each of the Parties agrees, promptly upon reasonable request therefore, to prepare, execute, acknowledge, deliver, or file such other an further papers, forms, instruments, and documents, and to take such other and further action as may be necessary or convenient to evidence, perfect, or enforce any of the rights and obligations arising under or in connection with the Agreement or with any document or agreement referred to herein or otherwise to consummate or carry out the intent of the Agreement.

10.4. The section headings contained in the Agreement are for convenience only and shall not in any way affect the meaning or interpretation of the provisions hereof.

10.5. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines that a Party has breached the Agreement, then the breaching Party shall be liable and shall pay to the other Party the legal fees incurred by the other Party in connection with such litigation, including any appeal therefrom

This Agreement was jointly drafted by the Parties and the language of all parts of the Agreement shall in all cases be construed as a whole according to its meaning and not strictly for or against any of the Parties.

IN WITNESS WHEREOF, the Parties have hereunto signed their names on the dates indicated.

| CARDIOFOCUS, INCORPORATED | CARDIOGENESIS CORPORATION |
| --- | --- |
| /s/ Stephen W. Sagon | /s/ D. A. Lee |
| Dated: June 14, 2012 | Dated: 6/14/2012 |
| Its: President & CEO | Its: EVP, COO & CFO |

**Exhibit 31.1**

**CERTIFICATIONS**

I, Steven G. Anderson, certify that:

1. I have reviewed this quarterly report on Form 10-Q of CryoLife, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with 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 (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 31, 2012

/s/ STEVEN G. ANDERSON

Chairman, President, and
Chief Executive Officer

**Exhibit 31.2**

I, David Ashley Lee, certify that:

1. I have reviewed this quarterly report on Form 10-Q of CryoLife, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with 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 (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 31, 2012

/s/ D. ASHLEY LEE

Executive Vice President,
Chief Operating Officer, and
Chief Financial Officer

**Exhibit 32**

**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 CryoLife, Inc. (the "Company") on Form 10-Q for the quarter ending June 30, 2012, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of Steven G. Anderson, the Chairman, President, and Chief Executive Officer of the Company, and David Ashley Lee, the Executive Vice President, Chief Operating Officer, and Chief Financial Officer of the Company, hereby certifies, pursuant to and for purposes of 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to his 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.

/s/ STEVEN G. ANDERSON
STEVEN G. ANDERSON
Chairman, President, and
Chief Executive Officer
July 31, 2012

/s/ D. ASHLEY LEE
D. ASHLEY LEE
Executive Vice President,
Chief Operating Officer, and
Chief Financial Officer
July 31, 2012