

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM681043

<b>SUBMISSION TYPE:</b>	RESUBMISSION		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
<b>RESUBMIT DOCUMENT ID:</b>	900638976		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
C & C Industries, Inc., d/b/a CNC Flow Control		10/30/2020	Corporation: TEXAS
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Smith Valve Company, LLC		
<b>Street Address:</b>	13750 Hollister Road		
<b>City:</b>	Houston		
<b>State/Country:</b>	TEXAS		
<b>Postal Code:</b>	77086		
<b>Entity Type:</b>	Limited Liability Company: TEXAS		
<b>PROPERTY NUMBERS Total: 3</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	1969858		
<b>Registration Number:</b>	2204776	DIAMOND	
<b>Registration Number:</b>	0915378	SMITH	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	2252483109		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	17134371864		
<b>Email:</b>	jwtrademarks@joneswalker.com		
<b>Correspondent Name:</b>	JEFFREY J. PHILLIPS		
<b>Address Line 1:</b>	811 Main Street, Ste. 2900		
<b>Address Line 4:</b>	Houston, TEXAS 77002		
<b>ATTORNEY DOCKET NUMBER:</b>	44095/180355-00		
<b>NAME OF SUBMITTER:</b>	JEFFREY J. PHILLIPS		
<b>SIGNATURE:</b>	/jeffrey j. phillips/		
<b>DATE SIGNED:</b>	10/14/2021		
<b>Total Attachments: 28</b> source=Notice#page1.tif			

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**ASSIGNMENT OF INTELLECTUAL PROPERTY**

THIS ASSIGNMENT OF INTELLECTUAL PROPERTY (this “Agreement”) is made this 30th day of October, 2020, by and between C&C Industries, Inc., d/b/a CNC Flow Control, a Texas corporation (“Assignor”), and Smith Valve Company, LLC, a limited liability company (the “Assignee”). Terms used herein and not otherwise defined herein have their respective meanings as set forth in the Asset Purchase Agreement, dated October 29, 2020 (the “Asset Purchase Agreement”), by and among Assignor and Assignee.

**RECITALS:**

WHEREAS, Assignor and Assignee are parties to the Asset Purchase Agreement and, pursuant and subject to the Asset Purchase Agreement, Assignor agreed to sell, assign and transfer to Assignee all the Intellectual Property set forth on Exhibit A (collectively, the “Intellectual Property”);

WHEREAS, the parties now desire to effectuate the assignment and assumption of the Intellectual Property pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of good and valuable consideration paid to the Assignor by the Assignee, receipt of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignment and Assumption. Effective as of the Closing, Assignor hereby assigns to Assignee, and Assignee hereby assumes the Intellectual Property. Assignee, by this Agreement, shall become entitled to all rights, titles, obligations and interests of Assignor in and to the Intellectual Property as if Assignee were the original party thereto or owner thereof.

2. No Liabilities Assumed. Except as expressly set forth in the Asset Purchase Agreement and the Assumption Agreement by and between Assignor (as Seller) and Assignee (as Purchaser) of even date herewith, Assignee assumes no liability or obligation with respect to, and Assignor retains full and complete responsibility for, and full obligation and liability in respect of, all indebtedness, obligations, claims and other liabilities (direct or indirect, known or unknown, choate or inchoate, absolute or contingent) of whatever nature of Assignor not specifically assumed by Assignee in the Purchase Agreement with respect to the Intellectual Property.

3. Conflict. This Agreement is made subject to and with the benefit of the representations, warranties and other provisions of the Asset Purchase Agreement. No provision of this Agreement shall be deemed to enlarge, alter or amend the terms or provisions of the Asset Purchase Agreement or constitute a waiver or release by any party of any liabilities imposed on another party by the terms of the Asset Purchase Agreement, including, without limitation, the representations and warranties contained therein, which shall not merge into but shall survive this Agreement and continue in full force and effect for the applicable periods in the Asset Purchase Agreement. Notwithstanding anything to the contrary set forth herein, if there is any conflict

between the terms and conditions of this Agreement and the terms and conditions of the Asset Purchase Agreement, the terms and conditions of the Asset Purchase Agreement shall control.

4. Additional Documents. Assignor shall execute and/or obtain such further documents, including without limitation any consents, waivers or assignments, and perform such further acts, as may be reasonably necessary to transfer and convey the Intellectual Property to Assignee, pursuant to the terms contained in the Asset Purchase Agreement, and to otherwise comply with the terms of this Agreement and consummate the transactions contemplated hereby.

5. Waiver; Modification. Waiver of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party. This Agreement may not be modified, altered, amended, or otherwise changed except by a written instrument executed by each of the parties.

6. Notices. All notices made pursuant to this Agreement shall be in writing and shall be sufficiently served when delivered personally to the party to be notified or sent by certified mail to the last known address, as determined by using due diligence, of the party to be notified.

7. Assignment. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns. Neither this Agreement nor any rights or obligations hereunder shall be assignable without the prior written consent of the other party.

8. Section Headings. Section headings have been inserted in this Agreement for convenience of reference only. If there is any conflict between such headings and the text of this Agreement, the text shall control.

9. Severability. In the event that any provision of this Agreement is declared to be illegal or invalid, only such provision shall be affected. This Agreement shall then be construed and enforced as if such provision had not been contained herein, and all other provisions not directly dependent thereon shall remain in full force and effect.

10. Applicable Law. This Agreement shall be construed in accordance with the internal laws of the State of Texas without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Texas.

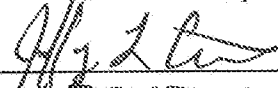
11. Counterparts. This Agreement may be executed in counterparts (delivery of which may occur by facsimile or electronic mail), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have executed this Assignment of Intellectual Property as of the date first above written.

ASSIGNOR:

between C&C Industries, Inc., d/b/a CNC Flow Control, a Texas corporation

By:   
Name: JEFFREY L. ADAMS  
Title: PRESIDENT

ASSIGNEE:

Smith Valve Company, LLC, a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned have executed this Assignment of Intellectual Property as of the date first above written.

ASSIGNOR:

between C&C Industries, Inc., d/b/a CNC Flow Control, a Texas corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ASSIGNEE:

Smith Valve Company, LLC, a Texas limited liability company

By: W. P. Smith  
Name: W. P. Smith  
Title: MANAGING MEMBER

**SCHEDULE A****Intellectual Property**

## 1. Registered Trademarks:

Title	Images	Owner Name	Place of Filing	Reg. Number	Reg. Date	Class(es)
DIAMOND GEAR design mark		Diamond gear Company, Inc.	United States	1969858	4/23/1996	Nice Classes: 07
DIAMOND word mark		Diamond gear Company, Inc.	United States	2204776	11/24/1998	Nice Classes: 07
SMITH word-mark/design mark		ERIKS N.V.	Benelux	0923549	8/2/2012	Nice Classes: 06
SMITH word mark/design mark		The Newdell Company, Inc.	United States	915378	1/22/1971	Nice Classes: 06

2. Unregistered Trademarks: None.

3. Patents and Applications: None.

4. Registered Copyrights and Applications: None.

5. The following purchased Domain Names (including all right, title, and interest to the content appearing on the domain names, source code, and marketing materials associates with the domain names):

- a. diamond-gear.com (Expiration Date 06/24/2021)
- b. smithvalve.com (Expiration Date 03/07/2024)
- c. smithvalves.com (Expiration Date 03/12/2024)

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "**Agreement**"), dated as of October 29, 2020, is entered into between C&C Industries, Inc. d/b/a CNC Flow Control, a Texas corporation ("**Seller**"), and Smith Valve Company, LLC, a Texas limited liability company ("**Buyer**") (Seller and Buyer are each a "**Party**" and collectively, the "**Parties**").

### RECITALS

**WHEREAS**, Seller is engaged in the business of (a) assembling and selling valves under the CNC "Smith" brand name; and (b) distributing worm gears, bevel gears, and gear accessories under the "Diamond Gear" brand name (the "**Business**");

**WHEREAS**, the assets of the Business are primarily located at 13750 Hollister Road, Houston, TX 77086 ("**Hollister Road**"); and

**WHEREAS**, Seller desires to sell and assign to Buyer, and Buyer wishes to purchase and assume from Seller, substantially all the assets and liabilities of the Business, subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS

##### Section 1.01 Definitions.

(a) "**Action**" shall mean any claim, action, suit, investigation, demand, notice of violation, summons, subpoena, regulatory enforcement action or any other legal proceeding.

(b) "**Affiliate**" of a Person shall mean any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person; and (ii) "**control**" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

(c) "**Code**" means the Internal Revenue Code of 1986, as amended.

(d) "**Contracts**" means all contracts, leases, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures, and all other agreements, commitments, and legally binding arrangements, whether written or oral.

(e) "**Disclosure Schedules**" means the disclosure schedules delivered by Seller and Buyer concurrently with the execution and delivery of this Agreement, as may be updated prior to Closing pursuant to this Agreement.

(f) "**Employee**" shall mean those Persons employed by Seller who worked exclusively for the Business immediately prior to the Closing.

(g) "**Encumbrance**" means any lien (statutory or other), assessment, judgment, security interest, mortgage, pledge, easement, reservation, charge, claim, pledge, condition, equitable interest, option, right of first refusal, encroachment, encumbrance or restriction of any kind, including any restriction of use or transfer.

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(h) **“Fundamental Representations”** means those representations and warranties made by Seller contained in Sections 4.01, 4.02(a), 4.04, 4.08 and 4.09.

(i) **“Governmental Authority”** shall mean any federal, state, local, or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any arbitrator, court, or tribunal of competent jurisdiction.

(j) **“Governmental Order”** shall mean any order, writ, judgment, injunction, decree, stipulation, determination, or award entered by or with any Governmental Authority.

(k) **“Guaranty”** shall mean the Guaranty To Commercial Lease Concerning the Leased Premises at 13750 Hollister Road, dated on or around March 24, 2016, by and among Diamond Terra, Ltd, a Texas limited partnership (the **“Landlord”**), Eriks Flow, Inc. and Eriks Corporation Inc.

(l) **“Intellectual Property”** shall mean any and all rights in, arising out of, or associated with patents, trademarks, service marks, brands, logos, trade dress, trade names, copyrights, and trade secrets, know-how, inventions (whether or not patentable), discoveries, improvements, valve and other designs and methods, technology, business and technical information, databases, data complications and collections, tools, methods, processes, techniques and other confidential and proprietary information and rights therein of the Seller together with the goodwill connected with the use of and symbolized by, and all registrations, applications for registration, and renewals of, any of the foregoing.

(m) **“Law”** shall mean any statute, law, ordinance, tax, regulation, order or rule of any Governmental Authority, including those covering environmental, energy, safety, health, transportation, bribery, record keeping, zoning, antidiscrimination, antitrust, wage and hour, and price and wage control matters, as well as any applicable principle of common law.

(n) **“Lease”** shall mean that certain lease, dated December 22, 2010, by and between Seller and Landlord, as amended.

(o) **“Liabilities”** shall mean liabilities, obligations, or commitments of any nature whatsoever, whether asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured, or otherwise.

(p) **“Material Adverse Effect”** shall mean any event, occurrence, fact, condition, or change that is materially adverse to the business, results of operations, financial condition, or assets of the Business, taken as a whole.

(q) **“Open PO Obligations”** shall mean the Seller’s open purchase order obligations for valve products on order but undelivered.

(r) **“Permitted Encumbrances”** means (i) Encumbrances for Taxes which are not due and payable, which may thereafter be paid without penalty or which are being contested in good faith and for which appropriate reserves have been established in accordance with GAAP consistently applied, and (ii) with respect to real property only: (A) mechanics’, carriers’, workers’, repairmen’s liens or other similar Encumbrances arising or incurred in the ordinary course of business consistent with past practices which do not materially affect the marketability of the property subject thereto and do not materially impair the use of the property subject thereto as presently used; (B) Encumbrances that arise under zoning, land use and other similar laws and other imperfections of title or encumbrances, if any, which do not materially affect the marketability of the property subject thereto and do not materially impair the use of the property subject thereto as presently used; (C) other Encumbrances arising as a matter of law which do not materially impair the marketability or the use of the property subject thereto as presently used; or (D) easements, covenants, rights-of-way and other encumbrances or restrictions, whether recorded or referred to in an applicable lease or unrecorded, which do not materially impair the use or marketability of the property subject thereto as currently used.

(s) “**Person**” shall mean any individual, partnership, limited liability company, limited liability partnership, corporation, association, joint stock company, trust, joint venture, unincorporated organization or Governmental Authority.

(t) “**Secoded Employee**” means [REDACTED]

(u) “**Tax**” or “**Taxes**” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, capital gain, intangible, environmental (pursuant to Section 59A of the Code or otherwise), custom duties, capital stock, franchise, unclaimed property or escheat, employee’s income withholding, foreign withholding, social security (or its equivalent), unemployment, disability, real property, personal property, sales, use, transfer, value added, registration, alternative or add-on minimum, estimated or other tax, including any interest, assessments, governmental charges, fines, penalties or additions to tax in respect of the foregoing, whether disputed or not, and any obligation to assume or succeed to the liability of any other Person in respect of the foregoing, and the term “**Tax Liability**” shall mean any Liability with respect to Taxes.

(v) “**Tax Return**” means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

(w) “**Transaction Documents**” means and all agreements and documents executed in connection with this Agreement by the Seller or the Buyer.

## ARTICLE II

### PURCHASE AND SALE

**Section 2.01 Purchase and Sale of Assets.** Subject to the terms and conditions set forth herein, at the Closing, Seller shall sell, convey, assign, transfer, and deliver to Buyer, and Buyer shall purchase from Seller, all of Seller’s right, title, and interest in, to, and under all of the following tangible and intangible (including certain goodwill) assets, properties, lease rights under the Lease and rights of every kind and nature free and clear of any Encumbrances except the Permitted Encumbrances (collectively, the “**Purchased Assets**”):

(a) all inventory, finished goods, raw materials, work in progress, packaging, supplies, parts, and other inventories of the Business set forth on Section 2.01(a) of the Disclosure Schedules;

(b) all Contracts set forth on Section 2.01(b) of the Disclosure Schedules (the “**Assigned Contracts**”) (including an assignment of the Lease);

(c) all furniture, fixtures, equipment, machinery, tools, vehicles, office equipment further including, supplies, computers (including the computer server or servers used in the Business located on the property subject to the Lease), telephones, and other tangible personal property of the Business located at 13750 Hollister Road, Houston, TX 77086 (the “**Tangible Personal Property**”);

(d) copies of those books and records directly and solely relating to the foregoing assets; and

(e) all Intellectual Property, including the software, set forth in Section 2.01(e) of the Disclosure Schedules.

**Section 2.02 Excluded Assets.** Other than the Purchased Assets, Buyer expressly understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, any other assets or properties of Seller, and all such other assets and properties shall be excluded from the Purchased Assets (collectively, the “**Excluded Assets**”). Excluded Assets are the properties, and rights specifically set forth on Section 2.02 of the Disclosure Schedules; any asset not listed in Section 2.01; any asset not located at Hollister Road (except for certain assets located at 10350 Clay Rd. #250, Houston, TX 77041), unless such asset was removed from the location on Hollister Road by the Seller after the execution of this Agreement, that are specifically included on Section 2.10(a) of the Disclosure Schedules); and any asset not used in the Business.

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**Section 2.03 Assumed Liabilities.**

(a) Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform, and discharge when due any and all Liabilities of Seller arising out of or relating to the Purchased Assets on and after the Closing, other than the Excluded Liabilities (collectively, the “**Assumed Liabilities**”), but only to the extent that such Liabilities thereunder are required to be performed after the Closing and do not relate to Seller’s failure to perform, improper performance (including product liability), warranty or other breach, default or violation by Seller on or prior to the Closing, including the following:

- (i) all Liabilities arising under or relating to the Assigned Contracts, including the Lease, arising after the Closing Date;
- (ii) all Liabilities for (A) Taxes relating to the Business, the Purchased Assets, or the Assumed Liabilities for any taxable period (or any portion thereof) beginning after the Closing Date; and (B) Taxes for which Buyer is liable pursuant to Section 6.04;
- (iii) all Liabilities relating to Employees, including with respect to compensation and employee benefits, which accrue from and after the Closing Date; and
- (iv) all Liabilities under those Open PO Obligations set forth on Section 2.03(a)(iv) of the Disclosure Schedules not yet delivered to Seller as of the Closing.

(b) Buyer shall not assume and shall not be responsible for paying, performing, or discharging any of the following Liabilities of Seller (collectively, the “**Excluded Liabilities**”):

- (i) any Liabilities relating to or arising out of the Excluded Assets;
- (ii) any Liabilities, except for the Allocated Property Taxes, for Taxes relating to the Business, the Purchased Assets, or the Assumed Liabilities for any taxable period (or any portion thereof) ending on or prior to the Closing Date;
- (iii) any Liabilities of Seller arising or incurred in connection with the negotiation, preparation, investigation, and performance of this Agreement, the other Transaction Documents, and the transactions contemplated hereby and thereby, including fees and expenses of counsel, accountants, consultants, advisers, and others;
- (iv) all Liabilities relating to Employees, including with respect to compensation and employee benefits, which accrue prior to the Closing Date; and
- (v) except for the Assumed Liabilities, all Liabilities of Seller arising out of the Business, operations, properties, assets, obligations or activities of the Seller or any of its Affiliates arising on or prior to the Closing, including any Liabilities associated with product liability (or similar theory of law) with respect to products sold by Seller.

**Section 2.04 Purchase Price.** The aggregate purchase price for the Purchased Assets (the “**Purchase Price**”) shall be an amount equal to:

- (a) The Purchase Price: \$ [REDACTED]
  - (i) *minus* the Closing Inventory Reduction (as defined herein);
  - (ii) *minus* the amount that the sum of the Paid PO Amount and the unreceived, unpaid balance of the Open PO Obligations exceeds \$ [REDACTED].

**"Closing Inventory Reduction"** shall mean 10% of every \$1.00 of Current Inventory below \$ [REDACTED] at Closing, excluding any Paid PO Amount inventory items that are in inventory at Closing.

**"Paid PO Amount"** shall mean the amount paid for any inventory under the Open PO Obligations that Seller receives before Closing, which remains in inventory at Closing.

**Section 2.05 Payment of Purchase Price.** Buyer shall pay the Purchase Price by wire transfer to Seller in immediately available funds in accordance with the wire transfer instructions set forth on Section 2.05 of the Disclosure Schedules.

**Section 2.06 Allocation of Purchase Price.** The Purchase Price shall be allocated among the Purchased Assets in accordance with Section 1060 of the Code and applicable Treasury Regulations in the manner set forth in Section 2.06 of the Disclosure Schedules (the "**Allocation**"). The Parties to this Agreement expressly agree that the Allocation shall be used by them for all purposes, including Tax, reimbursement and other purposes. Each Party to this Agreement agrees that it will (a) be bound by the Allocation for the purposes of determining any Taxes, (b) report the transaction completed pursuant to this Agreement in accordance with the Allocation, (c) timely complete and file the statement required by IRS Form 8594 consistent with the allocation (except for the effect of each Party's own transaction costs, which will be allocated in accordance with Section 1060), provide a copy of such form to the other Party hereto and file a copy of such form with its federal income tax return for the period that includes the Closing Date, and (d) that no such Party will take a position inconsistent with the Allocation on any applicable Tax Return in any Proceeding before any Governmental Authority except with the prior written consent of the other Parties hereto. In the event that the Allocation is disputed by any Governmental Authority, the Party receiving notice of the dispute will promptly notify the other Parties hereto. The Parties hereto will discuss the dispute prior to any resolution thereof. The Parties acknowledge that the Allocation was determined on an arm's-length basis upon a good faith determination of the fair market value of the Purchased Assets.

**Section 2.07 Non-Conforming Products.** Buyer acknowledges that certain designs and Purchased Assets in inventory do not meet the requirements of American Petroleum Institute (API) 602 ("Non-Conforming Products) and Buyer agrees that any Liability arising out of Buyer's sale or use of such Non-Conforming Products shall be treated as an Assumed Liability as set forth in Section 2.03.

### ARTICLE III CLOSING

**Section 3.01 Closing.** Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the "**Closing**") shall take place at the offices of Clark Hill Plc, 909 Fannin Street, Suite 2300, Houston TX 77010, on the business day that all of the conditions to Closing set forth in Section 3.02 are either satisfied or waived, or at such other time or place or in such other manner as Seller and Buyer may mutually agree upon in writing. The date on which the Closing is to occur is herein referred to as the "**Closing Date**" and shall be deemed to have occurred at 11:59 PM on the Closing Date.

#### **Section 3.02 Closing Conditions.**

(a) The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(i) The Fundamental Representations shall be true and correct in all respects as of the Closing Date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date) with the same effect as though made at and as of such date, and the other representations and warranties of Seller contained in Article IV shall be true and correct in all respects as of the Closing Date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date) with the same effect as though made at and as of such date except where the failure of such other

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representations and warranties to be true and correct would not have a Material Adverse Effect.

(ii) Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(iii) No Material Adverse Effect shall have occurred.

(iv) Buyer shall be reasonably satisfied with the results of its confirmatory due diligence investigation of the specific matters set forth on Schedule 3.02(a)(iv).

(v) Seller shall have delivered to Buyer the following:

(i) a bill of sale in the form of **Exhibit A** attached hereto (the "**Bill of Sale**") and duly executed by Seller, transferring the Tangible Personal Property to Buyer;

(ii) an assignment and assumption agreement in the form of **Exhibit B** attached hereto (the "**Assignment and Assumption Agreement**") and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Purchased Assets and the Assumed Liabilities;

(iii) a distribution agreement in the form of **Exhibit C** attached hereto (the "**Distribution Agreement**") and duly executed by Seller;

(iv) an intellectual property assignment agreement in the form of **Exhibit D** attached hereto (the "**IP Assignment Agreement**") and duly executed by Seller, effecting the assignment to Buyer of the Purchased Assets and the Intellectual Property;

(v) a certificate of the Secretary (or equivalent officer) of Seller certifying as to (A) the resolutions of the board of directors of Seller, which authorize the execution, delivery, and performance of this Agreement and the agreements related hereto and the consummation of the transactions contemplated hereby and thereby; and (B) the names and signatures of the officers of Seller authorized to sign this Agreement and the agreements related hereto; and

(vi) such other customary instruments of transfer or assumption, filings, or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to the transactions contemplated by this Agreement.

(b) The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller's waiver, at or prior to the Closing, of each of the following conditions:

(i) The representations and warranties of Buyer contained in Article V shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby.

(ii) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

- (iii) Buyer shall have delivered to Seller the following:
  - (i) the Purchase Price by wire transfer of immediately available funds;
  - (ii) a certificate of the Secretary (or equivalent officer) of Buyer certifying as to (A) the resolutions of the board of directors of Buyer, which authorize the execution, delivery, and performance of this Agreement and the agreements related hereto and the consummation of the transactions contemplated hereby and thereby; and (B) the names and signatures of the officers of Buyer authorized to sign this Agreement and the agreements related hereto;
  - (iii) the Assignment and Assumption Agreement duly executed by Buyer;
  - (iv) the IP Assignment Agreement executed by Buyer;
  - (v) the Distribution Agreement executed by the Buyer;
  - (vi) a Termination Agreement in form acceptable to Seller executed by Landlord with respect to the Guaranty.

**ARTICLE IV  
REPRESENTATIONS AND WARRANTIES OF SELLER**

Except as set forth in the Disclosure Schedules, Seller represents and warrants to Buyer that the statements contained in this Article IV are true and correct as of the date hereof and as of the Closing Date.

**Section 4.01 Organization and Authority of Seller.** Seller is a corporation duly organized, validly existing, and in good standing under the Laws of the State of Texas. Seller has all necessary corporate power and authority to enter into this Agreement and the other Transaction Documents to which Seller is a party, to carry out its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and any other Transaction Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder, and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate and shareholder action on the part of Seller. This Agreement and the Transaction Documents constitute legal, valid, and binding obligations of Seller enforceable against Seller in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

**Section 4.02 No Conflicts.** The execution, delivery, and performance by Seller of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) violate or breach any provision of the certificate of formation or bylaws of Seller; (b) violate or breach any provision of any Law or Governmental Order applicable to Seller, the Business, or the Purchased Assets; or (c) violate the terms and conditions of any material Contract to which Seller is a Party, including any Assigned Contract.

**Section 4.03 Assigned Contracts.** Seller is not in breach of or default under any Assigned Contract, except for such breaches or defaults that would not have a Material Adverse Effect.

**Section 4.04 Title to Tangible Personal Property.** Seller has good valid and indefeasible title to all the Purchased Assets free and clear of all Encumbrances except the Permitted Encumbrances.

**Section 4.05 Legal Proceedings; Governmental Orders.**

- (a) There are no Actions pending or, to Seller's knowledge, threatened against or by Seller relating to or affecting the Business, the Purchased Assets, or the Assumed Liabilities.

(b) There are no outstanding material Governmental Orders against, relating to, or affecting the Business or the Purchased Assets.

**Section 4.06 Compliance with Laws.** Seller is in compliance in all material respects with all Laws applicable to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets, including environmental laws. Seller has not released, and to Seller's actual knowledge, no third party has released, any hazardous materials in contravention of any environmental Laws with respect to the property subject to the Lease.

**Section 4.07 Infringement.** The Purchased Assets do not infringe or misappropriate any third party's patent or other intellectual property rights.

**Section 4.08 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of the Seller.

**Section 4.09 Taxes.**

(a) Seller has filed (taking into account any valid extensions) all Tax Returns with respect to the Purchased Assets or the Business required to be filed by Seller for any tax periods prior to Closing and has paid all Taxes shown thereon as owing. Seller is not currently the beneficiary of any extension of time within which to file any material Tax Return other than extensions of time to file Tax Returns obtained in the ordinary course of business.

(b) The representations and warranties set forth in this Section 4.09 are Seller's sole and exclusive representations and warranties regarding Tax matters.

**Section 4.10 Condition of Purchased Assets.** The conveyance of all Purchased Assets purchased by the Buyer under this Agreement and under any conveyance document executed in connection herewith shall be made on an "as is" and "where is" condition, and without any representation or warranties whatsoever with respect to such Purchase Assets, express or implied, with respect to the merchantability, fitness for a specific purpose, environmental condition, enforceability, collectability, documentation or freedom from encumbrance (in whole or in part), condition of property or any other matter, and Buyer shall not be entitled to rely on any representation or warranty whatsoever, except as expressly set forth in this Article IV of this Agreement.

**Section 4.11 No Other Representations and Warranties.** Except for the representations and warranties contained in this Article IV (including the related portions of the Disclosure Schedules), neither Seller nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller, including any representation or warranty as to the accuracy or completeness of any information, documents, or material regarding the Business and the Purchased Assets furnished or made available to Buyer and its representatives in any form.

**ARTICLE V  
REPRESENTATIONS AND WARRANTIES OF BUYER**

Except as set forth in the Disclosure Schedules, Buyer represents and warrants to Seller that the statements contained in this Article V are true and correct as of the date hereof and as of the Closing Date.

**Section 5.01 Organization and Authority of Buyer.** Buyer is a corporation duly organized, validly existing, and in good standing under the Laws of the State of Texas. Buyer has all necessary corporate power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder, and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement and the other Transaction Documents constitute legal, valid, and binding obligations of Buyer enforceable against Buyer in accordance with their respective

terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

**Section 5.02 No Conflicts.** The execution, delivery, and performance by Buyer of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) violate or breach any provision of the certificate of formation or bylaws of Buyer; or (b) violate or breach any provision of any Law or Governmental Order applicable to Buyer.

**Section 5.03 Legal Proceedings.** There are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer that challenge or seek to prevent, enjoin, or otherwise delay the transactions contemplated by this Agreement.

**Section 5.04 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer.

**Section 5.05 Independent Investigation.** Buyer acknowledges and agrees that (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, it has not relied, is not relying, and disclaims reliance on any and all express or implied representations or warranties, whether written or oral, made by Seller or any of its representatives, other than the express representations and warranties of Seller set forth in Article IV of this Agreement (including related portions of the Disclosure Schedules); and (b) neither Seller nor any other Person has made any representation or warranty as to Seller, the Business, the Purchased Assets, or this Agreement, except as expressly set forth in Article IV of this Agreement (including the related portions of the Disclosure Schedules).

## ARTICLE VI COVENANTS

**Section 6.01 Confidentiality.** The Parties acknowledge that the existence and the terms of this Agreement and any oral or written information exchanged between the Parties in connection with the preparation and performance this Agreement are regarded as confidential information. Each Party shall maintain confidentiality of all such confidential information, and without obtaining the written consent of the other Party, it shall not disclose any relevant confidential information to any third parties, except for the information that: (a) is or will be in the public domain (other than through the receiving Party's unauthorized disclosure); (b) is under the obligation to be disclosed pursuant to the applicable laws or regulations, rules of any stock exchange, or orders of the court or other government authorities; or (c) is required to be disclosed by any Party to its shareholders, legal counsels or financial advisors regarding the transaction contemplated hereunder, provided that such shareholders, legal counsels or financial advisors shall be bound by the confidentiality obligations similar to those set forth in this Section. Disclosure of any confidential information by the staff members or agencies hired by any Party shall be deemed disclosure of such confidential information by such Party, which Party shall be held liable for breach of this Agreement. This Section shall survive the termination of this Agreement.

**Section 6.02 Public Announcements.** Unless otherwise required by applicable Law, no party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed), and the parties shall cooperate as to the timing and contents of any such announcement.

**Section 6.03 Bulk Sales Laws.** The parties hereby waive compliance with the provisions of any bulk sales, bulk transfer, or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer.

**Section 6.04 Transfer Taxes.** All sales, use, registration, and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the other Transaction Documents, if any, shall be borne and paid by Buyer when due. Buyer shall, at its own expense, timely file any Tax Return or



other document with respect to such Taxes or fees (and Seller shall cooperate with respect thereto as necessary).

**Section 6.05 Further Assurances.** Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

**Section 6.06 Employees.** Buyer shall, or shall cause an Affiliate of Buyer to, offer employment effective on the Closing Date, to all Employees of the Business, including Employees who are absent due to vacation, family leave, short-term disability or other approved leave of absence. Buyer further agrees that each Employee who is offered and accepts employment and becomes employed by Buyer in connection with the transactions contemplated by this Agreement shall be eligible to receive base salary (excluding any other compensation or benefits) similar to that provided by Seller of such Employee. Nothing in this Section 6.06 is intended to create any third party beneficiary rights for an employee. Further, this Section 6.06 shall not restrict or limit Buyer's ability to modify or reduce the base salary, compensation, benefits or terms of employment of any employee after the Closing Date or to terminate the employment of any employee after the Closing Date.

**Section 6.07 Conduct of Business Prior to Closing.** From the date hereof until the Closing, Seller: (i) shall not accept or deliver any orders out of the normal course of business; (ii) will not issue any new purchase orders to vendors for inventory without Buyer's approval; (iii) shall provide weekly updates of purchase and sales orders placed, accepted, or delivered; and (iv) Seller shall maintain the Purchased Assets in the same condition as they were on the date of this Agreement (subject to reasonable and expected wear and tear).

**Section 6.08 Access to Information.** Seller acknowledges that as a condition to the Closing of the transactions contemplated in this Agreement, Buyer will conduct reasonable due diligence into the Business and the Purchased Assets. Accordingly, from the date hereof until the Closing, Seller shall (a) afford Buyer reasonable access to and the right to inspect all of the properties, assets, premises, books and records, Assigned Contracts and other documents and data related to the Business, including all agreements and licenses related to Intellectual Property and software utilized in the Business; (b) furnish Buyer with such financial, operating and other data and information related to the Business as Buyer may reasonably request; and (c) instruct the representatives of Seller to cooperate with Buyer in its investigation of the Business; (d) provide Buyer reasonable access to the Purchased Assets for reasonable inspection and testing, including a reasonable inspection and function testing of manufacturing and other equipment; provided, however, that any such investigation shall be conducted during normal business hours upon reasonable advance notice to Seller, under the supervision of Seller's personnel and in such a manner as not to interfere with the conduct of the Business or any other businesses of Seller. All requests by Buyer for access pursuant to this Section shall be submitted or directed exclusively to General Counsel of Seller or such other individuals as Seller may designate in writing from time to time. Notwithstanding anything to the contrary in this Agreement, Seller shall not be required to disclose any information to Buyer if such disclosure would, in Seller's reasonable opinion: (x) cause significant competitive harm to Seller and its businesses, including the Business, if the transactions contemplated by this Agreement are not consummated; (y) jeopardize any attorney-client or other privilege; or (z) contravene any applicable Law, fiduciary duty or binding agreement entered into prior to the date of this Agreement. Prior to the Closing, without the prior written consent of Seller, which may be withheld for any reason, Buyer shall not contact any suppliers to, or customers of, the Business and Buyer shall have no right to perform invasive or subsurface investigations of any real property (except in relation to the business of the Buyer unrelated to the Purchased Assets or the Business). Buyer shall abide by the terms of the Confidentiality Agreement, dated October 10, 2019, between Seller and Buyer, as amended, with respect to any access or information provided pursuant to this Section.

**Section 6.09 Supplement to Disclosure Schedules.** From time to time but not any later than two (2) days prior to the Closing, Seller shall have the right (but not the obligation) to supplement or amend the Disclosure Schedules hereto with respect to any matter hereafter arising or of which it becomes aware after the date hereof (a "Schedule Supplement"), and each such Schedule Supplement shall be deemed to be incorporated into and to supplement the Disclosure Schedules as of the Closing Date; provided, however, that solely in the event such Schedule Supplement contains information which would cause the condition set forth in Section 3.02(a)(iii) not to be satisfied as of the Closing Date, Buyer shall have the right to terminate this

Agreement prior to the Closing by written notice to the Seller no later than five (5) Business Days following delivery of such Schedule Supplement. In the event that the Buyer does not exercise its right to terminate this Agreement within such five (5) Business Day period, then the Buyer shall be deemed to have irrevocably waived any right to terminate this Agreement with respect to such matter under any of the conditions set forth in Section 3.02(a) and, further, shall have irrevocably waived its right to indemnification under Section 7.02(a) with respect to such new matter.

**Section 6.10 Closing Conditions.** From the date hereof until the Closing, each Party shall use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in Section 3.02 hereof.

**Section 6.11 Secondment.**

(a) Secondment Period. Immediately following Closing, Seller shall second the Seconded Employee to Buyer on an exclusive and full-time basis until the earlier of: (a) the 90th day following the Closing, and (b) the date upon which the Seconded Employee receives the approval or transfer of the HB-1 Visa. (the "**Secondment Period**").

(b) Employment. During the Secondment Period, (a) the Seconded Employee shall at all times remain an employee of Seller, which shall continue to be responsible for all payments due to the Seconded Employee pursuant to all applicable Laws, and (b) Seller shall not increase the compensation of the Seconded Employee unless otherwise required by Law.

(c) Supervision of the Seconded Employee. During the Secondment Period, when performing Seconded Services, the Seconded Employee shall work under the exclusive direction, control and supervision of Buyer, and to the organizational requirements, and be subject to the rules of Buyer with respect to all the activities performed on Buyer's premises. The general working conditions of the Seconded Employee, including without limitations, working days, working hours, break times, etc. shall conform to the working rules of Buyer. For purposes of this Agreement, "**Seconded Services**" means the duties to be performed by the Seconded Employee during the Secondment Period to benefit Buyer, being generally consistent with the duties performed by the Seconded Employee for Seller prior to the Closing.

(d) Administration of Payroll.

(i) During the Secondment Period, Seller shall bear responsibility for administration of employment-related costs to the Seconded Employee, and shall bear responsibility for payment of any applicable withholdings and taxes for the Seconded Employee.

(ii) During the Secondment Period, Buyer shall bear responsibility for the costs of any and all business travel and/or other business-related expenses incurred by the Seconded Employee in performing the Seconded Services for the benefit of Buyer.

(e) Payment Terms.

(i) In consideration of the Seconded Services for Buyer's benefit, Buyer shall accept a recharge of costs incurred by Seller in relation to the Seconded Employee's activities for the Secondment Period, including but not limited to: (i) Seller's payment of payroll as provided in this Section; (ii) any employer-paid taxes paid for by Seller; and (iii) any payroll processing fees charged by any third-party vendor used by Seller (collectively, the "**Rechargeable Costs**").

(ii) Such recharge shall take place in the following manner:

(A) at the end of each pay period, Seller shall send an itemized invoice/debit note (each an "**Invoice**") to Buyer for the applicable Rechargeable Costs. Seller will invoice Buyer in U.S. dollars. Such Rechargeable Costs shall be

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calculated by Seller and be deemed accurate in absence of a manifest error or reasonably timely objection by Buyer.

- (B) within seven (7) days of receipt of an Invoice, Buyer shall pay Seller the applicable Rechargeable Costs. In the event that Buyer disputes the calculation of the Rechargeable Costs, Buyer shall promptly notify Seller, and in the event that the Seller disputes the payment received pursuant to an Invoice received by Buyer, Seller shall promptly notify Buyer, and the designated representatives of Seller and Buyer shall discuss and attempt resolve the dispute.
- (C) Any amounts that Buyer has disputed in good faith and that are later determined by any court or other competent authority having jurisdiction, or by agreement of Seller and Buyer, to be owing from Buyer to Seller shall be paid in full within ten (10) business days of such determination, together with interest thereon at the maximum rate permitted by applicable law from the date due under the original invoice until the date of payment.

(f) Insurance.

- (i) Buyer shall obtain and maintain in full force and effect for the duration of the Secondment Period, and shall use commercially reasonable efforts to name Seller as an "additional insured" under any policies relating to:
  - (A) any insurance required in connection with the Seconded Employee's performance of the Seconded Services, including but not limited to, general liability insurance, in the amounts and types of coverage reasonably acceptable to Seller; and
  - (B) workers' compensation coverage required in connection with the Seconded Employee's performance of the Seconded Services, pursuant to an Alternate Employer Endorsement, substantially in the form attached hereto as Schedule "B".
- (ii) Buyer shall be solely responsible for all costs and expenses associated with obtaining and maintaining any insurance required by this Section.

(g) Scope of Liability. None of Seller or its subsidiaries and affiliates or their respective directors, officers or employees shall be liable to Buyer for any judgments, fines, penalties, charges, settlement amounts, costs, expenses and reasonable legal fees incurred in connection with any action, claim, suit, inquiry, proceeding, investigation or appeal therefrom, whether pending or threatened, arising out of, relating to or in connection with the performance by the Seconded Employee of the Seconded Services for Buyer, all such judgments, fines, penalties, charges, settlements, costs, expenses and fees being the sole responsibility of Buyer, except for any claims made by the Seconded Employee solely arising out of the failure by Seller to make payments to Seconded Employee required under applicable Laws.

**ARTICLE VII  
INDEMNIFICATION**

**Section 7.01 Survival.** Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is one (1) year from the Closing Date. None of the covenants or other agreements contained in this Agreement shall survive the Closing Date other than those which by their terms contemplate performance after the Closing Date, and each such surviving covenant and agreement shall survive the Closing for the period contemplated by its terms.

**Section 7.02 Indemnification by Seller.** Subject to the other terms and conditions of this Article VII, Seller shall indemnify Buyer against, and shall hold Buyer harmless from and against, any and all losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees (collectively, "**Losses**"), incurred or sustained by, or imposed upon, Buyer based upon, arising out of, with respect to, or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement;
- (b) any breach or non-fulfillment of any covenant, agreement, or obligation to be performed by Seller pursuant to this Agreement; or
- (c) any Excluded Asset or any Excluded Liability.

**Section 7.03 Indemnification by Buyer.** Subject to the other terms and conditions of this Article VII, Buyer shall indemnify Seller against, and shall hold Seller harmless from and against, any and all Losses incurred or sustained by, or imposed upon, Seller based upon, arising out of, or with respect to:

- (a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement;
- (b) any breach or non-fulfillment of any covenant, agreement, or obligation to be performed by Buyer pursuant to this Agreement;
- (c) any Assumed Liability; or
- (d) the Seconded Employee's performance of the Seconded Services.

**Section 7.04 Certain Limitations.** The party making a claim under this Article VII is referred to as the "**Indemnified Party**," and the party against whom such claims are asserted under this Article VII is referred to as the "**Indemnifying Party**." The indemnification provided for in Section 7.02 and Section 7.03 shall be subject to the following limitations:

- (a) The Indemnifying Party shall not be liable to the Indemnified Party for indemnification under Section 7.02(a) or Section 7.03(a), as the case may be, until the aggregate amount of all Losses in respect of indemnification under Section 7.02(a) or Section 7.03(a) exceeds one percent (1%) of the Purchase Price (the "**Deductible**"), in which event the Indemnifying Party shall only be required to pay or be liable for Losses in excess of the Deductible.
- (b) The aggregate amount of all Losses for which an Indemnifying Party shall be liable pursuant to Section 7.02(a) or Section 7.03(a), as the case may be, shall not exceed fifty percent (50%) of the Purchase Price (the "**Cap**"); provided that the Cap shall not apply to a breach of a Fundamental Representation.
- (c) In no event shall any Indemnifying Party be liable to any Indemnified Party under this Article VII for any punitive, incidental, consequential, special, or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple.
- (d) Seller shall not be liable under this Article VII for any Losses based upon or arising out of any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement if Buyer had actual conscious knowledge of such inaccuracy or breach prior to the Closing.
- (e) In no event shall Seller be liable in the aggregate under Sections 7.02 for Losses in excess of the Purchase Price.

**Section 7.05 Indemnification Procedures.** Whenever any claim shall arise for indemnification hereunder, the Indemnified Party shall promptly provide written notice of such claim to the Indemnifying Party. Such notice by the Indemnified Party shall: (a) describe the claim in reasonable detail; (b) include copies of all material written evidence thereof; and (c) indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. In connection with any claim giving rise to indemnity hereunder resulting from or arising out of any Action by a Person who is not a party to this Agreement, the Indemnifying Party, at its sole cost and expense and upon written notice to the Indemnified Party, may assume the defense of any such Action with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party shall be entitled to participate in the defense of any such Action, with its counsel and at its own cost and expense, subject to the Indemnifying Party's right to control the defense thereof. If the Indemnifying Party does not assume the defense of any such Action, the Indemnified Party may, but shall not be obligated to, defend against such Action in such manner as it may deem appropriate, including settling such Action, after giving notice of it to the Indemnifying Party, and no action taken by the Indemnified Party in accordance with such defense and settlement shall relieve the Indemnifying Party of its indemnification obligations herein provided with respect to any damages resulting therefrom; provided that unless the Indemnifying Party has expressly acknowledged in writing it is obligated to indemnify the Indemnified Party with respect to the underlying claim, the Indemnifying Party shall be deemed to deny and dispute any such Liability. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any claim, including: (i) making available (subject to the provisions of Section 6.08) records relating to such claim; and (ii) furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such claim. The Indemnifying Party shall not settle any Action without the Indemnified Party's prior written consent (which consent shall not be unreasonably withheld or delayed).

**Section 7.06 Tax Treatment of Indemnification Payments.** All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

**Section 7.7 Exclusive Remedies.** Subject to Section 9.11, the Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims for any breach of any representation, warranty, covenant, agreement, or obligation set forth herein or otherwise relating to the subject matter of this Agreement shall be pursuant to the indemnification provisions set forth in this Article VII. Nothing in this Section 7.07 shall limit any Person's right to seek and obtain any equitable relief to which such Person shall be entitled.

## ARTICLE VIII TERMINATION

**Section 8.01 Termination.** This Agreement may be terminated at any time prior to the Closing:

- (a) by the mutual written consent of Seller and Buyer;
- (b) by Buyer by written notice to Seller if:
  - (i) Buyer is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Section 3.02 and such breach, inaccuracy or failure cannot be cured by Seller by November 30, 2020 (the "**Drop Dead Date**"); or
  - (ii) any of the conditions set forth in Section 3.02(a) shall not have been fulfilled by the Drop Dead Date, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;
- (c) by Seller by written notice to Buyer if:

(i) Seller is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Section 3.02 and such breach, inaccuracy or failure cannot be cured by Buyer by the Drop Dead Date; or

(ii) any of the conditions set forth in Section 3.02(b) shall not have been fulfilled by the Drop Dead Date, unless such failure shall be due to the failure of Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(d) by Buyer or Seller in the event that:

(i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited; or

(ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

**Section 8.02 Effect of Termination.** In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any Party except:

(a) as set forth in this Article VIII, Section 6.01 and Article IX hereof; and

(b) that nothing herein shall relieve either Party from liability for any intentional breach of any provision hereof.

## ARTICLE IX MISCELLANEOUS

**Section 9.01 Expenses.** Except as otherwise expressly provided herein, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

**Section 9.02 Notices.** All notices, claims, demands, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section):

**If to Seller:** C&C Industries, Inc. d/b/a CNC Flow Control  
Email: [REDACTED]  
Attention: [REDACTED]

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

Clark Hill Plc  
301 Grant Street, 14<sup>th</sup> Floor  
Pittsburgh, PA 15219  
Email: [REDACTED]  
Attention: [REDACTED]  
Facsimile: [REDACTED]

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If to Buyer: Smith Valve Company, LLC  
[REDACTED]  
[REDACTED]  
Email: [REDACTED]  
Attention: [REDACTED]

with a copy to:  
(which shall not constitute  
notice) Email: [REDACTED]  
Attention: [REDACTED]

**Section 9.03 Interpretation; Headings.** This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement. The words "include" or "including" shall be deemed to be followed by the words "without limitation." The words "herein", "hereof", "hereunder" or "hereto" refer to this Agreement as a whole.

**Section 9.04 Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement.

**Section 9.05 Entire Agreement.** This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous representations, warranties, understandings, and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits, and the Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

**Section 9.06 Successors and Assigns.** This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign any of its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided however Seller may assign this Agreement to (a) an Affiliate of Seller with equal or greater net worth than Seller, and (b) in connection with a sale of all or substantially all of the assets of Seller. Any purported assignment in violation of this Section shall be null and void. No assignment shall relieve the assigning party of any of its obligations hereunder.

**Section 9.07 Amendment and Modification; Waiver.** This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise, or delay in exercising, any right or remedy arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy.

**Section 9.08 No Third-Party Beneficiaries.** Nothing in this Agreement is intended to or shall create for or grant to any third party (including without limitation to any former, current or future employees or officers of any Party, any Affiliate or any labor union), any rights whatsoever, as a third party beneficiary or otherwise.

**Section 9.09 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction). Any legal suit, action, proceeding, or dispute arising out of or related to this Agreement, the other Transaction Documents, or the transactions contemplated hereby or thereby may be instituted in the federal courts of the United States of America or the courts of the State of Texas in each case located in the city of Houston, Harris County, and each party

irrevocably submits to the exclusive jurisdiction and venue of such courts in any such suit, action, proceeding, or dispute.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS AND SCHEDULES ATTACHED TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT: (I) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION; (II) EACH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (III) EACH PARTY MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY; AND (IV) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**Section 9.10 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**Section 9.11 Specific Performance.** The parties agree that irreparable damage would occur if any provision of this Agreement is were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they may be entitled at law or equity.

**Section 9.12 Non-Solicitation.** For a period of one (1) year following the Closing, Seller shall not, and shall not permit any of its Affiliates to, directly or indirectly, hire or solicit any person who is offered employment by the Buyer pursuant to Section 6.06 or is or was employed in by Buyer during the Restricted Period, or encourage any such employee to leave such employment, except pursuant to a general solicitation which is not directed specifically to any such employees.

**Section 9.13 Non-Disparagement.** Each Party agrees and covenants that it will not, directly or indirectly, make, publish, or communicate to any person or entity or in any public forum any defamatory, maliciously false, or disparaging remarks, comments, or statements concerning the other Party.

**Section 9.14 Responsibility for Property Taxes.** Each party share bear its own pro-rata share of (a) the real property taxes and the personal property taxes with respect to the Real Property and Tangible Personal Property located at Hollister Road for 2020, and (b) the personal property taxes related to the Tangible Personal Property located at the Clay Road Texas location of the Business for 2020, with Buyer being responsible for the number of days from Closing until December 31, 2020.

[SIGNATURE PAGE TO FOLLOW]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**SELLER**

C&C Industries, Inc. d/b/a CNC Flow Control

By   
Name ROBERT L. ADAMS  
Its PRESIDENT

**BUYER**

Smith Valve Company, LLC

By \_\_\_\_\_  
Name \_\_\_\_\_  
Its \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**SELLER**

C&C Industries, Inc. d/b/a CNC Flow Control

By \_\_\_\_\_  
Name \_\_\_\_\_  
Its \_\_\_\_\_

**BUYER**

Smith Valve Company, LLC

By W. Ruff  
Name W. Ruff  
Its managing MEMBER

[Signature Page - Asset Purchase Agreement]