

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter
 Christine S. Wilson

_____)
In the Matter of)
)
Otto Bock HealthCare North America, Inc.,)
 a corporation)
) **Docket No. 9378**
) _____)

APPLICATION FOR APPROVAL OF DIVESTITURE OF THE FREEDOM ASSETS

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Introduction

Otto Bock HealthCare North America, Inc. (“Ottobock”), respectfully submits this Application for Approval of Divestiture of the Freedom Assets (the “Application”), in connection with the matter entitled *In the Matter of Otto Bock HealthCare North America, Inc., a corporation*, Docket No. 9378, arising out of Ottobock’s acquisition of FIH Group Holdings, LLC (“Freedom”) in 2017. Ottobock seeks approval for the proposed divestiture (the “Divestiture”) of Freedom’s microprocessor-controlled prosthetic knee (“MPK”) business (the “MPK Business”), together with a portfolio of complementary prosthetic foot and ankle products (collectively, with the MPK Business, the “Freedom Assets”) to Proteor, Inc. (“Proteor”) as reflected in the November 1, 2019 Commission Final Order entered in connection with *In the Matter of Otto Bock HealthCare North America, Inc., a corporation*, Docket No. 9378 (the “Order”) issued by the Commission and the following agreements (hereinafter referred to as the “Divestiture Agreements”): (i) an Asset Purchase Agreement, dated [REDACTED], attached hereto as Confidential Exhibit A, and related disclosure schedules, attached hereto as Confidential Exhibit B; (ii) an Intellectual Property Agreement, to be dated as of and entered into on the closing date of the Divestiture (the “Closing Date”), the agreed form of which is attached hereto as Confidential Exhibit C; (iii) a Transition Services Agreement, to be dated as of and entered into on the Closing Date, the agreed form of which is attached hereto as Confidential Exhibit D; (iv) a Sublease Agreement, to be dated as of and entered into on the Closing Date, for one floor of Freedom’s corporate headquarters in Irvine, California, attached hereto as Confidential Exhibit E; and (v) a Manufacturing Agreement, to be dated as of and entered into on the Closing Date, the agreed form of which is attached hereto as Confidential Exhibit F.

Although the Order is still under appeal and thus not final [REDACTED]

[REDACTED],

Ottobock has in good faith engaged in a process to divest itself of the Freedom Assets, as contemplated by Paragraph II of the Order and by the Commission opinion issued with the Order on November 1, 2019 (the “Opinion”). As a result of that divestiture process, which started in 2017 and involved the outside services of international investment banking firm Clairfield International GmbH (“Clairfield”), Ottobock has entered into the Divestiture Agreements with Proteor, a well-established and reputable manufacturer and supplier of lower-limb prosthetic devices in the United States, with its North American headquarters in Tempe, Arizona. Throughout this process, Ottobock has kept the Hold Separate Manager, Hold Separate Monitor and the FTC staff informed of the details of the scope of the proposed asset package under discussion with Proteor.

The proposed divestiture to Proteor would accomplish the Order’s purposes by “ensur[ing] the continued operation of the Freedom Business” and by “remedy[ing] the lessening of competition resulting from the Acquisition” alleged in the Commission’s Complaint of December 20, 2017 (the “Complaint”). (Order, ¶ II.B.) As described in detail below, Proteor has the financial, professional and operational resources and experience, and the incentive, to be a strong and effective competitor in the United States for the manufacture and supply of MPKs. Proteor is experienced in the manufacture and supply of lower-limb prosthetics, has successfully integrated past acquisitions in the United States and is highly motivated and well positioned to continue the operation of Freedom’s business as an effective competitor in the relevant market identified by the Commission in the Opinion (the “Relevant Market”). (Opinion, at 22).

[REDACTED]

[REDACTED]

[REDACTED]

I. OTTOBOCK, WITH THE PROFESSIONAL ASSISTANCE OF CLAIRFIELD INTERNATIONAL AND CRAVATH, SWAINE & MOORE LLP, CONDUCTED EXTENSIVE NEOGITATIONS WITH PROTEOR LEADING TO THE EXECUTION OF THE DIVESTITURE AGREEMENTS

After the Complaint was filed, Ottobock engaged Clairfield to solicit initial interest from financial and strategic buyers for a divestiture of the MPK Business and engaged Cravath, Swaine & Moore LLP (“Cravath”) to serve as its legal counsel. In Clairfield’s initial marketing and outreach efforts, Proteor emerged as a strong potential buyer of the MPK Business. As an active participant in the market for lower-limb prosthetics in the United States, Proteor was identified as capable of competing in the Relevant Market, as well as experienced in integrating acquired businesses following its acquisition of Ability Dynamics. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Following further negotiations and discussions with the FTC staff, Ottobock identified Proteor as among the best candidates to be an approvable buyer of the MPK Business based on the strengths of Proteor’s own profile.

Proteor executed a non-disclosure agreement with Ottobock on [REDACTED], after which Proteor was provided with an extended “teaser” presentation and a financial model presenting pro forma financial information on the MPK Business. Proteor was granted access to comprehensive diligence materials related to the MPK Business, including intellectual property documentation, distribution contracts, information on employees and locations of operations, detailed asset lists and historical financial information. On [REDACTED], a representative of Proteor visited Freedom’s site in Irvine, California to discuss Freedom’s financial performance

and tour the facility. While there, Proteor's representative met with certain Freedom executives and was given a presentation by the Freedom team on Freedom's MPK Business.

On [REDACTED], Ottobock and Proteor entered into a term sheet to purchase the MPK Business for a purchase price of [REDACTED], subject to customary purchase price adjustments. [REDACTED], Proteor continued to conduct due diligence on the MPK Business and negotiate the terms of an asset purchase agreement in respect of the MPK Business with Ottobock.

In [REDACTED], Proteor expressed a willingness to instead structure the acquisition of the MPK Business as an equity deal, in which the assets to be retained by Ottobock would be distributed to Ottobock through a series of pre-Closing transactions, before Proteor acquired the MPK Business through the acquisition of equity interests in the Freedom corporate entities. In [REDACTED], Proteor and Ottobock began negotiating an Intellectual Property Agreement setting forth the rights of the parties with respect to certain intellectual property used in both the MPK Business and the businesses contemplated to be retained by Ottobock under the Equity Purchase Agreement concurrently under negotiation.

On [REDACTED], Ottobock and Proteor executed a Clean Team Confidentiality Agreement, allowing certain of Proteor's advisors to view competitively sensitive information of Freedom for purposes of confirmatory due diligence. Throughout the Clean Team phase of due diligence, Proteor's advisors conducted due diligence on confidential materials and provided appropriately anonymized and aggregated reports to Proteor. As diligence continued, Proteor, Ottobock and their representatives continued to negotiate an Equity Purchase Agreement for the MPK Business. In [REDACTED], Proteor confirmed that it had officially concluded due diligence on the MPK Business, and following in-person negotiations,

Proteor and Ottobock reached substantial agreement on definitive documents for a divestiture of the MPK Business through an Equity Purchase Agreement for a purchase price of [REDACTED]

[REDACTED]

[REDACTED].

On May 6, 2019, the Administrative Law Judge issued an Initial Decision, which found that additional Freedom product lines would need to be divested in addition to the MPK Business to restore competition in the Relevant Market. The Initial Decision was subsequently affirmed by the Commission in the Opinion on November 1, 2019, requiring the divestiture of the Freedom Assets. [REDACTED]

[REDACTED]

[REDACTED] Ottobock and Cravath negotiated with Proteor and their counsel on revising the agreed transaction documents to reflect the broader scope of assets. From [REDACTED], Ottobock, Proteor and their counsel engaged with the FTC staff in a number of different discussions related to the scope of the revised Divestiture, [REDACTED]. Following discussions with the FTC staff, Proteor and Ottobock signed a revised term sheet on [REDACTED] [REDACTED] for the divestiture of the Freedom Assets in an asset sale for a purchase price of [REDACTED]. On [REDACTED], Proteor submitted a presentation to the FTC staff outlining the key terms of the Divestiture. In parallel with discussions with Proteor, Ottobock received, and responded to, periodic inquiries from other potential acquirers of all or a portion of Freedom's business. Ottobock evaluated these inquiries as received and maintained its belief that Proteor was among the best-suited candidates to ensure the success of the Divestiture.

[REDACTED]

[REDACTED].

II. PROTEOR IS A WELL-QUALIFIED PURCHASER AND IS READY, WILLING AND ABLE TO FULLY COMPETE WITH THE FREEDOM ASSETS IN THE RELEVANT MARKET

A. Prospective Acquirer's Name and Address.

PROTEOR, INC.
1236 W. Southern Ave.
Tempe, Arizona 85282

B. Description of Proposed Acquirer's Business.

Proteor was founded in 1913 in Burgundy, France. Over the past 117 years, through organic growth and acquisitions, Proteor has grown to over 900 employees and over €96 million in annual sales. Proteor's advanced engineering group consists of [REDACTED], supported by significant research and development, manufacturing and clinical infrastructure. Proteor has recently expanded its footprint in the U.S. market through its acquisition of Ability Dynamics in 2018. Through this strategic acquisition, Proteor acquired the RUSH Foot line of fiberglass composite prosthetic feet, which has strengthened Proteor's portfolio of feet compatible with MPKs. The acquisition has also enhanced Proteor's North American distribution through the acquisition of the U.S.-based salesforce of Ability Dynamics. Proteor has continued to expand its U.S. operations through additional hires, including Matthew Swiggum as CEO of Proteor USA. Mr. Swiggum previously served as the CEO of North American operations for Ottobock.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The addition of a proprietary MPK, a strong complementary foot and ankle portfolio, extensive intellectual property assets, and substantial research and development and manufacturing capacity ensures that the Divestiture will restore the competition that the Commission concluded was lost in the Relevant Market.

C. Proteor Has Conducted Comprehensive Due Diligence of Freedom and the Freedom Assets.

Over the course of more than two years, Proteor has completed a comprehensive due diligence investigation of Freedom and the Freedom Assets. Proteor has spent a considerable amount of time and committed significant internal and external resources to analyzing Freedom's operations to evaluate the scope of assets best suited to position Proteor as a robust competitor in the Relevant Market. In connection with its due diligence investigation, Proteor retained the following third-party advisors: [REDACTED]

[REDACTED], Neufelize OBC (corporate finance), Advance Capital (accounting and finance), Eight Advisory (accounting and finance), RSM US LLP (accounting and finance), [REDACTED]

[REDACTED].

Proteor's diligence investigation included (a) reviewing the books and records of Freedom and other materials provided in a virtual data room, (b) participating in numerous meetings and conference calls with members of the Freedom management team and key employees in research and development, sales and marketing and manufacturing roles, (c) conducting in-person site visits to Freedom's U.S. facilities, (d) reviewing Freedom's intellectual property portfolio, (e) completing business, accounting, tax, legal, human resources and benefits, insurance and information technology due diligence and (f) developing a detailed business plan for integration of the Freedom Assets into Proteor's existing operations. Proteor's extensive due diligence

investigation of Freedom's business and development of a detailed business plan will position Proteor to effectively integrate the Freedom Assets into its business and restore the competition that the Commission concluded was lost in the Relevant Market. (*See below*, Section 2.E).

D. Proteor Has Relevant Industry and Transaction Experience.

Proteor has extensive experience producing and distributing lower-limb prosthetics, including distribution of MPKs on behalf of other producers. In addition to production and distribution of its in-house products, Proteor has served as a distributor of Nabtesco's Allux MPK since 2016. Through this distribution arrangement, Proteor has developed extensive contacts in the Relevant Market. With the addition of the U.S.-based Ability Dynamics operations and salesforce in 2018, Proteor has further grown its in-house sales and marketing capabilities, developing connections to the key distributors and clinics who operate in the Relevant Market.

Proteor also has experience acquiring and integrating prosthetic products into its business, both internationally as well as in the U.S. via the acquisition of Ability Dynamics. Since the acquisition in 2018, Proteor has made the Ability Dynamics RUSH Foot an integral part of its product offerings and has seamlessly integrated the business with its other U.S. and European assets, enhancing its sales presence in the U.S. market while making use of research and development, product testing and manufacturing capacity in Europe to support its U.S. operations.

E. Proteor Has Developed a Comprehensive Business Plan To Compete Aggressively in the Relevant Market.

Proteor has expended considerable effort in connection with its decision to enter into the Divestiture Agreements, concluding that the proposed transaction would be accretive to its business overall, equip Proteor for immediate and long-term growth and position Proteor as a

strong player in both the Relevant Market and the broader U.S. prosthetics landscape. Proteor has developed a comprehensive business plan, setting forth in detail how it plans to compete aggressively with the Freedom Assets, consistent with the purposes of the Order. That plan has been submitted to FTC staff under separate cover by Proteor’s counsel.

III. THE ASSETS AND OTHER CAPABILITIES BEING DIVESTED ARE CONSISTENT WITH THE TERMS AND PURPOSE OF THE ORDER

In the Opinion, the stated intention of the Order is to “restore competition lost through the unlawful acquisition.” (Opinion, at 53). The Commission ordered that Ottobock divest “Freedom’s entire business with the limited exceptions granted by the ALJ.” (*Id.*, at 4). Pursuant to the Order, “Otto Bock may retain any or all of the Divestiture Products Group A unless the Acquirer demonstrates to the Commission’s satisfaction: (i) that any such asset is necessary to achieve the purpose of this Order; and (ii) that the Acquirer needs such asset to effectively operate the Freedom Business in a manner consistent with the purpose of this Order, and the Commission approves the divestiture with the divestiture of such asset” and that “Otto Bock must divest any or all of the Divestiture Products Group B unless the Acquirer demonstrates to the Commission’s satisfaction: (i) that any such asset is not necessary to achieve the purpose of this Order; and (ii) that the Acquirer does not need such asset to effectively operate the Freedom Business in a manner consistent with the purpose of this Order, and the Commission approves the divestiture without the divestiture of such asset.” (Order ¶ II.A.).

As outlined below, the Freedom Assets include all the products that Proteor believes are necessary to restore the competition that the Commission concluded was lost in the Relevant Market to pre-acquisition levels. Proteor has determined it does not need or want to acquire [REDACTED]

[REDACTED]

Accordingly, while [REDACTED] is included as a product within Divestiture Products Group B, the acquisition of [REDACTED] is not necessary to achieve the purpose of the Order, and Proteor does not need such an asset to effectively operate the Freedom Assets in a manner consistent with the purpose of the Order.

Additionally, Proteor has determined it does not need or want to acquire certain other products of Freedom that are contained within the Divestiture Products Group B list of the Order, as modified pursuant to 16 C.F.R. § 3.72(a). These include [REDACTED]

[REDACTED]

Proteor has negotiated for the Divestiture to be structured as a sale of the Freedom Assets, rather than a purchase of the equity of the Freedom legal entity. Pursuant to the Divestiture Agreements and the Order, Ottobock will be transferring employees, distribution contracts, technologies, sales and marketing operations, an extensive intellectual property portfolio, ongoing research and development projects and manufacturing facilities in the United States. Although Proteor already has significant manufacturing and distribution capacity in the United States, the additional facilities and personnel will allow Proteor to support the expanded product line and drive future sales growth. Additionally, Ottobock has agreed to transfer the technology, know-how, proprietary and third-party software, websites and social media accounts, and books and records related to the Freedom Assets. The Divestiture Agreements also provide that Ottobock will retain all liabilities related to the operation of the Freedom Assets prior to the Closing Date, in addition to all liabilities related to the retained assets and the Freedom corporate entities (whether arising before or after the Closing Date). The comprehensive divestiture

package will allow Proteor to achieve all of the benefits of an asset sale, while in substance acquiring all the key assets and goodwill associated with Freedom.

The terms of the Divestiture Agreements are consistent with the Order’s requirements that Ottobock: (i) provide transition services to the acquirer at direct cost, (ii) convey to the acquirer the right to use any licensed intangible property, (iii) place no restrictions on the use of the Freedom Assets (including any intangible property), (iv) assign or assist the acquirer in obtaining the rights under any contracts with suppliers, (v) not take any action to interfere with the acquirer’s hiring of any Freedom employee, (vi) vest all current and accrued benefits to Freedom employees, (vii) not solicit transferred employees hired by the acquirer and (viii) convey to the acquirer all confidential business information. (Order, ¶¶ II.A.8; II.A.6; II.A.7; II.A.9; II.A.10.)

A. Freedom Products To Be Divested to Proteor.

The Freedom Assets will include all products required to be divested by the Order. [REDACTED]

[REDACTED]

[REDACTED] These products have been selected by Proteor specifically to support the MPK Business, as discussed at length in correspondence with the FTC staff. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Proteor has thoroughly reviewed Freedom’s tangible and

intangible assets to confirm it is acquiring all necessary assets to sell these products following the Divestiture.

B. Freedom Products To Be Retained by Ottobock.

As noted above, following extensive diligence and review of the Freedom business, Proteor has determined that certain Freedom products included on Divestiture Products Group B (including as modified pursuant to 16 C.F.R. § 3.72(a)) are not required to be divested to fulfill the purposes of the Order. The following section summarizes Proteor’s rationale for not acquiring these products, but Proteor has also provided detailed explanations to the FTC staff under separate cover for the exclusion of each product noted below (as required by the Order).

Proteor has determined [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Accordingly, while [REDACTED] was contemplated by the Order to be in the scope of a potential Divestiture as part of the Divestiture Products Group B, the inclusion of [REDACTED] [REDACTED] is not necessary to achieve the purpose of the Order, and Proteor does not need [REDACTED] [REDACTED] to effectively operate the Freedom Assets in a manner consistent with the purpose of the Order.

Divestiture Products Group B includes [REDACTED]

[REDACTED]

[REDACTED] Accordingly, Proteor does not need or wish to include these items within the scope of the Divestiture.

Divestiture Products Group B also includes [REDACTED]

[REDACTED]

[REDACTED]

The [REDACTED]

[REDACTED], is also included in Divestiture Products Group B, but is not a product

Proteor seeks to acquire. [REDACTED]

[REDACTED]

[REDACTED]

Additionally, Proteor does not believe it needs or wants to acquire any of the Divestiture Products Group A not contemplated to be in the scope of a potential Divestiture by the Order. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ottobock will also retain the right [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ottobock will retain certain tangible and intangible assets related to the foregoing products or assets that are otherwise duplicative or unnecessary for Proteor to acquire. Proteor has confirmed in its diligence review that Ottobock retaining these assets will not impede Proteor's operation of the Freedom Assets following the Divestiture.

C. Intellectual Property and Technology To Be Transferred to Proteor.

The Divestiture Agreements will convey to Proteor all intellectual property and technology used in the Freedom Assets, including all proprietary software developed by Freedom and third-party software used in the research and development, manufacturing and sales and marketing of the Freedom Assets. This includes all intellectual property that is used both in the Freedom Assets as well as in the other operations of Freedom. Proteor will receive the right to use the Freedom name and the names of the divested products after the Closing Date, as well as all Freedom websites and social media 'handles', enabling Proteor to seamlessly integrate the

Freedom Assets into its business by retaining the goodwill associated with the Freedom name.

Proteor will offer employment to the entire research and development and manufacturing teams currently employed by Freedom, who are trained to operate all software and manufacturing equipment used in the Freedom Assets to date [REDACTED]

[REDACTED]. Proteor will also assume the existing information technology systems in place at Freedom [REDACTED]

[REDACTED]. The package of technology and intellectual property rights conveyed by the Divestiture Agreements will be sufficient for Proteor to compete in the Relevant Market immediately following the Closing Date, minimizing the risk of any business disruption in the short term and providing Proteor with the rights and assets to build upon Freedom's existing research and development to improve Freedom's existing MPK offerings. As required by the Order, the Divestiture Agreements place no restrictions on the use of the Freedom Assets by Proteor, including any intangible property.

D. Intellectual Property To Be Transferred to Proteor and Licensed Back to Ottobock.

The Divestiture Agreements provide that Proteor will be assigned all the intellectual property used in the Freedom Assets, without any restrictions on use. To the extent that intellectual property related to the [REDACTED] products retained by Ottobock overlaps with the foot and ankle portfolio to be divested, Proteor will grant Ottobock a limited, non-exclusive license to such shared intellectual property. The terms of the intellectual property license permit Ottobock to continue to use the licensed intellectual property only in the existing retained products as of the Closing Date, and Ottobock will not be permitted to use the licensed intellectual property for the development of entirely new products. The Freedom name will also

be licensed back to Ottobock, subject to a limited duration and narrow field of use. Ottobock will only be permitted to use the Freedom name for required regulatory purposes and to prevent customer confusion following the Closing Date for a transitional period of 12 months, subject to certain extension rights with the consent of the FTC staff. (*See Exhibit C*)

These licenses are necessary to fulfill the purposes of the Order. The Order contemplates that Ottobock is entitled to retain certain products in the Divestiture, and without these licenses, Ottobock would be unable to continue to market the retained products. The limited scope of the license ensures the retention of these products will not impair Proteor's ability to compete in the Relevant Market following the Closing Date.

E. Property and Equipment To Be Divested to Proteor.

Ottobock will divest Freedom's primary manufacturing facility [REDACTED] [REDACTED] as well as substantially all equipment used at that site. Proteor will also sublease [REDACTED] [REDACTED] while Proteor finalizes its long-term plans. The subleased space [REDACTED] [REDACTED] includes office space as well as all of the research and development and manufacturing facilities at [REDACTED]. Proteor will also acquire all research and development and manufacturing equipment located at [REDACTED] [REDACTED]. Ottobock will divest the key information technology infrastructure requested by Proteor, such that the Freedom Assets may continue uninterrupted operations after the Closing Date, and the sublease includes [REDACTED] to ensure Proteor's access to such infrastructure. At the Closing Date, Freedom and Proteor will have completed demising work [REDACTED] to ensure separate work spaces for Proteor and Ottobock personnel. (*See Exhibit E*).

F. Personnel To Be Transferred to Proteor.

Through its extensive diligence, including employee interviews and review of organizational charts and processes, Proteor has selected Freedom employees possessing the requisite experience and knowledge to support and grow the Freedom Assets. Proteor will make offers to all research and development and manufacturing employees, ensuring that the individuals who designed the divested products and those who have experience building those products will continue to fill those roles following the Closing Date and will be able to support the continued operation of the Freedom Assets. Proteor will also make offers to a substantial portion of Freedom's salesforce in order to maintain Freedom's existing customer relationships and add geographic coverage to its already strong United States sales operations. In general, those Freedom employees not selected for hiring by Proteor are employees that would be duplicative with Proteor's existing employee base (including at the senior management level). As required by the Order, Ottobock will compensate Proteor for all vested and accrued benefits as of the Closing Date for transferred employees and Ottobock agrees to a two-year non-solicit in respect of transferred employees employed by Proteor.

G. Contracts To Be Assigned to Proteor.

Pursuant to the Divestiture Agreements, Proteor will receive rights under all contracts that it has determined are necessary to operate the Freedom Assets following the Closing Date. Due to Proteor's existing corporate footprint in the United States, certain overhead and shared services contracts that are duplicative of capabilities Proteor already possesses will not need to be transferred in the Divestiture. Section 3.03 of the Asset Purchase Agreement and the corresponding section of the Disclosure Letter contain a list of all consents required for the assignment of the relevant contracts, with all material consents to be obtained

prior to the Closing Date. (See Exhibit A; Exhibit B). A separate list of all contracts requiring notices to third parties has been provided separately to the FTC staff.

H. Transition Services To Be Provided to Proteor.

To facilitate a seamless transition following the Divestiture, Ottobock will provide transition services to Proteor for up to [REDACTED] following the Closing Date. Transition services will include “knowledge transfer” services related to repair and servicing, human resources, marketing materials and technical data and accounting policies and procedures. Transition services will also include employee training related to receiving and procurement functions and sales representative training (including “ride-along” training and new sales representative onboarding). All transition services will be provided at direct cost consistent with the terms of the Order. Certain limited transition services will also be provided by Proteor to Ottobock, though for a shorter period. (See Exhibit D).

I. Manufacturing Agreement with Ottobock.

Proteor will continue to manufacture the foot and ankle products retained by Ottobock on a contract manufacturing basis for up to [REDACTED] following the Closing Date. This arrangement is documented in a Manufacturing Agreement to be entered into between the parties on the Closing Date. (See Exhibit F). [REDACTED]

[REDACTED]

[REDACTED] The Manufacturing Agreement will ensure Proteor can utilize and profit from the manufacturing capacity [REDACTED] it is assuming, with sufficient protections to ensure the contract manufacturing will not come at the expense of Proteor’s manufacture of the divested products.

IV. THE PROPOSED DIVESTITURE WILL FULLY RESTORE COMPETITION AND ACHIEVE THE REMEDIAL PURPOSES OF THE ORDER

According to the Opinion issued with the Order, the divestiture obligations in the Order were imposed to “fully restore the competition lost from the Acquisition.” (Opinion, at 4). In order to achieve this goal, the Commission ruled that “the appropriate remedy is divestiture of all assets [Ottobock] acquired, with the possible exception of certain prosthetic foot products that are not necessary to competition in the relevant MPK market.” (*Id.*)

The proposed divestiture would achieve the goal of replacing the competition that the Commission concluded was lost from Ottobock’s acquisition of Freedom by divesting the MPK Business alongside a complementary portfolio of foot and ankle products and all the personnel, properties and contractual rights necessary to successfully compete in the Relevant Market. The Freedom Assets are sufficient to accomplish this goal, as Proteor is an established competitor in the lower limb prosthetic market with an existing U.S. presence and the necessary overhead and organizational structure to compete vigorously promptly following the Closing Date. The Transition Services Agreement also provides the necessary support to ensure that Proteor succeeds in the Relevant Market even given Proteor’s substantial existing operations and the comprehensive package of employees and assets being divested.

Due to its existing operational capabilities [REDACTED], Proteor is a well-suited candidate to acquire the Freedom Assets in light of the purposes of the Order. Proteor is already an established competitor in the market for lower-limb prosthetics, with a strong line of prosthetic foot and ankle products that are complementary to Freedom’s MPK products. Through the addition of the MPK Business, a microprocessor-controlled ankle and additional complementary foot and ankle offerings, Proteor will obtain the necessary product coverage to fully compete with the existing MPK market participants. Through the divestiture of additional

foot and ankle products historically sold alongside Freedom's MPKs, Proteor will be well-positioned to ensure continuity of operations and preserve customer loyalty in the marketplace. Ottobock's transfer of the majority of the current Freedom employees, including a significant portion of the salesforce, will increase Proteor's existing capacity and provide Proteor with personnel both known in and familiar with the Relevant Market who can further grow distribution and sales. The acquisition of all of Freedom's existing manufacturing facilities will allow for a seamless transition, such that the employees currently manufacturing the Freedom Assets will continue in their existing roles as Proteor employees following the Closing Date.

V. REQUEST FOR CONFIDENTIAL TREATMENT

This Application contains confidential and competitively sensitive information relating to Ottobock, Freedom, Proteor and the divestiture of the Freedom Assets. Pursuant to Sections 6(f) and 21(c) of the Federal Trade Commission Act (15 U.S.C. §§ 46(f) and 57b-2(c)) and Sections 2.41(f), 4.9 and 4.10 of the Commission's Rules of Practice and Procedure (16 C.F.R. §§ 2.41(f), 4.9 and 4.10), Ottobock requests that nonpublic, commercially or competitively sensitive information contained in this Application be treated by the Commission as strictly confidential and not be made available to the public. The disclosure of this information would prejudice Ottobock and Proteor, cause harm to the ongoing competitiveness of the Freedom Business and impair Ottobock's ability to comply with its obligations under the Order. Ottobock requests that the Commission inform it immediately if the Commission cannot treat the confidential information contained in this Application as confidential in order to provide Ottobock an opportunity to seek relief.

For the convenience of maintaining the public record, Ottobock is submitting two versions of this Application. The confidential version contains the information necessary to

enable the Commission to assess the Application. The public version has been redacted to exclude confidential and proprietary information.

VI. REQUEST FOR EXPEDITIOUS APPROVAL

Ottobock requests expedited approval of the proposed divestiture of the Freedom Assets to Proteor as soon as possible after the expiration of the public comment period.

Prompt approval and consummation of the divestiture of the Freedom Assets to Proteor will further the purposes of the Order and is in the interests of customers. Expeditious approval of the transaction will remove the uncertainty facing customers and employees over the ultimate ownership of Freedom that has persisted since Ottobock's original acquisition of Freedom. [REDACTED]

[REDACTED]

The FTC staff are already familiar with Proteor as a result of Ottobock's extensive engagement with the FTC throughout the divestiture process, including detailed presentations regarding Proteor's fitness as a buyer and proposed business plan. The FTC staff have also spoken with Proteor's senior management and counsel on numerous occasions to confirm that Proteor is a well-suited buyer for the Freedom Assets. Ottobock and Proteor are prepared to close the transaction promptly following Commission approval.

For the foregoing reasons, Ottobock respectfully requests that the Commission approve the proposed Divestiture of the Freedom Assets to Proteor, on the terms set forth in the Divestiture Agreements, as soon as possible following the expiration of the public comment period.

CONCLUSION

Because the proposed divestiture of the Freedom Assets to Proteor is procompetitive, in the public interest, addresses the competitive concerns raised in the Opinion

and is in full compliance with the Order, Ottobock respectfully requests that the Commission approve the sale of the Freedom Assets to Proteor pursuant to the Divestiture Agreements.

Dated: October 9, 2020

Respectfully submitted,



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