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

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**FORM 8-K**

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**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): November 10, 2023**

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**INOGEN, INC.**

(Exact name of Registrant as Specified in Its Charter)

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**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**001-36309**  
(Commission File Number)

**33-0989359**  
(IRS Employer  
Identification No.)

**859 Ward Drive**  
**Goleta, California**  
(Address of Principal Executive Offices)

**93111**  
(Zip Code)

**Registrant's Telephone Number, Including Area Code: (805) 562-0500**

**Not Applicable**

(Former Name or Former Address, if Changed Since Last Report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value	INGN	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company

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

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**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

*CEO Transition*

On November 10, 2023, the Board of Directors (“Board”) of Inogen, Inc. (the “Company”) appointed Kevin Smith to serve as President and Chief Executive Officer (“CEO”) of the Company, effective November 10, 2023. In addition, on November 10, 2023, the Board, upon recommendation of the Nominating and Governance Committee of the Board, appointed Mr. Smith to serve as a Class III director of the Company, effective November 10, 2023, with a term expiring at the annual meeting of stockholders to be held in 2026. Mr. Smith will succeed Nabil Shabshab in the positions of President and CEO. Mr. Shabshab’s role as an officer and employee of the Company ended effective November 10, 2023.

Most recently, Mr. Smith, 52, served as the CEO, President and Executive Director at Sirtex Medical US Holdings, Inc., a biotechnology company, from April 2019 to November 2023 and served as its Executive Vice President of Sales & Marketing, Americas from August 2017 to April 2019. From December 2021 to April 2022, Mr. Smith also served as interim President and Chief Executive Officer and Director at OncoSec Medical, Inc., a biotechnology company. Prior to Sirtex, Mr. Smith served as Executive Vice President of Business Development at Gel-e, Inc., a medical device company, from January 2017 to August 2017. Prior to that, Mr. Smith served as Chief Commercial Officer at Sensium Healthcare, a medical device company, from October 2015 to November 2016. Prior to Sensium, Mr. Smith served as Global Vice President of Sales & Marketing at Teleflex, a medical device company, from August 2008 to October 2015. Prior to Teleflex, Mr. Smith served in various sales and marketing roles in medical device companies. Mr. Smith holds a Master of Business Administration in Global Management from University of Phoenix and a Bachelor of Science in Marketing from the University of Kentucky.

*Kevin Smith Compensation Arrangements*

Also on November 10, 2023 (the “effective date”), the Board, upon the recommendation of the Compensation Committee of the Board, approved, and the Company entered into, an employment and severance agreement with Mr. Smith (the “employment agreement”). Mr. Smith’s employment under the employment agreement is at will and may be terminated at any time by the Company or by Mr. Smith. Pursuant to the employment agreement, Mr. Smith will receive an annual base salary of \$700,000 and a target annual performance bonus opportunity of one hundred percent (100%) of his annual base salary (the “target bonus”). The employment agreement also provides for a cash sign-on bonus of \$1,700,000 (“sign-on bonus”). The sign-on bonus will be paid in two equal installments with the first installment being paid on the second payroll date after the effective date and the second installment being paid approximately one year after the effective date, subject to Mr. Smith’s continued employment with the Company through the date the sign-on bonus installment is paid.

The employment agreement further provides for the Company’s payment or reimbursement of certain relocation expenses that Mr. Smith may incur, up to a maximum gross amount of \$100,000. In addition, the Company will gross up these payments and reimbursements for any applicable taxes. If, prior to the anniversary of the first incurred expense subject to reimbursement, Mr. Smith’s employment is terminated by the Company for cause or he resigns without good reason (in each case as defined in the employment agreement), Mr. Smith will be required to repay to the Company a pro-rata portion of such payments or reimbursements and tax gross-up payments within 30 days of such termination or resignation.

The employment agreement also provides for equity awards of restricted stock units covering an aggregate of 170,000 shares of the Company’s common stock, comprised of (i) 85,000 time-based restricted stock units (“RSUs”) and (ii) 85,000 performance-based restricted stock units (“PSUs”). Subject to Mr. Smith’s continued service with the Company, one-third of the RSUs will vest annually over three years. Subject to Mr. Smith’s continued service with the Company, the PSUs will vest based on the Company’s achievement of specified performance goals for each of 2024 and 2025.

The RSUs and PSUs are each subject to the terms and conditions of the Company’s 2023 Equity Incentive Plan and applicable award agreements.

The employment agreement also provides that beginning in March 2024 and for each year thereafter in which Mr. Smith serves as the Company’s CEO, he will be eligible for annual Company equity awards, on the same terms and conditions as the annual equity awards made to the Company’s similarly situated executives and as approved by the Board or the Compensation Committee.

Mr. Smith’s employment agreement also provides that if, outside of the period beginning on the date 3 months before, and ending on the date 12 months following, a change of control (as defined in the employment agreement) (such period, the “change of control period”), his employment with the Company is terminated by the Company without cause (excluding by reason of death or disability) or he resigns for good reason, he will be eligible to receive the following severance benefits:

- continued payment of his base salary for a period of 24 months following his termination date; and
  - for the period of time permitted under the Consolidated Omnibus Budget Reconciliation Act of 1986 following his termination date, he and his eligible dependents will only be required to pay the portion of the costs of medical benefits as he was required to pay as of the date of his termination, or he will receive taxable monthly payments for the equivalent period in the event the Company determines that the COBRA subsidy could violate applicable law (the “COBRA Benefits”).
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The employment agreement further provides that if, during the change of control period, Mr. Smith's employment with the Company is terminated by the Company without cause (excluding by reason of death or disability) or he resigns for good reason, he will be eligible to receive the same severance benefits described above, except that the payment of 24 months' base salary will be paid in a lump sum.

Mr. Smith's receipt of the severance benefits described above is conditioned on his timely signing and not revoking a release of claims, resigning all directorships, committee memberships or any other positions he holds with the Company, and continuing to comply with certain covenants in the employment agreement and in his at-will employment, confidential information, invention assignment, and arbitration agreement with the Company.

If any of the payments provided for under the employment agreement or otherwise payable to Mr. Smith would constitute "parachute payments" within the meaning of Section 280G of the Internal Revenue Code and would be subject to the related excise tax under Section 4999 of the Internal Revenue Code, then he will be entitled to receive either full payment of benefits or such lesser amount that would result in no portion of the benefits being subject to the excise tax, whichever results in the greater amount of after-tax benefits to him.

Mr. Smith will receive no additional compensation for his service on the Board.

The summary of Mr. Smith's employment and severance agreement set forth above does not purport to be complete and is qualified in its entirety by reference to the full text of the employment and severance agreement, which is filed with this Current Report on Form 8-K as Exhibit 10.1 and incorporated by reference herein.

In addition, Inogen has entered into its standard form of indemnification agreement with Mr. Smith. The form indemnification agreement was filed with the Securities and Exchange Commission on November 27, 2013 as Exhibit 10.1 to the Company's Registration Statement on Form S-1 and is incorporated herein by reference. Mr. Smith has no direct or indirect material interest in any transaction required to be disclosed pursuant to Item 404(a) of Regulation S-K promulgated under the Securities Exchange Act of 1934, as amended, nor are any such transactions currently proposed. There is no arrangement or understanding between Mr. Smith or any other person pursuant to which Mr. Smith was selected as an officer or director. There are no family relationships between Mr. Smith and any of the Company's directors or executive officers.

#### *Nabil Shabshab Separation*

In connection with the separation of Mr. Shabshab's employment with the Company, the Company expects to enter into a Separation Agreement with Mr. Shabshab that will provide Mr. Shabshab with benefits consistent with the terms of Mr. Shabshab's Employment and Severance Agreement with the Company, dated January 22, 2021. The material terms of any such Separation Agreement entered into between the Company and Mr. Shabshab will be disclosed in an applicable subsequent public filing with the Securities and Exchange Commission.

#### **Item 7.01. Regulation FD Disclosure.**

On November 13, 2023, the Company issued a press release announcing the succession and appointments described in this Current Report on Form 8-K. A copy of the press release is furnished herewith as Exhibit 99.1.

The information set forth under this Item 7.01, including Exhibit 99.1, shall not be deemed "filed" for purposes of Section 18 of the Exchange Act, or incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, regardless of any general incorporation language in such filing, unless expressly incorporated by specific reference in such filing.

#### **Item 9.01 Financial Statements and Exhibits.**

##### (d) Exhibits

Exhibit	Description
10.1	<a href="#">Employment and Severance Agreement by and between the Company and Kevin Smith, dated November 10, 2023.</a>
99.1	<a href="#">Press Release dated November 13, 2023</a>
104	The cover page of this Current Report on Form 8-K, formatted in inline XBRL.

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**SIGNATURES**

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

**INOGEN, INC.**

Date: November 13, 2023

By: /s/ Michael Sergesketter  
Michael Sergesketter  
Interim Chief Financial Officer  
(Principal Accounting and Financial Officer)

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INOGEN, INC.EMPLOYMENT AND SEVERANCE AGREEMENT

This EMPLOYMENT AND SEVERANCE AGREEMENT (this “Agreement”) is made and effective as of November 10, 2023 (the “Effective Date”), by and between Inogen, Inc., a Delaware corporation (the “Company”), and Kevin Smith (the “Executive”).

## WITNESSETH:

WHEREAS, the Company desires to enter into this Agreement embodying the terms of Executive’s employment from and after the Effective Date and Executive desires to enter into this Agreement, and to provide the terms of severance benefits that may be payable upon certain qualifying employment termination events, subject to the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the Company and Executive hereby agree as follows:

Section 1. **Definitions.**

(a) “Accrued Obligations” shall mean (i) all accrued but unpaid Base Salary through the date of termination of Executive’s employment, (ii) any unpaid or unreimbursed expenses incurred in accordance with Section 7 below, (iii) any benefits provided under the Company’s employee benefit plans, subject to the terms hereof, and (iv) any benefits under policies, if any, upon a termination of employment, in accordance with the terms contained therein, including, without limitation, rights with respect to accrued but unused vacation.

(b) “Annual Bonus” shall have the meaning set forth in Section 4(b) below.

(c) “Base Salary” shall mean the salary provided for in Section 4(a) below, subject to any modification by the Company, under Section 4(a).

(d) “Board” shall mean the Board of Directors of the Company.

(e) “Cause” shall mean (i) Executive’s conviction of any crime (A) constituting a felony or (B) that has, or could reasonably be expected to result in, an adverse impact on the performance of Executive’s duties to the Company, or otherwise has, or could reasonably be expected to result in, an adverse impact to the business or reputation of the Company; (ii) conduct of Executive, in connection with his employment, that has, or could reasonably be expected to result in, material injury to the business or reputation of the Company, including, without limitation, act(s) of fraud, embezzlement, misappropriation and breach of fiduciary duty; (iii) any material violation of the operating and ethics policies of the Company, including, but not limited to those relating to sexual harassment and the disclosure or misuse of confidential information; (iv) willful neglect in the performance of Executive’s duties or willful or repeated failure or refusal to perform such duties; or (v) Executive’s breach of any material provision of this Agreement, including, without limitation, any provision of Section 9 or any breach of the Confidentiality Agreement (as defined below).

(f) “Change of Control” shall mean the occurrence of any of the following events:

(i) A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group (“Person”), acquires ownership of the stock of the Company that, together with the stock held by such Person, constitutes more than fifty percent (50%) of the total voting power of the stock of the Company; *provided, however*, that for purposes of this subsection (i), the acquisition of additional stock by any one Person, who

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is considered to own more than fifty percent (50%) of the total voting power of the stock of the Company, will not be considered a Change of Control; or

(ii) A change in the effective control of the Company which occurs on the date that a majority of members of the Board is replaced during any twelve (12) month period by members of our Board whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election. For purposes of this clause (ii), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Change of Control; or

(iii) A change in the ownership of a substantial portion of the Company's assets which occurs on the date that any Person acquires (or has acquired during the twelve (12) month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than fifty percent (50%) of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions; *provided, however*, that for purposes of this subsection (iii), the following will not constitute a change in the ownership of a substantial portion of the Company's assets: (A) a transfer to an entity that is controlled by the Company's stockholders immediately after the transfer, or (B) a transfer of assets by the Company to: (1) a stockholder of the Company (immediately before the asset transfer) in exchange for or with respect to the Company's stock, (2) an entity, fifty percent (50%) or more of the total value or voting power of which is owned, directly or indirectly, by the Company, (3) a Person, that owns, directly or indirectly, fifty percent (50%) or more of the total value or voting power of all the outstanding stock of the Company, or (4) an entity, at least fifty percent (50%) of the total value or voting power of which is owned, directly or indirectly, by a Person described in subsection (iii) (B)(3). For purposes of this subsection (iii), gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

For purposes of this definition, Persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company.

Notwithstanding the foregoing, a transaction will not be deemed a Change of Control unless the transaction qualifies as a change in control event within the meaning of Code Section 409A, as it has been and may be amended from time to time, and any proposed or final Treasury Regulations and Internal Revenue Service guidance that has been promulgated or may be promulgated thereunder from time to time.

Further and for the avoidance of doubt, a transaction will not constitute a Change of Control if: (i) its sole purpose is to change the state of the Company's incorporation, or (ii) its sole purpose is to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(g) "Change of Control Period" shall mean the period beginning on the date three (3) months prior to, and ending on the date twelve (12) months following, a Change of Control.

(h) "Change of Control Severance Term" shall mean a twenty four (24) month period following Executive's termination by the Company without Cause (other than by reason of death or Disability) or by Executive for Good Reason, provided such termination occurred within the Change of Control Period, and subject to Sections 8(h) and 12 below.

(i) "Code" shall mean the Internal Revenue Code of 1986, as amended.

(j) "Company" shall have the meaning set forth in the preamble hereto.

(k) "Confidential Information" shall have the meaning set forth in the At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement between Executive and the Company, signed prior to or concurrently herewith, or any new At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement (or such other similar agreement in use by the Company at such time) between Executive and

the Company, signed in connection with a change to Executive's principal place of employment pursuant to Section 3(c) (such agreement as in effect at the applicable time, the "Confidentiality Agreement").

(l) "Confidentiality Agreement" shall have the meaning set forth under subsection (k) above.

(m) "Disability" shall mean any physical or mental disability or infirmity that prevents the performance (with or without reasonable accommodation) of Executive's performance of the essential functions of Executive's duties for a period of (i) ninety (90) consecutive days or (ii) one hundred twenty (120) non-consecutive days during any twelve (12) month period. Any question as to the existence, extent or potentiality of Executive's Disability upon which Executive and the Company cannot agree shall be determined by a qualified, independent physician selected by the Company and approved by Executive (which approval shall not be unreasonably withheld).

(n) "Effective Date" shall have the meaning set forth in the preamble hereto.

(o) "Executive" shall have the meaning set forth in the preamble hereto.

(p) "Good Reason" shall mean, without Executive's consent, (i) a substantial and material diminution in Executive's duties or responsibilities; (ii) a reduction in Base Salary or Annual Bonus opportunity (provided, however, that any such reduction of less than ten percent (10%) that is substantially similar to a reduction that also applies to substantially similarly situated employees of the Company will not constitute "Good Reason"); (iii) a material change in the location of Executive's primary place of work to a location more than fifty (50) miles from Executive's primary place of work immediately prior to such change and that is further from Executive's then-current residence (provided, however, that the relocation of Executive's primary work location to the Company Headquarters (as defined below) pursuant to Section 3(c) will not constitute "Good Reason"), or (iv) the failure of the Company to pay any material compensation when due. Following the relocation of Executive's primary work location to the Company Headquarters pursuant to Section 3(c), to the extent Executive's primary work location is Executive's residence due to a shelter in place order or work from home arrangement that applies to Executive, Executive's primary place of work, from which a change in location under the foregoing clause (iii) will be measured, will be considered to be the Company's office location where Executive's employment with the Company primarily was or would have been based immediately prior to the commencement of such shelter-in-place order or work-from-home arrangement.

(q) "MIP" shall have the meaning set forth in Section 4(b) below.

(r) "Person" shall mean any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust (charitable or non-charitable), unincorporated organization or other form of business entity.

(r) "Severance Term" shall mean a twenty-four (24) month period following Executive's termination by the Company without Cause (other than by reason of death or Disability) or by Executive for Good Reason, and subject to Sections 8(h) and 12 below.

(s) "Term of Employment" shall mean the period specified in Section 2 below.

## Section 2. **Term of Employment.**

Subject to Section 8 below, the Company agrees to employ Executive, and Executive agrees to serve the Company, on an at-will basis, which means that either the Company or Executive may terminate Executive's employment with the Company at any time and for any or no reason. The period of such at-will employment under this Agreement is referred to herein as the "Term of Employment."

## Section 3. **Position, Duties and Responsibilities; Place of Performance.**

(a) During the Term of Employment, Executive shall serve as the Company's Chief Executive Officer and President together with such other position or positions consistent with Executive's title as the Board shall specify from time to time, and shall have such duties, responsibilities and authority typically associated with such title.



Executive shall report directly to the Board. In addition, on the Effective Date, Executive shall be appointed to serve as a member of the Board, subject to any required stockholder approvals, and shall be nominated for applicable re-election to the Board throughout the Term of Employment as Chief Executive Officer of the Company.

(b) Executive shall devote his full business time, attention, skill and best efforts to the performance of his duties under this Agreement and shall not engage in any other business or occupation during the Term of Employment that (x) conflicts with the interests of the Company, (y) interferes with the proper and efficient performance of his duties for the Company, or (z) interferes with the exercise of his judgment in the Company's best interests. Notwithstanding the foregoing, nothing herein shall preclude Executive from (i) serving, with the prior written consent of the Board, as a member of the board of directors or advisory board (or their equivalents in the case of a non-corporate entity) of non-competing businesses and charitable organizations, (ii) engaging in charitable activities and community affairs, and (iii) managing his personal investments and affairs; *provided, however*, that the activities set out in clauses (i), (ii) and (iii) shall be limited by Executive so as not to materially interfere, individually or in the aggregate, with the performance of his duties and responsibilities hereunder or otherwise conflict with the terms of the Confidentiality Agreement (as defined above).

(c) Executive's principal place of employment initially shall be at his home office in the Commonwealth of Massachusetts or such other location mutually agreed by Executive and the Board in writing, although Executive understands and agrees that his continued employment with the Company is contingent on his relocation to the Company Headquarters Area (as defined below) by the Relocation Deadline (as defined below). Executive may be required to travel from time to time for business reasons, and prior to Executive's relocation to the Company Headquarters Area, the Company, as part of an accountable plan, shall reimburse Executive's ordinary and necessary reasonable travel expenses incurred by Executive in connection with Executive's visits to and work from the Company's then-current headquarters (the "Company Headquarters"), consistent with the Company's then existing policies. For the avoidance of doubt, the Company will not reimburse Executive for any expenses for temporary housing or other accommodations in connection with Executive's visits to and work from the Company Headquarters. To the extent Executive's principal place of employment changes, Executive acknowledges and agrees that, at the Company's direction, Executive may be required to execute a new At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement (or such other similar agreement in use by the Company at such time) in a form provided by the Company (Executive also agrees to cooperate with the Company as reasonably necessary to make updates to other employment agreements in connection with any such relocation as may be requested by the Company).

**Section 4. Compensation.** During the Term of Employment, Executive shall be entitled to the following compensation:

(a) Base Salary. Commencing as of the Effective Date Executive shall be paid an annualized Base Salary of \$700,000 (the "Base Salary"), payable in accordance with the regular payroll practices of the Company. The Base Salary shall be subject to periodic review by the Board or its Compensation Committee (in either case, the "Committee"), based on both Executive and Company performance.

(b) Annual Bonus.

(i) Beginning with the Company's 2024 fiscal year, Executive is eligible for a discretionary annual performance bonus award (the "Annual Bonus"), determined pursuant to the Company's Management Incentive Plan (the "MIP"), as may be modified by the Company. Executive's initial target Annual Bonus is one-hundred percent (100%) of Executive's Base Salary (the "Bonus Target").

(ii) The actual Annual Bonus payable shall be between 0% of the Bonus Target and the maximum percentage of the Bonus Target set forth in the MIP, with specific financial targets for the MIP, all determined by the Committee. The Annual Bonus, or installments thereof, is earned as of the end of any applicable fiscal year, provided all relevant targets and conditions have been met, and paid to Executive following the annual audit for such fiscal year at such time as annual bonuses are paid to other senior executives of the Company, as discussed more fully in the MIP. The eligibility for and payment of any bonus under the MIP is subject to the terms and conditions of the MIP, which are at the discretion of the Company.

(c) Company Equity Awards.

(i) Subject to the approval of the Committee, as a material inducement to Executive accepting employment with the Company, Executive will be granted the following equity awards (each, a “New Hire Award”): (i) a one-time award of 85,000 time-based restricted stock units (“RSUs”) and (ii) a one-time award of 85,000 performance-based restricted stock units (“PSUs”). The RSUs will vest over three (3) years based on satisfaction of time and service-based requirements as follows: 1/3<sup>rd</sup> of the RSUs will vest on each anniversary of the vesting commencement date (as determined by the Committee), subject to Executive continuing to be a service provider to the Company through each such date. The PSUs shall be separated into two (2) substantially equal tranches that vest based on the Company’s achievement of the performance goals for each of 2024 and 2025 (which goals shall be established at the time of grant by the Committee and shall be consistent with the goals for such years that apply to the PSU awards that were granted to the Company’s similarly situated executives in 2023), subject to Executive continuing to be a service provider to the Company through each applicable vesting date (as determined by the Committee). Each New Hire Award shall be subject to the terms and conditions of an equity incentive plan of the Company and the applicable form of award agreement.

(ii) Subject to the approval of the Committee, Executive will also be eligible for annual equity awards beginning in March 2024 with vesting based on the same terms and conditions as the annual equity awards made to the Company’s similarly situated executives.

(iii) Executive will be eligible to receive equity awards, including stock options, restricted stock units, performance stock units, or other equity awards, pursuant to any plans or arrangements the Company may have in effect from time to time. The Committee will determine in its discretion whether Executive will be granted any such equity awards and the terms of any such award in accordance with the terms of any applicable plan or arrangement that may be in effect from time to time.

(d) Relocation Reimbursements. If Executive relocates to the area where the Company Headquarters is located (the “Company Headquarters Area”) prior to the date that is twelve (12) months after the Effective Date (the “Relocation Deadline”), the Company will pay or otherwise reimburse Executive up to a maximum gross amount of \$100,000 for the following expenses incurred prior to the Relocation Deadline during the Term of Employment, in each case subject to Executive remaining employed with the Company through the date such payment or reimbursement is paid: (i) reasonable moving expenses incurred by Executive and his immediate family for the packing, loading, insuring, and transferring household goods and furnishings during their relocation from Executive’s primary residence in the Commonwealth of Massachusetts to the Company Headquarters Area, plus storage for such items, (ii) reasonable costs for Executive to move himself and his immediate family from the Commonwealth of Massachusetts to the Company Headquarters Area (i.e., mileage reimbursement for one vehicle, shipping costs for one vehicle, and up to two nights of lodging and reasonable meal expenses), (iii) reasonable costs for up to two house-hunting trips to the Company Headquarters Area (i.e., reimbursement of coach airfare, up to three nights of lodging expenses, and reasonable meal expenses for Executive and his immediate family), and (iv) the closing costs on the purchase of a new personal home in the Company Headquarters Area (including loan origination and inspections fees, but excluding points and realtor fees) ((i) through (iv) collectively, the “Relocation Payments”). All reimbursement requests made pursuant to this section must be submitted within sixty (60) days of the date they are incurred, and are subject to the Company’s reimbursement policy, including appropriate substantiation for any such requests. The Relocation Payments will be grossed up for applicable taxes upon payment or reimbursement to Executive, in each case subject to Executive’s continued employment through such gross up is paid. If, prior to the date twelve (12) months after the date Executive first incurred any expense subject to reimbursement under this paragraph, Executive’s employment is terminated by the Company for Cause or by Executive voluntarily without Good Reason, Executive agrees to repay the Company a portion of the Relocation Payments and tax gross up payments within thirty (30) days of Executive’s employment termination date, with such portion equal to (i) the entire gross amount of the Relocation Payments and tax gross up payments multiplied by (ii) a fraction (A) the numerator of which is equal to the difference between (x) twelve (12) minus (y) the number of completed months between the date of Executive’s relocation to the Company Headquarters Area and the date Executive’s employment with the Company terminates and (B) the denominator of which is twelve (12). For clarity, if Executive’s employment is terminated by the Company without Cause or by Executive voluntarily for Good Reason, Executive will not be obligated to repay any portion of the Relocation Payments.

(e) Sign-On Bonus. Executive shall be eligible to receive a cash bonus of \$1,700,000 (the "Sign-On Bonus"), which shall be payable in two (2) equal installments as follows: (i) fifty percent (50%) of the Sign-On Bonus (less applicable withholdings) will be paid on the second payroll date following the Effective Date, and (ii) the remaining fifty percent (50%) of the Sign-On Bonus (less applicable withholdings) will be paid on the first payroll date on or following the first anniversary of the Effective Date, in each case subject to Executive's continued employment with the Company through the applicable payment date.

#### Section 5. **Executive Benefits.**

During the Term of Employment, Executive shall be entitled to participate in health, insurance, retirement and other benefits provided to other similarly-situated executives of the Company, including the same number of holidays, sick days and other benefits as are generally allowed to such executives of the Company in accordance with the Company policy in effect from time to time. Executive will be entitled to accrue paid time off ("PTO") in accordance with the Company's PTO policy.

#### Section 6. **Key-Man Insurance.**

At any time during the Term of Employment, the Company shall have the right to insure the life of Executive for the sole benefit of the Company, in such amounts, and with such terms, as it may determine. All premiums payable thereon shall be the obligation of the Company. Executive shall have no interest in any such policy, but agrees to cooperate with the Company in taking out such insurance by submitting to physical examinations, supplying all information required by the insurance company, and executing all necessary documents, provided that no financial obligation is imposed on Executive by any such documents.

#### Section 7. **Payment and Reimbursement of Business Expenses.**

Executive is authorized to incur reasonable business expenses in carrying out his duties and responsibilities under this Agreement and the Company shall pay or, if Executive shall have paid, shall promptly reimburse Executive for any and all such reasonable business expenses for business, entertainment, promotion, professional association dues and travel incurred by Executive in connection with carrying out the business of the Company, subject to documentation and the other limitations and requirements under the Company's policy, as in effect from time to time, and subject to the consent of the Board. The Company shall reimburse Executive for his reasonable attorney's fees incurred in the negotiation of this Agreement and all related agreements described herein, not to exceed \$20,000, in the aggregate.

#### Section 8. **Termination of Employment.**

(a) General. The Term of Employment shall terminate upon the earliest to occur of (i) Executive's death, (ii) a termination by reason of a Disability, (iii) a termination by the Company with or without Cause, or (iv) a termination by Executive with or without Good Reason. Upon any termination of Executive's employment for any reason, except as may otherwise be requested by the Company in writing and agreed upon in writing by Executive, Executive shall resign from any and all directorships, committee memberships or any other positions Executive holds with the Company (collectively, the "Board Resignation"). The payment hereunder of any deferred compensation (within the meaning of Section 409A of the Code) upon a termination of employment shall not be paid to Executive until such time as Executive has undergone a "separation from service" as defined in Treas. Reg. 1.409A-1(h) (the "Separation from Service").

(b) Termination due to Death or Disability. Executive's employment shall terminate automatically upon his death. The Company may terminate Executive's employment immediately upon the occurrence of a Disability, such termination to be effective upon Executive's receipt of written notice of such termination. In the event Executive's employment is terminated due to his death or Disability, Executive or his estate or his beneficiaries, as the case may be, shall be entitled to:

- (i) The Accrued Obligations; and

(ii) Any earned but unpaid Annual Bonus in respect to any completed fiscal year, which has ended prior to the date of such termination, which amount shall be paid at such time annual bonuses are paid to other senior executives of the Company.

Following such termination of Executive's employment by the reason of death or Disability, except as set forth in this Section 8(b), Executive shall have no further rights to any compensation or any other benefits under this Agreement or otherwise.

(c) Termination by the Company for Cause.

(i) The Company may terminate Executive's employment at any time for Cause, effective upon Executive's receipt of written notice of such termination; *provided, however*, that with respect to any termination for Cause which is described in clause (iv) of Section 1(e) or, to the extent capable of being cured (as determined by the Company in its discretion), clause (v) of Section 1(e) above, Executive shall be given not less than ten (10) days' written notice by the Board of the intention to terminate his employment for Cause, such notice to state in detail the particular act or acts or failure or failures to act that constitute the grounds on which the proposed termination for Cause is based, and such termination shall be effective at the expiration of such ten (10)-day notice period unless Executive has fully cured such acts or failure or failures to act that give rise to Cause during such period to the satisfaction of the Company.

(ii) In the event the Company terminates Executive's employment for Cause, he shall be entitled only to the Accrued Obligations. Following such termination of Executive's employment for Cause, except as set forth in this Section 8(c)(ii), Executive shall have no further rights to any compensation or any other benefits under this Agreement or otherwise.

(d) Termination by the Company without Cause Unrelated to a Change of Control. The Company may terminate Executive's employment at any time without Cause, effective upon Executive's receipt of written notice of such termination. In the event Executive's employment is terminated by the Company without Cause (other than due to death or Disability) outside of the Change of Control Period, subject to the conditions set forth under Sections 8(h) and Section 12 below, Executive shall be entitled to:

(i) The Accrued Obligations;

(ii) Any earned but unpaid Annual Bonus in respect to any completed fiscal year which has ended prior to the date of such termination, which amount shall be paid at such time annual bonuses are paid to other senior executives of the Company;

(iii) Continuation of payment of Base Salary during the Severance Term, payable in accordance with the Company's regular payroll practices, it being agreed that each installment of Base Salary payable hereunder shall be deemed to be a separate payment for purposes of Section 409A of the Code; and

(iv) Continuation, during the period of time permitted under the Consolidated Omnibus Budget Reconciliation Act of 1986 (the "COBRA Period"), of the medical benefits provided to Executive and his covered dependents under the Company's health plans in effect as of the date of such termination, it being understood and agreed that Executive shall be required to pay that portion of the cost of such medical benefits as Executive was required to pay (including through customary deductions from Executive's paycheck) as of the date of Executive's termination of employment with the Company. Notwithstanding the foregoing, the Company's obligation to provide such continuation of benefits shall terminate prior to the expiration of the COBRA Period in the event that Executive becomes eligible to receive any such or similar benefits while employed by or providing service to, in any capacity, any other business or entity during the COBRA Period.

Notwithstanding anything in this Section 8(d)(iv) to the contrary, if the Company determines, in its sole discretion, that it cannot provide the foregoing benefit related to COBRA premiums without potentially violating, or being subject to an excise tax under, applicable law (including, without limitation, Section 2716 of the Public Health Service Act, the Patient Protection and Affordable Care Act, and the Health Care and Education Reconciliation Act of 2010), the Company shall in lieu thereof provide to Executive a taxable monthly payment, payable on the last day

of a given month (except as provided by the following sentence), in an amount equal to the portion of the monthly COBRA premium that Executive would be required to pay to continue the group health coverage for Executive and his eligible dependents at coverage levels in effect immediately prior to Executive's termination (which amount shall equal the excess of the full monthly COBRA premium cost Executive would be required to pay and the monthly medical premium costs that Executive was required to pay as of immediately prior to the date of Executive's termination of employment with the Company), which payments shall be made regardless of whether Executive or his eligible dependents elect COBRA continuation coverage on the first payroll date following Executive's termination of employment (subject to any delay as may be required by Section 12 of this Agreement) and shall end on the earlier of (x) the date upon which Executive obtains other employment or (y) the end of the COBRA Period. For the avoidance of doubt, the taxable payments in lieu of COBRA subsidies may be used for any purpose, including, but not limited to, continuation coverage under COBRA, and shall be subject to all applicable tax withholdings.

Notwithstanding the foregoing, the payments and benefits described in clauses (ii), (iii), and (iv), above shall immediately terminate, and the Company shall have no further obligations to Executive with respect thereto, in the event that Executive breaches any provision of Section 9 hereof or the terms of the Confidentiality Agreement. Following such termination of Executive's employment by the Company without Cause, except as set forth in this Section 8(d), Executive shall have no further rights to any compensation or any other benefits under this Agreement or otherwise.

(e) Termination by Executive with Good Reason Unrelated to a Change of Control. Executive may terminate his employment with Good Reason by providing the Company thirty (30) days' written notice setting forth in reasonable specificity the event that constitutes Good Reason, which written notice, to be effective, must be provided to the Company within thirty (30) days of the occurrence of such event. During such thirty (30)-day notice period, the Company will have a cure right (if curable), and if not cured within such period, Executive's termination shall be effective upon the expiration of such cure period, and, if such termination occurs outside of the Change of Control Period, Executive shall be entitled to the same payments and benefits as provided in Section 8(d) above for a termination by the Company without Cause, subject to the same conditions on payment and benefits as described in Section 8(d) above. Following such termination of Executive's employment by Executive with Good Reason, except as set forth in this Section 8(e), Executive shall have no further rights to any compensation or any other benefits under this Agreement or otherwise.

(f) Termination by Company without Cause or by Executive with Good Reason in Connection with a Change of Control. In the event Executive's employment is terminated by the Company without Cause (other than due to death or Disability) or Executive terminates his employment with Good Reason (by providing thirty (30) days' written notice to the Company and with such cure period as described in Section 8(e), above) during the Change of Control Period, Executive shall be entitled to the same payments and benefits as described in Section 8(d) above provided, however, that the amount of the severance payable under Section 8(d)(iii) above shall be equal to Executive's Base Salary for the Change of Control Severance Term (rather than the Severance Term), subject to reduction pursuant to the last sentence of this Section 8(f) for any amounts already paid to Executive under Section 8(d)(iii) above (if any), and such severance shall be paid as a single lump sum on the later of the Initial Payment Date (as defined below) or the first payroll date on or after the Change of Control. Any such payments or benefits shall also be subject to the same conditions described in Section 8(d) above. Any payments or benefits previously made to Executive under Sections 8(d) or 8(e) above shall offset the payments and benefits due to Executive under this Section 8(f), if any.

(g) Termination by Executive without Good Reason. Executive may terminate his employment without Good Reason by providing the Company thirty (30) days' written notice of such termination. In the event of a termination of employment by Executive under this Section 8(g), Executive shall be entitled only to the Accrued Obligations. In the event of termination of Executive's employment under this Section 8(g), the Company may, in its sole and absolute discretion, by written notice accelerate such date of termination and still have it treated as a termination without Good Reason. Following such termination of Executive's employment by Executive without Good Reason, except as set forth in this Section 8(g), Executive shall have no further rights to any compensation or any other benefits under this Agreement or otherwise.

(h) Conditions Precedent. Any severance payments and post-employment benefits (other than the Accrued Obligations), in each case, as applicable, contemplated by Sections 8(d), (e), and (f) above are conditional on Executive: (i) continuing to comply with the terms of this Agreement and the Confidentiality Agreement (as defined

above); and (ii) Executive executing and not revoking a Separation Agreement, including a general release of claims, in favor of the Company, substantially in the form approved by the Company, and such release becoming effective within sixty (60) days following Executive's Separation from Service (as defined above); and (iii) effectuating the Board Resignation (as discussed above). The severance benefits shall be paid and/or provided in installments immediately beginning on the first payroll date after the sixtieth (60th) day following Executive's Separation from Service (such payroll date, the "Initial Payment Date"), provided the Separation Agreement becomes effective and other conditions precedent have been met, and shall continue to be paid thereafter, if applicable, based on the Company's regular payroll schedule. The payment on the Initial Payment Date will include a lump sum of any severance payments that Executive would have received on or prior to such date under the original schedule but for the delay while waiting for the sixtieth (60th) day in compliance with Code Section 409A and the effectiveness of the release, with the balance of the Severance Benefits being paid in installments as originally scheduled, if applicable.

**Section 9. Disclosure of Confidential information; Return of Documents.**

(a) Disclosure of Confidential Information. At any time during and after the end of the Term of Employment, without the prior written consent of the Board, except to the extent required by an order of a court having jurisdiction or under subpoena from an appropriate government agency, in which event, Executive shall use his best efforts to consult with the Board prior to responding to any such order or subpoena, and except as required in the performance of his duties hereunder, Executive shall not disclose to or use for his individual benefit or the benefit of any third party any Confidential Information, as further discussed under the Confidentiality Agreement.

(b) Return of Documents. In the event of the termination of Executive's employment for any reason, Executive shall deliver to the Company all of (i) the property of the Company, and (ii) the documents and data of any nature and in whatever medium of the Company, and he shall not take with him any such property, documents or data or any reproduction thereof, or any documents containing or pertaining to any Confidential Information, as set forth in more detail under Section 5 of the Confidentiality Agreement.

**Section 10. Taxes.**

The Company may withhold from any payments made under this Agreement all applicable taxes, including, but not limited to, income, employment and social insurance taxes, as shall be required by law. Executive acknowledges and represents that the Company has not provided any tax advice to him in connection with this Agreement and that he has been advised by the Company to seek tax advice from his own tax advisors regarding this Agreement and payments that may be made to him pursuant to this Agreement, including specifically, the application of the provisions of Section 409A of the Code to such payments.

**Section 11. Set Off; Mitigation.**

The Company's obligation to pay Executive the amounts provided and to make the arrangements provided hereunder shall be subject to set-off, counterclaim or recoupment of amounts owed by Executive to the Company or its affiliates. Executive shall not be required to mitigate the amount of any payment provided for pursuant to this Agreement by seeking other employment or otherwise and, except as provided in Section 8(d)(iv) hereof, the amount of any payment provided for pursuant to this Agreement shall not be reduced by any compensation earned as a result of Executive's other employment or otherwise.

**Section 12. Section 409A.**

(a) Notwithstanding anything to the contrary in this Agreement, no severance pay or benefits to be paid or provided to Executive, if any, pursuant to this Agreement that, when considered together with any other severance payments or separation benefits, are considered deferred compensation under Code Section 409A, and the final regulations and any guidance promulgated thereunder ("Section 409A") (together, the "Deferred Payments") will be paid or otherwise provided until Executive has a Separation from Service.

(b) Any severance payments or benefits under this Agreement that would be considered Deferred Payments will be paid on, or, in the case of installments, will not commence until, the sixtieth (60th) day following Executive's

Separation from Service, or, if later, such time as required by Section 12(c). Except as required by Section 12(c), and as discussed under Section 8(h), any installment payments that would have been made to Executive during the sixty (60)-day period immediately following Executive's Separation from Service but for the preceding sentence will be paid to Executive on the sixtieth (60th) day following Executive's Separation from Service and the remaining payments shall be made as provided in this Agreement.

(c) Notwithstanding anything to the contrary in this Agreement, if Executive is a "specified employee" within the meaning of Section 409A at the time of Executive's termination (other than due to death), then the Deferred Payments that are payable within the first six (6) months following Executive's Separation from Service, will become payable on the first payroll date that occurs on or after the date six (6) months and one (1) day following the date of Executive's Separation from Service. All subsequent Deferred Payments, if any, will be payable in accordance with the payment schedule applicable to each payment or benefit. Notwithstanding anything herein to the contrary, if Executive dies following Executive's Separation from Service, but prior to the twelve (12) month anniversary of the Separation from Service, then any payments delayed in accordance with this paragraph will be payable in a lump sum as soon as administratively practicable after the date of Executive's death and all other Deferred Payments will be payable in accordance with the payment schedule applicable to each payment or benefit. Each payment and benefit payable under this Agreement is intended to constitute a separate payment for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

(d) Any amount paid under this Agreement that satisfies the requirements of the "short-term deferral" rule set forth in Section 1.409A-1(b)(4) of the Treasury Regulations will not constitute Deferred Payments for purposes of subsection (a) above.

(e) Any amount paid under this Agreement that qualifies as a payment made as a result of an involuntary Separation from Service pursuant to Section 1.409A-1(b)(9)(iii) of the Treasury Regulations that does not exceed the Section 409A Limit (as defined below) will not constitute Deferred Payments for purposes of subsection (a) above.

(f) The foregoing provisions are intended to comply with the requirements of Section 409A so that none of the severance payments and benefits to be provided hereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities herein will be interpreted to so comply. The Company and Executive agree to work together in good faith to consider amendments to this Agreement and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition prior to actual payment to Executive under Section 409A.

(g) For purposes of this Agreement, "Section 409A Limit" will mean two (2) times the lesser of: (i) Executive's annualized compensation based upon the annual rate of pay paid to Executive during Executive's taxable year preceding Executive's taxable year of his Separation from Service as determined under Treasury Regulation Section 1.409A-1(b)(9)(iii)(A)(1) and any Internal Revenue Service guidance issued with respect thereto; or (ii) the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) of the Code for the year in which Executive's Separation from Service occurred.

### **Section 13. Successors and Assigns; No Third-Party Beneficiaries.**

(a) The Company. This Agreement shall inure to the benefit of the Company and its respective successors and assigns. Neither this Agreement nor any of the rights, obligations or interests arising hereunder may be assigned by the Company without Executive's prior written consent (which shall not be unreasonably withheld, delayed or conditioned), to a person or entity other than an affiliate or parent entity of the Company, or their respective successors or assigns; *provided, however*, that, in the event of the merger, consolidation, transfer or sale of all or substantially all of the assets of the Company with or to any other individual or entity, this Agreement shall, subject to the provisions hereof, be binding upon and inure to the benefit of such successor and such successor shall discharge and perform all the promises, covenants, duties and obligations of the Company hereunder, it being agreed that in such circumstances, the consent of Executive shall not be required in connection therewith.

(b) Executive. Executive's rights and obligations under this Agreement shall not be transferable by Executive by assignment or otherwise, without the prior written consent of the Company; *provided, however*, that if Executive shall die, all amounts then payable to Executive hereunder shall be paid in accordance with the terms of this Agreement to Executive's devisee, legatee or other designee or, if there be no such designee, to Executive's estate.

(c) No Third-Party Beneficiaries. Except as otherwise set forth in Section 8(b) or Section 13(b) hereof, nothing expressed or referred to in this Agreement will be construed to give any person or entity other than the Company and Executive any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement.

#### Section 14. **Waiver and Amendments.**

Any waiver, alteration, amendment or modification of any of the terms of this Agreement shall be valid only if made in writing and signed by each of the parties hereto; *provided, however*, that any such waiver, alteration, amendment or modification is consented to on the Company's behalf by the Board. No waiver by either of the parties hereto of their rights hereunder shall be deemed to constitute a waiver with respect to any subsequent occurrences or transactions hereunder unless such waiver specifically states that it is to be construed as a continuing waiver.

#### Section 15. **Severability.**

If any covenants or such other provisions of this Agreement are found to be invalid or unenforceable by a final determination of a court of competent jurisdiction or an arbitrator: (a) the remaining terms and provisions hereof shall be unimpaired, and (b) the invalid or unenforceable term or provision hereof shall be deemed replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision hereof.

#### Section 16. **Governing Law.**

This Agreement is governed by and is to be construed under the laws of the Commonwealth of Massachusetts (or following Executive's relocation to the Company Headquarters Area, the laws of the state where the Company Headquarters is located), without regard to conflict of laws rules.

#### Section 17. **ARBITRATION**

THE PARTIES AGREE THAT ANY AND ALL DISPUTES ARISING OUT OF THE TERMS OF THIS AGREEMENT, THEIR INTERPRETATION, AND ANY OF THE MATTERS ADDRESSED HEREIN, SHALL BE SUBJECT TO THE ARBITRATION AND DISPUTE RESOLUTION PROCESS DETAILED IN THE CONFIDENTIALITY AGREEMENT. EXECUTIVE ACKNOWLEDGES AND AGREES THAT EXECUTIVE IS HEREBY WAIVING THE RIGHT TO JURY TRIAL.

#### Section 18. **Notices.**

(a) Every notice or other communication relating to this Agreement shall be in writing, and shall be mailed to or delivered to the party for whom it is intended at such address as may from time to time be designated by it in a notice mailed or delivered to the other party as herein provided; *provided that*, unless and until some other address be so designated, all notices or communications by Executive to the Company shall be mailed or delivered to the Company at its principal executive office, and all notices or communications by the Company to Executive may be given to Executive personally or may be mailed to Executive at Executive's last known address, as reflected in the Company's records.

(b) Any notice so addressed shall be deemed to be given: (i) if delivered by hand, on the date of such delivery; (ii) if mailed by courier or by overnight mail, on the first (1st) business day following the date of such mailing; and (iii) if mailed by registered or certified mail, on the third (3rd) business day after the date of such mailing.



Section 19. **Section Headings.**

The headings of the sections and subsections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part thereof, affect the meaning or interpretation of this Agreement or of any term or provision hereof.

Section 20. **Entire Agreement.**

This Agreement and the Confidentiality Agreement, together with any exhibits attached thereto, constitute the entire understanding and agreement of the parties hereto regarding the employment of Executive. This Agreement supersedes all prior negotiations, discussions, correspondence, communications, understandings and agreements between the parties relating to the subject matter of this Agreement.

Section 21. **Survival of Operative Sections.**

Upon any termination of Executive's employment, the provisions of Section 8 through Section 24 of this Agreement (together with any related definitions set forth in Section 1 hereof) shall survive to the extent necessary to give effect to the provisions thereof.

Section 22. **Limitation on Payments.**

In the event that the severance and other benefits provided for in this Agreement or otherwise payable to Executive (i) constitute "parachute payments" within the meaning of Section 280G of the Code and (ii) but for this Section 22, would be subject to the excise tax imposed by Section 4999 of the Code, then Executive's severance and other benefits will be either:

(a) delivered in full, or

(b) delivered as to such letter extent which would result in no portion of such severance and other benefits being subject to the excise tax under Section 4999 of the Code,

whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999, results in the receipt by Executive on an after-tax basis, of the greatest amount of severance and other benefits, notwithstanding that all or some portion of such severance and other benefits may be taxable under Section 4999 of the Code. If a reduction in the severance and other benefits constituting "parachute payments" is necessary so that no portion of such severance benefits is subject to the excise tax under Section 4999 of the Code, the reduction shall occur in the following order: (1) reduction of the cash severance payments; (2) cancellation of accelerated vesting of equity awards that vest, in whole or in part, based on the achievement of performance criteria, in the reverse order that such awards would have vested; (3) cancellation of accelerated vesting of equity awards that vest based solely on continued service, in the order of the percentage of the fair market value of such awards that constitutes a parachute payment (commencing with the largest percentage); and (4) reduction of continued employee benefits. In the event that acceleration of vesting of equity award compensation is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of Executive's equity awards. Notwithstanding the foregoing, to the extent the Company submits any payment or benefit payable to Executive under this Agreement or otherwise to the Company's stockholders for approval in accordance with Treasury Regulation Section 1.280G-1 Q&A 7, the foregoing provisions shall not apply following such submission and such payments and benefits will be treated in accordance with the results of such vote, except that any reduction in, or waiver of, such payments or benefits required by such vote will be applied without any application of discretion by Executive and in the order prescribed by this Section 22.

Unless the Company and Executive otherwise agree in writing, any determination required under this Section 22 will be made in writing by an independent firm (the "Firm"), whose determination will be conclusive and binding upon Executive and the Company for all purposes. For purposes of making the calculations required by this Section 22, the Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The

Company and Executive will furnish to the Firm such information and documents as the Firm may reasonably request in order to make a determination under this Section 22. The Company will bear all costs the Firm may reasonably incur in connection with any calculations contemplated by this Section 22.

**Section 23. Counterparts.**

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one (1) and the same instrument. The execution of this Agreement may be by actual or facsimile signature.

**Section 24. Protected Activity Not Prohibited.**

Executive understands that nothing in this Agreement, the Confidentiality Agreement, or in any other agreement between Executive and the Company, as applicable, will in any way limit or prohibit Executive from engaging in any protected activity, as set forth in the "Protected Activity Not Prohibited" section in the Confidentiality Agreement.

**Section 25. General.**

Executive's employment is made contingent upon a satisfactory background investigation, credit report and Executive's ability to provide proof of identification and authorization to work in the United States, in accordance with the Immigration and Control Act of 1986. This offer expires at the close of business on November 15, 2023. To indicate acceptance, Executive must sign in the space provided below.

\* \* \*

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

COMPANY:

Inogen, Inc.

/s/ Elizabeth Mora

By: Elizabeth Mora

Title: Chairperson of the Board

EXECUTIVE:

/s/ Kevin Smith

By: Kevin Smith





**FOR IMMEDIATE RELEASE**

**Inogen Announces Leadership Change with the  
Appointment of Kevin Smith as President and CEO**

*Seasoned Leader Brings More than Two Decades of Medical Device Experience and Proven  
Track Record of Driving Growth and Organizational Transformation*

**GOLETA, Calif., November 13, 2023** – Inogen, Inc. (NASDAQ: INGN), a medical technology company offering innovative respiratory products for use in the homecare setting, today announced that its Board of Directors has appointed Kevin Smith as Inogen’s President and Chief Executive Officer and a member of the Board of Directors, effective immediately, succeeding Nabil Shabshab.

Mr. Smith brings more than 20 years of commercial leadership experience in the medical device industry, including respiratory care and durable medical equipment businesses, and a history of success in executing value-creating transformations across organizations. He most recently served as Chief Executive Officer at Sirtex Medical Limited, a global manufacturer of interventional treatment solutions, where he successfully implemented a profitable growth strategy, including global expansion, and oversaw the company’s business development strategy. Mr. Smith previously held senior positions at Sensium Healthcare Ltd., Teleflex, Hillrom Holdings and ZOLL Medical Corporation. Throughout his career, he has developed extensive expertise strategically navigating enterprises through market cycles, leading business turnarounds, optimizing business channels, introducing new products, and driving growth and international market expansion.

“Inogen is a global leader in portable oxygen therapy solutions, with a large and growing market, and leading patient-centric product portfolio,” said Elizabeth Mora, Chairperson of the Board. “We believe we have tremendous opportunities to scale our business, drive operational efficiencies and accelerate our growth trajectory, and the Board believes it is the right time for new leadership to improve performance and support Inogen’s next phase of its journey. With deep global medical device experience and a strong track record of successful business transformations, we believe Kevin is the right leader to capitalize on Inogen’s potential. We look forward to benefitting from his expertise as we seek to advance our commercial strategy, win new customers, and drive sustainable, long-term value for our shareholders.”

Mr. Smith said, “I am honored to join Inogen, a company with a strong brand, global reach, and purpose-led vision. I believe Inogen has a solid foundation, with leading products, and significant potential to make innovative respiratory solutions the standard of care to improve patient health. I look forward to working with the Board and entire team to drive growth, innovation, and enhanced performance to create value for patients and our shareholders alike.”

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Ms. Mora added, “On behalf of the Board, I want to thank Nabil for his service and contributions to Inogen. Nabil has helped navigate Inogen through headwinds over the past few years, and we wish him well in his future endeavors.”

The Company reaffirms its full year financial guidance previously announced on November 7.

In light of the transition, the Company will no longer attend the Stifel 2023 Healthcare Conference and the Piper Sandler 35<sup>th</sup> Annual Healthcare Conference taking place later this month.

### **About Kevin Smith**

Mr. Smith joins Inogen from Sirtex Medical Limited, a previously ASX-listed leading manufacturer of interventional treatment solutions, where he most recently served as Chief Executive Officer since 2019. He originally joined Sirtex in 2017 as Executive Vice President, Sales & Marketing for the Americas, and was responsible for transforming the company’s business development approach, implementing impactful commercial strategies for sustained profitable growth, and leading Sirtex’s expansion into Latin America.

From October 2015 to November 2016, Mr. Smith served as Chief Commercial Officer at Sensium Healthcare Ltd., where he was responsible for revising the growth strategy, and eventually arranging a sale of the business to The Surgical Company. Earlier in his career, Mr. Smith held a variety of leadership roles in the global therapeutic and medical device industry, including a seven-year tenure at Teleflex within the cardiac business unit, where he served as Global Vice President of Sales and Marketing, and eventually International Vice President of Sales and Marketing. Key highlights of Mr. Smith’s tenure at Teleflex include leading new product launches, driving sales channel optimization initiatives and implementing strategies to improve gross margins and profitability.

Mr. Smith earned an MBA in global management from the University of Phoenix and holds a Bachelor’s degree in marketing from the University of Kentucky.

### **About Inogen**

Inogen, Inc. (Nasdaq: INGN) is a leading global medical technology company offering innovative respiratory products for use in the homecare setting. Inogen supports patient respiratory care by developing, manufacturing, and marketing innovative best-in-class portable oxygen concentrators used to deliver supplemental long-term oxygen therapy to patients suffering from chronic respiratory conditions. Inogen partners with patients, prescribers, home medical equipment providers, and distributors to make its oxygen therapy products widely available allowing patients the chance to remain ambulatory while managing the impact of their disease.

For more information, please visit [www.inogen.com](http://www.inogen.com).

Inogen has used, and intends to continue to use, its Investor Relations website, <http://investor.inogen.com/>, as a means of disclosing material non-public information and for complying with its disclosure obligations under Regulation FD. For more information, visit <http://investor.inogen.com/>.

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## **Forward-Looking Statements**

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, including, among others, statements with respect to the announced changes to management; statements concerning or implying Inogen's future financial performance; statements regarding Inogen's goals and potential, including the potential for Inogen to scale its business, drive operational efficiencies, accelerate its growth, win new customers, and drive long-term value for its shareholders; the ability of management personnel to contribute to the execution of Inogen's strategic plans and goals; the ability of Inogen to achieve sustainable, long-term growth; and Inogen's full year financial guidance. Any statements contained in this communication that are not statements of historical fact may be deemed to be forward-looking statements. Words such as "believes," "anticipates," "plans," "expects," "will," "intends," "potential," "possible," and similar expressions are intended to identify forward-looking statements. Forward-looking statements are subject to numerous risks and uncertainties that could cause actual results to differ materially from currently anticipated results, including but not limited to, risks related to its announced management and organizational changes, and risks arising from the possibility that Inogen will not realize anticipated future financial performance or strategic goals. In addition, Inogen's business is subject to numerous additional risks and uncertainties, including, among others, risks relating to market acceptance of its products; competition; its sales, marketing and distribution capabilities; its planned sales, marketing, and research and development activities; interruptions or delays in the supply of components or materials for, or manufacturing of, its products; seasonal variations; unanticipated increases in costs or expenses; risks associated with international operations; and the possibility that Inogen will not realize anticipated revenue from recent or future technology acquisitions or that expenses and costs related thereto will exceed Inogen's expectations. Information on these and additional risks, uncertainties, and other information affecting Inogen's business operating results are contained in its Annual Report on Form 10-K for the period ended December 31, 2022, its Quarterly Report on Form 10-Q for the calendar quarter ended September 30, 2023 and in its other filings with the Securities and Exchange Commission. These forward-looking statements speak only as of the date hereof. Inogen disclaims any obligation to update these forward-looking statements except as may be required by law.

## **Investor Contact**

[ir@inogen.net](mailto:ir@inogen.net)

## **Media Contact**

Andi Rose / Mahmoud Siddig  
Joele Frank, Wilkinson Brimmer Katcher  
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