

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**  
**FORM 10-Q**

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

For the  
Quarterly Period Ended  
March 31, 2020  
**OR**

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 001-35887

**MIMEDX GROUP, INC.**

(Exact name of registrant as specified in its charter)

**Florida**  
(State or other jurisdiction of incorporation)

**26-2792552**  
(I.R.S. Employer Identification Number)

**1775 West Oak Commons Ct NE**  
**Marietta, GA**  
(Address of principal executive offices)

**30062**  
(Zip Code)

**(770) 651-9100**  
(Registrant's telephone number, including area code)

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

Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes  No

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

Non-accelerated filer   
(Do not check if a smaller  
reporting company)

Large accelerated filer  Accelerated filer  reporting company) Smaller reporting company  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.

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

Yes  No

There were 110,328,875 shares of the registrant's common stock, par value \$0.001 per share, outstanding as of June 25, 2020.

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As used herein, the terms “*MiMedx*,” “*the Company*,” “*we*,” “*our*” and “*us*” refer to MiMedx Group, Inc., a Florida corporation, and its consolidated subsidiaries as a combined entity, except where it is clear that the terms mean only MiMedx Group, Inc.

## Explanatory Note

As previously disclosed in the Company’s Annual Report on Form 10-K for the year ended December 31, 2018 (the “**2018 Form 10-K**”), the Company filed no periodic reports after October 2017 until the filing of the 2018 Form 10-K. In June 2018, following an investigation (the “**Audit Committee Investigation**”), the Audit Committee of the Company’s Board of Directors, with the concurrence of management, concluded that the Company’s previously issued consolidated financial statements and financial information relating to each of the fiscal years ended December 31, 2016, 2015, 2014, 2013 and 2012 and each of the interim periods within such years, along with the unaudited condensed consolidated financial statements included in the Company’s Quarterly Reports on Form 10-Q for the quarters ended March 31, 2017, June 30, 2017 and September 30, 2017 (collectively, the “**Non-Reliance Periods**”), would need to be restated (the “**Restatement**”) and could no longer be relied upon due to accounting irregularities regarding the recognition of revenue under generally accepted accounting principles in the United States of America (“**GAAP**”). The 2018 Form 10-K contained our audited consolidated statements of operations, stockholders’ equity and cash flows for the years ended December 31, 2018 and 2017, which had not previously been filed, and for the year ended December 31, 2016, which were restated from the consolidated financial statements previously filed in our Annual Report on Form 10-K for the year ended December 31, 2016. The 2018 Form 10-K also included our audited consolidated balance sheets as of December 31, 2018 and 2017.

The Company, the Board, and the Audit Committee devoted considerable resources, including the time and attention of the Company’s financial and accounting staff and management, to completing the 2018 Form 10-K, which was not filed until March 17, 2020. This delayed the completion and filing of the Company’s Annual Report on Form 10-K for the year ended December 31, 2019 (the “**2019 Form 10-K**”) and Quarterly Report on Form 10-Q for the quarter ended March 31, 2020, both of which were filed on July 6, 2020.

## Forward-Looking Statements

This Form 10-Q contains forward-looking statements. All statements relating to events or results that may occur in the future are forward-looking statements, including, without limitation, statements regarding the following:

- our strategic focus, as illustrated by our strategic priorities and our ability to implement these priorities;
- our ability to access capital sufficient to implement our strategic priorities;
- our expectations regarding our ability to fund our ongoing and future operating costs;
- our expectations regarding future income tax liability;
- the advantages of our products and development of new products;
- market opportunities for our products;
- the regulatory pathway for our products, including our existing and planned investigative new drug application and pre-market approval requirements, the design and success of our clinical trials and pursuit of biological license applications (“**BLAs**”) for certain products;
- our expectations regarding our ability to manufacture certain of our products in compliance with current Good Manufacturing Practices (“**cGMP**”);
- our expectations regarding costs relating to compliance with regulatory standards, including those arising from our clinical trials, pursuit of BLAs, and cGMP compliance;
- our ability to continue marketing our micronized products and certain other products during and following the end of the period of enforcement discretion announced by the United States Food and Drug Administration (“**FDA**”);
- expectations regarding government and other third-party coverage and reimbursement for our products;
- expectations regarding future revenue growth;
- the effects of the adoption of new accounting standards on the Company’s financial position or results of operations;
- our ability to procure sufficient supplies of human tissue to manufacture and process our products;
- the outcome of pending litigation and investigations;
- our ability to relist our common stock, par value \$0.001 per share (the “**Common Stock**”) on The Nasdaq Capital Market;
- ongoing and future effects arising from the Audit Committee Investigation, the Restatement, and related litigation;
- ongoing and future effects arising from the COVID-19 pandemic;
- demographic and market trends;
- our plans to remediate the identified material weaknesses in our internal control environment and to strengthen our internal control environment; and
- our ability to compete effectively.

Forward-looking statements generally can be identified by words such as “expect,” “will,” “change,” “intend,” “seek,” “target,” “future,” “plan,” “continue,” “potential,” “possible,” “could,” “estimate,” “may,” “anticipate,” “to be” and similar expressions. These statements are based on numerous assumptions and involve known and unknown risks, uncertainties and other factors that could significantly affect the Company’s operations and may cause the Company’s actual actions, results, financial condition, performance or achievements to differ materially from any future actions, results, financial condition, performance or achievements expressed or implied by any such forward-looking statements. Factors that may cause such a difference include, without limitation, those discussed under the heading “*Risk Factors*” in the 2019 Form 10-K.

Unless required by law, the Company does not intend, and undertakes no obligation, to update or publicly release any revision to any forward-looking statements, whether as a result of the receipt of new information, the occurrence of subsequent events, a change in circumstances or otherwise. Each forward-looking statement contained in this Form 10-Q is specifically qualified in its entirety by the aforementioned factors. Readers are advised to carefully read this Form 10-Q in conjunction with the important disclaimers set forth above prior to reaching any conclusions or making any investment decisions and not to place undue reliance on forward-looking statements, which apply only as of the date of the filing of this Form 10-Q with the Securities and Exchange Commission (“*SEC*”).

**PART I - FINANCIAL INFORMATION**

**Item 1. Financial Statements**

MIMEDX GROUP, INC. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(in thousands, except share data)

|   | March 31, 2020<br>(unaudited) | December 31,<br>2019 |
|---|-------------------------------|----------------------|
| <b>ASSETS</b>   |                               |                      |
| Current assets:   |                               |                      |
| Cash and cash equivalents   | \$ 53,525                     | \$ 69,069            |
| Accounts receivable, net  | 31,932                        | 32,327               |
| Inventory, net  | 9,247                         | 9,104                |
| Prepaid expenses  | 5,239                         | 6,669                |
| Income tax receivable   | 10,729                        | 18                   |
| Other current assets  | 5,216                         | 6,058                |
| Total current assets  | 115,888                       | 123,245              |
| Property and equipment, net   | 11,833                        | 12,328               |
| Right of use asset  | 3,158                         | 3,397                |
| Goodwill  | 19,976                        | 19,976               |
| Intangible assets, net  | 7,581                         | 7,777                |
| Other assets  | 473                           | 443                  |
| Total assets  | \$ 158,909                    | \$ 167,166           |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>   |                               |                      |
| Current liabilities:  |                               |                      |
| Accounts payable  | \$ 9,756                      | \$ 8,710             |
| Accrued compensation  | 17,116                        | 21,302               |
| Accrued expenses  | 30,661                        | 32,161               |
| Current portion of long term debt   | 3,750                         | 3,750                |
| Other current liabilities   | 2,416                         | 1,399                |
| Total current liabilities   | 63,699                        | 67,322               |
| Long term debt, net   | 61,637                        | 61,906               |
| Other liabilities   | 3,234                         | 3,540                |
| Total liabilities   | \$ 128,570                    | \$ 132,768           |
| Commitments and contingencies (Note 13)   |                               |                      |
| Stockholders' equity:   |                               |                      |
| Preferred stock; \$.001 par value; 5,000,000 shares authorized; 0 issued and 0 outstanding at March 31, 2020 and 0 issued and 0 outstanding at December 31, 2019  | \$ —                          | \$ —                 |
| Common stock; \$.001 par value; 150,000,000 shares authorized; 112,703,926 issued and 110,540,860 outstanding at March 31, 2020 and 112,703,926 issued and 110,818,649 outstanding at December 31, 2019 | 113                           | 113                  |
| Additional paid-in capital  | 149,765                       | 147,231              |
| Treasury stock at cost; 2,163,066 shares at March 31, 2020 and 1,885,277 shares at December 31, 2019  | (12,578)                      | (10,806)             |
| Accumulated deficit   | (106,961)                     | (102,140)            |
| Total stockholders' equity  | 30,339                        | 34,398               |
| Total liabilities and stockholders' equity  | \$ 158,909                    | \$ 167,166           |

See notes to unaudited condensed consolidated financial statements

MIMEDX GROUP, INC. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
(in thousands, except share and per share data)  
(unaudited)

|   | Three Months Ended March 31, |             |
|---|------------------------------|-------------|
|   | 2020                         | 2019        |
| Net sales                                     | \$ 61,736                    | \$ 66,555   |
| Cost of sales                                 | 10,025                       | 7,418       |
| Gross profit                                  | 51,711                       | 59,137      |
| Operating expenses:                           |                              |             |
| Selling, general and administrative           | 46,942                       | 50,862      |
| Investigation, restatement and related        | 15,592                       | 18,107      |
| Research and development                      | 2,650                        | 2,902       |
| Amortization of intangible assets             | 271                          | 233         |
| Impairment of intangible asset                | —                            | 446         |
| Operating loss                                | \$ (13,744)                  | \$ (13,413) |
| Other income (expense), net                   |                              |             |
| Interest (expense) income, net                | (2,387)                      | 211         |
| Other income (expense), net                   | 6                            | (29)        |
| Loss before income tax provision              | (16,125)                     | (13,231)    |
| Income tax provision benefit (expense)        | 11,304                       | (42)        |
| Net loss                                      | \$ (4,821)                   | \$ (13,273) |
| Net loss per common share - basic             | \$ (0.04)                    | \$ (0.12)   |
| Net loss per common share - diluted           | \$ (0.04)                    | \$ (0.12)   |
| Weighted average shares outstanding - basic   | 107,538,509                  | 106,420,317 |
| Weighted average shares outstanding - diluted | 107,538,509                  | 106,420,317 |

See notes to unaudited condensed consolidated financial statements

MIMEDX GROUP, INC. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY  
(in thousands, except share data)  
(unaudited)

|  | Common Stock Issued |        | Additional Paid<br>- in<br>Capital | Treasury Stock |             | Accumulated<br>Deficit | Total     |
|--|---------------------|--------|------------------------------------|----------------|-------------|------------------------|-----------|
|  | Shares              | Amount |                                    | Shares         | Amount      |                        |           |
| Balance at December 31, 2019               | 112,703,926         | \$ 113 | \$ 147,231                         | 1,885,277      | \$ (10,806) | \$ (102,140)           | \$ 34,398 |
| Share-based compensation expense           | —                   | —      | 1,915                              | —              | —           | —                      | 1,915     |
| Exercise of stock options                  | —                   | —      | (1,214)                            | (170,300)      | 1,512       | —                      | 298       |
| Restricted stock shares canceled/forfeited | —                   | —      | 1,746                              | 242,998        | (1,746)     | —                      | —         |
| Shares repurchased for tax withholding     | —                   | —      | 87                                 | 205,091        | (1,538)     | —                      | (1,451)   |
| Net loss                                   | —                   | —      | —                                  | —              | —           | (4,821)                | (4,821)   |
| Balance at March 31, 2020                  | 112,703,926         | \$ 113 | \$ 149,765                         | 2,163,066      | \$ (12,578) | \$ (106,961)           | \$ 30,339 |

|  | Common Stock Issued |        | Additional Paid<br>- in<br>Capital | Treasury Stock |             | Accumulated<br>Deficit | Total     |
|--|---------------------|--------|------------------------------------|----------------|-------------|------------------------|-----------|
|  | Shares              | Amount |                                    | Shares         | Amount      |                        |           |
| Balance at December 31, 2018               | 112,703,926         | \$ 113 | \$ 164,744                         | 3,605,263      | \$ (38,642) | \$ (76,560)            | \$ 49,655 |
| Share-based compensation expense           | —                   | —      | 3,014                              | —              | —           | —                      | 3,014     |
| Issuance of restricted stock               | —                   | —      | (3,025)                            | (251,305)      | 3,025       | —                      | —         |
| Restricted stock shares canceled/forfeited | —                   | —      | 1,563                              | 141,381        | (1,563)     | —                      | —         |
| Shares repurchased for tax withholding     | —                   | —      | —                                  | 336,674        | (1,044)     | —                      | (1,044)   |
| Net loss                                   | —                   | —      | —                                  | —              | —           | (13,273)               | (13,273)  |
| Balance at March 31, 2019                  | 112,703,926         | \$ 113 | \$ 166,296                         | 3,832,013      | \$ (38,224) | \$ (89,833)            | \$ 38,352 |

See notes to unaudited condensed consolidated financial statements



MIMEDX GROUP, INC. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(in thousands)  
(unaudited)

|  | Three Months Ended March 31, |             |
|--|------------------------------|-------------|
|  | 2020                         | 2019        |
| Cash flows from operating activities:                                      |                              |             |
| Net loss   | \$ (4,821)                   | \$ (13,273) |
| Adjustments to reconcile net income to net cash from operating activities: |                              |             |
| Share-based compensation   | 3,349                        | 3,014       |
| Depreciation   | 1,506                        | 1,695       |
| Amortization of intangible assets  | 271                          | 233         |
| Amortization of deferred financing costs and debt discount                 | 668                          | —           |
| Non-cash lease expenses  | 239                          | 269         |
| Loss on fixed asset disposal   | —                            | 1           |
| Impairment of intangible assets  | —                            | 1,258       |
| Increase (decrease) in cash resulting from changes in:                     |                              |             |
| Accounts receivable  | 395                          | —           |
| Inventory  | (143)                        | (442)       |
| Prepaid expenses   | 1,430                        | 2,053       |
| Income tax receivable  | (10,711)                     | (12)        |
| Other assets   | 812                          | (1,612)     |
| Accounts payable   | 1,046                        | (4,173)     |
| Accrued compensation   | (4,186)                      | (7,501)     |
| Accrued expenses   | (2,845)                      | 3,895       |
| Income taxes   | —                            | —           |
| Other liabilities  | 709                          | (665)       |
| Cash flows used in operating activities                                    | (12,281)                     | (15,260)    |
| Cash flows from investing activities:                                      |                              |             |
| Purchases of equipment   | (1,011)                      | (648)       |
| Principal payments from note receivable                                    | —                            | 389         |
| Patent application costs   | (75)                         | (174)       |
| Cash flows used in investing activities                                    | (1,086)                      | (433)       |
| Cash flows from financing activities:                                      |                              |             |
| Proceeds from exercise of stock options                                    | 298                          | —           |
| Stock repurchased for tax withholdings on vesting of restricted stock      | (1,538)                      | (1,044)     |
| Repayment of term loan   | (937)                        | —           |
| Cash flows used in financing activities                                    | (2,177)                      | (1,044)     |
| Net change in cash   | (15,544)                     | (16,737)    |
| Cash and cash equivalents, beginning of period                             | 69,069                       | 45,118      |
| Cash and cash equivalents, end of period                                   | \$ 53,525                    | \$ 28,381   |

See notes to unaudited condensed consolidated financial statements

MIMEDX GROUP, INC.  
NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
FOR THE THREE MONTHS ENDED MARCH 31, 2020 AND 2019

**1. Nature of Business**

MiMedx Group, Inc. (together with its subsidiaries except where the context otherwise requires “*MiMedx*,” or the “*Company*”) is an advanced wound care and emerging therapeutic biologics company, developing and distributing human placental tissue allografts with patent-protected processes for multiple sectors of healthcare. The Company derives its products from human placental tissues processed using proprietary processing methodologies. The Company’s mission is to offer physicians products and tissues to help the body heal itself. MiMedx provides products in the wound care, burn, surgical, orthopedic, spine, sports medicine, ophthalmic and dental sectors of healthcare. All of the Company’s products are regulated by the United States Food and Drug Administration (“*FDA*”).

MiMedx is the leading supplier of human placental allografts, which are human tissues that are transplanted from one person (a donor) to another person (a recipient). The Company operates in one business segment, Regenerative Biomaterials, which includes the design, manufacture, and marketing of products for the wound care, burn, surgical, orthopedic, spine, sports medicine, ophthalmic and dental sectors of healthcare. The Company’s allograft product families include: the dHACM family with AmnioFix® and EpiFix® brands; the Umbilical family with EpiCord® and AmnioCord® brands; and the Placental Collagen family with AmnioFill™ brands. AmnioFix and EpiFix are tissue allografts derived from amnion and chorion layers of human placental membrane; EpiCord and AmnioCord are tissue allografts derived from umbilical cord tissue. AmnioFill is a placental connective tissue matrix, derived from the placental disc and other placental tissue.

The Company’s business model is focused primarily on the United States of America but the Company is exploring potential future international expansion opportunities.

***Effect of COVID-19 Pandemic***

The COVID-19 pandemic and governmental and societal responses thereto have affected the Company’s business, results of operations and financial condition. The continuation or additional waves of the outbreak of COVID-19 or the outbreak of other health epidemics could harm the Company’s operations and increase the Company’s costs and expenses in numerous ways. The ultimate impact of the COVID-19 pandemic is highly uncertain and subject to change. The Company does not yet know the full extent of delays or impacts on the business, clinical trials, healthcare systems or the global economy as a whole, or how long such effects will endure. The effects of the COVID-19 pandemic or other health epidemics could have an adverse impact on the Company’s business, results of operations and financial condition.

On March 27, 2020, the Coronavirus Aid, Relief and Economic Security Act (the “*CARES Act*”) was signed into law. The CARES Act includes provisions relating to refundable payroll tax credits, deferment of the employer portion of certain payroll taxes, loans and grants to certain business, net operating loss carryback periods, alternative minimum tax credit refunds, modifications to the net interest deduction limitations and technical corrections to tax depreciation methods for qualified improvement property. As a result of the CARES Act, the Company expects a federal tax refund of approximately \$11.3 million and has recognized an income tax benefit of the same amount.

**2. Significant Accounting Policies**

Please see Note 3 to the Company’s Consolidated Financial Statements included in the Company’s Form 10-K for the fiscal year ended December 31, 2019 (the “*2019 Form 10-K*”), filed with the Securities and Exchange Commission (“*SEC*”) on July 6, 2020 for a description of all significant accounting policies.

***Basis of Presentation***

The unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“*GAAP*”) from interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. Changes to GAAP are established by the Financial Accounting Standards Board (“*FASB*”) in the form of Accounting Standards Updates (“*ASU*”) to the FASB’s Accounting Standards Codification (“*ASC*”). In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation of the results of operations for the periods presented have been included. Operating results for the three months ended March 31, 2020 and 2019, are not necessarily indicative of the results that may be expected for the fiscal year. The balance sheet at December 31, 2019, has been derived from the audited consolidated financial statements at that date, but does not include all of the information and footnotes required by GAAP for complete financial statements.

You should read these condensed consolidated financial statements together with the historical consolidated financial statements of the Company for the year ended December 31, 2019, included in the 2019 Form 10-K.

### ***Use of Estimates***

The consolidated financial statements have been prepared in accordance with GAAP. Conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported consolidated statements of operations during the reporting period. Actual results could differ from those estimates. Significant estimates include estimated useful lives and potential impairment of property and equipment and intangible assets, estimates for contingent liabilities, management's assessment of the Company's ability to continue as a going concern, estimates of fair value of share-based payments and valuation of deferred tax assets.

### ***Principles of Consolidation***

The consolidated financial statements include the accounts of MiMedx Group, Inc. and its wholly-owned subsidiaries. All intercompany balances and transactions have been eliminated upon consolidation.

### ***Cash and Cash Equivalents***

Cash and cash equivalents include cash and Federal Deposit Insurance Corporation ("**FDIC**") insured certificates of deposit held at various banks with an original maturity of three months or less.

### ***Accounts Receivable***

Accounts receivable represent amounts due from customers for which revenue has been recognized. Generally, the Company does not require collateral or any other security to support its receivables.

The allowance for doubtful accounts is the Company's best estimate of the amount of probable credit losses in the Company's existing receivables. The Company determines the allowance based on factors such as historical collection experience, customers' current creditworthiness, customer concentrations, age of accounts receivable and general economic conditions that may affect customers' ability to pay.

### ***Notes Receivable***

Notes receivable represent formal payment agreements with customers which generally arise in situations where amounts shipped and billed have aged significantly as well as the promissory note issued by Stability Biologics, LLC ("**Stability**") as part of the divestiture of Stability in 2017. The promissory note from Stability was paid in full in the three months ended September 30, 2019. The Company's notes receivable are included in other current and long-term assets in the accompanying condensed consolidated balance sheets and were valued taking into consideration cost of the market participant inputs, market conditions, liquidity, operating results and other qualitative factors.

### ***Inventories***

Inventories are valued at the lower of cost or net realizable value, using the first-in, first-out ("**FIFO**") method. Inventory is tracked through raw material, work-in-process, and finished good stages as the product progresses through various production steps and stocking locations. Labor and overhead costs are absorbed through the various production processes until the work order closes. Historical yields and normal capacities are utilized in the calculation of production overhead rates. Reserves for inventory obsolescence are utilized to account for slow-moving inventory as well as inventory no longer needed due to diminished market demand.

### ***Revenue Recognition***

The Company sells its products primarily to individual customers and independent distributors (collectively referred to as "**customers**"). During the three months ended March 31, 2019, the Company's control environment was such that it created uncertainty surrounding all of its customer arrangements, which required consideration related to the proper revenue recognition under the applicable literature. The control environment allowed for the existence of extra-contractual or undocumented terms or arrangements initiated by or agreed to by the Company and former members of Company management at the outset of the transactions (side agreements). Concessions were also agreed to subsequent to the initial sale (e.g. sales above established customer credit limits extended and unusually long payment terms, return or exchange rights, and contingent payment obligations) that called into question the ability to recognize revenue at the time that product was shipped to a customer. The applicable revenue

recognition guidance also changed beginning January 1, 2018, which further impacted the Company's revenue recognition methodology.

As a result, the Company's application of the applicable revenue recognition guidance varies for the three months ended March 31, 2020 and 2019. Additionally, the Company changed its pattern of revenue recognition effective October 1, 2019. The application of the relevant revenue recognition guidance and the pattern of revenue recognition are further discussed below for each period presented.

#### *Three Months Ended March 31, 2019*

The Company follows ASC Topic 606, *Revenue from Contracts with Customers* ("**ASC 606**") which establishes principles for reporting information about the nature, amount, timing and uncertainty of revenue and cash flows arising from the entity's contracts to provide goods or services to customers. The core principle requires an entity to recognize revenue to depict the transfer of goods or services to customers in an amount that reflects the consideration that it expects to be entitled to receive in exchange for those goods or services recognized as performance obligations are satisfied.

ASC 606 establishes a five-step model for revenue recognition. The first of these steps requires the identification of the contract as described in ASC 606-10-25-1. The specific criteria (the "**Step 1 Criteria**") to this determination are as follows:

- The parties to the contract have approved the contract (in writing, orally, or in accordance with other customary business practices) and are committed to perform their respective obligations;
- The entity can identify each party's rights regarding the goods or services to be transferred; and
- The entity can identify the payment terms for the goods or services to be transferred.
- The contract has commercial substance.
- It is probable that the entity will collect substantially all of the consideration to which it will be entitled in exchange for the goods or services that will be transferred to the customer.

For the three months ended March 31, 2019, the Company concluded that the first three of the above criteria were not met upon shipment of product to the customer, the fourth criterion had been met, and the Company acknowledges that there is a degree of uncertainty as to whether the last criterion above had been met. Although the parties to the contract may have approved the contract and purchase orders in writing, the Company concluded that upon shipment of products to the customer there is not sufficient evidence that its customers were committed to perform their obligations defined in the contract due to the existence of extra-contractual or undocumented terms or arrangements (e.g., regarding payment terms, right of return, etc.).

The Company's inability to fulfill these criteria was due to uncertainties of contractual adjustments with customers created by a combination of an inappropriate tone at the top and extra-contractual arrangements. Consequently, the Company concluded that it did not meet the Step 1 Criteria upon shipment of the product. Subsequent to the shipment of product, uncertainties surrounding contractual adjustment were not resolved until either: (1) the customer returned the product prior to payment; or (2) the Company received payment from the customer. At that point, the Company determined that an accounting contract existed and the performance obligations of the Company to deliver product and the customer to pay for the product were satisfied. The Company determined the transaction price of its contracts to equal the amount of consideration received from customers less the amount expected to be refunded or credited to customers, which is recognized as a refund liability that is updated at the end of each reporting period for changes in circumstances. The refund liability is included within accrued expenses in the consolidated balance sheet.

#### *Transition and the Three Months Ended March 31, 2020*

The Company continued to assess contracts, new and existing, throughout 2019 to determine if the Step 1 Criteria noted above for the determination of a contract under ASC 606 were met for new contracts at the outset of a sales transaction (i.e., upon shipment of product) or for existing contracts at some point within 2019 when all the terms of the arrangement would have been known. Until the Step 1 Criteria had been met, revenue recognition continued to be deferred consistent with the assessment for the year ended December 31, 2018.

As further discussed above, the primary factors contributing to the determination in prior periods that the Step 1 Criteria had not been met were the inappropriate tone at the top and the existence of pervasive extra-contractual or undocumented terms or arrangements. These prior business practices and the lack of transparency surrounding them created a systemically implied right for customers to demand future, unknown performance by the Company. Although some of the former executives were employed by the Company only through June 2018, the Company determined that based on the impact of the prior tone at the top, the

continued internal sales force strategy and the existing customer base's continued expectations (based on past practice), there would be flexibility with respect to arrangement terms even after delivery of the product so pervasive that all customer arrangements continued to be subject to uncertain modification of terms into 2019.

After identifying the primary factors contributing to the lack of knowledge regarding its customer contractual terms, the Company began implementing changes in mid-2018 to remediate the pervasive weaknesses in the control environment, followed by gradually implementing measures to empower its compliance, legal, and accounting departments, educating its sales force on appropriate business practices, and communicating its revised terms of sale to customers. The Company assessed its efforts throughout 2019 to determine when, if at any point, the factors contributing to the inability to satisfy the Step 1 Criteria were sufficiently addressed such that the Step 1 Criteria were met at the time of physical delivery to the customer. Determining when these conditions were effectively satisfied was a matter of judgment; however, the Company determined that adequate knowledge of the contractual arrangements with its customers did exist in 2019. Management did note that there is no single determinative change that overcame the pervasive challenges noted above, but rather an accumulation of efforts that taken together, resulted in sufficient knowledge of contractual relationships both internally within the Company and externally with its customers.

To address the tone at the top issues, the Company noted that proper remediation involved not only the removal of members of management that were setting an inappropriate tone but also the establishment of new management throughout the organization that emphasized a commitment to integrity, ethical values and transparency and have that reinforcement for a sustained period of time. The changes made to management positions throughout the organization and the resulting organization behavior changes were assessed to have been sufficiently addressed by mid-2019.

Therefore, beginning October 1, 2019, for all new customer arrangements, the Company determined adequate measures were in place to understand the terms of its contracts with customers. As such, beginning October 1, 2019, the Company concluded that the Step 1 Criteria would be met prior to shipment of product to the customer or implantation of the products on consignment.

For the remaining customer arrangements at September 30, 2019 (the "**Remaining Contracts**"), the Company concluded that due to the uncertainty that extracontractual arrangement may continue the Step 1 Criteria would not be satisfied until the Company receives payment from the customer. At that point, the Company determined that an accounting contract would exist and the performance obligations of the company to deliver product and the customer to pay for the product would be satisfied. As of March 31, 2020, upon reassessment, the Company concluded that the Step 1 Criteria continued to not be met due to the same circumstances described above. The amount related to these Remaining Contracts at March 31, 2020 was \$4.5 million.

|  | Amounts Invoiced and<br>Not Collected | Deferred Cost of Sales |
|--|---------------------------------------|------------------------|
| Amounts as of December 31, 2019  | \$ 9,006                              | \$ 1,261               |
| Revenue recognized related to amounts invoiced and not collected at September 30, 2019:        |                                       |                        |
| Cash collected during the three months ended March 31, 2020 related to the Remaining Contracts | (4,495)                               | (629)                  |
| Amounts as of March 31, 2020   | <u>\$ 4,511</u>                       | <u>\$ 632</u>          |

As a result of the reassessment as of September 30, 2019, the Company also determined that, for approximately \$10.3 million of existing contracts where payment had not been received, it was not probable that substantially all consideration would be collected. For these customer contracts, the Company continued to fail the Step 1 Criteria and, therefore, no revenue was recognized in 2019. Any collections during the three months ended March 31, 2020, as well as any future collections relating to these customer contracts, will be recorded as revenue at the time payment is received.

For all customer transactions concluded to meet the Step 1 Criteria, the Company then assessed the remaining criteria of ASC 606 to determine the proper timing of revenue recognition.

Under ASC 606, the Company recognizes revenue following the five-step model: (i) identify the contracts with a customer (the Step 1 Criteria); (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when (or as) the entity satisfies a performance obligation. As noted above, during the third quarter of 2019, the Company determined that they had met the Step 1 Criteria. The Company also determined that the performance obligation was met upon delivery of the product to the customer, or at the time the product is implanted for products on consignment, at which point the Company determined it will collect the consideration it is entitled to in exchange for the product transferred to the customer. As a result, the Company recognizes as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) the performance obligation is satisfied, generally upon shipment of the product to the customer. The nature of the Company's contracts gives rise

to certain types of variable consideration, including rebates and other discounts. The Company includes estimated amounts of variable consideration in the transaction price to the extent that it is probable there will not be a significant reversal of revenue. Estimates are based on historical or anticipated performance. The Company does have consignment agreements with several customers and distributors which allow the Company to better market its products by moving them closer to the end user. In these cases, the Company determined that it has fulfilled its performance obligation once control of the product has been delivered to the customer, which occurs simultaneously with the product being implanted.

The Company acts as the principal in all of its customer arrangements and therefore records revenue on a gross basis. Shipping is considered immaterial in the context of the overall customer arrangement, and damages or loss of goods in transit are rare. Therefore, shipping is not deemed a separately recognized performance obligation. The Company maintains a returns policy that allows its customers to return product that is consigned, damaged or non-conforming, ordered in error, or due to a recall. The estimate of the provision for returns is based upon historical experience with actual returns. The Company's payment terms for customers are typically 30 to 60 days from receipt of title of the goods.

Subsequent to the Transition, the Company continued to defer the cost of sales for certain arrangements for which all revenue recognition criteria have not been met. These amounts were recorded within other current assets on the consolidated balance sheet in the amount of \$0.6 million and \$1.3 million as of March 31, 2020 and December 31, 2019, respectively.

#### ***GPO Fees***

The Company sells to Group Purchasing Organization (“**GPO**”) members who transact directly with the Company at GPO-agreed pricing. GPOs are funded by administrative fees that are paid by the Company. These fees are set as a percentage of the purchase volume, which is typically 3% of sales made to the GPO members. The Company presents the administrative fees paid to GPOs as a reduction of revenues because the benefit received by the Company in exchange for the GPO fees is not sufficiently separable from the GPO member's purchase of the Company's products.

#### ***Cost of Sales***

Cost of sales includes all costs directly related to bringing the Company's products to their final selling destination. Amounts include direct and indirect costs to manufacture products including raw materials, personnel costs and direct overhead expenses necessary to convert collected tissues into finished goods, product testing costs, quality assurance costs, facility costs associated with the Company's manufacturing and warehouse facilities, depreciation, freight charges, costs to operate equipment and other shipping and handling costs for products shipped to customers.

#### ***Leases***

Effective January 1, 2019, the Company accounts for its leases under ASC 842, “*Leases*”. The Company determines if an arrangement is, or contains, a lease at inception. Right-of-use assets and the related liabilities result from operating leases were included in Right of use asset, Other current liabilities and Other liabilities, respectively, in the condensed consolidated balance sheets as of March 31, 2020 and December 31, 2019.

Operating lease assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the Company's obligation to make lease payments arising from the lease. Operating lease assets and liabilities are recognized at the lease commencement date based on the estimated present value of lease payments over the lease term. The lease term used in the calculation includes options to extend or terminate the lease when the exercise of such options are reasonably certain. The Company uses the estimated incremental borrowing rate in determining the present value of lease payments. Variable components of the lease payments such as fair market value adjustments, utilities, and maintenance costs are expensed as incurred and not included in determining the present value of lease liabilities. As an accounting policy election, the Company excludes short-term leases having initial terms of 12 months or fewer. Lease expense is recognized on a straight-line basis over the lease term. See Note 6, “*Leases*” for further information regarding lease obligations.

#### ***Patent Costs***

The Company incurs certain legal and related costs in connection with patent applications for tissue-based products and processes. The Company capitalizes such costs as patents in progress until a patent is obtained. When a patent is issued, the costs are amortized over the expected life of the patent to the extent that an economic benefit is anticipated from the resulting patent or alternative future use is available to the Company. If a patent is not obtained, costs are expensed. Patents are included in Intangible assets in the condensed consolidated balance sheet. The Company capitalized approximately \$0.1 million and \$0.2 million of patent costs during the first three months of 2020 and 2019, respectively.

#### ***Treasury Stock***

The Company accounts for the purchase of treasury stock under the cost method. Treasury stock which is reissued for the exercise of option grants and the issuance of restricted stock grants is accounted for on a FIFO basis.

### ***Recently Issued Accounting Standards Adopted by the Company***

In February 2016, FASB issued ASU No. 2016-02, “*Leases (Topic 842)*”, which amended the guidance on accounting for leases. The FASB issued this update to increase transparency and comparability among organizations. This update requires the recognition of lease assets and lease liabilities on the balance sheet and the disclosure of key information about leasing arrangements. The Company adopted the ASU effective January 1, 2019 using the additional (optional) approach, in accordance with ASU 2018-11, “*Leases (Topic 842): Targeted Improvements*.” Upon adoption, the Company recorded a right of use asset of \$4.3 million and a right of use liability of \$5.2 million. The right of use asset, in its entirety, is included in Right of use assets, net on the condensed consolidated balance sheet. Right of use liabilities are included in Other current liabilities to the extent that such liabilities are expected to be settled within one year and Other liabilities to the extent that such obligations are due more than one year from the balance sheet date. The difference between the right of use asset and liability relates to rent credits which existed as of January 1, 2019. There was no effect on opening retained earnings at adoption.

In adopting the new lease standard, the Company elected the permitted package of practical expedients permitted, which allowed the Company to account for existing leases under their current classification, as well as omit any new costs classified as initial direct costs, under the new standard. See Note 6 for additional information on leases.

In February 2018, the FASB issued ASU No. 2018-02, “*Income Statement - Reporting Comprehensive Income (Topic 220)*,” to address certain income tax effects in Accumulated Other Comprehensive Income (“*AOCI*”) resulting from the tax reform enacted in 2017. The amended guidance provides an option to reclassify tax effects within AOCI to retained earnings in the period in which the effect of the tax reform is recorded. The amendments were effective for fiscal years beginning after December 15, 2018, including interim periods. The Company adopted this ASU on January 1, 2019, which did not have any impact on the Company’s results of operations or financial condition as there were no balances in AOCI that are tax effected.

In June 2018, the FASB issued ASU 2018-07, “*Compensation-Stock Compensation (Topic 718): Improvements to Non-employee Share-Based Payment Accounting*” (“*ASU 2018-07*”), which simplifies the accounting for share-based payments to non-employees by aligning it with the accounting for share-based payments to employees, with certain exceptions. Under the new guidance, the measurement of equity-classified nonemployee awards will be fixed at the grant date. ASU 2018-07 is effective for interim and annual reporting periods beginning after December 15, 2018 and early adoption was permitted. The Company adopted the new standard on January 1, 2019. The adoption of ASU 2018-07 did not have a material impact on the Company’s consolidated financial statements and related disclosures.

In June 2016, the FASB issued ASU 2016-13, “*Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*,” that introduces a new model for recognizing credit losses on financial instruments based on an estimate of current expected credit losses. This includes accounts receivable, trade receivables, loans, held-to-maturity debt securities, net investments in leases and certain off-balance sheet credit exposures. The guidance also modifies the impairment model for available-for-sale debt securities. The ASU is effective for fiscal years and interim periods within those fiscal years beginning after December 15, 2019. The Company adopted this ASU on January 1, 2020 using a modified retrospective transition method which requires a cumulative-effect adjustment to the opening balance of retained earnings to be recognized on the date of adoption with no change to financial results reported in prior periods. The cumulative effect adjustment recorded on January 1, 2020 is not material. The adoption of this ASU did not have a significant impact on the Company’s consolidated financial statements and related disclosures.

All other ASUs issued and not yet effective for the three months ended March 31, 2020, and through the date of this report, were assessed and determined to be either not applicable or are expected to have minimal impact on the Company’s financial position or results of operations.

### **3. Liquidity and Capital Resources**

#### ***Net Working Capital***

As of March 31, 2020, the Company had approximately \$53.5 million of cash and cash equivalents. The Company reported total current assets of approximately \$115.9 million and current liabilities of approximately \$63.7 million as of March 31, 2020.

#### ***Overall Liquidity and Capital Resources***

The Company’s largest cash requirement for the three months ended March 31, 2020 was cash for general working capital needs and capital expenditures. The Company funded its cash requirements through its existing cash reserves, and the Term Loan that closed in June 2019. The Company believes that its anticipated cash from operating and financing activities and existing cash and

cash equivalents will enable the Company to meet its operational liquidity needs and fund its planned investing activities for the next year from the date these financial statements were available to be issued.

#### **Issuance of \$100 Million of Series B Convertible Preferred Stock**

On July 2, 2020, the Company issued \$100 million of the Company’s Series B Convertible Preferred Stock, par value \$0.001 per share (the “**Series B Preferred Stock**”) to an affiliate of EW Healthcare Partners and to certain funds managed by Hayfin Capital Management LLP pursuant to a Securities Purchase Agreement with Falcon Fund 2 Holding Company, L.P., an affiliate of EW Healthcare Partners, and certain funds managed by Hayfin Capital Management LLP, dated as of June 30, 2020 (the “**Securities Purchase Agreement**”), for an aggregate purchase price of \$100 million (the “**Preferred Stock Transaction**”).

#### **\$75 Million Loan Facility with Hayfin**

On June 30, 2020, the Company entered into a Loan Agreement with, among others, Hayfin Services LLP, an affiliate of Hayfin Capital Management LLP (the “**Hayfin Loan Agreement**”), which funded on July 2, 2020 (the “Hayfin Loan Transaction”) and provided the Company with a senior secured term loan in an aggregate amount of \$50 million (the “**Hayfin Term Loan**”) and an additional \$25 million delayed draw term loan (the “**DD TL**”) in the form of a committed but undrawn facility. The Hayfin Term Loan and the DD TL mature on July 2, 2025 (the “Maturity Date”). The Hayfin Term Loan and the DD TL have no fixed amortization (i.e. interest only through the Maturity Date).

Borrowings under the Hayfin Loan Agreement bear interest at a rate equal to LIBOR (subject to a floor of 1.5%) plus a margin of 6.75%. The margin will be eligible to step down to 6.5% or 6.0% based on future Total Net Leverage levels, as defined in the Hayfin Loan Agreement. The Company paid an upfront commitment fee of 2% of the aggregate of the Hayfin Term Loan and the DD TL. The DD TL is subject to an additional commitment fee of 1% of the amount undrawn.

The Hayfin Loan Agreement also contains certain affirmative covenants that impose certain reporting and/or performance obligations on the Company and its subsidiaries, including (i) Maximum Total Net Leverage of 5.0x through December 31, 2020, stepping down to 4.5x through June 30, 2021, and to 4.0x thereafter until the Maturity Date; (ii) Cap on Cash Netting for the purposes of calculating Total Net Leverage set at \$10,000,000; (iii) DD TL Incurrence Covenant of 3.5x Total Net leverage, tested prior to any drawings under the DD TL; and (iv) Minimum Liquidity of \$10,000,000, an at-all-times covenant tested monthly.

#### **Repayment and Termination of BT Loan Agreement**

On July 2, 2020, the Company repaid the remaining \$72.0 million of principal and accrued interest of \$0.1 million under the loan agreement, dated as of June 10, 2019, by and among the Company, the subsidiaries of the Company as guarantors party thereto from time to time, the lenders party thereto from time to time, and Blue Torch Finance LLC (“**Blue Torch**”), as administrative agent and collateral agent, as amended by that certain First Amendment thereto, dated as of April 22, 2020 (the “**BT Loan Agreement**”), and terminated the BT Loan Agreement. As a result of the early termination of the BT Loan Agreement, the Company also incurred a prepayment premium of \$1.4 million, which it paid with a portion of the proceeds from the Preferred Stock Transaction and the Hayfin Loan Transaction, as described above.

For more information regarding the Preferred Stock Transaction, the Hayfin Loan Transaction, and the repayment of the BT Term Loan (as defined below) refer to Item 9B of the 2019 Form 10-K.

#### **4. Inventory**

Inventory consisted of the following (in thousands):

|                          | March 31, 2020 | December 31, 2019 |
|--------------------------|----------------|-------------------|
| Raw materials            | \$ 330         | \$ 318            |
| Work in process          | 3,913          | 4,299             |
| Finished goods           | 5,587          | 5,206             |
| Inventory, gross         | 9,830          | 9,823             |
| Reserve for obsolescence | (583)          | (719)             |
| Inventory, net           | \$ 9,247       | \$ 9,104          |



## 5. Property and Equipment

Property and equipment consisted of the following (in thousands):

|                                | March 31, 2020 | December 31, 2019 |
|--------------------------------|----------------|-------------------|
| Leasehold improvements         | \$ 5,321       | \$ 5,321          |
| Lab and clean room equipment   | 15,128         | 14,894            |
| Furniture and office equipment | 15,405         | 15,118            |
| Construction in progress       | 1,463          | 972               |
| Property and equipment, gross  | 37,317         | 36,305            |
| Less accumulated depreciation  | (25,484)       | (23,977)          |
| Property and equipment, net    | \$ 11,833      | \$ 12,328         |

Depreciation expense for the three months ended March 31, 2020 and 2019, was approximately \$1.5 million and \$1.7 million, respectively.

## 6. Leases

As discussed in Note 2, on January 1, 2019, MiMedx adopted new guidance for the accounting and reporting of leases. The Company has operating leases primarily for corporate offices, vehicles, and certain equipment. Such leases do not require any contingent rental payments, impose any financial restrictions, or contain any residual value guarantees. The Company determines if an arrangement is or contains a lease at inception.

Under ASC 842 transition guidance, the Company has not elected the hindsight practical expedient to determine the lease term for existing leases, which permits companies to consider available information prior to the effective date of the new guidance as to the actual or likely exercise of options to extend or terminate the lease. Certain of the Company's leases include renewal options and escalation clauses; renewal options have not been included in the calculation of the lease liabilities and right of use assets as the Company is not reasonably certain to exercise the options.

Lease expense for operating lease payments is recognized on a straight-line basis over the term of the lease. Operating lease assets and liabilities are recognized based on the present value of lease payments over the lease term. Since most of the Company's leases do not have a readily determinable implicit discount rate, the Company uses its incremental borrowing rate to calculate the present value of lease payments. As a practical expedient, the Company has made an accounting policy election not to separate lease components from non-lease components in the event that the agreement contains both. The Company includes both the lease and non-lease components for purposes of calculating the right-of-use asset and related lease liability.

The Company does not act as a lessor or have any leases classified as financing leases.

Operating lease cost was \$0.4 million for the three months ended March 31, 2020 and was recorded in Selling, general, and administrative expenses. Interest on lease obligations was \$0.1 million for the three months ended March 31, 2019 and was recorded in Selling, general, and administrative expenses. Cash paid for amounts included in the measurement of operating lease liabilities was \$0.4 million at March 31, 2020. The amortization of leased assets was \$0.2 million and \$0.3 million for the three months ended March 31, 2020 and 2019, respectively.

Supplemental balance sheet information related to operating leases is as follows (amounts in thousands, except lease term and discount rate):

|   | March 31, 2020 | December 31, 2019 |
|---|----------------|-------------------|
| <b>Assets</b>                                 |                |                   |
| Right of use asset                            | \$ 3,158       | \$ 3,397          |
| <b>Liabilities</b>                            |                |                   |
| Short term lease liability                    | \$ 1,195       | \$ 1,168          |
| Long term lease liability                     | \$ 2,611       | \$ 2,919          |
| Weighted-average remaining lease term (years) | 2.8            | 3.1               |
| Weighted-average discount rate                | 11.5%          | 11.5%             |

Maturities of operating leases liabilities are as follows (amounts in thousands):

| Year ended December 31,                                | Maturities      |
|--|-----------------|
| 2020 (excluding the three months ended March 31, 2020) | \$ 1,170        |
| 2021   | 1,528           |
| 2022   | 1,552           |
| 2023   | 195             |
| 2024   | —               |
| Thereafter   | —               |
| Total lease payments                                   | 4,445           |
| Less: imputed interest                                 | (639)           |
|  | <u>\$ 3,806</u> |

## 7. Intangible Assets

Intangible assets are summarized as follows (in thousands):

|  | March 31, 2020              |                             |                        | December 31, 2019           |                             |                        |
|--|-----------------------------|-----------------------------|------------------------|-----------------------------|-----------------------------|------------------------|
|  | Gross<br>Carrying<br>Amount | Accumulated<br>Amortization | Net Carrying<br>Amount | Gross<br>Carrying<br>Amount | Accumulated<br>Amortization | Net Carrying<br>Amount |
| <b>Amortized intangible assets</b>       |                             |                             |                        |                             |                             |                        |
| Licenses                                 | \$ 1,414                    | \$ (1,234)                  | \$ 180                 | \$ 1,414                    | \$ (1,200)                  | \$ 214                 |
| Patents and know how                     | 9,108                       | (5,232)                     | 3,876                  | 9,099                       | (5,070)                     | 4,029                  |
| Customer and supplier relationships      | 3,761                       | (2,485)                     | 1,276                  | 3,761                       | (2,417)                     | 1,344                  |
| Non-compete agreements                   | 120                         | (75)                        | 45                     | 120                         | (68)                        | 52                     |
| <b>Total amortized intangible assets</b> | <u>\$ 14,403</u>            | <u>\$ (9,026)</u>           | <u>\$ 5,377</u>        | <u>\$ 14,394</u>            | <u>\$ (8,755)</u>           | <u>\$ 5,639</u>        |
| <b>Unamortized intangible assets</b>     |                             |                             |                        |                             |                             |                        |
| Trade names and trademarks               | \$ 1,008                    |                             | \$ 1,008               | \$ 1,008                    |                             | \$ 1,008               |
| Patents in process                       | 1,196                       |                             | 1,196                  | 1,130                       |                             | 1,130                  |
| <b>Total intangible assets</b>           | <u>\$ 16,607</u>            |                             | <u>\$ 7,581</u>        | <u>\$ 16,532</u>            |                             | <u>\$ 7,777</u>        |

Amortization expense for the three months ended March 31, 2020 and 2019, was approximately \$0.3 million and \$0.2 million, respectively.

Expected future amortization of intangible assets as of March 31, 2020, is as follows (in thousands):

| Year ending December 31,                               | Estimated Amortization Expense |
|--|--------------------------------|
| 2020 (excluding the three months ended March 31, 2020) | \$ 739                         |
| 2021   | 978                            |
| 2022   | 955                            |
| 2023   | 955                            |
| 2024   | 955                            |
| Thereafter   | 795                            |
|  | <u>\$ 5,377</u>                |

## 8. Accrued Expenses

Accrued expenses include the following (in thousands):

|   | March 31, 2020   | December 31, 2019 |
|---|------------------|-------------------|
| Legal costs   | \$ 13,302        | \$ 12,202         |
| Settlement costs                                    | 5,931            | 5,931             |
| Pricing adjustment settlement with Veterans Affairs | 6,894            | 6,894             |
| Estimated returns                                   | 1,567            | 2,581             |
| External commissions                                | 1,328            | 1,722             |
| Accrued clinical trials                             | 566              | 1,076             |
| Other   | 1,073            | 1,755             |
| Total   | <u>\$ 30,661</u> | <u>\$ 32,161</u>  |

## 9. Long-Term Debt

On June 10, 2019, the Company entered into the BT Loan Agreement, pursuant to which the full amount was borrowed and funded (the “**BT Term Loan**”). The proceeds from the BT Term Loan were used (i) for working capital and general corporate purposes and (ii) to pay transaction fees, costs and expenses incurred in connection with the BT Term Loan and the related transactions. The BT Term Loan would have matured on June 20, 2022 and was repayable in quarterly installments of \$0.9 million; the balance was due on June 20, 2022. Blue Torch maintained a first-priority security interest in substantially all the Company’s assets. The BT Term Loan was issued net of the original issue discount of \$2.3 million. The Company also incurred \$6.7 million of deferred financing costs.

As of March 31, 2020, interest applicable to any borrowings under the BT Term Loan accrued at a rate equal to LIBOR plus a margin of 8.00% per annum. The BT Term Loan had an interest rate equal to 10.46% at the time the BT Loan Agreement was executed and an interest rate as of March 31, 2020 was 9.95%.

The BT Loan Agreement originally contained financial covenants requiring the Company, on a consolidated basis, to maintain the following:

- Maximum Total Leverage Ratio, defined as funded debt divided by consolidated adjusted EBITDA, of not more than 3.0 to 1.0 as of the last day of the previous four consecutive fiscal quarters.
- Minimum Liquidity, defined as unrestricted cash and cash equivalents, of less than \$40.0 million as of the last business day of each fiscal month following the BT Term Loan closing date through and including the fiscal month ending May 31, 2020. For fiscal months beginning June 30, 2020, the Company was not permitted to have liquidity of less than \$30.0 million. Beginning with the fiscal month ending December 31, 2020, if the total leverage ratio is less than 2.50 to 1.0 as of the last business day of any fiscal month, the Company’s liquidity was not permitted to be less than \$20.0 million.

The BT Term Loan was amended on April 22, 2020 to, among other things, modify the financial covenants. See Note 15, “*Subsequent Events*,” of the consolidated financial statements.

The BT Loan Agreement also specified that any prepayment of the loan, voluntary or mandatory, as defined in the BT Loan Agreement, subjected MiMedx to a prepayment penalty as of the date of the prepayment with respect to the BT Term Loan of:

- During the period from June 10, 2019 through June 10, 2020, an amount equal to 3% of the principal amount of the BT Term Loan prepaid on such date; and
- During the period from June 11, 2020 through June 10, 2021, an amount equal to 2% of the principal amount of the BT Term Loan prepaid on such date.

Principal prepayments after June 10, 2021 were not subject to a prepayment penalty.

The BT Loan Agreement also included events of default customary for facilities of this type, and upon the occurrence of such events of default, subject to customary cure rights, all outstanding loans under the BT Loan Agreement could have been accelerated and/or the lenders' commitments terminated.

The balances of the BT Term Loan were as follows (amounts in thousands):

|  | March 31, 2020  |           | December 31, 2019 |           |
|--|-----------------|-----------|-------------------|-----------|
|  | Current portion | Long-term | Current portion   | Long-term |
| Liability component - principal          | \$ 3,750        | \$ 68,438 | \$ 3,750          | \$ 69,375 |
| Original issue discount                  | —               | (1,723)   | —                 | (1,890)   |
| Deferred financing cost                  | —               | (5,078)   | —                 | (5,579)   |
| Liability component - net carrying value | \$ 3,750        | \$ 61,637 | \$ 3,750          | \$ 61,906 |

Interest expense related to the BT Term Loan, included in Interest income (expense), net in the consolidated statements of operations, was as follows (amounts in thousands):

|  | For the Three Months Ended |
|--|----------------------------|
|  | March 31, 2020             |
| Interest expense - stated interest rate                              | \$ 1,840                   |
| Interest expense - amortization of original issue discount and costs | 167                        |
| Interest expense - amortization of deferred financing costs          | 491                        |
| Total term loan interest expense                                     | \$ 2,498                   |

The future principal payments for the Company's BT Term Loan as of March 31, 2020 were as follows (in thousands):

| Year ending December 31,                               | Principal |
|--|-----------|
| 2020 (excluding the three months ended March 31, 2020) | \$ 2,088  |
| 2021   | 3,750     |
| 2022   | 66,350    |
| 2023   | —         |
| 2024   | —         |
| Thereafter   | —         |
| Total Long Term Debt                                   | \$ 72,188 |

As of March 31, 2020, the fair value of the Company's BT Term Loan was \$62.7 million. This valuation was calculated based on a series of Level 2 and Level 3 inputs by calculating a discount rate based on the credit risk spread of debt instruments of a similar risk character in reference to U.S. Treasury instruments with identical securities, with an incremental risk premium for Company-specific risk factors. The remaining cash flows associated with the BT Term Loan were discounted to March 31, 2020 with this calculated discount rate to derive the fair value as of that date.

As described above in Note 3, "Liquidity and Capital Resources," on July 2, 2020, a portion of the proceeds from the Preferred Stock Transaction and the Hayfin Loan Transaction were used to repay the outstanding balance of principal, accrued but unpaid

interest, and prepayment premium under the BT Loan Agreement. In connection with the repayment of the BT Term Loan, the Company terminated the BT Loan Agreement.

Additionally, on July 2, 2020, the Company borrowed an aggregate of \$50 million pursuant to the Hayfin Loan Agreement, and obtained an additional committed but undrawn \$25 million facility pursuant to the Hayfin Loan Agreement, as described above in Note 3, "Liquidity and Capital Resources."

## 10. Net Loss Per Share

Basic net loss per common share is computed using the weighted-average number of common shares outstanding during the period. Diluted net loss per common share is computed using the weighted-average number of common and dilutive common equivalent shares from stock options, restricted stock and warrants using the treasury stock method.

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

|   | Three Months Ended March 31, |             |
|---|------------------------------|-------------|
|   | 2020                         | 2019        |
| Net loss  | \$ (4,821)                   | \$ (13,273) |
| Denominator for basic earnings per share - weighted average shares                                    | 107,538,509                  | 106,420,317 |
| Effect of dilutive securities: Stock options, restricted stock, and warrants outstanding(a)           | 2,706,804                    | 803,487     |
| Denominator for diluted earnings per share - weighted average shares adjusted for dilutive securities | 107,538,509                  | 106,420,317 |
| Loss per common share - basic   | \$ (0.04)                    | \$ (0.12)   |
| Loss per common share - diluted   | \$ (0.04)                    | \$ (0.12)   |

(a) Securities outstanding that are included in the computation above, utilizing the treasury stock method are as follows:

|                           | Three Months Ended March 31, |         |
|---------------------------|------------------------------|---------|
|                           | 2020                         | 2019    |
| Outstanding Stock Options | 919,555                      | 609,292 |
| Performance Based Awards  | 17,402                       | —       |
| Restricted Stock Awards   | 1,769,847                    | 194,195 |
|                           | 2,706,804                    | 803,487 |

## 11. Income Taxes

The effective tax rates for the Company of 70.1% and 0.3% for the three months ended March 31, 2020 and March 31, 2019, respectively includes the impact of discrete items of approximately \$11.4 million in 2020 and \$0 in 2019. As of March 31, 2020, the projected annual effective tax rate for 2020 is (0.6)%. The discrete items recorded for the three months ended March 31, 2020 are primarily related to modifications to the tax rules for carryback of net operating losses as a result of the CARES Act which are expected to result in a federal tax refund of approximately \$11.3 million and an income tax benefit of the same amount. No benefit had been recognized with respect to the net operating losses due to a valuation allowance previously recorded.

## 12. Supplemental Disclosure of Cash Flow and Non-Cash Investing and Financing Activities

Selected cash payments, receipts, and noncash activities are as follows (in thousands):

|                        | Three Months Ended March 31, |      |
|------------------------|------------------------------|------|
|                        | 2020                         | 2019 |
| Cash paid for interest | \$ 1,840                     | \$ 1 |
| Income taxes paid      | 6                            | 46   |

### 13. Contractual Commitments and Contingencies

#### ***Contractual Commitments***

In addition to the leases noted under Note 6 “*Leases*,” the Company has commitments for meeting space. These leases expire over 3 to 3.5 years following March 31, 2020, and generally contain renewal options. The Company anticipates that most of these leases will be renewed or replaced upon expiration.

Rent expense for the three months ended March 31, 2020 and 2019, was approximately \$0.3 million and \$0.4 million, respectively, and is allocated among cost of sales, research and development, and selling, general and administrative expenses.

#### ***Separation and Transition Services Agreement of Edward J. Borkowski***

On November 18, 2019, the Company entered into a Separation and Transition Services Agreement (“***Separation Agreement***”) with Edward J. Borkowski, under which Mr. Borkowski resigned as Executive Vice President and Interim Chief Financial Officer of the Company, as well as from any and all officer, director or other positions that he held with the Company and its affiliates, effective November 15, 2019. Pursuant to the Separation Agreement, Mr. Borkowski agreed to perform the duties of the Interim Chief Financial Officer with respect to the Company’s Annual Report on Form 10-K for the year ended December 31, 2018 (the “***2018 Form 10-K***”) and assist with the transition of his duties as described in the Separation Agreement from November 15, 2019 through the earlier of the first business day following the Company’s filing of its 2018 Form 10-K with the SEC or December 31, 2019 (the “***Transition Period***”). From the end of the Transition Period until March 31, 2020, Mr. Borkowski agreed to provide services as may be requested by the Company with respect to matters related to the 2018 Form 10-K and the 2019 Form 10-K. The Company has paid Mr. Borkowski the full amount of \$4.0 million as of July 6, 2020.

#### ***Litigation and Regulatory Matters***

In the ordinary course of business, the Company and its subsidiaries are parties to numerous civil claims and lawsuits and subject to regulatory examinations, investigations, and requests for information. Some of these matters involve claims for substantial amounts. The Company’s experience has shown that the damages alleged by plaintiffs or claimants are often overstated, based on unsubstantiated legal theories, unsupported by facts, and/or bear no relation to the ultimate award that a court might grant. Additionally, the outcome of litigation and regulatory matters and the timing of ultimate resolution are inherently difficult to predict. These factors make it difficult for the Company to provide a meaningful estimate of the range of reasonably possible outcomes of claims in the aggregate or by individual claim. However, on a case-by-case basis, reserves are established for those legal claims in which it is probable that a loss will be incurred and the amount of such loss can be reasonably estimated. The Company’s financial statements at March 31, 2020 reflect the Company’s current best estimate of probable losses associated with these matters, including costs to comply with various settlement agreements, where applicable. The actual costs of resolving these claims may be substantially higher or lower than the amounts reserved. For more information regarding the Company’s legal proceedings, refer to the disclosure under Item 3, “*Legal Proceedings*” and Note 16, “*Commitments and Contingencies*” in the Company’s 2019 Form 10-K, which disclosure is incorporated herein by reference.

The following is a description of certain litigation and regulatory matters:

#### ***Shareholder Derivative Suits***

On December 6, 2018, the United States District Court for the Northern District of Georgia entered an order consolidating three shareholder derivative actions (*Evans v. Petit, et al.* filed September 25, 2018, *Georgalas v. Petit, et al.* filed September 27, 2018, and *Roloson v. Petit, et al.* filed October 22, 2018) that had been filed in the Northern District of Georgia. On January 22, 2019, plaintiffs filed a verified consolidated shareholder derivative complaint. The consolidated action sets forth claims of breach of fiduciary duty, corporate waste and unjust enrichment against certain former officers, and certain current and former directors, of the Company: Parker H. Petit, William C. Taylor, Michael J. Senken, John E. Cranston, Alexandra O. Haden, Joseph G. Bleser, J. Terry Dewberry, Charles R. Evans, Larry W. Papasan, Luis A. Aguilar, Bruce L. Hack, Charles E. Koob, Neil S. Yeston and Christopher M. Cashman. The allegations generally involve claims that the defendants breached their fiduciary duties by causing or allowing the Company to misrepresent its financial statements as a result of improper revenue recognition. The Company filed a motion to stay on February 18, 2019, pending the completion of the investigation by the Company’s Special Litigation Committee. The Special Litigation Committee completed its investigation relating to this action and filed an executive summary of its findings with the Court on July 1, 2019. The parties (together with parties from the Hialeah derivative lawsuit, the Nix and Demaio derivative lawsuit, and the Murphy derivative lawsuit, each described below) held a mediation on February 11, 2020. Following continued discussions, on May 1, 2020, the parties notified the Court that plaintiffs and the Company had reached an agreement in principle to settle this consolidated derivative action, which settlement also encompasses all claims asserted in the Hialeah derivative lawsuit, the Nix and Demaio derivative lawsuit, and the Murphy derivative lawsuit. As of the date of the filing of this Form 10-Q, the

parties are drafting, and intend to file, a stipulation of settlement and motion seeking preliminary approval of the settlement.

On February 10, 2020, Charles Pike filed a shareholder derivative complaint in the United States District Court for the Southern District of Florida (*Pike v. Petit, et al.*). The complaint alleges claims for breaches of fiduciary duty against certain former officers, and certain current and former directors, of the Company: Parker H. Petit, William C. Taylor, Michael J. Senken, John E. Cranston, Charles R. Evans, Luis A. Aguilar, Joseph G. Bleser, J. Terry Dewberry, Bruce L. Hack, Charles E. Koob, Larry W. Papasan and Neil S. Yeston. Similar to the prior-filed actions discussed above, the allegations generally involve claims that the defendants breached their fiduciary duties by causing or allowing the Company to misrepresent its financial statements as a result of improper revenue recognition. On May 12, 2020, prior to the Company's time to respond to the complaint, the plaintiff filed a notice of voluntary dismissal of this action without prejudice.

On February 18, 2020, Bruce Cassamajor filed a shareholder derivative complaint in the United States District Court for the Northern District of Florida (*Cassamajor v. Petit, et al.*). The complaint alleges claims for breaches of fiduciary duty against certain former officers, and certain current and former directors, of the Company: Parker H. Petit, William C. Taylor, Michael J. Senken, John E. Cranston, Charles R. Evans, Luis A. Aguilar, Joseph G. Bleser, J. Terry Dewberry, Bruce L. Hack, Charles E. Koob, Larry W. Papasan and Neil S. Yeston. Similar to the prior-filed actions discussed above, the allegations generally involve claims that the defendants breached their fiduciary duties by causing or allowing the Company to misrepresent its financial statements as a result of improper revenue recognition. On May 22, 2020, prior to service of the complaint, the plaintiff filed a notice of voluntary dismissal of this action without prejudice. On May 26, 2020, the court ordered this case to be dismissed for failure to serve process.

#### *Securities Class Action*

On January 16, 2019, the United States District Court for the Northern District of Georgia entered an order consolidating two purported securities class actions (*MacPhee v. MiMedx Group, Inc., et al.* filed February 23, 2018 and *Kline v. MiMedx Group, Inc., et al.* filed February 26, 2018). The order also appointed Carpenters Pension Fund of Illinois as lead plaintiff. On May 1, 2019, the lead plaintiff filed a consolidated amended complaint, naming as defendants the Company, Michael J. Senken, Parker H. Petit, William C. Taylor, Christopher M. Cashman and Cherry Bekaert & Holland LLP. The amended complaint (the "**Securities Class Action Complaint**") alleged violations of Section 10(b) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), Rule 10b-5 promulgated thereunder and Section 20(a) of the Exchange Act. It asserted a class period of March 7, 2013 through June 29, 2018. Following the filing of motions to dismiss by the various defendants, the lead plaintiff was granted leave to file an amended complaint. The lead plaintiff filed its amended complaint against the Company, Michael Senken, Pete Petit, William Taylor, and Cherry Bekaert & Holland (Christopher Cashman was dropped as a defendant) on March 30, 2020; defendants filed motions to dismiss on May 29, 2020.

#### **Investigations**

##### *United States Attorney's Office for the Southern District of New York ("USAO-SDNY") Investigation*

The USAO-SDNY is conducting an investigation into, among other things, the Company's recognition of revenue and practices with certain distributors and customers. The USAO-SDNY requested that the Company provide it with copies of all information the Company furnished to the SEC staff and made additional requests for information. The USAO-SDNY conducted interviews of various individuals, including employees and former employees of the Company. In November 2019, former executives Messrs. Petit and Taylor were indicted for securities fraud and conspiracy to commit securities fraud, to make false filings with the SEC, and to influence improperly the conduct of audits relating to alleged misconduct that resulted in inflated revenue figures for fiscal 2015. The Company is cooperating with the USAO-SDNY.

##### *Department of Veterans' Affairs Office of Inspector General ("VA-OIG") and Civil Division of the Department of Justice ("DOJ-Civil") Subpoenas and/or Investigations*

VA-OIG has issued subpoenas to the Company seeking, among other things, information concerning the Company's financial relationships with VA clinicians. DOJ-Civil has requested similar information. The Company has cooperated fully and produced responsive information to VA-OIG and DOJ-Civil. Periodically, VA-OIG has requested additional documents and information regarding payments to individual VA clinicians. Most recently, on June 3, 2020, the Company received a subpoena from the VA-OIG requesting information regarding the Company's financial relationships and interactions with two healthcare providers at the VA Long Beach Healthcare System. The Company has continued to cooperate and respond to these requests.

As part of its cooperation, the Company provided documents in response to subpoenas concerning its relationship with three now former VA employees in South Carolina, who were ultimately indicted in May 2018. Among other things, the indictment referenced speaker fees paid by the Company to the former VA employees and other interactions between now former Company employees and the former VA employees. In January 2019, prosecution was deferred for 18 months to allow the three former VA employees to enter and complete a Pretrial Diversion Program, the completion of which would result in the dismissal of the indictment. As far as the Company is aware, two of the former VA employees have completed the program early and the indictment has been dismissed with respect to them. To date, no actions have been taken against the Company with respect to this matter.

#### *United States Attorney's Office for the Middle District of North Carolina ("USAO-MDNC") Investigation*

On January 9, 2020, the USAO-MDNC informed the Company that it is investigating the Company's financial relationships with two former clinicians at the Durham VA Medical Center. The Company is cooperating with the investigation.

#### *Qui Tam Actions*

On January 19, 2017, a former employee of the Company filed a *qui tam* False Claims Act complaint in the United States District Court for the District of South Carolina (*United States of America, ex rel. Jon Vitale v. MiMedx Group, Inc.*) alleging that the Company's donations to the patient assistance program, Patient Access Network Foundation, violated the Anti-Kickback Statute and resulted in submission of false claims to the government. The government declined to intervene and the complaint was unsealed on August 10, 2018. The Company filed a motion to dismiss on October 1, 2018. The Company's motion to dismiss was granted in part and denied in part on May 15, 2019. The case is in discovery.

#### *Former Employee Litigation*

On November 19, 2018, the Company's former Chief Financial Officer filed a complaint in the Superior Court for Cobb County, Georgia (*Michael J. Senken v. MiMedx Group, Inc.*) in which he claims that the Company has breached its obligations under the Company's charter and bylaws to advance to him, and indemnify him for, his legal fees and costs that he incurred in connection with certain Company internal investigations and litigation. The Company filed its answer denying the plaintiff's claims on April 19, 2019. To date, no deadlines have been established by the court.

On January 21, 2019, a former employee filed a complaint in the Fifth Judicial Circuit, Richland County, South Carolina (*Jon Michael Vitale v. MiMedx Group, Inc. et. al.*) against the Company alleging retaliation, defamation and unjust enrichment and seeking monetary damages. The former employee claims he was retaliated against after raising concerns related to insurance fraud and later defamed by comments concerning the indictments of three South Carolina VA employees. On February 19, 2019, the case was removed to the U.S. District Court for the District of South Carolina. The Company filed a motion to dismiss on April 8, 2019, which was denied by the Court. This case is in discovery.

In December 2019, MiMedx received notice of a complaint filed in July 2018 with the Occupational Safety and Health Administration ("OSHA") section of the Department of Labor ("DOL") by Thomas Tierney, a former Regional Sales Director, against MiMedx and the referenced individuals, *Tierney v. MiMedx Group, Inc., Parker Petit, William Taylor, Christopher Cashman, Thornton Kuntz, Jr. and Alexandra Haden*, DOL No. 4-5070-18-243. Mr. Tierney alleged that he was terminated from MiMedx in retaliation for reporting concerns about revenue recognition practices, compliance issues, and the corporate culture, in violation of the anti-retaliation provisions of the Sarbanes-Oxley Act. The parties settled this matter and OSHA dismissed the complaint on May 20, 2020.

#### *Defamation Claims*

On June 4, 2018, Sparrow Fund Management, LP ("**Sparrow**") filed a complaint against the Company and Mr. Petit, including claims for defamation and civil conspiracy in the United States District Court for the Southern District of New York (*Sparrow Fund Management, L.P. v. MiMedx Group, Inc. et. al.*). The complaint seeks monetary damages and injunctive relief and alleges the defendants commenced a campaign to publicly discredit Sparrow by falsely claiming it was a short seller who engaged in illegal and criminal behavior by spreading false information in an attempt to manipulate the price of our Common Stock. On March 31, 2019, a judge granted defendants' motions to dismiss in full, but allowed Sparrow the ability to file an amended complaint. The Magistrate has recommended Sparrow's motion for leave to amend be granted in part and denied in part and the Judge adopted the Magistrate's recommendation. Sparrow filed its amended complaint against MiMedx (Mr. Petit has been dropped from the lawsuit) on April 3, 2020 and the Company filed its answer. This case is in discovery.

On June 17, 2019, the principals of Viceroy Research ("**Viceroy**"), filed suit in the Circuit Court for the Seventeenth Judicial Circuit in Broward County, Florida (*Fraser John Perring et. al. v. MiMedx Group, Inc. et. al.*) against the Company and Mr. Petit, alleging defamation and malicious prosecution based on the defendants' alleged campaign to publicly discredit Viceroy and the



lawsuit the Company previously filed against the plaintiffs, but which the Company subsequently dismissed without prejudice. On November 1, 2019, the Court granted Mr. Petit's motion to dismiss on jurisdictional grounds, denied the Company's motion to dismiss, and granted plaintiffs leave to file an amended complaint to address the deficiencies in its claims against Mr. Petit, which they did on November 21, 2019. The Company filed its answer on December 20, 2019.

### *Intellectual Property Litigation*

#### *The NuTech Action*

On March 2, 2015, the Company filed a patent infringement lawsuit against NuTech Medical, Inc. ("**NuTech**") and DCI Donor Services, Inc. ("**DCI**") in the United States District Court for the Northern District of Alabama (*MiMedx Group, Inc. v. NuTech Medical, Inc. et. al.*). The Company has alleged that NuTech and DCI infringed and continue to infringe the Company's patents through the manufacture, use, sale and/or offering of their tissue graft product. The Company has also asserted that NuTech knowingly and willfully made false and misleading representations about its products to customers and prospective customers. The Company is seeking permanent injunctive relief and unspecified damages. The case was stayed pending the restatement of the Company's financial statements. Since the Company has completed its restatement, the case has resumed and discovery has recommenced.

#### *The Osiris Action*

On February 20, 2019, Osiris Therapeutics, Inc. ("**Osiris**") refiled its trade secret and breach of contract action against the Company (which had been dismissed in a different forum) in the United States District Court for the Northern District of Georgia (*Osiris Therapeutics, Inc. v. MiMedx Group, Inc.*). Osiris has alleged that the Company acquired Stability, a former distributor of Osiris, in order to illegally obtain trade secrets. On February 24, 2020, the Court issued an order granting in part and denying in part MiMedx's motion to dismiss. The Court dismissed Osiris's claims for tortious interference, conspiracy to breach contract, unfair competition, and conspiracy to commit unfair competition. The Court denied MiMedx's motion to dismiss with respect to the claim for breach of the contract between Osiris and Stability, finding that there is a question as to whether Osiris can maintain such a claim by piercing the corporate veil between MiMedx and its former subsidiary. If Osiris cannot pierce the corporate veil, the claim against MiMedx fails; if Osiris can pierce the corporate veil, the breach of contract claim must be brought in an arbitration proceeding. MiMedx did not move to dismiss Osiris's claims for misappropriation of trade secrets and conspiracy to misappropriate trade secrets. MiMedx plans to defend against all remaining claims.

As of March 31, 2020, the Company has accrued approximately \$12.8 million related to the legal proceedings discussed above. The Company has paid approximately \$9.2 million to settle certain cases noted above.

#### **Other Matters**

Under the Florida Business Corporation Act and agreements with its current and former officers and directors, the Company is obligated to indemnify its current and former officers and directors who are made party to a proceeding, including a proceeding brought by or in the right of the corporation, with certain exceptions, and to advance expenses to defend such matters. The Company has already borne substantial costs to satisfy these indemnification and expense advance obligations and expects to continue to do so in the future.

In addition to the matters described above, the Company is a party to a variety of other legal matters that arise in the ordinary course of the Company's business, none of which is deemed to be individually material at this time. Due to the inherent uncertainty of litigation, there can be no assurance that the resolution of any particular claim or proceeding would not have a material adverse effect on the Company's business, results of operations, financial position or liquidity.

#### **14. Product Revenue Detail**

MiMedx has two primary distribution channels: (1) direct to customers (healthcare professionals and/or facilities) ("**Direct Customers**"), and (2) sales through distributors ("**Distributors**"). For purposes of the required disclosure under ASC 606-10-50-5, the Company groups its customers into these two groups. This grouping by customer types does not constitute a basis for resource allocation but is information intended to provide the reader with ability to better understand how the nature, amount, timing, and uncertainty of revenue and cash flows are affected by economic factors applicable to each customer type. These groupings also do not meet the criteria under ASC 280-10-50-1 to qualify as separate operating segments. The Company did not have significant foreign operations or a single external customer from which 10% or more of revenues were derived during the three months ended March 31, 2020 and 2019.

Below is a summary of net sales by each customer type (in thousands):

|                  | Three Months Ended March 31, |           |
|------------------|------------------------------|-----------|
|                  | 2020                         | 2019      |
| Direct Customers | \$ 59,896                    | \$ 64,542 |
| Distributors     | 1,840                        | 2,013     |
| Total            | \$ 61,736                    | \$ 66,555 |

## 15. Subsequent Events

### ***Paycheck Protection Program (PPP) Loan***

On April 24, 2020, the Company received a \$10.0 million loan under the Paycheck Protection Program (“PPP”). On May 11, 2020 the Company repaid the PPP loan.

### ***BT Loan Agreement Amendment***

On April 22, 2020, the Company agreed to terms for an amendment to its BT Loan Agreement with Blue Torch. The amendment provided for an increase in the maximum Total Leverage Ratio (as defined in the BT Loan Agreement), which was a quarterly test, for the remainder of 2020, and also provided for a reduction in the minimum Liquidity (as defined in the BT Loan Agreement) requirement from April 2020 through and including November 2020. Specifically, the maximum Total Leverage Ratio increased from 3.0 to 1 to 5.0 to 1 through December 31, 2020. The minimum Liquidity requirement was reduced from \$40 million to \$20 million for April and May 2020, and from \$30 million to \$20 million for June through November 2020. In connection with the amendment, the Company agreed to pay a one-time fee of approximately \$0.7 million, added to the principal balance, and a 1 percentage point increase in the interest rate to LIBOR plus 9%.

### ***Sublease***

On April 1, 2020 the Company successfully subleased its industrial warehouse space that expires on May 31, 2023. The Company performed an asset recovery test comparing the sum of estimated undiscounted future cash flows attributable to the sublease to its carrying amount. The total undiscounted cash flows for the remaining lease term exceed the carrying amount of the asset, therefore there is no impairment.

### ***Issuance of \$100 Million of Series B Convertible Preferred Stock***

On July 2, 2020, the Company issued \$100 million of Series B Convertible Preferred Stock to an affiliate of EW Healthcare Partners and to certain affiliates of Hayfin Capital Management LLP pursuant to that certain Securities Purchase Agreement, as described above in Note 3, “Liquidity and Capital Resources.”

### ***\$75 Million Loan Facility with Hayfin***

On July 2, 2020, the Company borrowed an aggregate of \$50 million pursuant to the Hayfin Loan Agreement, and obtained an additional committed but undrawn \$25 million facility pursuant to the Hayfin Loan Agreement, as described above in Note 3, “Liquidity and Capital Resources.”

### ***Repayment and Termination of BT Loan Agreement***

On July 2, 2020, the Company repaid the remaining principal of \$72.0 million, accrued interest of \$0.1 million, and prepayment penalty of \$1.4 million under the BT Loan Agreement with a portion of the proceeds from the Preferred Stock Transaction and the Hayfin Loan Transaction, and terminated the BT Loan Agreement, each as described above in Note 3, “Liquidity and Capital Resources.”



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

### Overview

MiMedx is an industry leader in advanced wound care and an emerging therapeutic biologics company, developing and distributing placental tissue allografts with patent-protected processes for multiple sectors of healthcare. We derive our products from human placental tissues processed using our proprietary processing methodologies, including the PURION® process. We employ aseptic processing techniques in addition to terminal sterilization to produce our allografts. MiMedx provides products in the wound care, burn, surgical, orthopedic, spine, sports medicine, ophthalmic, and dental sectors of healthcare. Our mission is to offer products and tissues to help the body heal itself. All of our products are regulated by the FDA.

MiMedx is the leading supplier of human placental allografts, which are human tissues that are transplanted from one person (a donor) to another person (a recipient). MiMedx has supplied over 1.9 million allografts, through both direct sales and consignment shipments. Our biomaterial platform technologies include AmnioFix®, EpiFix®, EpiCord®, AmnioCord® and AmnioFill®. AmnioFix and EpiFix are our tissue allografts derived from the amnion and chorion layers of the human placental membrane. EpiCord and AmnioCord are tissue allografts derived from umbilical cord tissue. AmnioFill is a placental connective tissue matrix derived from the placental disc and other placental tissue.

Our EpiFix and EpiCord product lines are promoted for external use, such as in advanced wound care applications, while our AmnioFix, AmnioCord and AmnioFill products are positioned for use in surgical applications, including lower extremity repair, plastic surgery, vascular surgery and multiple orthopedic repairs and reconstructions.

MiMedx has two primary distribution channels: (1) direct to customers (healthcare professionals and/or facilities); and (2) sales through distributors.

### Trends in Our Business

*Certain areas of our business suffered as a result of the issues identified in the Audit Committee Investigation*

The results of the Audit Committee Investigation have caused us to incur significant legal fees, fines, and penalties. Additionally, the Company has incurred significant costs in connection with the associated Restatement. Negative publicity in the marketplace has created challenges for the Company in selling product to customers and retaining talented employees. All of these matters have caused the Company to incur significant costs and have negatively impacted our financial performance.

*Demographic shifts are creating opportunities in the wound care space*

The advanced wound care category is expected to continue growing due to certain demographic trends, including an aging population, increasing incidence of obesity and diabetes, and the associated higher susceptibility to non-healing chronic wounds. Furthermore, the increasing number of patients requiring advanced treatment represents a significant cost burden on the healthcare system. We expect that these shifts will benefit our business.

*As we look for ways to achieve long-term competitive advantages, we plan to continue to invest in research & development*

We continue to evaluate these opportunities in alignment with our focus on advanced wound care. We remain focused on advancing our BLA programs and are therefore aligning customer input, industry expertise, and additional resourcing toward seeking FDA approval for micronized dehydrated human amnion/chorion membrane (“*dHACM*”) for the potential indication to treat musculoskeletal degeneration across multiple indications. In addition, we expect to incur additional costs to achieve compliance with evolving regulatory standards.

## Important Cautionary Statement

We caution the reader that actual results may differ materially from our expectations. Among the factors that could cause actual results to differ are: variances from our expectations or assumptions; changes in reimbursement policy from public and private insurers and health systems; the loss of a Group Purchasing Organization or Integrated Delivery Network; changes in purchasing behavior by government accounts; the loss of independent sales agents or distributors; the removal of any of our products from the market as a result of regulatory actions; the success of our marketing efforts; the fact that obtaining and maintaining the necessary regulatory approvals for certain of our products will be expensive and time consuming and may impede our ability to fully exploit our technologies; rapid technological change could cause our products to become obsolete and, if we do not enhance our product offerings through our research and development efforts, we may be unable to compete effectively; our ability to transition our manufacturing facilities into compliance with cGMP, advance our IND applications, complete our clinical trials and pursue BLAs for certain of our micronized products; the fact that our business is subject to continuing regulatory compliance by the FDA and other authorities, which is costly, and our failure to comply could result in adverse effects on our business, results of operations and financial condition; the fact that litigation and other matters relating to and arising out of the Investigation, including the accounting review of our previously issued consolidated financial statements and the audits of fiscal years 2018, 2017 and 2016, have been time consuming and expensive, and may result in additional expense; and the fact that our variable rate indebtedness under the Hayfin Term Loan (as defined below) subjects us to interest rate risk, which could result in higher expense in the event of increases in interest rates and adversely affect our business, financial condition, and results of operations.

## Expected Impact of COVID-19 Pandemic

On March 11, 2020, the World Health Organization designated the outbreak of a novel strain of coronavirus (“**COVID-19**”) as a global pandemic. Governments and businesses around the world have taken unprecedented actions to mitigate the spread of COVID-19, including imposing restrictions on movement and travel such as quarantines and shelter-in-place requirements, and restricting or prohibiting outright some or all commercial and business activity, including the manufacture and distribution of certain goods and the provision of nonessential services. As of the end of the first half of 2020, significant uncertainty exists surrounding the efficacy of these measures to mitigate the spread of the virus, in addition to uncertainty surrounding timing and availability of a vaccine. The evolution of the outbreak, combined with these uncertainties, could result in the imposition of similar or greater restrictions for indefinite periods of time.

COVID-19 began to affect our operations during the three months ended March 31, 2020.

### *Sourcing and Manufacturing*

We source the raw materials for our product from donors in hospitals. We have a large, geographically-diverse network of donor hospitals. We experienced interruptions to our access to some hospitals in some geographic areas beginning in the second half of March 2020. However, we have been successful in mitigating this disruption to our supply by adding additional donor hospitals, using third-party providers of donated placentas, and increasing efforts at hospitals that did not impose access limits. Additionally, in anticipation of expected disruptions, we ran manufacturing at levels greater than demand and have been successful in building our inventory of safety stock.

We process donated tissue in a sterile environment. However, the manufacturing space is a confined area where an affected employee might spread the virus to other employees despite the use of personal protective equipment required for this environment. We monitor our employees’ temperatures prior to entering our facilities and to date only two manufacturing employees and one sales representative have tested positive for the virus, each of whom was isolated from our workforce. Additionally, we required our non-manufacturing employees including our executives to work from home from March 13, 2020 until June 1, 2020, and we have continued to allow most employees flexibility in their work arrangements as a result of the pandemic. To date, and due to significant mitigation efforts, COVID-19 has had only a modest impact on our ability to source and manufacture our products.

### *Sales and Marketing*

Our ability to sell our product has been hampered by the pandemic. Our sales force is spread across the country. In many areas, our sales force was excluded from hospitals and the offices of other health care providers. Additionally, many patients stayed away from hospitals and other medical facilities. This had an adverse effect on our revenues beginning late in the first quarter of 2020 and continuing into April. By mid-May, access to hospitals and healthcare providers by our sales force had been mostly restored, and we began to see significant numbers of patients’ return to hospitals and other healthcare providers, including for elective procedures. However, as of early July 2020, additional restrictions have been put in place in some areas of the country that again limit or postpone elective surgical procedures, and in particular, in areas of the country that contribute a larger portion of our sales. Future sales will depend on patients’ willingness to visit healthcare providers for care, and our sales force’s access to healthc

are providers. Also, the severity of the COVID-19 pandemic has been uneven across the country, and future waves of the outbreak of COVID-19 may have a greater impact on us than did the first wave depending on where infection rates are highest. We are not able to estimate COVID-19's future effect on patient behavior and consequently future demand for our products. *The COVID-19 pandemic and governmental and societal responses thereto have adversely affected our business, results of operations and financial condition, and the continuation of COVID-19 or the outbreak of other health epidemics could harm our business, results of operations, and financial condition.* in the 2019 Form 10-K.

#### *Selling and General Administrative Expenses*

In response to these challenges, our management team initiated several actions. Most discretionary expenses such as travel were cancelled. We negotiated additional discounts with vendors. Merit salary increases scheduled for the second quarter of 2020 were deferred until the fourth quarter of 2020. Beginning on April 5, 2020, we reduced employees' salaries, including those of senior executives, on a sliding scale with larger reductions applied to larger salaries. We intend for these reductions to last up to six months, and estimate that the combination of these efforts has saved the Company approximately \$9.0 million through June 30, 2020. This has allowed us to reduce our expense base and reduce cash outlays, although we expect our margins to be temporarily reduced until sales return to normal levels. Nevertheless, at the end of the first quarter of 2020 and continuing into April, we saw a reduction in the amount of cash generated by the business. At May 31, 2020, our cash balance was \$27.4 million, net of minimum balance covenants set forth in our Loan Agreement, dated as of June 10, 2019, by and among the Company, the subsidiaries of the Company as guarantors party thereto from time to time, the lenders party thereto from time to time, and Blue Torch Finance LLC ("**Blue Torch**"), as administrative agent and collateral agent, as amended by that certain First Amendment thereto, dated as of April 22, 2020 (the "**BT Loan Agreement**").

#### *Liquidity and Capital Resources*

On April 22, 2020, we executed the First Amendment (the "**Amendment**") to the BT Loan Agreement with Blue Torch. The Amendment provided for an increase in the maximum Total Leverage Ratio (as defined in the BT Loan Agreement), which is a quarterly test, for the remainder of 2020, and also provided for a reduction in the minimum Liquidity (as defined in the BT Loan Agreement) requirement from April 2020 through and including November 2020. Specifically, the maximum Total Leverage Ratio increased from 3 to 1 to 5 to 1 through December 31, 2020. The minimum Liquidity requirement was reduced from \$40.0 million to \$20.0 million for April and May 2020, and from \$30.0 million to \$20.0 million for June through November 2020. In connection with the Amendment, we agreed to pay a one-time fee (the "**Amendment Fee**") of approximately \$0.7 million, added to the principal balance, and a 1 percentage point increase in the interest rate to LIBOR plus 9%.

In addition, the Amendment loosened restrictions on our ability to borrow additional funds; enabling us to borrow up to \$10 million under the Paycheck Protection Program (the "**PPP Loan**") offered by the U.S. Small Business Administration under the Coronavirus Aid, Relief, and Economic Security Act. We applied for the PPP Loan prior to obtaining the aforementioned amendment to the BT Loan Agreement, and received the proceeds of the PPP Loan on April 24, 2020.

On May 8, 2020, we received a letter from the U.S. House of Representatives' Committee on Oversight and Reform's Select Subcommittee on the Coronavirus Crisis requesting that we return the proceeds of the PPP Loan so that the funds earmarked under the program could be used by smaller companies with more limited access to the capital markets. We repaid the PPP Loan in full on May 11, 2020.

#### *Reserves and Financial Estimates*

We do not expect that there be significant changes in judgments in determining the fair value of other assets measured in accordance with U.S. GAAP. As a result of the pandemic, we do not expect to incur any material impairments (e.g., with respect to goodwill, intangible assets, long-lived assets, right of use assets, investment securities), increases in allowances for credit losses, restructuring charges, other expenses, or changes in accounting judgments that have had or are reasonably likely to have a material impact on your financial statements, although we expect our days sales outstanding, post revenue recognition transition discussed in the "Critical Accounting Policies" below, to increase modestly as a result of patient behavior.

The uncertain future impacts of COVID-19 make it difficult for us to forecast future results.

#### *Financial Reporting Systems and Internal Controls*

We have invested in technology to allow our office staff to work remotely. As a result, we do not expect the pandemic to have a material adverse effect on our financial reporting systems, internal controls over financial reporting and disclosure controls and procedures, although we have experienced delays when working with third parties who do not have remote access to our systems or whose procedures require them to review certain physical records.

## Recent Developments

### Appointment of New Officers

On March 19, 2020, we announced that our Board of Directors appointed Peter M. Carlson as Chief Financial Officer of the Company, effective March 18, 2020. He succeeded Edward J. Borkowski, who served as Executive Vice President and Interim Chief Financial Officer from June 6, 2018 through November 15, 2019 and as acting Chief Financial Officer from November 18, 2019 through March 17, 2020.

On May 5, 2020, we announced that we had appointed William L. Phelan as Senior Vice President and Chief Accounting Officer of the Company, effective May 1, 2020.

### BT Loan Agreement Amendment

On April 22, 2020, as described above, the BT Loan Agreement was amended to provide for an increase in the maximum Total Leverage Ratio and a reduction in the minimum Liquidity covenant. In connection with the amendment, we agreed to pay a one-time fee of approximately \$0.7 million, added to the principal balance, and a 1 percentage point increase in the interest rate to LIBOR plus 9%.

### Financing Transactions

On July 2, 2020, the Company issued \$100 million of its Series B Convertible Preferred Stock, par value \$.001 per share, (the “**Series B Preferred Stock**”) to an affiliate of EW Healthcare Partners and to certain funds managed by Hayfin Capital Management LLP, pursuant to the Securities Purchase Agreement with Falcon Fund 2 Holding Company, L.P., an affiliate of EW Healthcare Partners, and certain funds managed by Hayfin Capital Management LLP, dated as of June 30, 2020 (the “**Securities Purchase Agreement**”), for an aggregate purchase price of \$100 million (the “**Preferred Stock Transaction**”). Also on July 2, 2020, the Company borrowed an aggregate of \$50 million and obtained an additional committed but undrawn \$25 million facility pursuant to the Loan Agreement with, among others, Hayfin Services LLP, an affiliate of Hayfin Capital Management LLP (the “**Hayfin Loan Agreement**”), which funded on July 2, 2020 (the “**Hayfin Loan Transaction**”) and that provided the Company with a senior secured term loan in an aggregate amount of \$50 million (the “**Hayfin Term Loan**”) and an additional \$25 million delayed draw term loan (the “**DD TL**”) in the form of a committed but undrawn facility. The Company used a portion of the proceeds of the Preferred Stock Transaction and the Hayfin Loan Transaction to repay the outstanding principal balance of \$72.0 million, accrued interest and fees of \$0.1 million, and prepayment penalty of \$1.4 million under the BT Loan Agreement. The Company also terminated the BT Loan Agreement. For further information regarding the Preferred Stock Transaction, the Hayfin Loan Transaction and the termination of the BT Loan Agreement, see Note 3, “*Liquidity and Capital Resources*” in this Form 10-Q and Item 9B in the 2019 Form 10-K.

## Results of Operations Comparison of the Three Months Ended March 31, 2020, to the Three Months Ended March 31, 2019

|  | Three Months Ended March 31, |             |            |             |
|--|------------------------------|-------------|------------|-------------|
|  | (in thousands)               |             |            |             |
|  | 2020                         | 2019        | \$ Change  | % Change    |
| Net Sales                              | \$ 61,736                    | \$ 66,555   | \$ (4,819) | (7.2)%      |
| Gross profit                           | 51,711                       | 59,137      | (7,426)    | (12.6)%     |
| Selling, general and administrative    | 46,942                       | 50,862      | (3,920)    | (7.7)%      |
| Investigation, restatement and related | 15,592                       | 18,107      | (2,515)    | (13.9)%     |
| Research and development               | 2,650                        | 2,902       | (252)      | (8.7)%      |
| Amortization of intangible assets      | 271                          | 233         | 38         | 16.3 %      |
| Impairment of intangible assets        | —                            | 446         | (446)      | (100.0)%    |
| Interest (expense) income, net         | (2,387)                      | 211         | (2,598)    | (1,231.3)%  |
| Other income (expense), net            | 6                            | (29)        | 35         | (120.7)%    |
| Income tax provision expense           | 11,304                       | (42)        | 11,346     | (27,014.3)% |
| Net loss                               | \$ (4,821)                   | \$ (13,273) | \$ 8,452   | 63.7 %      |

## *Net Sales*

Net sales for the quarter ended March 31, 2020 were \$61.7 million, primarily recognized on an “as-shipped” basis, a 7.2% decrease over the quarter ended March 31, 2019 revenue of \$66.6 million, recognized on a “cash-receipts” basis. See Note 2, “*Significant Accounting Policies*,” for more information on our revenue recognition methodologies. This decrease is due to lower shipment levels in the last half of March 2020, reflecting the impact of the COVID-19 global pandemic. This effect is further discussed below.

## *Gross Profit Margin*

Gross profit margin in the first quarter of 2020 was 84% as compared to 89% in the first quarter of 2019. The gross profit margin decrease reflects the cost of higher quality standards of cGMP and investments in our Biologic License Application (“*BLA*”) programs in the first quarter of 2020 compared to the first quarter of 2019.

## *Selling, General and Administrative Expenses*

Selling, General and Administrative expenses for the first quarter of 2020 decreased approximately \$3.9 million, or 7.7%, to \$46.9 million compared to \$50.9 million for the first quarter of 2019. The decrease was primarily related to a reduction in legal fees related to normal course of business matters, and a decrease in discretionary expenses as the Company implemented safety and costs-containment measures to mitigate the impact to the business from COVID-19. This was partially offset by an increase in severance expense related to the sales organizational realignment in January 2020.

## *Investigation, Restatement, and Related Expenses*

Investigation, restatement and related expense for the first quarter of 2020 decreased approximately \$2.5 million, or 13.9%, to \$15.6 million compared to \$18.1 million for the first quarter of 2019. The decrease was primarily related to a reduction in investigation and litigation costs, as the Audit Committee Investigation concluded in May 2019.

## *Research and Development Expenses*

Our research and development expenses decreased approximately \$0.3 million, or 8.7%, to \$2.7 million in the first quarter of 2020, compared to approximately \$2.9 million in the first quarter of 2019. The decrease is primarily due to year-over-year decreases in clinical trial activities as well as decreased patient visit activity brought upon by the COVID-19 pandemic.

## *Amortization of Intangible Assets*

Amortization expense related to intangible assets remained flat for the first quarter of 2020 compared to the first quarter of 2019.

## *Impairment of Intangible Assets*

The impairment of intangible assets of \$0.4 million was due to the impairment of certain customer relationship intangible assets in the three months ended March 31, 2019 related to the divestiture of Stability in 2017.

## *Interest (Expense) Income, Net*

Interest (expense) income, net increased approximately \$2.6 million or 1,231.3%, to \$(2.4) million in the first quarter of 2020, compared to \$0.2 million for the first quarter of 2019. This increase was due to the interest on the loan under the BT Loan Agreement (the “*BT Term Loan*”).

## *Other Income (Expense), Net*

Other income (expense), net remained relatively flat for the first quarter of 2020 compared to the first quarter of 2019.

## *Income Tax Provision (Expense) Benefit*

The effective tax rates for the Company were 70.1% and (0.3)% for the three months ended March 31, 2020 and March 31, 2019, respectively. The change in the effective tax rate was primarily due to the impact of the federal net operating loss carrybacks permitted under the CARES Act resulting in a significant income tax benefit during the first quarter of 2020.



## Liquidity and Capital Resources

Our business requires capital for its operating activities, including costs associated with the sale of product through direct and indirect sales channels, the conduct of research and development activities, compliance costs, and legal and consulting fees in connection with ongoing litigation and other matters. We generally fund our operating capital requirements through our operating activities, cash reserves and, since June 2019, proceeds from term loans. We expect to use capital in the near and medium term to implement our priorities, including for capital investments, steps to complete achievement of cGMP compliance, advancement of our IND applications, pursuit of BLAs for certain of our micronized products, and settlements of certain legal matters.

As of March 31, 2020, the Company had approximately \$53.5 million of cash and cash equivalents. The Company reported total current assets of approximately \$115.9 million and total current liabilities of approximately \$63.7 million at March 31, 2020, which represents a current ratio of 1.8 as of March 31, 2020.

We have funded our cash requirements, including for our operating activities and for the Investigation and Restatement, through existing cash reserves and from operating activities and the term loans described below. In addition, on July 2, 2020, we issued \$100 million of our Series B Preferred Stock to an affiliate of EW Healthcare Partners and to certain funds managed by Hayfin Capital Management LLP pursuant to the Securities Purchase Agreement for an aggregate purchase price of \$100,000,000.

The Company is currently paying its obligations in the normal course of business. We believe that, due to the Preferred Stock Transaction and the Hayfin Loan Agreement (which provides for significantly less restrictive financial covenants than the BT Loan Agreement), our anticipated cash from operating activities, existing cash, and cash equivalents will enable us to meet our operational liquidity needs.

We expect to incur additional costs in connection with efforts to enhance our cGMP compliant manufacturing capabilities and toward the completion of the BLA process. This includes development and enhancement of production processes, procedures, tests and assays, and it requires extensive validation work. It can also involve the procurement and installation of new production or lab equipment. These efforts also require human capital, expertise and resources.

We anticipate cash requirements related to the following items within one year from the date of the filing of this Form 10-Q:

- lawsuits or potential settlements for which we are not able to estimate a loss;
- private securities lawsuits, for which we are currently not able to estimate a loss and for which it is unclear whether we would be indemnified under various insurance policies; and
- investments and other expenditures required in order to bring the Company's facilities into compliance with cGMP.

Following the Preferred Stock Transaction, the Hayfin Loan Transaction, and the repayment and termination of the BT Loan Agreement, as discussed below and in Note 3, "*Liquidity and Capital Resources*," we analyzed our ability to address the aforementioned commitments and potential liabilities while remaining compliant with the financial covenants set forth in the Hayfin Loan Agreement for the 12 months extending from the date of the filing of this Form 10-Q. Based on this analysis, and in combination with existing cash on hand, we expect to meet all obligations as they come due without violating the financial covenants set forth by the Hayfin Loan Agreement, as discussed below.

### *BT Term Loan*

On June 10, 2019, we entered into the BT Loan Agreement to borrow funds with a face value of \$75.0 million, the full amount of which was borrowed and funded. The proceeds from the BT Term Loan were used (i) for working capital and general corporate purposes and (ii) to pay transaction fees, costs and expenses incurred in connection with the BT Term Loan and the related transactions. On April 22, 2020, the BT Loan Agreement was amended to provide for an increase in the maximum Total Leverage Ratio and a reduction in the minimum Liquidity covenant. In connection with the amendment, the Company agreed to pay a one-time fee of approximately \$0.7 million, added to the principal balance, and a 1 percentage point increase in the interest rate to LIBOR plus 9%. See Note 9, "*Long-Term Debt*," for more information regarding the terms of the BT Term Loan and the amendment thereto.

### *Hayfin Term Loan; Preferred Stock Transaction; Termination of BT Term Loan*

On July 2, 2020, the Company issued \$100 million of Series B Preferred Stock to an affiliate of EW Healthcare Partners and to certain funds managed by Hayfin Capital Management LLP, pursuant to the Securities Purchase Agreement, for an aggregate purchase price of \$100 million. Also on July 2, 2020, the Company borrowed an aggregate of \$50 million and obtained an additional committed but undrawn \$25 million facility pursuant to the Hayfin Loan Agreement. The Company used a portion of the proceeds

of the Preferred Stock Transaction and the Hayfin Loan Transaction to repay the outstanding principal balance of \$72.0 million, accrued interest and fees of \$0.1 million, and prepayment penalty of \$1.4 million under the BT Loan Agreement. The Company also terminated the BT Loan Agreement. For further information regarding the Preferred Stock Transaction, the Hayfin Loan Transaction (including certain terms of the Hayfin Loan Agreement) and the termination of the BT Loan Agreement, see Note 3, “*Liquidity and Capital Resources.*”

### **Share Repurchases**

During the three months ended March 31, 2020, the Company repurchased 205,091 shares surrendered by employees to satisfy tax withholding obligations upon vesting of restricted stock. Other than these, the Company did not repurchase any shares of its common stock during the three months ended March 31, 2020.

The timing and amount of future repurchases, if any, will depend upon the Company’s stock price, economic and market conditions, regulatory requirements, and other corporate considerations. The Company may initiate, suspend or discontinue purchases under the stock repurchase program at any time.

### **Contingencies**

See Note 13 to our Condensed Consolidated Financial Statements in Part I, Item 1 herein.

### **Contractual Obligations**

For the three months ended March 31, 2020 there were no significant changes to our operating lease obligations from those disclosed in the section “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our 2019 Form 10-K.

### **Discussion of Cash Flows**

Net cash used in operations during the three months ended March 31, 2020 decreased approximately \$3.0 million to approximately \$12.3 million, compared to \$15.3 million from operating activities for the three months ended March 31, 2019, primarily attributable to decreases in selling, general and administrative expenses between periods.

Net cash used in investing activities during the three months ended March 31, 2020 increased to approximately \$1.1 million, compared to approximately \$0.4 million for 2019. Cash used in investing activities for the three months ended March 31, 2020 included equipment purchases of \$1.0 million compared to \$0.6 million for the three months ended March 31, 2019.

Net cash used in financing activities during the three months ended March 31, 2020 increased approximately \$1.2 million to \$2.2 million compared to \$1.0 million of cash used during the three months ended March 31, 2019. Cash used in financing activities during the three months ended March 31, 2020 included approximately \$0.9 million of BT Term Loan payments and an increase in stock repurchases for tax withholdings of \$0.5 million partially offset by proceeds from the exercise of stock options of \$0.3 million.

### **Non-GAAP Financial Measures**

In addition to our GAAP results, we provide certain Non-GAAP metrics including Earnings Before Interest, Taxes, Depreciation and Amortization (“**EBITDA**”) and Adjusted EBITDA. We believe that the presentation of these measures provides important supplemental information to management and investors regarding our performance. These measurements are not a substitute for GAAP measurements, and the manner in which we calculate Adjusted EBITDA may not be identical to the manner in which other companies calculate adjusted EBITDA. We use these Non-GAAP measures as aids in monitoring our on-going financial performance from quarter-to-quarter and year-to-year on a regular basis and for benchmarking against comparable companies.

EBITDA is intended to provide a measure of the Company’s operating performance as it eliminates the effects of financing and capital expenditures. EBITDA consists of GAAP net income (loss) excluding: (i) depreciation, (ii) amortization of intangibles, (iii) interest expense (income) and (iv) income tax provision.

Adjusted EBITDA is intended to provide an enduring, normalized view of EBITDA and our broader business operations that we expect to experience on an ongoing basis by removing items which may be irregular, one-time, or non-recurring from EBITDA; most significantly those expenses related to the Audit Committee Investigation and Restatement. This enables us to identify underlying trends in our business that could otherwise be masked by such items.

Adjusted EBITDA consists of GAAP net loss excluding: (i) depreciation, (ii) amortization of intangibles, (iii) interest expense (income), (iv) income tax provision, (v) costs incurred in connection with Audit Committee Investigation and Restatement, (vi) the effect of the change in revenue recognition on net income, (vii) impairment of intangible assets, and (viii) share-based compensation.

A reconciliation of GAAP Net Loss to EBITDA and Adjusted EBITDA appears in the table below (in thousands):

|   | Three Months Ended March 31, |                 |
|---|------------------------------|-----------------|
|   | 2020                         | 2019            |
| Net loss  | \$ (4,821)                   | \$ (13,273)     |
| <b>Non-GAAP Adjustments:</b>  |                              |                 |
| Depreciation expense  | 1,506                        | 1,695           |
| Amortization of intangible assets   | 271                          | 233             |
| Interest expense (income), net  | 2,387                        | (211)           |
| Income tax provision (benefit) expense  | (11,304)                     | 42              |
| EBITDA  | <u>(11,961)</u>              | <u>(11,514)</u> |
| <b>Additional Non-GAAP Adjustments:</b>   |                              |                 |
| Costs incurred in connection with Audit Committee Investigation and Restatement | 15,592                       | 18,107          |
| Effect of change in revenue recognition   | (3,866)                      | —               |
| Impairment of intangible assets   | —                            | 1,258           |
| Share-based compensation  | 3,349                        | 3,014           |
| Adjusted EBITDA   | <u>3,114</u>                 | <u>10,865</u>   |

### Critical Accounting Policies

In preparing financial statements, we follow GAAP, which requires us to make certain estimates and apply judgments that affect our financial position and results of operations. We regularly review our accounting policies and financial information disclosures. A summary of significant accounting policies that require the use of estimates and judgments in preparing the financial statements was provided in the 2019 Form 10-K. During the quarter covered by this report, there were no material changes to the accounting policies and assumptions previously disclosed, except as disclosed in Note 2 to the condensed consolidated financial statements contained herein.

### Recent Accounting Pronouncements

For the effect of recent accounting pronouncements, see Note 2 to the condensed consolidated financial statements contained herein.

### Off-Balance Sheet Arrangements

The Company has no off-balance sheet arrangements.

### **Item 3. Quantitative and Qualitative Disclosures about Market Risk**

Based on our lack of market risk sensitive instruments outstanding at March 31, 2020, we have determined that there was no material market risk exposure to our consolidated financial position, results of operations or cash flows as of such date.

### **Item 4. Controls and Procedures**

#### ***Evaluation of Disclosure Controls and Procedures***

Management maintains a set of disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), designed to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer ("**CEO**") and Chief Financial Officer ("**CFO**"), to allow for timely decisions regarding required disclosure.

An evaluation of the effectiveness of the design and operation of our disclosure controls and procedures was performed under the supervision and with the participation of our management, including our CEO and CFO. As a result of this evaluation, our CEO and CFO concluded that our disclosure controls and procedures were not effective as of March 31, 2020 because of certain material weaknesses in internal control over financial reporting, as described in Item 9A, "Controls and Procedures" of our 2019 Form 10-K.

#### ***Changes in Internal Control over Financial Reporting***

Under Exchange Act Rules 13a-15(d) and 15d-15(d), management is required to evaluate, with the participation of our principal executive officer and principal financial officer, any changes in internal control over financial reporting that occurred during each fiscal quarter that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. Other than as disclosed under "Remediation Efforts to Address Material Weaknesses in Internal Control over Financial Reporting" below, there were no changes in our internal control over financial reporting during the quarter ended March 31, 2020 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. Additionally, we have not experienced any material impact to our internal controls over financial reporting from the COVID-19 pandemic despite the fact that most of our employees are working remotely due to the COVID-19 pandemic. We are regularly monitoring and assessing the impact of COVID-19 and the related remote working situation on our internal controls to minimize the impact on the design and operating effectiveness of internal controls.

#### ***Remediation Efforts to Address Material Weaknesses in Internal Control Over Financial Reporting***

As discussed in Item 9A, "Controls and Procedures" of our 2019 Form 10-K, we identified unremediated material weaknesses related to the Control Environment and Control Activities elements established in Internal Control-Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (the "COSO framework" ) as of December 31, 2019. Prior to December 31, 2019, we designed and implemented new controls specific to our information and technology system to remediate identified material weaknesses, specifically, management performed a comprehensive review of permissions and profiles within each information technology ("IT") application that is significant to the Company's financial reporting objectives, and subsequently reconfigured profiles with appropriate permissions to better align with job responsibilities and enforce segregation of duties. Once user profiles and their associated permissions were reconfigured, management employed procedures to ensure the continued appropriateness of all applicable system and network access. This objective was achieved through the performance of periodic user access reviews and the enhancement of procedures related to the granting and removing of system and network access. Due to the timing of the design and implementation of these controls during the fourth quarter of 2019, however, there was insufficient time to consistently execute against their design as of December 31, 2019. During the first quarter of 2020, we executed the newly designed controls specific to the IT system. We will continue to evaluate the results of our control assessments and testing procedures to determine whether the new controls have been designed appropriately and are operating effectively, and whether the material weakness has been remediated. We expect that our remediation efforts will continue for all identified material weaknesses through 2020 as described in our remediation plan and status in Item 9A, "Controls and Procedures" of our 2019 Form 10-K, with the goal to fully remediate the material weaknesses during 2020.

#### ***Inherent Limitation on the Effectiveness of Internal Controls***

The effectiveness of any system of internal control over financial reporting is subject to inherent limitations, including the exercise of judgment in designing, implementing, operating, and evaluating the controls and procedures, and the inability to eliminate misconduct completely. Accordingly, any system of internal control over financial reporting can only provide reasonable, not

absolute, assurance that its objectives will be met. In addition, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. We intend to continue to monitor and upgrade our internal controls as necessary or appropriate for our business, but we cannot assure that such improvements will be sufficient to provide us with effective internal control over financial reporting in 2020 or future periods.

## PART II – OTHER INFORMATION

### Item 1. Legal Proceedings

For information regarding our material pending legal proceedings, see the disclosure in Note 13, “*Contractual Commitments and Contingencies - Litigation and Regulatory Matters*” of this Form 10-Q, which is incorporated herein by reference.

### Item 1A. Risk Factors

There have been no material changes to the risk factors discussed in Part I, Item 1A., “*Risk Factors*” of the Company’s 2019 Form 10-K. These factors could materially and adversely affect the Company’s business, financial condition, and results of operations, and should be carefully considered. However, these are not the only risks facing the Company. Additional risks and uncertainties not currently known, or that the Company currently deems to be immaterial, also may adversely affect the Company’s business, financial condition, and results of operations.

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

(a) None.

(b) None.

#### (c) *Stock Repurchases:*

The following table sets forth information regarding the purchases of the Company’s equity securities made by or on behalf of the Company or any affiliated purchaser (as defined in Exchange Act Rule 10b-18) during the three month period ended March 31, 2020:

|  | Total number<br>of<br>shares<br>purchased <sup>(a)</sup> | Average<br>price paid<br>per share | Total number<br>of shares<br>purchased<br>under publicly<br>announced plan | Approximate dollar value of shares<br>that may yet be purchased under<br>plans or programs |
|--|--|------------------------------------|--|--|
| Total amount remaining December 31, 2019 |  |                                    |  | \$ —   |
| January 1 - January 31, 2020             | 5,340  | \$ 7.56                            | —  | \$ —   |
| February 1 - February 28, 2020           | 199,193  | \$ 7.50                            | —  | \$ —   |
| March 1 - March 31, 2020                 | 558  | \$ 6.55                            | —  | \$ —   |
| Total for the quarter                    | 205,091  | \$ 7.50                            | —  |  |

<sup>(a)</sup> Shares repurchased during the quarter include only shares surrendered by employees to satisfy tax withholding obligations upon vesting of restricted stock.

### Item 3. Defaults Upon Senior Securities

None.

### Item 4. Mine Safety Disclosures

Not applicable.

**Item 5. Other Information**

None.

## Item 6. Exhibits

| <u>Exhibit Number</u> | <u>Description</u>   |
|-----------------------|--|
| 3.1                   | Articles of Incorporation, together with Articles of Amendment effective each of May 14, 2010; August 8, 2012, November 8, 2012; and May 15, 2015 ( <a href="#">incorporated by reference to Exhibit 3.1 to the Registrant's Form 10-K filed on March 1, 2017</a> ).   |
| 3.2                   | Articles of Amendment to the Articles of Incorporation effective November 6, 2018 ( <a href="#">incorporated by reference to Exhibit 3.1 to the Registrant's Form 8-A filed on November 7, 2018</a> ).   |
| 3.3                   | Bylaws of MiMedx Group, Inc., as amended and restated as of October 3, 2018 ( <a href="#">incorporated by reference to Exhibit 3.1 to the Registrant's Form 8-K filed on October 4, 2018</a> ).  |
| 3.4#                  | <a href="#">Articles of Amendment to the Articles of Incorporation of MiMedx Group, Inc.</a> , effective July 1, 2020.   |
| 10.2*                 | First Amendment, dated as of April 22, 2020, to Loan Agreement, dated June 10, 2019, by and between MiMedx Group, Inc., the other guarantors party thereto, the lenders party thereto and Blue Torch Finance LLC, as administrative agent and collateral agent ( <a href="#">incorporated by reference to Exhibit 10.1 to Current Report on Form 8-K filed April 27, 2020</a> ). |
| 31.1 #                | <a href="#">Certification of Chief Executive Officer</a> pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.  |
| 31.2 #                | <a href="#">Certification of Chief Financial Officer</a> pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.  |
| 32.1 #                | <a href="#">Certification of Chief Executive Officer</a> pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.  |
| 32.2 #                | <a href="#">Certification of Chief Financial Officer</a> pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.  |
| 101.INS               | XBRL Instance Document   |
| 101.SCH               | XBRL Taxonomy Extension Schema Document  |
| 101.CAL               | XBRL Taxonomy Extension Calculation Linkbase Document  |
| 101.DEF               | XBRL Taxonomy Extension Definition Linkbase Document   |
| 101.LAB               | XBRL Taxonomy Extension Label Linkbase Document  |
| 101.PRE               | XBRL Taxonomy Extension Presentation Linkbase Document   |

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\* Schedules and exhibits omitted pursuant to Item 601(b)(2) of Regulation S-K. MiMedx agrees to furnish a copy of any omitted schedule or exhibit to the SEC upon request.

# Filed herewith



## SIGNATURES

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

July 6, 2020

MIMEDX GROUP, INC.

By: /s/ Peter M. Carlson

Peter M. Carlson

Chief Financial Officer and Principal Financial Officer

**ARTICLES OF AMENDMENT  
TO THE ARTICLES OF INCORPORATION  
OF  
MIMEDX GROUP, INC.**

**DESIGNATION OF RIGHTS, PREFERENCES, AND LIMITATIONS OF  
SERIES B CONVERTIBLE PREFERRED STOCK**

**FIRST:** This Corporation is named MiMedx Group, Inc. (the “Corporation”). The Articles of Incorporation of the Corporation were originally filed in the Office of the Department of State of the State of Florida on February 28, 2008, and amended by the Articles of Merger filed in the Office of the Department of State of the State of Florida on March 31, 2008, the Articles of Amendment filed in the Office of the Department of State of the State of Florida on May 14, 2010, the Articles of Amendment filed in the Office of the Department of State of the State of Florida on August 8, 2012, the Articles of Amendment filed in the Office of the Department of State of the State of Florida on November 8, 2012, the Articles of Amendment filed in the Office of the Department of State of the State of Florida on May 15, 2015, the Articles of Amendment filed in the Office of the Department of State of the State of Florida on November 7, 2018 and the Articles of Merger filed in the Office of the Department of State of the State of Florida on July 25, 2019.

**SECOND:** Pursuant to the authority of the Board of Directors of the Corporation set forth in the Corporation’s Articles of Incorporation, as amended, and Section 607.0602 of the Florida Business Corporation Act, the Board of Directors of the Corporation, by resolutions duly adopted as of June 28, 2020, has approved the amendment of the Corporation’s Articles of Incorporation to (i) designate a series of preferred stock (“Preferred Stock”) of the Corporation as “Series B Convertible Preferred Stock,” consisting of 100,000 shares of the Corporation’s Preferred Stock and (ii) set the rights, preferences, limitations, and other terms and conditions of the Series B Convertible Preferred Stock. Approval of the shareholders of the Corporation was not required.

**THIRD:** Article 3 of the Articles of Incorporation of the Corporation is hereby amended to add the following Section 3.4:

“Section 3.4 **Series B Convertible Preferred Stock:**

1. Designation and Amount. The shares of such series of Preferred Stock shall be designated as “Series B Convertible Preferred Stock” (the “Series B Preferred Stock”). The number of authorized shares constituting the Series B Preferred Stock shall be 100,000. That number from time to time may be increased or decreased (but not below the number of shares of Series B Preferred Stock then outstanding) by further resolution duly adopted by the Board, or any duly authorized committee thereof, and by filing appropriate Articles of Amendment with the Office of the Department of State of the State of Florida. The Corporation shall not have the authority to issue fractional shares of Series B Preferred Stock.

2. Ranking. The Series B Preferred Stock will rank, with respect to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation:

(a) on a parity basis with each other class or series of Capital Stock of the Corporation authorized on or after the Original Issuance Date, the terms of which expressly provide that such class or series ranks on a parity basis with the Series B Preferred Stock as to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation (such Capital Stock, but for the avoidance of doubt excluding the Series B Preferred Stock, "Parity Stock");

(b) junior to each other class or series of Capital Stock of the Corporation authorized on or after the Original Issuance Date, the terms of which expressly provide that such class or series ranks senior to the Series B Preferred Stock as to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation (such Capital Stock, "Senior Stock"); and

(c) senior to (i) the Series A Junior Participating Preferred Stock and (ii) the Common Stock and each other class or series of Capital Stock of the Corporation authorized on or after the Original Issuance Date, the terms of which do not expressly provide that such class or series ranks on a parity basis with or senior to the Series B Preferred Stock as to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation (such Capital Stock, "Junior Stock").

3. Definitions. As used in this Section 3.4 with respect to Series B Preferred Stock:

"10% Holder" means, with respect to the EW Investor, that since the Original Issuance Date, the EW Investor and its Affiliates have at all times beneficially owned at least 10% of the total number of outstanding shares of Common Stock (calculated on a Fully-Diluted Basis).

"5% Holder" means, with respect to the EW Investor, that since the Original Issuance Date, the EW Investor and its Affiliates have at all times beneficially owned at least 5% of the total number of outstanding shares of Common Stock (calculated on a Fully-Diluted Basis) but the EW Investor and its Affiliates beneficially own less than 10% of the total number of outstanding shares of Common Stock (calculated on a Fully-Diluted Basis).

"Acceptable Change of Control Event" has the meaning set forth in Subsection 13(c)(viii).

"Accrued Dividend Record Date" has the meaning set forth in Subsection 4(e).

“Accrued Dividends” means, as of any date, with respect to any share of Series B Preferred Stock, all Dividends that have accrued on such share pursuant to Subsection 4(c), whether or not declared, but that have not, as of such date, been paid.

“Accumulated Dividends” means, as of any date, with respect to any share of Series B Preferred Stock, all Dividends that have been accumulated on such share pursuant to Subsection 4(b) but that have not, as of such date, been accrued on such share pursuant to Subsection 4(c) or declared and paid in respect of such share pursuant to Subsection 4(c), Subsection 4(d) or otherwise.

“Affected Holder” has the meaning set forth in Subsection 13(d).

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly, Controls or is Controlled by or is under common Control with such Person, and in the case of an investment fund, vehicle or similar entity, any other investment fund, vehicle or similar entity that Controls or is Controlled by or under common Control with such investment fund, vehicle or similar entity. “Affiliated” has a correlative meaning.

Any Person shall be deemed to “beneficially own”, to have “beneficial ownership” of, or to be “beneficially owning” any securities (which securities shall also be deemed “beneficially owned” by such Person) that such Person is deemed to “beneficially own” within the meaning of Rule 13d-3 or 13d-5 under the Exchange Act; provided that any Person shall be deemed to beneficially own any securities that such Person has the right to acquire, whether or not such right is exercisable within sixty (60) days or thereafter (including assuming conversion of all Series B Preferred Stock, if any, owned by such Person to Common Stock).

“Board” means the Board of Directors of the Corporation.

“Business Day” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“Bylaws” means the Amended and Restated Bylaws of the Corporation, as amended as of October 3, 2018, and as may be further amended from time to time.

“Capital Stock” means, with respect to any Person, any and all shares of, interests in, rights to purchase, warrants to purchase, options for, participations in or other equivalents of or interests in (however designated) stock issued by such Person.

“Change of Control” means the occurrence of one of the following, whether in a single transaction or a series of related transactions:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), is or becomes the beneficial owner, directly or indirectly, of a majority of the total voting power of the Voting Stock of the Corporation, other than

as a result of a transaction in which (1) the holders of securities that represented 100% of the Voting Stock of the Corporation immediately prior to such transaction are substantially the same as the holders of securities that represent a majority of the Voting Stock of the surviving Person or its Parent Entity immediately following such transaction and (2) the holders of securities that represented 100% of the Voting Stock of the Corporation immediately prior to such transaction own directly or indirectly Voting Stock of the surviving Person or its Parent Entity in substantially the same proportion to each other as immediately prior to such transaction; or

(b) the merger or consolidation of the Corporation with or into another Person or the merger of another Person with or into the Corporation, or the sale, transfer, lease, or exclusive license of all or substantially all the assets of the Corporation (determined on a consolidated basis), whether in a single transaction or a series of related transactions, to another Person, or any recapitalization, reclassification or other transaction in which all or substantially all of the Common Stock is exchanged for or converted into cash, securities or other property, other than (1) in the case of a merger, consolidation, recapitalization, reclassification or other transaction, a transaction pursuant to which the holders of securities that represented 100% of the Voting Stock of the Corporation immediately prior to such transaction own directly or indirectly (in substantially the same proportion to each other as immediately prior to such transaction, other than changes in proportionality as a result of any cash/stock election provided under the terms of the definitive agreement regarding such transaction) at least a majority of the voting power of the Voting Stock of the surviving Person in such merger or consolidation transaction immediately after such transaction, and (2) in the case of a sale, transfer, lease or exclusive license of all or substantially all of the assets of the Corporation, any such sale, transfer or lease made to a Subsidiary of the Corporation or a Person that becomes a Subsidiary of the Corporation.

“Change of Control Notice” has the meaning set forth in Subsection 10(c).

“Change of Control Redemption Date” has the meaning set forth in Subsection 10(a).

“Change of Control Redemption Price” has the meaning set forth in Subsection 10(a).

“close of business” means 5:00 p.m. (New York City time).

“Common Director” has the meaning set forth in Subsection 14(b).

“Common Stock” means the common stock, par value \$0.001 per share, of the Corporation.

“Competitor” has the meaning set forth in the SPA.

“Constituent Person” has the meaning set forth in Subsection 12(a).

“Control” means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or agency or otherwise. “Controlled” has a correlative meaning.

“Conversion Agent” means the Transfer Agent acting in its capacity as conversion agent for the Series B Preferred Stock, and its successors and assigns.

“Conversion Date” has the meaning set forth in Subsection 8(a).

“Conversion Notice” has the meaning set forth in Subsection 6(c)(i).

“Conversion Price” means, for each share of Series B Preferred Stock, \$3.85, subject to adjustment in accordance with Subsection 11.

“Degressive Issuance” has the meaning set forth in Subsection 11(b).

“Director Indemnitors” has the meaning set forth in Subsection 14(e).

“Dividend Accrual” has the meaning set forth in Subsection 4(c).

“Dividend Payment Date” means March 31, June 30, September 30 and December 31 of each year; provided that if any such Dividend Payment Date is not a Business Day, then the applicable Dividend shall be payable on the next Business Day immediately following such Dividend Payment Date, without any interest.

“Dividend Payment Period” means in respect of any share of Series B Preferred Stock the period from and including the Issuance Date of such share to but excluding the next Dividend Payment Date and, subsequently, in each case the period from and including any Dividend Payment Date to but excluding the next Dividend Payment Date.

“Dividend Rate” means 4.0% per annum for any Dividend Payment Period ending prior to June 30, 2021, and 6.0% per annum for any Dividend Payment Period thereafter.

“Dividend Record Date” has the meaning set forth in Subsection 4(e).

“Dividends” has the meaning set forth in Subsection 4(a).

“Effective Price” has the following meaning with respect to the issuance or sale of any shares of Common Stock or any Equity-Linked Securities:

(a) in the case of the issuance or sale of shares of Common Stock, the value of the consideration received or receivable by (or at the direction of) the Corporation or any of its Subsidiaries for such shares, expressed as an amount per share of Common Stock; and

(b) in the case of the issuance or sale of any Equity-Linked Securities, an amount equal to a fraction whose:

(i) numerator is equal to the sum, without duplication, of (x) the value of the aggregate consideration received or receivable by (or at the direction of) the Corporation or any of its Subsidiaries for the issuance or sale of such Equity-Linked Securities; and (y) the value of the minimum aggregate additional consideration, if any, payable to purchase or otherwise acquire shares of Common Stock pursuant to such Equity-Linked Securities; and

(ii) denominator is equal to the maximum number of shares of Common Stock underlying such Equity-Linked Securities;

provided, however, that:

(w) for purposes of clauses (a) and (b)(i) above, all underwriting commissions, placement agency commissions or similar commissions paid to any broker-dealer by the Corporation or any of its Subsidiaries in connection with such issuance or sale will be added to the aggregate consideration referred to in such clause;

(x) for purposes of clause (b) above, if such minimum aggregate consideration, or such maximum number of shares of Common Stock, is not determinable at the time such Equity-Linked Securities are issued or sold, then (1) the initial consideration payable under such Equity-Linked Securities, or the initial number of shares of Common Stock underlying such Equity-Linked Securities, as applicable, will be used; and (2) at each time thereafter when such amount of consideration or number of shares becomes determinable or is otherwise adjusted (including pursuant to “anti-dilution” or similar provisions), there will be deemed to occur, for purposes of Subsection 11(b) and without affecting any prior adjustments theretofore made to the Conversion Price, an issuance of additional Equity-Linked Securities;

(y) for purposes of clause (b) above, the surrender, extinguishment, maturity or other expiration of any such Equity-Linked Securities will be deemed not to constitute consideration payable to purchase or otherwise acquire shares of Common Stock pursuant to such Equity-Linked Securities; and

(z) the “value” of any such consideration will be the fair value thereof, as of the date such shares or Equity-Linked Securities, as applicable, are issued or sold, determined in good faith by the Board (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

“Equity-Linked Securities” means any rights, options, warrants or other securities entitling the holder thereof to purchase or otherwise acquire (whether immediately, during specified times, upon the satisfaction of any conditions, by conversion, exchange, exercise or otherwise) any shares of Common Stock or any rights, options, warrants or other securities

exercisable for, convertible into or exchangeable for such rights, options, warrants or other securities.

“EW Investor” has the meaning set forth in the SPA.

“EW Investor Parties” has the meaning set forth in the SPA.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Exchange Property” has the meaning set forth in Subsection 12(a).

“Excluded Issuance” means (a) the Corporation’s issuance of any securities as full or partial consideration in connection with a merger, acquisition, consolidation or purchase of all or substantially all of the securities or assets of a corporation or other entity; (b) the Corporation’s issuance to directors, officers, employees, consultants, service providers or agents of the Corporation of equity securities, including those issued upon the exercise of stock options, and the vesting and settlement of other awards in each case granted pursuant to any employee share purchase or equity-based incentive plan, program or arrangement of the Corporation in existence as of the Original Issuance Date or that has been approved by either (i) a majority of the independent members of the Board or (ii) the compensation committee of the Board, including inducement grants under Nasdaq Listing Rule 5635(c)(4); (c) the Corporation’s issuance of equity securities in connection with a reclassification, recapitalization, exchange, stock split (including a reverse stock split), combination or readjustment of shares or any stock dividend or stock distribution, or similar transaction; (d) the Corporation’s issuance of securities upon the exercise, exchange or conversion of any securities that are exercisable or exchangeable for, or convertible into, shares of Common Stock and are outstanding as of the Original Issuance Date, provided that such exercise, exchange or conversion is effected pursuant to the terms of such securities as in effect on the Original Issuance Date; (e) the Corporation’s issuance of securities pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution approved by a majority of the disinterested members of the Board and as in effect on the Original Issuance Date; and (f) the Corporation’s issuance of the Series B Preferred Stock and any shares of Common Stock upon conversion of the Series B Preferred Stock.

“Fully-Diluted Basis” means treating for this purpose as outstanding all shares of Common Stock issuable upon exercise, conversion or exchange of all Equity-Linked Securities (including the Series B Preferred Stock) outstanding as of the relevant date of the calculation.

“Governmental Entity” means any federal, state, or local governmental agency, board, commission, department, court or tribunal; or any regulatory agency, bureau, commission, or authority.

“Holder” means a Person in whose name the shares of the Series B Preferred Stock are registered, which Person shall be treated by the Corporation, Transfer Agent, Registrar,



paying agent and Conversion Agent as the absolute owner of the shares of Series B Preferred Stock for the purpose of making payment and settling conversions and for all other purposes; provided that, to the fullest extent permitted by law, (i) no Person that has received shares of Series B Preferred Stock in violation of the SPA shall be a Holder; (ii) the Transfer Agent, Registrar, paying agent and Conversion Agent, as applicable, shall not, unless directed otherwise by the Corporation, recognize any such Person as a Holder; and (iii) the Person in whose name the shares of the Series B Preferred Stock were registered immediately prior to such transfer shall remain the Holder of such shares.

“Independent Financial Advisor” means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing; provided, however, that such firm or consultant is not an Affiliate of the Corporation.

“Investor Designee” has the meaning set forth in Subsection 14(a).

“Investor Director” has the meaning set forth in Subsection 14(e).

“Investor Per Share Purchase Price” means, with respect to any share of Series B Preferred Stock, \$1,000 per share.

“Issuance Date” means, with respect to any share of Series B Preferred Stock, the date of issuance of such share.

“Judgment” has the meaning set forth in the SPA.

“Junior Stock” has the meaning set forth in Subsection 2(c).

“Liquidation Preference” means, with respect to any share of Series B Preferred Stock, as of any date, \$1,000 per share.

“Liquidity Event” has the meaning set forth in Subsection 5(a).

“Mandatory Conversion” has the meaning set forth in Subsection 7(a).

“Mandatory Conversion Date” has the meaning set forth in Subsection 7(a).

“Mandatory Conversion Price” means 200% of the Conversion Price (as may be adjusted pursuant to the provisions of Subsection 11). The Mandatory Conversion Price shall initially be \$7.70.

“Market Disruption Event” means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal U.S. national or regional securities exchange or other market on which the Common Stock is listed for trading or trades, of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

“Minimum Price” means \$5.25; provided that if the Conversion Price is adjusted pursuant to the provisions of Subsection 11(a), then the Minimum Price shall be proportionately adjusted.

“Notice of Mandatory Conversion” has the meaning set forth in Subsection 7(b).

“Original Issuance Date” means the date on which the Closing (as defined in the SPA) occurs.

“Parent Entity” means, with respect to any Person, any other Person of which such first Person is a direct or indirect wholly owned Subsidiary.

“Parity Stock” has the meaning set forth in Subsection 2(a).

“Person” means an individual, firm, corporation (including any non-profit corporation), partnership, limited liability company, joint venture, association, trust, Governmental Entity or other entity or organization.

“Preferred Director” has the meaning set forth in Subsection 14(a).

“Preferred Stock” has the meaning set forth in the recitals above.

A “Qualified Person” means an individual who, (i) qualifies as an “independent director” under applicable rules of the Securities and Exchange Commission, the rules of any stock exchange on which securities of the Corporation are traded and applicable governance policies of the Corporation; (ii) satisfies all other criteria and qualifications for service as a director applicable to all directors of the Corporation; (iii) is not a Representative of a Competitor; (iv) has not been involved in any of the events enumerated under Item 2(d) or (2)(e) of Schedule 13D under the Exchange Act or Item 401(f) of Regulation S-K under the Securities Act; (v) is not subject to any Judgment prohibiting service as a director of any public company; and (vi) is reasonably acceptable to the Board.

“Record Date” means, with respect to any dividend, distribution or other transaction or event in which the holders of the Common Stock have the right to receive any cash, securities or other property or in which the Common Stock is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Stock entitled to receive such cash, securities or other property (whether such date is fixed by the Board or by statute, contract or otherwise).

“Registrar” means the Transfer Agent acting in its capacity as registrar for the Series B Preferred Stock, and its successors and assigns.

“Reorganization Event” has the meaning set forth in Subsection 12(a).

“Replacement Designee” has the meaning set forth in Subsection 14(b).

“Representative” has the meaning set forth in the SPA.

“Senior Stock” has the meaning set forth in Subsection 2(b).

“Series B Preferred Stock” has the meaning set forth in Subsection 1.

“Share Delivery Date” has the meaning set forth in Subsection 8(c)

“Shareholder Approval” means such approval as required by the applicable Nasdaq Stock Market Rules by the shareholders of the Corporation with respect to the conversion of all shares of Series B Preferred Stock and the issuance of the shares of Common Stock issuable upon the conversion of the Series B Preferred Stock.

“SPA” means that certain Securities Purchase Agreement between the Corporation and the Holders set forth on Schedule 1 thereto, dated as of June 30, 2020, as it may be amended, supplemented or otherwise modified from time to time, with respect to certain terms and conditions concerning, among other things, the rights of and restrictions on the Holders.

“Specified Contract Terms” means the covenants, terms and provisions of any indenture, credit agreement or any other agreement, document or instrument evidencing, governing the rights of the holders of or otherwise relating to any indebtedness of the Corporation or any of its Subsidiaries as in effect on the date hereof, or any amendments thereto or refinancings or replacements thereof.

“Subsidiary”, means, with respect to any Person, any corporation, partnership, joint venture or other legal entity as to which such Person (either alone or through or together with any other subsidiary), (a) owns, directly or indirectly, more than 50% of the stock or other equity interests, or (b) has the power to elect a majority of the board of directors or similar governing body.

“Sunset Date” has the meaning set forth in Subsection 13(c)(vii).

“Trading Day” means any day on which trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded, provided that there is no Market Disruption Event. If the Common Stock is not so listed or traded, then “Trading Day” means a Business Day.

“Trading Period” has the meaning set forth in Subsection 7(a).

“Transfer Agent” means the Person acting as Transfer Agent, Registrar and paying agent and Conversion Agent for the Series B Preferred Stock, and its successors and assigns. The Transfer Agent initially shall be Issuer Direct Corporation.

“Transfer Tax” has the meaning set forth in Subsection 17.

“Voting Stock” means (i) with respect to the Corporation, the Common Stock, the Series A Junior Participating Preferred Stock, the Series B Preferred Stock (subject to the limitations set forth herein) and any other Capital Stock of the Corporation having the right to vote generally in any election of directors of the Board and (ii) with respect to any other Person, all Capital Stock of such Person having the right to vote generally in any election of directors of the board of directors of such Person or other similar governing body.

“VWAP” per share of Common Stock on any Trading Day means the per share volume-weighted average price as displayed under the heading Bloomberg VWAP on Bloomberg (or, if Bloomberg ceases to publish such price, any successor service reasonably chosen by the Corporation) page “USFD <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the open of trading on the relevant Trading Day until the close of trading on such Trading Day (or if such volume-weighted average price is unavailable, the market price of one share of Common Stock on such Trading Day determined, using a volume-weighted average method, by an Independent Financial Advisor retained for such purpose by the Corporation).

“Weighted Average Issuance Price” has the meaning set forth in Subsection 11(b).

#### 4. Dividends.

(a) Dividends. Holders shall be entitled to receive dividends of the type and in the amount determined as set forth in this Subsection 4 (such dividends, “Dividends”).

(b) Accumulation of Dividends. Dividends on each share of Series B Preferred Stock shall accumulate (i) on a daily basis from and including the Issuance Date of such share, whether or not declared and whether or not the Corporation has assets legally available to make payment thereof, at a rate equal to the Dividend Rate calculated on the Liquidation Preference plus any Accrued Dividends in respect of such share, and (ii) on the basis of a 365-day year based on actual days elapsed. The amount of Dividends accumulated with respect to any share of Series B Preferred Stock for any Dividend Payment Period shall equal the sum of the daily dividend amounts accumulated in accordance with the first sentence of this Subsection 4(b) with respect to such share during such Dividend Payment Period.

(c) Payment of Dividend. With respect to any Dividend Payment Date, the Corporation shall, if, as and when authorized by the Board in its sole discretion, and to the extent permitted by applicable law, declare a dividend on each share of Series B Preferred Stock in an amount up to the amount of the Accumulated Dividends in respect of the Dividend Payment Period ending immediately prior to such Dividend Payment Date; provided, however, that if the Corporation does not declare and pay in cash the full amount of such Accumulated Dividends, any portion not so declared and paid in cash shall accrue in respect of each such share (a “Dividend Accrual”). The Corporation shall provide written notice to each Holder of the amount of the

Dividend Accrual in respect of such Holder's shares of Series B Preferred Stock no less than five (5) Business Days prior to such Dividend Payment Date.

(d) Arrearages. The Corporation shall be entitled to at any time and from time to time, at its option, to declare and pay all or any part of the Accrued Dividends or Accumulated Dividends in cash and, following such payment, such paid Accrued Dividends or Accumulated Dividends, as applicable, shall no longer be deemed Accrued Dividends or Accumulated Dividends hereunder.

(e) Record Date. The Record Date for payment of Dividends that are declared and paid on any relevant Dividend Payment Date in accordance with Subsection 4(c) will be the close of business on the fifteenth (15th) day of the calendar month which contains the relevant Dividend Payment Date (each, a "Dividend Record Date"), and the Record Date for payment of any Accrued Dividends or Accumulated Dividends in accordance with Subsection 4(d) will be the close of business on the date that is established by the Board, or a duly authorized committee thereof, as such, which will not be more than forty-five (45) days prior to the date on which such Dividends are paid (each, an "Accrued Dividend Record Date"), in each case whether or not such day is a Business Day.

(f) Priority of Dividends. So long as any shares of Series B Preferred Stock remain outstanding, unless all Accrued Dividends and Accumulated Dividends on all outstanding shares of Series B Preferred Stock have been declared and paid in cash, or have been or contemporaneously are declared and a sum in cash sufficient for the payment of those dividends has been or is set aside for the benefit of the Holders, the Corporation may not declare any dividend on, or make any distributions relating to, Junior Stock or Parity Stock, or redeem, purchase, acquire (either directly or through any Subsidiary) or make a liquidation payment relating to, any Junior Stock or Parity Stock, other than:

- (i) purchases, redemptions or other acquisitions of shares of Junior Stock in connection with any employment contract, benefit plan or other similar arrangement existing on the date hereof or approved by the Board with or for the benefit of current or former employees, officers, directors or consultants;
- (ii) purchases of Junior Stock in an amount equal to the proceeds received from the substantially contemporaneous sale of other shares of Junior Stock;
- (iii) as a result of an exchange or conversion of any class or series of Parity Stock or Junior Stock for any other class or series of Parity Stock (in the case of Parity Stock) or Junior Stock (in the case of Parity Stock or Junior Stock);
- (iv) purchases of fractional interests in shares of Parity Stock or Junior Stock (A) pursuant to the conversion or exchange provisions of such Parity Stock or Junior Stock or the security being converted or exchanged or (B)

in connection with any bona-fide reclassification, recapitalization, exchange, stock split (including a reverse stock split), combination or readjustment of shares or any stock dividend or stock distribution, or similar transaction;

(v) payment of any dividends in respect of Junior Stock where the dividend is in the form of the same stock or rights to purchase the same stock as that on which the dividend is being paid;

(vi) rights to purchase Common Stock;

(vii) dividends or distributions of Common Stock or rights to purchase Common Stock;

(viii) any dividend in connection with the implementation of a shareholders' rights or similar plan, or the redemption or repurchase of any rights under any such plan.

Subject to the provisions of this Subsection 4, dividends may be authorized by the Board, or any duly authorized committee thereof, and declared and paid by the Corporation, on any Junior Stock and Parity Stock from time to time; and the Holders will not be entitled to participate in those dividends.

(g) Conversion Following a Record Date. If the Conversion Date for any shares of Series B Preferred Stock is prior to the close of business on a Dividend Record Date or an Accrued Dividend Record Date, the Holder of such shares will not be entitled to any dividend in respect of such Dividend Record Date or Accrued Dividend Record Date, as applicable, other than through the inclusion of Accrued Dividends and Accumulated Dividends as of the Conversion Date in the calculation under Subsection 6(a) or 7(a), as applicable. If the Conversion Date for any shares of Series B Preferred Stock is after the close of business on a Dividend Record Date or an Accrued Dividend Record Date but prior to the corresponding payment date for such dividend, the Holder of such shares as of such Dividend Record Date or Accrued Dividend Record Date, as applicable, shall be entitled to receive such dividend, notwithstanding the conversion of such shares prior to the applicable Dividend Payment Date; provided that the amount of such dividend shall not be included for the purpose of determining the amount of Accrued Dividends or Accumulated Dividends under Subsection 6(a) or 7(a), as applicable, with respect to such Conversion Date.

## 5. Liquidation Rights.

(a) Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation (each a "Liquidity Event"), the Holders shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock, and subject to the rights of the holders of

any Senior Stock or Parity Stock and the rights of the Corporation's existing and future creditors, to receive in full a liquidating distribution in cash and in the amount per share of Series B Preferred Stock equal to the sum of (i) the Liquidation Preference *plus* (ii) the Accrued Dividends *plus* (iii) the Accumulated Dividends with respect to such share of Series B Preferred Stock as of the date of such Liquidity Event. Holders shall not be entitled to any further payments in the event of any such Liquidity Event other than what is expressly provided for in this Subsection 5 and will have no right or claim to any of the Corporation's remaining assets.

(b) Partial Payment. If in connection with any distribution described in Subsection 5(a) above, the assets of the Corporation or proceeds therefrom are not sufficient to pay in full the aggregate liquidating distributions required to be paid pursuant to Subsection 5(a) to all Holders and the liquidating distributions payable to all holders of any Parity Stock, the amounts distributed to the Holders and to the holders of all such Parity Stock shall be paid *pro rata* in accordance with the respective aggregate liquidating distributions to which they would otherwise be entitled if all amounts payable thereon were paid in full.

(c) Merger, Consolidation and Sale of Assets Not Liquidity Event. For purposes of this Subsection 5, each of the following events shall not be deemed a Liquidity Event: (i) the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation, (ii) the merger, consolidation, statutory exchange or any other business combination transaction of the Corporation into or with any other Person, (iii) the merger, consolidation, statutory exchange or any other business combination transaction of any other Person into or with the Corporation, or (iv) a Change of Control.

6. Right of the Holders to Convert.

(a) Each Holder shall have the right, at such Holder's option, subject to the conversion procedures set forth in Subsection 8, the limitations in Subsection 9 and the right of the Corporation to declare and pay all or any part of the Accrued Dividends or Accumulated Dividends at any time under Subsection 4(c), to convert each share of such Holder's Series B Preferred Stock at any time into (i) the number of shares of Common Stock equal to the quotient of (A) the sum of (x) the Liquidation Preference *plus* (y) the Accrued Dividends *plus* (z) the Accumulated Dividends with respect to such share of Series B Preferred Stock as of the applicable Conversion Date *divided by* (B) the Conversion Price as of the applicable Conversion Date *plus* (ii) to the extent applicable, cash in lieu of fractional shares in accordance with Subsection 8(e). The right of conversion may be exercised as to all or any portion of such Holder's Series B Preferred Stock from time to time; provided that, in each case, no right of conversion may be exercised by a Holder in respect of fewer than 1,000 shares of Series B Preferred Stock (unless such conversion relates to all shares of Series B Preferred Stock held by such Holder).

(b) The Corporation shall at all times reserve and keep available out of its authorized and unissued Common Stock, solely for issuance upon the conversion of the Series B Preferred Stock, such number of shares of Common Stock as shall from time to time be issuable upon the conversion of all the shares of Series B Preferred Stock then outstanding, and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all the then outstanding shares of the Series B Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in reasonable best efforts to obtain the requisite stockholder approval of any necessary amendment to the Articles of Incorporation. Any shares of Common Stock issued upon conversion of Series B Preferred Stock shall be duly authorized, validly issued, fully paid and nonassessable. If the Common Stock is then listed on any securities exchange or quoted on any inter-deal quotation system, then the Corporation will cause each such share of Common Stock, when so delivered, to be admitted for listing on such exchange or quotation on such system.

(c) A Holder must do each of the following in order to convert shares of Series B Preferred Stock pursuant to this Subsection 6:

(i) (A) complete and manually sign the conversion notice provided by the Conversion Agent (the “Conversion Notice”), and deliver such notice to the Conversion Agent; provided that a Conversion Notice may be conditional on the completion of a Change of Control or other corporate transaction, and (B) provide the Corporation with at least five (5) Business Days’ written notice prior to the delivery of any Conversion Notice to the Conversion Agent;

(ii) Promptly after delivery of the Conversion Notice deliver to the Conversion Agent the certificate or certificates (if any) representing the shares of Series B Preferred Stock to be converted;

(iii) if required by the Conversion Agent, furnish appropriate endorsements and transfer documents; and

(iv) to the extent applicable, pay any stock transfer, documentary, stamp or similar taxes on such conversion not payable by the Corporation pursuant to Subsection 17.

7. Mandatory Conversion by the Corporation.

(a) Mandatory Conversion. All of the outstanding shares of Series B Preferred Stock shall automatically be converted into shares of Common Stock (a “Mandatory Conversion”) if, on a given day following the third anniversary of the Original Issuance Date (the “Mandatory Conversion Date”), the VWAP per share of Common



Stock is equal to or greater than the Mandatory Conversion Price (i) for at least twenty (20) Trading Days (whether or not consecutive) in any period of thirty (30) consecutive Trading Days (such thirty (30) consecutive Trading Day period, the “Trading Period”) and (ii) as of the close of trading on the Trading Day immediately prior to the Mandatory Conversion Date. In the case of a Mandatory Conversion, each share of Series B Preferred Stock then outstanding shall be converted into (i) the number of shares of Common Stock equal to the quotient of (A) the sum of (x) the Liquidation Preference *plus* (y) the Accrued Dividends *plus* (z) the Accumulated Dividends with respect to such share of Series B Preferred Stock as of the Mandatory Conversion Date *divided by* (B) the Conversion Price of such share in effect as of the Mandatory Conversion Date *plus* (ii) to the extent applicable, cash in lieu of fractional shares in accordance with Subsection 8(e).

(b) Notice of Mandatory Conversion. As soon as practicable, and in any event no later than the fifth (5th) Business Day after the Mandatory Conversion Date, the Corporation shall provide a written notice to the Holders that a Mandatory Conversion has occurred (“Notice of Mandatory Conversion”). As soon as practicable, and in any event within five (5) Business Days following the receipt of a Notice of Mandatory Conversion, each Holder must:

(i) deliver to the Conversion Agent the certificate or certificates (if any) representing the shares of Series B Preferred Stock to be converted;

(ii) if required by the Conversion Agent, furnish appropriate endorsements and transfer documents; and

(iii) to the extent applicable, pay any stock transfer, documentary, stamp or similar taxes on such conversion not payable by the Corporation pursuant to Subsection 17.

#### 8. Conversion Procedures and Effect of Conversion.

(a) Conversion Date. The “Conversion Date” means (A) with respect to conversion of any shares of Series B Preferred Stock at the option of any Holder under Subsection 6(a), the date on which such Holder complies with the procedures in Subsection 6(c) (including the satisfaction of any conditions to conversion set forth in the Conversion Notice) and (B) with respect to Mandatory Conversion under Subsection 7(a), the Mandatory Conversion Date.

(b) Effect of Conversion. Effective immediately prior to the close of business on the Conversion Date applicable to any shares of Series B Preferred Stock, Dividends shall no longer accrue or be declared on any such shares of Series B Preferred Stock, and such shares of Series B Preferred Stock shall cease to be outstanding.

(c) Record Holder of Underlying Securities as of Conversion Date. The Person or Persons entitled to receive the Common Stock and, to the extent applicable, cash, securities or other property issuable upon conversion of Series B Preferred Stock on a Conversion Date shall be treated for all purposes as the record holder(s) of such shares of Common Stock and/or cash, securities or other property as of the close of business on such Conversion Date. As promptly as practicable, but no later than five (5) Business Days after the Conversion Date (the “Share Delivery Date”) and subject to compliance by the applicable Holder with the relevant procedures contained in Subsection 6(c) and Subsection 7(b), the Corporation shall issue the number of whole shares of Common Stock issuable upon conversion (and to the extent applicable, deliver payment of cash in lieu of fractional shares in accordance with Subsection 8(e)) and, to the extent applicable, any cash, securities or other property issuable thereon. Such delivery of shares of Common Stock, securities or other property shall be made by book-entry or, at the request of the Holder, through the facilities of the Conversion Agent or in certificated form. Any such certificate or certificates shall be delivered by the Corporation to the appropriate Holder on a book-entry basis, through the facilities of the Conversion Agent, or by mailing certificates evidencing the shares to the Holders, in each case at their respective addresses as set forth in the Conversion Notice (in the case of a conversion pursuant to Subsection 6(a)) or in the records of the Corporation or as set forth in a notice from the Holder to the Conversion Agent, as applicable (in the case of a Mandatory Conversion). In the event that a Holder shall not by written notice designate the name in which shares of Common Stock (and payments of cash in lieu of fractional shares) and, to the extent applicable, cash, securities or other property to be delivered upon conversion of shares of Series B Preferred Stock should be registered or paid, or the manner in which such shares, cash, securities or other property should be delivered, the Corporation shall be entitled to register and deliver such shares, securities or other property, and make such payment, in the name of the Holder and in the manner shown on the records of the Corporation. If the number of shares of Series B Preferred Stock represented by the Series B Preferred Stock certificate(s) submitted for conversion is greater than the number of shares of Series B Preferred Stock being converted, then the Corporation shall, as soon as practicable and in no event later than ten (10) Business Days after receipt of the Series B Preferred Stock certificate(s) and at its own expense, issue and deliver to such Holder a new Series B Preferred Stock certificate representing the number of shares of Series B Preferred Stock not converted.

(d) Status of Converted Shares. Shares of Series B Preferred Stock converted in accordance with the terms hereof shall be retired promptly after the conversion or acquisition thereof. All such shares shall, upon their retirement, become authorized but unissued shares of Preferred Stock, without designation as to series until such shares are once more designated as part of a particular series by the Board.

(e) No Charge of Payment. The issuance of shares of Common Stock upon conversion of shares of Series B Preferred Stock shall be made without payment of

additional consideration to the Corporation by, or other charge or cost imposed by the Corporation on the holder in respect thereof.

(f) Fractional Shares. No fractional shares of Common Stock will be delivered to the Holders upon conversion. In lieu of fractional shares otherwise issuable, the Holders will be entitled to receive, at the Corporation's sole discretion, either (i) an amount in cash equal to the fraction of a share of Common Stock multiplied by the closing price of the Common Stock on the Trading Day immediately preceding the applicable Conversion Date or (ii) one additional whole share of Common Stock.

9. Limitations on Common Stock Issuable Upon Conversion.

(a) Beneficial Ownership Limitation. Notwithstanding anything herein to the contrary, no conversion of a share of Series B Preferred Stock pursuant to Subsection 6 or pursuant to Subsection 7 hereof shall be permitted to the extent such conversion would result in a converting Holder, together with its Affiliates and any other Person whose holdings would be aggregated with such Holder for purposes of Section 13(d) of the Exchange Act:

(i) beneficially owning more than 19.90% of the issued and outstanding Common Stock; or

(ii) holding more than 19.90% of the votes entitled to be cast at any shareholders meeting,

in each case, unless the Corporation obtains Shareholder Approval to remove the restrictions contained in this Subsection 9(a). In any vote to obtain any Shareholder Approval, the Holders of shares of Series B Preferred Stock shall not be entitled to vote.

(b) Subject to Subsection 9(c), any attempted conversion (whether by a Holder pursuant to Subsection 6 or by Mandatory Conversion pursuant to Subsection 7) to the extent it would violate this Subsection 9 shall be void *ab initio* and of no force and effect.

(c) If any conversion in accordance with Subsection 6 or any Mandatory Conversion pursuant to Subsection 7 would be limited as a result of the application of Subsection 9(a), then (i) in the case of a Conversion Notice pursuant to Subsection 6, the Conversion Notice in respect of such conversion shall be deemed to have been amended automatically and without any action by the Holder thereof so that it applies only to the number of shares of Series B Preferred Stock that are permitted to be converted pursuant to Subsection 9(a) and (ii) in the case of a Mandatory Conversion pursuant to Subsection 7, all shares of Series B Preferred Stock that are permitted to be converted pursuant to Subsection 9(a) shall be so converted in accordance with Subsection 7, and thereafter from time to time, to the extent Series B Preferred Stock are permitted to be converted in accordance with Subsection 9(a), they shall be deemed to have been so automatically converted.

10. Redemption upon Change of Control.

(a) Corporation's Rights upon a Change of Control. Subject to the other terms of this Subsection 10, if a Change of Control occurs, the Corporation will have the right to redeem, contingent upon and substantially contemporaneously with the consummation of the Change of Control (the date of such consummation, the "Change of Control Redemption Date") any or all of the shares of Series B Preferred Stock for cash in an amount equal to the sum of (x) the Liquidation Preference *plus* (y) the Accrued Dividends *plus* (z) the Accumulated Dividends for each such share of Series B Preferred Stock redeemed (the "Change of Control Redemption Price"), subject to the right of each Holder to convert its Series B Preferred Stock pursuant to Subsection 6 prior to such redemption.

(b) Holders' Rights upon a Change of Control. If and to the extent the Corporation does not exercise its right to redeem any or all of the then-outstanding shares of Series B Preferred Stock under Subsection 10(a), each Holder shall have the option to (i) require the Corporation to redeem any or all of such Holder's then-outstanding shares of Series B Preferred Stock for cash in an amount equal to (x) the Liquidation Preference *plus* (y) the Accrued Dividends *plus* (z) the Accumulated Dividends for each such share of Series B Preferred Stock redeemed, or (ii) convert any or all of such Holder's then-outstanding shares of Series B Preferred Stock into shares of Common Stock and, if any consideration is payable to the holders of Common Stock upon such Change of Control, receive for each share of Common Stock issued upon such conversion (including payments of cash in lieu of fractional shares) the consideration per share of Common Stock payable upon the Change of Control thereunder, in each case of clauses (i) or (ii) above, as of the Change of Control Redemption Date. If the value of the consideration payable to the holders of Common Stock upon such Change of Control (if any) has changed since the date of a Holder's election under this Subsection 10(b) then, each Holder may withdraw or amend its election made under this Subsection 10(b) by delivering a written notice of such withdrawal or amendment, as the case may be, to the Corporation at any time before the close of business on the fifth (5th) Business Day immediately prior to the date on which the Corporation anticipates consummating the Change of Control.

(c) Initial Change of Control Notice. On or before the twentieth (20th) Business Day prior to the date on which the Corporation anticipates consummating a Change of Control (or, if later, promptly after the Corporation discovers that a Change of Control may occur), a written notice (a "Change of Control Notice") shall be sent by or on behalf of the Corporation to each Holder at its address as it appears in the records of the Corporation. The Change of Control Notice shall include (i) a brief summary of the events causing the Change of Control; (ii) a description of the material terms and conditions of the Change of Control; (iii) the Conversion Price in effect on the date of such Change of Control Notice and a description and quantification of any adjustments to the Conversion Price that may result from such

Change of Control (if any); (iv) the date on which the Change of Control is anticipated to be consummated, to the extent that such information does not constitute material non-public information (or, if applicable, the date on which a Schedule TO or other schedule, form or report disclosing a Change of Control was filed); (v) subject to the right of each Holder to convert its Series B Preferred Stock pursuant to Subsection 6 prior to such redemption, whether the Corporation is exercising its right under Subsection 10(a) to redeem any or all of the outstanding shares of Series B Preferred Stock and, if so, the number of shares of Series B Preferred Stock to be redeemed from such Holder, and stating the place or places at which the shares of Series B Preferred Stock called for redemption shall, upon presentation and surrender of the certificates evidencing such shares of Series B Preferred Stock, be redeemed (and other instructions a Holder must follow to receive payment); and (vi) the applicable Change of Control Redemption Price (which may be stated as a formula to the extent the date of such Change of Control is not definitively known). If, or to the extent that, the Corporation is not exercising its rights pursuant to Subsection 10(a), a Holder may exercise its right pursuant to Subsection 10(b) to (y) require the Corporation to redeem all or any portion of the outstanding shares of Series B Preferred Stock owned by such Holder by delivering a written notice to the Corporation stating that such Holder is exercising its right to require the Corporation to redeem all or a portion of its outstanding shares of Series B Preferred Stock and including wire transfer instructions for the payment of the Change of Control Redemption Price or (z) convert any or all of such Holder's then-outstanding shares of Series B Preferred Stock into shares of Common Stock in accordance with Subsection 6 and if any consideration is payable to the holders of Common Stock upon such Change of Control, receive for each share of Common Stock issued upon such conversion, the consideration per share of Common Stock payable upon the Change of Control thereunder, which notice for redemption or conversion, as the case may be, shall be delivered no later the fifth (5th) Business Day prior to the date on which the Corporation anticipates consummating the Change of Control. In the event that a Holder so exercises its rights pursuant to Subsection 10(b), the Corporation will, as promptly as practicable, deliver to such Holder at its address as it appears in the records of the Corporation written instructions stating the place or places at which the shares of Series B Preferred Stock to be redeemed or converted shall, upon presentation and surrender of the certificates evidencing such shares of Series B Preferred Stock, be redeemed or converted (and other instructions such Holder must follow to receive payment or such other consideration (if any) per share of Common Stock payable upon the Change of Control, as applicable) and the applicable Change of Control Redemption Price (which may be stated as a formula to the extent the date of such Change of Control is not definitively known).

(d) Delivery upon Change of Control. If either the Corporation or a Holder has exercised its right to redeem, or require redemption of, any outstanding shares of Series B Preferred Stock pursuant to Subsection 10(a) or 10(b), then upon the consummation of a Change of Control and subject to Subsection 10(e) below and subject to such Holder properly surrendering the certificates evidencing the

applicable shares of Series B Preferred Stock, the Corporation (or its successor) shall promptly deliver or cause to be delivered to such Holder by wire transfer the applicable Change of Control Redemption Price with respect to each of such Holder's shares so redeemed.

(e) Cash Redemption Not Permitted. If the Corporation shall (A) not have sufficient funds legally available to redeem in compliance with applicable law, or (B) will be in violation of Specified Contract Terms if its redeems, all outstanding shares of Series B Preferred Stock otherwise required or sought to be redeemed pursuant to this Subsection 10, the Corporation shall not be entitled to elect to redeem any shares of Series B Preferred Stock pursuant to Subsection 10(a) and, with respect to any shares of Series B Preferred Stock with respect to which Holders of such shares have exercised their rights pursuant to Subsection 10(b), the Corporation shall (i) redeem, *pro rata* among such electing Holders, a number of shares of Series B Preferred Stock with an aggregate applicable Change of Control Redemption Price equal to the lesser of: (1) the amount legally available therefor and (2) the largest amount that can be used for such redemption not prohibited by the Specified Contract Terms, in each case for the redemption of shares of Series B Preferred Stock, (ii) take all actions, including taking commercially reasonable efforts to seek any consents or approvals required from any third party or Governmental Entity, (as determined by the Board in good faith and consistent with its fiduciary duties) required or permitted under applicable law to permit the redemption or repurchase of the Series B Preferred Stock, including, without limitation, if and to the extent permitted by law, generally accepted accounting principles and the rules and regulations of any stock exchange on which the Common Stock is then traded, through the revaluation of the Corporation's assets in accordance with applicable law, to make funds legally available under applicable law for such redemption, and (iii) redeem any shares of Series B Preferred Stock with respect to which Holders of such shares have exercised their rights pursuant to Subsection 10(b) not purchased because of the foregoing limitations at the applicable Change of Control Redemption Price as soon as practicable after the Corporation is able to make such redemption out of assets legally available under applicable law for the purchase of such shares of Series B Preferred Stock and without violation of the Specified Contract Terms. The Corporation will not voluntarily consummate any transaction, that would result in a Change of Control unless the Corporation will, on the date of payment, have sufficient funds legally available to fully pay the maximum aggregate Change of Control Redemption Price that would be payable in respect of such Change of Control on all shares of Series B Preferred Stock then outstanding. The inability of the Corporation (or its successor) to make a redemption payment for any reason shall not relieve the Corporation (or its successor) from its obligation to effect any required redemption when, as and if permitted by applicable law and the Specified Contract Terms.

(f) Effect of Redemption. Effective immediately prior to the close of business on the Change of Control Redemption Date for any shares of Series B Preferred

Stock redeemed pursuant to this Subsection 10, Dividends shall, notwithstanding anything else herein to the contrary, no longer accumulate, accrue or be declared on any such shares of Series B Preferred Stock, and such shares of Series B Preferred Stock shall cease to be outstanding.

(g) Status of Redeemed Shares. Any shares of Series B Preferred Stock redeemed or otherwise acquired by the Corporation in any manner whatsoever shall be retired promptly after the acquisition thereof. All such shares shall, upon their retirement, become authorized but unissued shares of Preferred Stock, without designation as to series until such shares are once more designated as part of a particular series by the Board.

11. Anti-Dilution Adjustments.

(a) Stock Dividends, Splits and Combinations. For so long as any shares of Series B Preferred Stock remain outstanding, if the Corporation issues shares of Common Stock as a dividend or distribution on all or substantially all shares of Common Stock, or if the Corporation effects a stock split or a stock combination in respect of the Common Stock (in each case excluding an issuance pursuant to a Reorganization Event, as to which Subsection 12 will apply), then the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0}{OS_1}$$

where:

$CP_0$  = the Conversion Price in effect immediately before the close of business on the Dividend Record Date, or immediately before the close of business on the effective date of such dividend, distribution, stock split or stock combination, as applicable;

$CP_1$  = the Conversion Price in effect immediately after the close of business on such Dividend Record Date or effective date, as applicable;

$OS_0$  = the number of shares of Common Stock outstanding (calculated on a Fully-Diluted Basis) immediately before the close of business on such Dividend Record Date or effective date, as applicable, without giving effect to such dividend, distribution, stock split or stock combination; and

$OS_1$  = the number of shares of Common Stock outstanding (calculated on a Fully-Diluted Basis) immediately after giving effect to such dividend, distribution, stock split or stock combination.

If any dividend, distribution, stock split or stock combination of the type described in this Subsection 11(a) is declared or announced, but not so paid or made, then the

Conversion Price will be readjusted, effective as of the date the Board (or its authorized delegate) determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Price that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced. For the purpose of this Subsection 11, the number of shares of Common Stock outstanding at any time will exclude shares of Common Stock held in the Corporation's treasury (unless the Corporation pays any dividend or makes any distribution on shares of Common Stock held in its treasury).

(b) Degressive Issuances. Subject to Subsection 11(c), if, on or after the Original Issuance Date and prior to the second anniversary of the Original Issuance Date, the Corporation issues or otherwise sells any shares of Common Stock, or any Equity-Linked Securities, in each case at an Effective Price per share of Common Stock that is less than the Conversion Price in effect (before giving effect to the adjustment required by this Subsection 11(b)) as of the date of the issuance or sale of such shares or Equity-Linked Securities (such an issuance or sale, a "Degressive Issuance"), then, effective as of the close of business on such date, the Conversion Price will be decreased to an amount equal to the Weighted Average Issuance Price. For these purposes, the "Weighted Average Issuance Price" will be equal to:

$$\frac{(CP \times OS) + (EP \times X)}{OS + X}$$

where:

*CP* = such Conversion Price;

*OS* = the number of shares of Common Stock outstanding immediately before such Degrressive Issuance (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise, conversion or exchange of all Equity-Linked Securities (including the Series B Preferred Stock) outstanding immediately prior to such issue);

*EP* = the Effective Price per share of Common Stock in such Degrressive Issuance; and

*X* = the sum, without duplication, of (x) the total number of shares of Common Stock issued or sold in such Degrressive Issuance; and (y) the maximum number of shares of Common Stock underlying such Equity-Linked Securities issued or sold in such Degrressive Issuance;

provided, however, that (A) the Conversion Price will not be adjusted pursuant to this Subsection 11(b) to the extent that the Degrressive Issuance is an Excluded Issuance; (B) the issuance of shares of Common Stock pursuant to any Equity-Linked Securities will not constitute an additional issuance or sale of shares of Common Stock for purposes of this Subsection 11(b) (it being understood, for the avoidance



of doubt, that the issuance or sale of such Equity-Linked Securities, or any re-pricing or amendment thereof, will be subject to this Subsection 11(b)); and (C) in no event will the Conversion Price be increased pursuant to this Subsection 11(b). For purposes of this Subsection 11(b), any re-pricing or amendment of any Equity-Linked Securities (including, for the avoidance of doubt, any Equity-Linked Securities existing as of the Original Issuance Date) will be deemed to be the issuance of additional Equity-Linked Securities, without affecting any prior adjustments theretofore made to the Conversion Price.

(c) Limitations on Adjustments.

(i) Adjustment Cap on Degressive Issuances. Notwithstanding anything to the contrary in this Subsection 11, under no circumstances shall adjustments to the Conversion Price pursuant to Subsection 11(b) cause the Conversion Price to be less than \$3.47.

(ii) No Adjustments in Certain Events. The Corporation will not be required to adjust the Conversion Price except pursuant to this Subsection 11. Without limiting the foregoing, the Corporation will not be required to adjust the Conversion Price on account of:

(A) except as otherwise provided in Subsection 11(b), the sale of shares of Common Stock for a purchase price that is less than the market price per share of Common Stock or less than the Conversion Price;

(B) the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Corporation's securities and the investment of additional optional amounts in shares of Common Stock under any such plan;

(C) except as otherwise provided in Subsection 11(b), the issuance of any shares of Common Stock or options or rights to purchase shares of Common Stock pursuant to any present or future employee, director or consultant benefit plan or program of, or assumed by, the Corporation or any of its Subsidiaries, including inducement grants under Nasdaq Listing Rule 5635(c)(4);

(D) except as otherwise provided in Subsection 11(b), the issuance of any shares of Common Stock pursuant to any option, warrant, right, restricted stock unit, performance stock unit or other awards granted under any employee share purchase or equity-based incentive plan, program or arrangement of the Corporation, or convertible or exchangeable security of the Corporation outstanding as of the Original Issuance Date; or

(E) solely a change in the par value of the Common Stock.

(iii) Adjustment Deferral. If an adjustment to the Conversion Price otherwise required by this Subsection 11 would result in a change of less than one percent (1%) to the Conversion Price, then the Corporation may, at its election, defer such adjustment, except that all such deferred adjustments must be given effect immediately upon the earliest to occur of the following: (A) when all such deferred adjustments would result in a change of at least one percent (1%) to the Conversion Price, (B) the Conversion Date of any share of Series B Preferred Stock and (C) the Change of Control Redemption Date for any Change of Control.

(iv) Shareholder Rights Plans. If any shares of Common Stock are to be issued upon conversion of any Series B Preferred Stock and, at the time of such conversion, the Corporation has in effect any shareholder rights plan, then the Holders of such Series B Preferred Stock will be entitled to receive, in addition to, and concurrently with the delivery of, the consideration otherwise due upon such conversion, the rights set forth in such shareholder rights plan.

(v) Notice of Conversion Price Adjustments. Upon the effectiveness of any adjustment to the Conversion Price pursuant to this Subsection 11, the Corporation will, as soon as reasonably practicable and no later than ten (10) Business Days after the date of such effectiveness, send notice to the Holders containing (A) a brief description of the transaction or other event on account of which such adjustment was made, (B) the Conversion Price in effect immediately after such adjustment, and (C) the effective time of such adjustment.

12. Adjustment for Reorganization Events.

(a) Reorganization Events. In the event of:

(i) any reclassification, statutory exchange, merger, consolidation or other similar business combination of the Corporation with or into another Person, in each case, pursuant to which at least a majority of the Common Stock is changed or converted into, or exchanged for, cash, securities or other property of the Corporation or another Person;

(ii) any sale, transfer, lease, exclusive license, or conveyance to another Person of all or a majority of the property and assets of the Corporation, in each case pursuant to which the Common Stock is converted into cash, securities or other property; or

(iii) any statutory exchange of securities of the Corporation with another Person (other than in connection with a merger or acquisition) or reclassification, recapitalization or reorganization of the Common Stock into other securities;

other than, in each case, any such transaction that constitutes a Change of Control, with respect to which, for the avoidance of doubt, the provisions of Subsection 10 shall apply (each of which is referred to as a “Reorganization Event”), each share of Series B Preferred Stock outstanding immediately prior to such Reorganization Event will, without the consent of the Holders but subject to Subsection 12(d), remain outstanding but shall become convertible into, out of funds legally available therefor, the number, kind and amount of securities, cash and other property (the “Exchange Property”) (without any interest on such Exchange Property and without any right to dividends or distribution on such Exchange Property that have a Record Date that is prior to the applicable Conversion Date) that the Holder of such share of Series B Preferred Stock would have received in such Reorganization Event had such Holder converted its shares of Series B Preferred Stock into the applicable number of shares of Common Stock immediately prior to the effective date of the Reorganization Event using the Conversion Price applicable immediately prior to the effective date of the Reorganization Event and the Liquidation Preference (plus (y) the Accrued Dividends plus (z) the Accumulated Dividends for each such shares of Series B Preferred Stock) applicable at the time of such subsequent conversion (without regard to the provisions of Subsection 9); provided that the foregoing shall not apply if such Holder is a Person with which the Corporation consolidated or into which the Corporation merged or which merged into the Corporation or to which such sale or transfer was made, as the case may be (any such Person, a “Constituent Person”), or an Affiliate of a Constituent Person, to the extent such Reorganization Event provides for different treatment of Common Stock held by such Constituent Persons or such Affiliate thereof. If the kind or amount of securities, cash and other property receivable upon such Reorganization Event is not the same for each share of Common Stock held immediately prior to such Reorganization Event by a Person (other than a Constituent Person or an Affiliate thereof), then for the purpose of this Subsection 12(a), the kind and amount of securities, cash and other property receivable upon conversion following such Reorganization Event will be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock.

(b) Successive Reorganization Events. The above provisions of this Subsection 12 shall similarly apply to successive Reorganization Events and the provisions of Subsection 11 shall apply to any shares of Capital Stock received by the holders of the Common Stock in any such Reorganization Event.

(c) Reorganization Event Notice. The Corporation (or any successor) shall, no less than thirty (30) days prior to the anticipated effective date of any Reorganization Event, provide written notice to the Holders of such occurrence of such event and of the kind and amount of the cash, securities or other property that constitutes the Exchange Property. Failure to deliver such notice shall not affect the operation of this Subsection 12.

(d) Reorganization Event Agreements. The Corporation shall not enter into any agreement for a transaction constituting a Reorganization Event unless (i) such agreement provides for or does not interfere with or prevent (as applicable) conversion of the Series B Preferred Stock into the Exchange Property in a manner that is consistent with and gives effect to this Subsection 12 and (ii) to the extent that the Corporation is not the surviving corporation in such Reorganization Event or will be dissolved in connection with such Reorganization Event, proper provision shall be made in the agreements governing such Reorganization Event for the conversion of the Series B Preferred Stock into stock of the Person surviving such Reorganization Event or such other continuing entity in such Reorganization Event.

13. Voting Rights.

(a) General. Except as provided in Subsection 13(c) or as otherwise provided in the Florida Business Corporation Act, the Holders shall be entitled to vote as a single class with the holders of the Common Stock and the holders of any other class or series of Capital Stock of the Corporation then entitled to vote with the Common Stock on all matters submitted to a vote of the holders of Common Stock (and, if applicable, holders of any other class or series of Capital Stock of the Corporation). Subject to Subsection 13(b), each Holder shall be entitled in respect of each share of Preferred Stock held by such Holder to a number of votes equal to the number of whole shares of Common Stock into which each share of Series B Preferred Stock is convertible pursuant to Subsection 6, in each case at and calculated as of the Record Date for the determination of shareholders entitled to vote or consent on such matters or, if no such Record Date is established, at and as of the date such vote or consent is taken or any written consent of shareholders is first executed. The Holders shall be entitled to notice of any meeting of holders of Common Stock (or requests for consent) to the same extent that holders of Common Stock are entitled to thereunder.

(b) Voting Cap. Notwithstanding anything herein to the contrary:

(i) no Holder (together with its Affiliates) shall be entitled to vote (in respect of such Person's holdings of Series B Preferred Stock and any Common Stock issued or issuable upon conversion of such Series B Preferred Stock) more than 19.90% of the total Voting Stock of the Corporation (measured as of the time of such vote); and

(ii) no Holder shall be entitled in respect of each share of Series B Preferred Stock to more than a number of votes equal to (x) \$1,000 *divided by* (y) the Minimum Price.

(c) Special Voting Rights. For as long as any shares of Series B Preferred Stock remain outstanding, the Corporation shall not take, and shall cause its Subsidiaries not to take, any of the actions described in this Subsection 13(c) without the prior written consent of the Holders of not less than a majority of the then total outstanding shares of Series B Preferred Stock, voting separately as a single class with one vote

per share, in person or by proxy, either in writing without a meeting or at an annual or a special meeting of such Holders, and any such action taken without such consent shall be null and void *ab initio*, and of no force or effect:

- (i) alter, amend or change the rights, preference or privileges of the Series B Preferred Stock;
- (ii) amend or restate any organizational document of the Corporation or its Subsidiaries in a manner that materially, adversely and disproportionately affects the rights, preferences and privileges of the Series B Preferred Stock as compared to Common Stock;
- (iii) authorize or create any class or series of Senior Stock or Parity Stock (or any security convertible or exchangeable into or evidencing the right to purchase, shares of any class or series of Senior Stock or Parity Stock);
- (iv) declare or pay dividends or otherwise make distributions with respect to any shares of Parity Stock or Junior Stock, except dividends or distributions made for purposes as set forth in Subsection 4(f)(i) through Subsection 4(f)(vii);
- (v) repurchase or redeem any issued and outstanding shares of Junior Stock or Parity Stock, other than repurchases or redemptions as contemplated by Subsection 4(f)(i) through Subsection 4(f)(vii);
- (vi) repurchase or redeem any issued and outstanding shares of Series B Preferred Stock, other than repurchases or redemptions of shares of Series B Preferred Stock upon the occurrence of a Change of Control in accordance with Subsection 10 (for the avoidance of doubt, conversions of Preferred Stock shall not constitute repurchases or redemptions);
- (vii) at any time prior to the date that is 30 months after the Original Issuance Date (the “Sunset Date”), (A) sell, transfer or otherwise dispose of any assets (other than sales of inventory in the ordinary course of business), business or operations, for consideration equal to or greater than \$25 million or (B) acquire any assets, business or operations, for consideration equal to or greater than \$75 million, in each case of clauses (A) or (B) above in any one transaction or series of related transactions;
- (viii) at any time prior to the Sunset Date, merge or consolidate the Corporation with and into any other company unless either (A) the surviving company will have no class of equity securities ranking superior to or on parity with the Series B Preferred Stock in any liquidation, dissolution or wind-up of the Corporation or with respect to dividends, or (B) the Holders will receive in connection with such merger or consolidation, consideration (in the form of cash or publicly traded securities) in respect of each share of

Series B Preferred Stock valued (as of the time a definitive agreement in respect of such merger or consolidation is entered into) at or above an amount equal to 200% of the Investor Per Share Purchase Price (any merger or consolidation or other Change of Control in which the Holders will receive consideration meeting the requirements set forth in this clause (B), an “Acceptable Change of Control Event”);

(ix) at any time prior to the Sunset Date, commence a voluntary case under any applicable bankruptcy, insolvency or other similar law or consent to the entry of an order for relief in an involuntary case under any such law, or effect any general assignment for the benefit of creditors; or

(x) at any time prior to the Sunset Date, enter into any settlement agreement with respect to the following proceeding: *In re MiMedx Group, Inc. Securities Litigation, Case No. 1:18-cv-00830-WMR (N.D. Ga.)*.

Notwithstanding anything herein to the contrary, no consent or approval of the Holders shall be required for (i) the Corporation to enter into or consummate an Acceptable Change of Control Event or (ii) the authorization or creation of, or the increase in the number of authorized or issued shares of Junior Stock. For the avoidance of doubt, any consent in writing executed by the Holders of at least a majority of the then total outstanding shares of Series B Preferred Stock shall be sufficient to grant any consent required under this Subsection 13(c) for all purposes hereunder and (except as otherwise agreed in writing with a Holder) no notice of such action to the other Holders of Series B Preferred Stock shall be required and no meeting of the Holders of the Series B Preferred Stock shall be required to be convened; provided, that, if the Corporation has not publicly disclosed any action set forth in clauses (i) through (vi) within 10 Business Days of taking such action, then the Corporation shall provide written notice to all Holders of Series B Preferred Stock no less than five (5) Business Days following the taking of such action.

(a) Consent Rights of the Series B Preferred Holders. For as long as any shares of Series B Preferred Stock remain outstanding, the Corporation shall not amend the provisions of its Articles of Incorporation in a manner that adversely and disproportionately affects the rights, preferences and privileges of any Holder of Series B Preferred Stock (such affected holder, an “Affected Holder”) as compared to any other Holder of Series B Preferred Stock, without the prior written consent of the Affected Holder.

14. Investor Designees. Notwithstanding anything else to the contrary herein, this Subsection 14 shall be effective only for so long as any shares of Series B Preferred Stock remain outstanding.

(a) Right to Designate Preferred Directors.

(i) Subject to Subsection 14(b), from and after the Original Issuance Date, so long as the EW Investor is a 10% Holder, the EW Investor shall have the right to designate two (2) Investor Designees to serve as preferred directors (each, a "Preferred Director"). To effect this right, on the Original Issuance Date, the size of the Board shall be increased by two (2) members, and two (2) Qualified Persons designated by the EW Investor (each Qualified Person designated by the EW Investor, an "Investor Designee") shall be appointed to the Board as Preferred Directors, filling the vacancies created by such increase. The initial Preferred Directors shall be Martin P. Sutter and William A. Hawkins, III, each of whom shall take office effective as of the Original Issuance Date subject to the terms of this Subsection 14. If any Investor Designee is not elected to serve as a Preferred Director, the Board will take all lawful actions to appoint such Investor Designee as a Preferred Director.

(i) Subject to Subsection 14(b), from and after the Original Issuance Date, so long as the EW Investor is a 5% Holder, the EW Investor shall have the right to designate one (1) Investor Designee to serve as a Preferred Director.

(i) From and after the Original Issuance Date, if the EW Investor is at any time neither a 5% Holder nor a 10% Holder, the EW Investor shall have no right to designate any person to serve as a Preferred Director.

(i) Notwithstanding anything to the contrary contained in Article 10 of the Articles of Incorporation, and subject to the other terms and conditions of this Subsection 14, including Subsection 14(b) and Subsection 14(c), each Preferred Director shall continue to hold office until the death, disability, resignation or removal of such Preferred Director and shall not be a member of any class of directors that is elected by the holders of shares of Common Stock. Subject to Subsection 14(b), no Person other than the EW Investor shall have any right to designate, appoint, elect or remove any Preferred Directors, and the EW Investor may remove any Preferred Director at any time with or without cause. Only the EW Investor shall have the right to fill any Preferred Director vacancies resulting from death, disability, resignation, disqualification, removal or other cause; provided, however, that the EW Investor shall not designate anyone other than a Qualified Person to fill any such vacancy and provided further that the EW Investor shall not have any right to fill any vacancy resulting from the acceptance of any resignation pursuant to Subsection 14(c).

(i) So long as the EW Investor has any right to designate any Preferred Director, in the event of the death, disability, resignation, disqualification or removal of a Preferred Director as a member of the Board (other than pursuant

to Subsection 14(c)), the EW Investor may designate a Qualified Person to be a replacement Preferred Director to the Board.

(i) The size of the Board may be increased or decreased at any time in accordance with the Articles of Incorporation, the Bylaws and applicable law; provided that no such decrease shall limit the rights of the EW Investor to designate Preferred Directors under this Subsection 14.

(a) Service as Common Directors in Lieu of Service as Preferred Directors. The Board may, by notice to the EW Investor, (i) appoint any Investor Designee (including any Investor Designee who is then serving as a Preferred Director) as a director under Article 10 of the Articles of Incorporation (any such director, a “Common Director”) or (ii) nominate any Investor Designee (including any Investor Designee who is then serving as a Preferred Director) for election to the Board by holders of Common Stock at the Corporation’s next annual meeting of shareholders, provided that (x) no such appointment or nomination of an Investor Designee shall take place if such Investor Designee would be up for election as a Common Director prior to the 2022 annual meeting of shareholders of the Corporation, and (y) if an Investor Designee is appointed or nominated as a Common Director prior to the second anniversary of the Original Issuance Date, then the other Investor Designee may not be so appointed or nominated to be a Common Director prior to the second anniversary of the Original Issuance Date. Any such notice shall indicate the class of Common Director to which such Investor Designee will be appointed or nominated for election. Upon the earlier of the appointment or the election of such Investor Designee (or a Replacement Designee (as defined below)) as a Common Director, and for so long as such Investor Designee (or a Replacement Designee) serves as a Common Director, the EW Investor’s rights to designate an Investor Designee as a Preferred Director under Subsection 14(a) shall be deemed to have been satisfied. For the avoidance of doubt, the total number of Investor Designees that the EW Investor is entitled to have serving on the Board as Preferred Directors, Common Directors or a combination thereof when the EW Investor is a 10% Holder shall be no greater than two (2), and the total number of Investor Designees that the EW Investor is entitled to have serving on the Board as Preferred Directors or Common Directors when the EW Investor is a 5% Holder shall be no greater than one (1). In the event of the death, disability, resignation or removal of an Investor Designee who is serving as a Common Director pursuant to this Subsection 14(b), the EW Investor may designate a Qualified Person to serve as a replacement Investor Designee (any such Person, a “Replacement Designee”).

(a) Resignation; Removal.

(i) If, at any time after the Original Issuance Date, two (2) Investor Designees are serving on the Board, whether as Preferred Directors, Common Directors or a combination thereof, and the EW Investor ceases to be a 10% Holder, the EW Investor shall immediately deliver notice to the Board



indicating which Investor Designee's conditional resignation described in Subsection 14(d)(iii) below shall be deemed to have been tendered, and a majority of the then remaining directors (other than the Investor Designees) shall determine whether or not to accept such resignation. If the Board receives no such notice within five (5) Business Days after the EW Investor ceases to be a 10% Holder, the Board (other than the Investor Designees) shall determine which Investor Designee's conditional resignation described in Subsection 14(d)(iii) below shall be deemed to have been tendered, and a majority of the then remaining directors (other than the Investor Designees) shall determine whether or not to accept such resignation. If the Board determines to accept such resignation, the Investor Designee who tendered his or her resignation shall cease to be an Investor Designee hereunder. If the Board determines not to accept such resignation then, regardless of whether such Investor Designee served as a Preferred Director or a Common Director immediately prior to the time when the EW Investor ceased to be a 10% Holder, such Investor Designee shall, upon the Board's determination not to accept such Investor Designee's resignation, serve on the Board as a Common Director in such class as the Board shall determine (if such a determination has not been previously been made by the Board) and not as a Preferred Director.

(i) If, at any time after the Original Issuance Date, pursuant to Subsection 14(c)(i) only one (1) Investor Designee is serving on the Board as a Preferred Director or a Common Director, and the EW Investor ceases to be a 5% Holder, (a) a majority of the then remaining directors (other than the Investor Designee) shall determine whether or not to accept the conditional resignation of such Investor Designee and (b) the EW Investor shall no longer have any rights under this Subsection 14. If the Board determines to accept such resignation, the Investor Designee who tendered his or her resignation shall cease to be an Investor Designee hereunder. If the Board determines not to accept such resignation then, regardless of whether such Investor Designee served as a Preferred Director or a Common Director immediately prior to the time when the EW Investor ceased to be a 5% Holder, such Investor Designee shall, upon the Board's determination not to accept such Investor Designee's resignation, serve on the Board as a Common Director in such class as the Board shall determine (if such a determination has not been previously been made by the Board) and not as a Preferred Director.

(a) As a condition to any Investor Designee's appointment to the Board pursuant to this Subsection 14, the EW Investor and such Investor Designee shall provide to the Corporation:

(i) if requested by the Corporation, the information required from a nominating shareholder or a Proposed Nominee (as defined in Article II, Section 10 of the Bylaws) under Article II, Section 10 of the Bylaws;

(i) an undertaking in writing by the Investor Designee to (A) be subject to, bound by and duly comply with the code of conduct and other policies of the Corporation to the same extent required of other non-executive directors of the Corporation; and (B) recuse himself or herself from any deliberations or discussion of the Board or any committee thereof regarding the Corporation's relationship with the EW Investor or any of its Affiliates, including in connection with the EW Investor Parties' purchase or holding of the Series B Preferred Stock; and

(i) a conditional irrevocable letter of resignation signed by the Investor Designee resigning automatically and without further action, subject to acceptance of such resignation by vote of a majority of the then remaining directors (other than any Investor Designees), upon the occurrence of any of the following events: (A) the EW Investor's ceasing to be a 10% Holder and notice to such Investor Designee of the effectiveness of such Investor Designee's resignation pursuant to Subsection 14(c)(i), (B) the EW Investor's ceasing to be a 5% Holder, (C) such Investor Designee's failure satisfy the requirements set forth in clause (i), (ii), (iii), (iv) or (v) of the definition of Qualified Person or (D) such Investor Designee's material breach of any of the Corporation's Articles of Incorporation or Bylaws, committee charters, corporate governance guidelines, insider trading policies, stock ownership guidelines or similar governance documents.

(a) Indemnification. Upon election or appointment to the Board, an Investor Designee shall herein be referred to as an "Investor Director". The Corporation shall indemnify each Investor Director and provide each Investor Director with director and officer insurance to the same extent as it indemnifies and provides such insurance to other non-executive members of the Board, pursuant to the Articles of Incorporation and Bylaws of the Corporation, applicable laws or otherwise. The Corporation hereby acknowledges that an Investor Director may have rights to indemnification and advancement of expenses provided by the EW Investor or its Affiliates (directly or through insurance obtained by any such entity) (collectively, the "Director Indemnitors"). The Corporation hereby agrees and acknowledges that (i) it is the indemnitor of first resort with respect to an Investor Director, (ii) it shall be required to advance the full amount of expenses incurred by such Investor Director, as required by law, the terms of the Articles of Incorporation and Bylaws, an agreement, vote of stockholders or disinterested directors, or otherwise, without regard to any rights such Investor Director may have against the Director Indemnitors and (iii) to the extent permitted by law, it irrevocably waives, relinquishes and releases the Director Indemnitors from any and all claims against the Director Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Corporation further agrees that no advancement or payment by the Director Indemnitors on behalf of the Corporation with respect to any claim for which such Investor Director has sought indemnification from the Corporation shall affect the foregoing and the Director Indemnitors shall have a right of contribution

and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of such Investor Director against the Corporation. These rights shall be a contract right.

(a) Conflicts.

(i) The Corporation reserves the right to withhold any information and to exclude the Investor Designees from any meeting or portion thereof if access to such information or attendance at such meeting would reasonably be expected to result in a conflict of interest.

(ii) The EW Investor shall cause the Investor Designees not to participate in, and to recuse themselves from, any Board deliberations and actions relating to the Corporation's relationship with the EW Investor Parties, including in connection with the EW Investor Parties' purchase or holding of the Series B Preferred Stock.

(b) No Assignment or Transfer. The rights of the EW Investor hereunder may not be assigned or transferred whether directly or indirectly.

15. Transfer Agent, Conversion Agent, Registrar and Paying Agent. The initial duly appointed Transfer Agent, Conversion Agent, Registrar and paying agent for the Series B Preferred Stock shall be Issuer Direct Corporation. The Corporation may, in its sole discretion, appoint any other Person to serve as Transfer Agent, Conversion Agent, Registrar or paying agent for the Series B Preferred Stock and thereafter may remove or replace such other Person at any time. Upon any such appointment or removal, the Corporation shall send written notice thereof by first class mail or email to the Holders.

16. Replacement Certificates.

(a) Mutilated, Destroyed, Stolen and Lost Certificates. If physical certificates evidencing the Series B Preferred Stock are issued, the Corporation shall replace any mutilated certificate at the Holder's expense upon surrender of that certificate to the Transfer Agent. The Corporation shall replace certificates that become destroyed, stolen or lost at the Holder's expense upon delivery to the Corporation and the Transfer Agent of satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any bond, indemnity or security that may be required by the Transfer Agent and the Corporation.

(b) Certificates Following Conversion. If physical certificates representing the Series B Preferred Stock are issued, the Corporation shall not be required to issue replacement certificates representing shares of Series B Preferred Stock on or after the Conversion Date applicable to such shares, to the extent that no shares of Series B Preferred Stock represented by such certificates remain outstanding following such Conversion Date. In place of the delivery of a replacement certificate following the applicable Conversion Date, the Transfer Agent, upon receipt of the satisfactory

evidence and bond described in clause (a) above, shall deliver the shares of Common Stock issuable upon conversion of such shares of Series B Preferred Stock formerly evidenced by the physical certificate.

1. Taxes.

(a) The Corporation may deduct and withhold, or cause to be deducted and withheld, any amounts required to be deducted and withheld under applicable law with respect to the Series B Preferred Stock (and may set off any such amounts required to be deducted and withheld against any Dividends, distributions or other payments on the Series B Preferred Stock).

(b) The Corporation shall pay any and all documentary, stamp, recording, registration and similar issue or transfer tax ("Transfer Tax") due on (x) the issuance of the Series B Preferred Stock and (y) the issuance of shares of Common Stock upon conversion of Series B Preferred Stock. However, the Corporation shall not be required to pay any Transfer Tax that may be payable in respect of the issuance or delivery (or any transfer involved in the issuance or delivery) of Series B Preferred Stock or shares of Common Stock issued upon conversion of Series B Preferred Stock to a beneficial owner other than the beneficial owner of the Series B Preferred Stock or shares of Common Stock issued upon conversion of Series B Preferred Stock immediately prior to the event pursuant to which such issuance or delivery is required, and no such issuance or delivery shall be made unless and until the Person requesting such issuance or delivery has paid to the Corporation the amount of any such Transfer Tax or has established to the satisfaction of the Corporation that such Transfer Tax has been paid or is not payable.

2. Notices. All notices referred to herein shall be in writing and, unless otherwise specified herein, all notices hereunder shall be deemed to have been given upon the earlier of delivery or three (3) Business Days after the mailing thereof, with respect to mailing in the United States and ten (10) Business Days after the mailing thereof, with respect to mailing outside of the United States, in each case if sent by registered or certified mail with postage prepaid, or by private courier service addressed: (i) if to the Corporation, to its office at 1775 West Oak Commons Court, Marietta, GA 30062 (Attention: General Counsel), (ii) if to any Holder, to such Holder at the address of such Holder as listed in the stock record books of the Corporation (which may include the records of the Transfer Agent) or (iii) to such other address as the Corporation or any such Holder, as the case may be, shall have designated by notice similarly given; provided, that notices to the Holders hereunder may be provided by e-mail if and to the extent the Corporation has on file an e-mail address for such Holder.

3. Waiver. Any provision contained herein and any right of the Holders granted hereunder may be waived as to all shares of Series B Preferred Stock (and the Holders thereof) upon the vote or written consent of the Holders of a majority of the shares of Series B Preferred Stock then outstanding, provided that any waiver of a provision or rights that adversely and disproportionately affects the rights, preferences and privileges of an Affected

Holder as compared to any other Holder of Series B Preferred Stock shall require the consent of the Affected Holder.

4. Severability. If any term of the Series B Preferred Stock set forth herein is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other terms set forth herein which can be given effect without the invalid, unlawful or unenforceable term will, nevertheless, remain in full force and effect, and no term herein set forth will be deemed dependent upon any other such term unless so expressed herein. Notwithstanding the foregoing in the event of any conflict between the Corporation's Articles of Incorporation and this Article 3, this Article 3 shall control."

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the undersigned has executed these Articles of Amendment as of June 30, 2020.

**MIMEDX GROUP, INC.**

By: /s/ William F. "Butch" Hulse  
Name: William F. "Butch" Hulse  
Title: General Counsel and Secretary

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO RULES 13a-14(A) AND 15d-14(A)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

I, Timothy R. Wright, certify that:

1. I have reviewed this Form 10-Q for the quarter ended March 31, 2020, of MiMedx Group, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 6, 2020

/s/ Timothy R. Wright

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Timothy R. Wright

Chief Executive Officer

**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO RULES 13a-14(A) AND 15d-14(A)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

I, Peter M. Carlson, certify that:

1. I have reviewed this Form 10-Q for the quarter ended March 31, 2020, of MiMedx Group, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 6, 2020

/s/ Peter M. Carlson

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Peter M. Carlson

Chief Financial Officer

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350 AS ADOPTED  
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

The undersigned Timothy R. Wright, the Chief Executive Officer of MiMedx Group, Inc. (the “Company”), has executed this certification in connection with the filing with the Securities and Exchange Commission of the Company’s Quarterly Report on Form 10-Q for the period ending March 31, 2020 (the “Report”). Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned hereby certifies, to his knowledge, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: July 6, 2020

/s/ Timothy R. Wright

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Timothy R. Wright

Chief Executive Officer



**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350 AS ADOPTED  
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

The undersigned Peter M. Carlson, the Chief Financial Officer of MiMedx Group, Inc. (the "Company"), has executed this certification in connection with the filing with the Securities and Exchange Commission of the Company's Quarterly Report on Form 10-Q for the period ending March 31, 2020 (the "Report"). Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned hereby certifies, to his knowledge, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: July 6, 2020

/s/ Peter M. Carlson

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Peter M. Carlson

Chief Financial Officer