UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

☑ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the fiscal year ended December 31, 2019

☐ **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	**26-2792552**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

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

30062
(Zip Code)

(770) 651-9100
(Registrant's telephone number, including area code)
Securities registered pursuant to Section 12(b) of the Act: None.

Title of each class	**Trading Symbol**	**Name of each exchange on which registered**
N/A	N/A	N/A

Securities registered pursuant to Section 12(g) of the Act:
Common Stock, par value $0.001 per share

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes o No ☑
Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes o No ☑
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 o No ☑
Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§223.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit 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 the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	Accelerated filer	☑
Non-accelerated filer	☐	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 Act). Yes ☐ No ☑

The aggregate market value of the registrant's voting common equity held by non-affiliates of the registrant as of June 28, 2019 (the last business day of the registrant's most recently completed second quarter) was approximately $425.1 million based upon the last sale price ($4.05) of the shares as reported on the OTC Pink Market on such date.

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

Documents Incorporated By Reference

None.

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PART I

EXPLANATORY NOTE

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.

Prior Investigation and Restatement

In February 2018, the Audit Committee (the "***Audit Committee***") of the Company's Board of Directors (the "***Board***") retained King & Spalding LLP ("***King & Spalding***") as counsel to the Audit Committee to assist in conducting an independent investigation into current and prior-period matters relating to allegations regarding certain sales and distribution practices at the Company and certain other matters (the "***Investigation***" or the "***Audit Committee Investigation***"). The Investigation focused primarily on the following areas: (1) the Company's revenue recognition practices; (2) revenue management activities; (3) actions taken against whistleblowers; (4) tone set by former senior management and (5) Anti-Kickback Statute and related allegations.

In a Form 8-K dated June 6, 2018, we disclosed that our Audit Committee, 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 under United States generally accepted accounting principles ("***GAAP***") and could no longer be relied upon.

Our annual report on Form 10-K for the year ended December 31, 2018 (the "***2018 Form 10-K***"), filed on March 17, 2020, included our audited consolidated balance sheets, consolidated statements of operations, stockholders' equity and cash flows as of and 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, as well as selected unaudited condensed consolidated financial data as of and for the years ended December 31, 2015 (Restated) and 2014 (Restated), which reflected adjustments to our previously filed consolidated financial statements as of and for the years ended December 31, 2015 and 2014 (collectively, the "***Restatement***"). Refer to Item 6, "Selected Financial Data" of our 2018 Form 10-K for information regarding the applicable adjustments or restatements of our financial results for 2016, 2015 and 2014.

Forward-Looking Statements

This Form 10-K 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;
- our belief in the sufficiency of our intellectual property rights in our technology;
- 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 complete remedial actions to address all observations in the Forms FDA 483 issued to us by the FDA;
- our ability to regain and remain in compliance with Securities and Exchange Commission (the "***SEC***") reporting obligations;
- 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, and our responses intended to mitigate such effects;
- demographic and market trends;
- our plans to remediate the identified material weaknesses in our internal control environment and to strengthen our internal control environment;
- our expectations regarding research and development costs, including those arising from filing additional investigative new drug applications and pursuing new BLAs;
- our expectations regarding the cost savings and effects resulting from reductions in employee salaries; 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 this 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-K is specifically qualified in its entirety by the aforementioned factors. Readers are advised to carefully read this Form 10-K 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-K with the SEC.

Item 1. Business

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 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. We describe these in greater detail below under the heading "*Our Product Portfolio.*"

2017 FDA Guidance. The products we sell are regulated by the FDA. Historically, we marketed our products as Human Cells, Tissues and Cellular and Tissue – Based Products ("***HCT/Ps***"), which do not require pre-market clearance or approval by the FDA and are subject solely to Section 361 of the Public Health Service Act ("***Section 361***") and related regulations. However, in November 2017 the FDA published a series of related guidances, including one entitled "*Regulatory Considerations for Human Cells, Tissues, and Cellular and Tissue–Based Products: Minimal Manipulation and Homologous Use – Guidance for Industry and Food and Drug Administration Staff*" (the "***Guidance***"), that established an updated framework for the FDA's regulation of cellular and tissue-based products. Among other things, the guidances clarified the FDA's views about the criteria that differentiate those products subject to regulation solely under Section 361 ("***Section 361 HCT/Ps***") from those cellular and tissue-based products that are considered to be drugs and biological products ("***Section 351 HCT/Ps***") subject to licensure under Section 351 of the Public Health Service Act ("***Section 351***") and related regulations. As described below and elsewhere in this Form 10-K, the guidances clarified the FDA's expectation that certain products such as those that MiMedx has long marketed as Section 361 HCT/Ps will be treated as Section 351 HCT/Ps moving forward. The Guidance also confirmed that amniotic membrane in sheet form generally can be characterized as "minimally manipulated" and therefore regulated solely under Section 361.

Effect on Our Products. Under the Guidance, we expect that the FDA will continue to regulate our amniotic membrane sheet products (AmnioFix, EpiFix, EpiBurn and EpiXL) and umbilical cord products (EpiCord and AmnioCord) as Section 361 HCT/Ps so long as the claims we make for them are consistent with the Section 361 framework. We expect, however, that the FDA will regulate certain of our other products, such as our micronized products (AmnioFix Injectable and EpiFix Micronized) under Section 351 as biological products. We also expect other products, like AmnioFill, will be regulated as biological products under the Section 351 regulations.

Enforcement Discretion. The Guidance stated that the FDA intends to exercise enforcement discretion under limited conditions with respect to the investigative new drug ("***IND***") application and pre-market approval requirements for certain HCT/Ps through November 2020. This means that, through November 2020, the FDA does not intend to enforce certain provisions as they currently apply to certain entities or activities. The FDA intended this period of enforcement discretion to give sponsors time to evaluate their products, have a dialogue with the agency and, if necessary, begin clinical trials and file the appropriate pre-market applications to transition products that had been marketed as Section 361 HCT/Ps into compliance with Section 351. The FDA's approach is risk-based, and the Guidance clarified that high-risk products and uses might be subject to immediate enforcement action.

During the Period of Enforcement Discretion. We have continued to market our micronized products under this policy of enforcement discretion, while at the same time pursuing a Biologics License Application ("***BLA***") for certain of our micronized products.

We have already filed INDs for three indications for our micronized product, AmnioFix injectable: plantar fasciitis, osteoarthritis knee pain, and Achilles tendonitis and have been conducting clinical trials. We also intend to file additional INDs for both AmnioFill and for injectable micronized EpiFix in the second half of 2020, but have not yet initiated any clinical trials under an IND in furtherance of any regulatory approvals for these indications. Further, as we previously announced, we will need more time than

we originally anticipated to file our BLAs with the FDA, and clinical trial protocol amendments and enhancements, further resources, and additional capabilities and expertise will be required. See "*Clinical Trials*" below for information.

We have also begun investing in additional plant and equipment and compliance personnel to allow us to manufacture and market in accordance with Section 351 requirements at scale. Among other things, this required us to make capital expenditures in 2019 which have continued in 2020. See discussion below – "*Risk Factors*" under the heading "*If any of the BLAs are approved, the Company would be subject to additional regulation which will increase costs and results in adverse sanctions for non-compliance."*

Efforts to Seek Extension of Enforcement Discretion Period. MiMedx has provided a recommendation to the FDA that the FDA extend its enforcement discretion period beyond November 2020 to allow for the continued marketing of the impacted products in accordance with an agreed upon transition plan. However, there is no guarantee that the FDA will grant an extension, and even if issued, such an extension may be limited to the products and indications that are subject to clinical trials. See discussion below - "*Risk Factors*" under the heading "*To the extent our products do not qualify for regulation as human cells, tissues and cellular and tissue-based products solely under Section 361 of the Public Health Service Act, this could result in removal of the applicable products from the market, would make the introduction of new tissue products more expensive, and would significantly delay the expansion of our tissue product offerings and subject us to additional post-market regulatory requirements."*

Post-Enforcement Discretion. Following the period of enforcement discretion, we may need to cease selling our micronized products and other products regulated under Section 351 until the FDA approves a BLA, and then we will only be able to market such products for indications that have been approved in a BLA. The loss of our ability to market and sell our micronized products would have a material adverse impact on our revenues, earnings and financial position. In addition, we expect the cost to manufacture our products will increase due to the costs to comply with the requirements that apply to Section 351 biological products such as cGMPs and ongoing product testing costs. See discussion below – "*Risk Factors*" under the heading "*To the extent our products do not qualify for regulation as human cells, tissues and cellular and tissue-based products solely under Section 361 of the Public Health Service Act, this could result in removal of the applicable products from the market, would make the introduction of new tissue products more expensive, and would significantly delay the expansion of our tissue product offerings and subject us to additional post-market regulatory requirements."*

The majority of our revenues are generated by wound care applications. We intend to sharpen our focus in advanced wound care, continue developing and expanding our product pipeline, and work toward continued operational excellence to support future growth and sustained productivity. This includes focusing on effective and efficient execution in our core advanced wound care business and maximizing clinical adoption. In the second half of 2020, we plan to continue executing our commercial strategy, bring our manufacturing and quality systems toward compliance with the requirements that apply to Section 351 biological products, and continue pursuing a dialogue with the FDA in advance of the end of the period of enforcement discretion. The Company is advancing its therapeutic biologics pipeline targeting specific FDA-approved clinical indications for the treatment of musculoskeletal degeneration and other areas of unmet clinical need. See the discussion below – "*Clinical Trials*" for more information.

Our History

Our current business began on February 8, 2008 when Alynx, Co., our predecessor company, acquired MiMedx, Inc., a development-stage medical device company, the assets of which included licenses to two development-stage medical device technology platforms, which are regulated under Section 361 and we do not currently market. On March 31, 2008, Alynx, Co. merged into MiMedx Group, Inc., a Florida corporation and wholly-owned subsidiary that had been formed for purposes of the merger, with MiMedx Group, Inc. (the "Company") as the surviving corporation in the merger. In January 2011, the Company acquired all of the outstanding equity interests of Surgical Biologics, LLC (n/k/a MiMedx Tissue Services, LLC).

Recent Developments

Delisting of Common Stock and Related Matters

Due to our failure to remain current in our reporting obligations under SEC requirements, The Nasdaq Stock Market LLC ("***Nasdaq***") suspended our common stock ("***Common Stock***") from trading on The Nasdaq Capital Market on November 8, 2018, and subsequently delisted our Common Stock effective March 8, 2019. We are in the process of applying to relist our Common Stock after we become current with respect to our SEC reporting obligations, but we cannot guarantee when, or if, we will be able to relist our Common Stock.

Leadership Changes to Our Management and Board of Directors

Since June 2018, most of our executive leadership team has changed. The Board appointed Timothy R. Wright as Chief Executive Officer, effective as of May 13, 2019. In December 2019, William "Butch" Hulse joined the Company as General Counsel and Secretary. Effective March 18, 2020, the Board appointed Peter M. Carlson as Chief Financial Officer, and on May 1, 2020 the Company appointed William L. Phelan as Chief Accounting Officer.

Charles R. Evans, the Company's lead director, was appointed Chairman of the Board on July 2, 2018. In June 2019, Dr. M. Kathleen Behrens succeeded him as Chair of the Board.

The Board is in the process of executing a plan to refresh the composition of the Board while providing important business oversight and leadership continuity. The Board is currently comprised of nine directors elected by holders of Company Common Stock, five of whom have joined the Board since June 2019. In addition, the Board agreed to nominate a mutually-agreed candidate with Prescience Partners, LP, a Delaware limited partnership ("***Prescience Partners***"), for election as a Class III director at the upcoming 2019 annual meeting of shareholders (the "***2019 Annual Meeting***") to succeed one of our incumbent directors. Pursuant to the Preferred Stock Transaction described below, the Company increased the size of the Board of Directors, and Martin P. Sutter and William A. Hawkins III were appointed to serve as Preferred Directors effective July 2, 2020. As a result, following the 2019 Annual Meeting, eight of our eleven directors will be new to the Board since June 2019.

Financing Transactions

In June 2019, the Company secured $75 million of debt financing from Blue Torch Finance LLC ("***Blue Torch***"). Effective April 22, 2020, the Company amended its loan agreement with Blue Torch (the "***BT Loan Agreement***") to (1) relax the Total Leverage Ratio (as defined in the BT Loan Agreement) covenant, which is a quarterly test, from a maximum Total Leverage Ratio of 3.00 to 1.00 to 5.00 to 1.00 for the quarterly periods ending on June 30, 2020, September 30, 2020, and December 31, 2020; and (2) to reduce the minimum Liquidity (as defined in the BT Loan Agreement) covenant, which is a monthly requirement, from $40 million to $20 million for April and May 2020 and from $30 million to $20 million for June through November 2020.

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 the Securities Purchase Agreement, dated as of June 30, 2020 (the "***Securities Purchase Agreement***"), for an aggregate purchase price of $100,000,000 (the "***Preferred Stock Transaction***"). On July 2, 2020, the Company also borrowed an aggregate of $50 million pursuant to the loan agreement, dated as of June 30, 2020 (the "***Hayfin Loan Agreement***"), by and among the Company, certain of the Company's subsidiaries, Hayfin Services LLP and other funds managed by Hayfin Capital Management LLP and has obtained an additional committed but undrawn $25 million facility pursuant to the Hayfin Loan Agreement (collectively, the "***Hayfin Loan Transaction***"). A portion of the proceeds from these transactions was used to repay the outstanding balance of principal and accrued but unpaid interest, and repayment premium, under the BT Loan Agreement. For further information regarding the Preferred Stock Transaction, the Hayfin Loan Transaction and the repayment and termination of the BT Loan Agreement, see Item 9B, "*Other Information.*"

Government Investigations Update

On November 26, 2019, the Company announced that it finalized a settlement with the SEC resolving a previously disclosed investigation into the Company's financial accounting practices. The Company agreed to settle with the SEC, without admitting or denying the SEC's allegations, by consenting to the entry of a final judgment that permanently restrains and enjoins the Company from violating certain provisions of the federal securities laws. As part of the settlement, the Company paid a $1.5 million civil penalty. The SEC recognized the Company's cooperation during the investigation, as well as its remedial efforts.

On April 6, 2020, the Company announced that it had finalized a settlement with the Department of Justice (the "DOJ"), resolving an investigation concerning the accuracy of commercial pricing disclosures to the United States Department of Veterans Affairs (the "VA") for one of the Company's products in connection with the Company's Federal Supply Schedule contract, and a related qui tam action filed in Minnesota. The Company self-disclosed the matter to the VA Office of Inspector General (VA-OIG) in November 2018, prior to its knowledge of the qui tam suit or any underlying government investigation and, as the DOJ acknowledged in the settlement agreement, the Company cooperated with the government's investigation into the matter. Without admitting the allegations, the Company agreed to pay $6.5 million to the DOJ to resolve the matter. The Company previously disclosed that it had accrued an amount to cover the settlement and anticipated related expenses in its annual report on Form 10-K for the year ended December 31, 2018.

Current Business Priorities

Advanced wound care includes products or procedures used in the treatment of acute and chronic wounds. These products or procedures are used when standard wound care has failed, or after 4 weeks of non-healing. 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. After evaluating the potential impact of this data on the Company's wound care franchise, we incorporated a strategy not only to participate in this market growth but also to increase the Company's market share by demonstrating the positive health economics of our products.

Our priorities include sharpening our focus in advanced wound care, developing and expanding our portfolio pipeline and driving continued operational excellence to support future growth and sustained productivity, with the following elements:

Focus on effective and efficient execution in our core advanced wound care business, maximizing clinical adoption and health economics value.

We have identified and are in the final process of aligning new sales territories to focus our sales force and drive efficiencies, enabling the MiMedx field personnel and sales infrastructure to enhance productivity and better serve our customers and patients. We are advancing additional health economics outcomes data to further support the use of EpiFix and have expanded efforts to best position EpiCord within the treatment paradigm, capitalizing on expanded product coverage throughout our leading technology portfolio.

Enhance business development efforts, driving growth throughout the Company's existing product portfolio pipeline and strategic adjacencies to create a long-term competitive advantage.

Our long-range planning identified opportunities for innovative pipeline growth and international regulatory and product coverage expansion within targeted high growth geographies. Additionally, an ongoing assessment of the Company's development programs has highlighted the need for greater cross-functional collaboration and increased investment. 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 voice-of-customer input, industry expertise and additional resources toward seeking FDA approval for micronized dehydrated human amnion/chorion membrane ("***dHACM***") for a potential indication to treat musculoskeletal degeneration across multiple indications.

Enable operational and organizational excellence to support future growth and sustained productivity.

In December 2018, we announced the launch of a broad-based organizational realignment, cost reduction and efficiency program to better ensure the Company's cost structure was appropriate given its overall lower revenue expectations. This program included management changes, a realignment of the Company's sales force, reductions in non-employee expenses and certain changes to our business practices in response to the Investigation. The program created business efficiencies supportive of sustained, achievable and independent growth. Since enactment through December 31, 2019, the Company has realized cost savings of approximately $37 million associated with the realignment program**.** Additionally, management has continued its efforts to position the business for long-term success. As part of our effort to continue to improve our sales force effectiveness, the Company has prioritized the alignment of various market access functions across the organization under one business functional area. This is aimed toward aligning with providers and patients where our payer coverage, reimbursement and Group Purchasing Organization ("***GPO***") and Integrated Delivery Network ("***IDN***") contract opportunities exist.

We have re-focused our priorities on refining our near-term approach for our business and our products following the end of the enforcement discretion period, bringing our manufacturing and quality systems toward compliance with the requirements that apply to Section 351 biological products, and advancing our commercial initiatives focused on building market awareness.

Our Product Portfolio

We sell our placenta-based allograft products under our own brands and, on a limited basis, through a private label or original equipment manufacturer ("***OEM***") basis. We maintain strict controls on quality at each step of the manufacturing process beginning at the time of procurement. Our Quality Management System has long been focused on compliance with the American Association of Tissue Banks' ("***AATB***") standards and the FDA's current Good Tissue Practices ("***cGTP***"), and we are strengthening our controls for future BLA products through development of our current Good Manufacturing Practices ("***cGMP***") program.

EpiFix

Our EpiFix allograft is a semi-permeable protective barrier membrane product comprised of dehydrated human amnion/chorion membrane that may be used in the treatment of chronic wounds, including diabetic foot ulcers ("***DFUs***"), venous leg ulcers ("***VLUs***"), arterial ulcers, pressure ulcers and burns. EpiFix is available in a variety of sizes that can be used appropriately for wounds of varying sizes.

MiMedx also has a micronized version of this product. As further discussed below under the heading "*Government Regulation -Recent FDA Guidance and Transition Policy for HCT/Ps*," the FDA clarified in its 2017 guidance that it regards micronized amniotic membrane products as being subject to FDA licensure as biological products under Section 351. We intend to file an IND for EpiFix micronized in the second half of 2020 for potential application in DFUs or other areas of advanced wound care, but have not yet initiated any clinical trials under an IND in furtherance of any regulatory approvals.

AmnioFix

Our AmnioFix allograft is a semi-permeable protective barrier membrane product comprised of dehydrated human amnion/chorion membrane that may be used in the treatment of wounds related to surgical procedures. AmnioFix is configured in a variety of sizes, appropriate for various applications for internal use. Currently, our AmnioFix product line consists of two main configurations, including AmnioFix sheet and AmnioFix Injectable:

- AmnioFix sheet form is used in a variety of surgical wound repair and internal surgical procedures. It is primarily used in lower extremity repair, spine, orthopedic, sports medicine, gastrointestinal, urologic, and other general surgery applications.

- AmnioFix Injectable is supplied in micronized powder form and is reconstituted with 0.9% sterile saline for injection. This product is our lead BLA candidate. We are studying the product's potential to address musculoskeletal degeneration across multiple indications. We have three clinical studies underway to support INDs: plantar fasciitis, Achilles tendonitis and knee osteoarthritis. We currently are in Phase 3 for plantar fasciitis and Achilles tendonitis and in Phase 2B for knee osteoarthritis.

EpiCord and AmnioCord

EpiCord and AmnioCord are dehydrated human umbilical cord allografts intended for homologous use. EpiCord and AmnioCord provide a protective environment for the healing process and are used in the treatment of wounds or in surgical procedures. Our cord products are thicker than the EpiFix or AmnioFix allografts and have application in deeper wounds or in areas where suturing the allograft in place may be advantageous.

AmnioFill

AmnioFill is a connective tissue matrix derived from placental disc, umbilical cord, and amnion/chorion tissues. It is used to replace or supplement damaged integumental tissue. Its primary application is in larger and uneven wound surfaces, or deep/tunneling wounds including pressure ulcers. We intend to file an IND for AmnioFill in the second half of 2020. However, we have not yet initiated any clinical trials under an IND in furtherance of any regulatory approvals for AmnioFill.

OEM Products

We sell a selection of allografts for dental applications on an OEM basis pursuant to an agreement under which we have granted a third party an exclusive license to some of our technology for use in dental applications. Other than dental applications, we have a limited number of OEM relationships.

We continue to research new opportunities for amniotic and other placental tissue, and we have several additional offerings in various stages of conceptualization and development.

Placenta Donation Program

We partner with physicians and hospitals to recover donated placental tissue. Through our donor program, a mother who delivers a healthy baby via a Caesarean section can donate her placenta and umbilical cord tissue in lieu of having it discarded as medical waste. After consent for donation is obtained, a blood sample from each donor is tested for communicable diseases, and the donor is screened for risk factors in order to determine eligibility in compliance with federal regulations and AATB standards. We operate a licensed tissue bank that is registered as a tissue establishment with the FDA, and we are an accredited member of the AATB. All donor records and test results are reviewed by our Medical Director and staff prior to the release of the tissue for distribution.

We have developed a large network of hospitals that participate in our placenta donation program, and we employ a dedicated staff that work with these hospitals. We also utilize third-party providers of placenta donations to mitigate risks. We believe that we will be able to obtain an adequate supply of tissue to meet anticipated demand. However, see discussion below "*Risk Factors*" under the heading "*Our products depend on the availability of tissue from human donors, and any disruption in supply could adversely affect our business.*"

Processing (Manufacturing)

Over several years, we have developed and patented a unique and proprietary technique (PURION) for processing allografts from the donated placental tissue. This technique specifically focuses on preserving the tissue's natural growth factor content and maintaining the structure and collagen matrix of the tissue. Our patented and proprietary processing method employs aseptic processing techniques in addition to terminal sterilization for increased patient safety. We believe that our process preserves more of the natural characteristics of the tissue than the processes used by many of our competitors.

The PURION process produces an allograft that retains the tissue's inherent biological properties (cytokines, chemokines, growth factors, etc.) found in the placental tissue and produces an allograft that is easy for healthcare providers to use. The allograft can be stored at ambient temperature and has a five-year shelf life. Each sheet allograft incorporates specialized visual embossments that assist the health care practitioner with proper allograft placement and orientation.

To ensure the safety of human tissue products, the FDA enforces current Good Tissue Practice ("c***GTP***") manufacturing regulations. We believe that MiMedx has developed mature systems to comply with, and is in compliance with, these regulations. As an important part of the Company's product safety compliance, MiMedx products are terminally sterilized to an internationally recognized industry standard in addition to having been processed via the PURION process.

Our facilities are subject to periodic unannounced inspections by regulatory authorities and may undergo compliance inspections conducted by the FDA and corresponding state and foreign agencies. We are registered with the FDA as a tissue establishment and are subject to the FDA's cGTP quality program regulations, state regulations and regulations promulgated by various regulatory authorities outside the United States. The Company's most recent FDA inspection for compliance with GTP regulations, which took place in September 2018, resulted in no observations and a no action indicated (NAI) rating, which is the most favorable designation the FDA provides after an inspection.

In recent years, the FDA has clarified through inspection activity, letters to industry, and guidance documents its expectation that certain human tissue products, including product types manufactured by MiMedx, meet additional requirements that apply to traditional biological products, such as BLA approval and cGMP compliance beginning in November 2020. The guidance documents apply to products offered by many companies, not just MiMedx, and the guidance has implications for manufacturing processes, among other things. For example, the FDA generally requires products subject to Section 351 to be manufactured in compliance with cGMPs. After the end of the enforcement discretion period, these products will be subject to cGMP compliance. The Company is developing and enhancing systems to meet these requirements, and intends to complete those efforts by November 2020, although there is no guarantee that the Company will be able to meet the requirements by such date, or at all. In December 2019, the FDA conducted cGMP inspections at our Marietta, Georgia and Kennesaw, Georgia processing facilities. The FDA issued a Form FDA 483 ("***483***"), which is a list of inspectional observations, at the conclusion of each inspection. Specifically, the FDA issued a 483 consisting of 9 observations at our Marietta, Georgia processing facility, and a 483 consisting of 14 observations at our Kennesaw, Georgia processing facility. MiMedx timely responded to the FDA regarding each observation, providing substantive responses to all of the observations. The Company's response included completed and planned actions to address each observation, and as of the date of this filing, all of these remedial actions are now complete.

Intellectual Property

Our intellectual property includes owned and licensed patents, owned and licensed patent applications and patents pending, proprietary manufacturing processes and trade secrets, and trademarks associated with our technology. We believe that our patents, proprietary manufacturing processes, trade secrets, trademarks, and technology licensing rights provide us with important competitive advantages.

Patents and Patent Applications

Due to the substantial expertise and investment of time, effort and financial resources required to bring new regenerative biomaterial products and implants to the market, the importance of obtaining and maintaining patent protection for significant new technologies, products and processes cannot be underestimated. As of the date of the filing of this Form 10-K, in addition to international patents and patent applications, we own 52 U.S. patents related to our amniotic tissue technology and products, and 32 additional patent applications covering aspects of this technology are pending at the United States Patent and Trademark Office. The vast majority of our domestic patents covering our core amniotic tissue technology and products will not begin to expire until August 2027. See discussion below – "*Risk Factors*" under the heading "*Risks Related to Our Intellectual Property*."

Market Overview

Domestic sales currently account for substantially all of our revenue, and we are considering international expansion, primarily targeting Europe and Asia Pacific. In the United States, advanced wound care, including burns and lower extremity surgical applications, are our primary applications.

Wound Care

The broad wound care category includes traditional dressings such as bandages, gauzes and ointments, which are used to treat non-severe or non-chronic wounds, and advanced wound care products such as mechanical devices, advanced dressings, xenografts, biological products, and HCT/Ps, which are used to treat severe wounds or chronic wounds that have not appropriately closed after four weeks of treatment with traditional dressings.

In the United States in 2018, third-party estimates indicate that there were 8.2 million total reported wounds, with 2.9 million of these wounds classified as chronic wounds. Of these chronic wounds, we estimate that 35% are candidates for advanced skin substitute product treatment regimens, providing for a total addressable opportunity of approximately $3.3 billion. The overall cost of treating chronic wounds is rising sharply, and the current annual estimated cost in the United States exceeds $28 billion.

MiMedx is a leader in the advanced wound care category and the amniotic tissue allograft sub-category. Both of these categories are 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.

Traditional dressings such as bandages, gauzes and ointments, along with treatment of active infection and debridement, currently represent the "standard of care" for treating chronic wounds such as DFUs, VLUs, pressure ulcers and arterial ulcers. If after four weeks of use, the wound has not responded appropriately to "standard of care" therapy, clinical research has shown that advanced therapy such as a skin and dermal substitute can be beneficial as part of the patient's treatment plan. However, often times advanced therapies are not employed - this represents a large target market for the Company and one of the drivers for the growth of the advanced therapy market. According to data provided by BioMedGPS, MiMedx's EpiFix is the current product of choice for physicians choosing to use a skin and dermal substitute product as a barrier or cover. EpiFix stores at ambient conditions for up to five years compared to certain cultured skin substitutes currently on the market that require cryogenic freezer storage and expire within days to months from the time of processing. In addition, we market multiple sizes of EpiFix sheets for use as protective barriers which enables a healthcare provider to select an appropriate size graft based on the size of the wound to reduce product waste.

Our AmnioFix tissue allografts have been used in a variety of surgical applications including, but not limited to, plastic surgery, general surgery, gynecology, urology, orthopedics, spinal surgery, lower extremity repair and sports medicine. AmnioFix can be used as a barrier membrane in procedures where a second surgery may be required and scar tissue formation may be problematic.

Biologics License Application (BLA) Programs

The FDA clarified its expectations in late 2017 that certain cellular and tissue-based products, including types of products marketed by MiMedx, are considered drugs and biological products subject to Section 351 requirements under the federal Food, Drug and Cosmetic Act (the "***FD&C Act***"). In order to conform to this regulatory guidance, MiMedx is pursuing several indications under the BLA pathway, although there can be no assurance that we will obtain a BLA and may ultimately decide not to pursue a BLA for certain products or indications. See *Risk Factors* - "*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."* AmnioFix Injectable is our lead BLA product candidate, and we are studying its potential to address a number of degenerative musculoskeletal conditions. In this regard, we have three ongoing IND programs: plantar fasciitis, Achilles tendonitis and knee osteoarthritis. We are currently completing a Phase 3 plantar fasciitis study and are well advanced in the enrollment of subjects in a Phase 2B knee

osteoarthritis study. Results of double-blinded, randomized, interim analyses of these studies revealed separation between treatment and control groups, but indicated that the power to observe a result with statistical and clinical significance could be increased by increasing the sample size. We have since amended the protocols and have taken other steps to improve these trials. We also have completed subject enrollment in a Phase 3 IND study for Achilles tendonitis, and we plan to review our options for this program after we have assessed the results of this study. However, an interim analysis of this study indicated that the sample size needed to be significantly increased to provide sufficient statistical and clinical significance. We have decided not to increase the size of the study, but have chosen to continue it to completion with the original sample size as we evaluate the study endpoints for appropriateness, including appropriateness of the measures and the time required to measure differences between the treatment groups (*e.g.*, three months, six months, *etc*.). In addition, we have begun efforts to file an IND for AmnioFill in the second half of 2020, although we have not yet initiated any clinical trials under an IND in furtherance of any regulatory approvals for this product. Similar activities have also been initiated toward the filing of an IND for injectable micronized EpiFix for the treatment of DFUs or other areas of advanced wound care in the second half of 2020. Clinical study initiation will depend on FDA feedback for both of these programs. Given the timelines of these proposed filings and anticipated delays at FDA in processing applications due to the COVID-19 pandemic, it is likely that studies will not begin enrollment in 2020.

We are studying AmnioFix Injectable for a variety of uses other than wound care, and the applications described above (plantar fasciitis, osteoarthritis knee pain, and Achilles tendonitis) address unmet needs outside of traditional wound care. After oral non-habit forming pain medication fails to adequately relieve a patient's joint, ligament or tendon pain, market available injections such as corticosteroids are a commonly available treatment option. However, a number of patients still do not get adequate relief from corticosteroid injections, or do not want to use corticosteroids given their potential to damage human tissue. Additionally, in light of the current crisis with opioid abuse, non-surgical treatments and alternative approaches to musculoskeletal pain management are under consideration. Patients and physicians are searching for new products that are safe and effective for the management of chronic musculoskeletal conditions. According to data from the National Health Interview Survey 2007-2008, it was estimated that 14 million people in the U.S. have symptomatic knee osteoarthritis, with more than half under the age of 65. We are studying AmnioFix Injectable as a potential product candidate to address this unmet need, as well as in other degenerative musculoskeletal applications. As of the date of the filing of this Form 10-K, it has not been approved by the FDA for any such use.

Marketing and Sales

Our direct sales force focuses on the advanced wound care category through multiple sites of service. We also maintain a network of independent sales agents that focus on musculoskeletal applications leveraging the complementary products in their portfolios, access to certain customers, and to provide sales coverage for areas where we do not have a full time sales representative.

We also sell our products through distributors. Distributors purchase products from us at wholesale prices and resell products to end users. Sales through distributors comprised a smaller percentage of our total sales in 2019 than in prior years. See Note 17, "*Revenue Data by Customer Type*." As discussed above, we sell allografts for dental applications on an OEM basis pursuant to an agreement under which we granted a third party an exclusive license to some of our technology for use in certain fields in a specified field of use. We also sell our amnion/chorion and umbilical tissue products through a variety of agents for use in additional musculoskeletal applications on a non-exclusive basis.

Coverage and Reimbursement

With the exception of government accounts, most purchasers of our products are physicians, hospitals or ambulatory surgery centers ("***ASCs***") that rely on reimbursement by third-party payers. Accordingly, our growth substantially depends on adequate levels of third-party reimbursement for our products from these payers. Third-party payers are sensitive to the cost of products and services and are increasingly seeking to implement cost containment measures to control, restrict access to, or influence the purchase of health care products and services. In the U.S., such payers include U.S. federal healthcare programs (*e.g.*, Medicare and Medicaid), private insurance plans, managed care programs and workers' compensation plans. Federal healthcare programs have prescribed coverage criteria and reimbursement rates for medical products, services and procedures. Similarly, private, third-party payers have their own coverage criteria and negotiate reimbursement amounts for medical products, services and procedures with providers. In addition, in the U.S., an increasing percentage of insured individuals are receiving their medical care through managed care programs (including managed federal healthcare programs) which monitor and may require pre-approval of the products and services that a member receives. Ultimately, however, each third-party payer determines whether and on what conditions they will provide coverage for our products, and such decisions often include each payer's assessment of the science and efficacy of the applicable product.

A significant portion of our products are purchased by U.S. government accounts (*e.g.*, the VA, the Public Health Service (including the Indian Health Service)), which do not depend on reimbursement from third party payers. In order for a company to be eligible to have its products purchased by such federal agencies and paid for by the Medicaid program, federal law requires the Company

to participate in the VA Federal Supply Schedule ("***FSS***") pricing program. To participate, we are required to enter into a Master Agreement with the VA for our products and agree to certain prices.

EpiFix Sheet Products and EpiCord

Medicare Coverage

By far, the largest third-party payer in the United States is the Medicare program, which is a federally-funded program that provides healthcare coverage for senior citizens and certain disabled individuals. The Medicare program is administered by the Centers for Medicare and Medicaid Services ("***CMS***"), an agency within the U.S. Department of Health and Human Services ("***HHS***"). Medicare Administrative Contractors ("***MACs***") are private insurance companies that serve as agents of CMS in the administration of the Medicare program and are responsible for making coverage decisions and paying claims for the designated Medicare jurisdiction. There are seven Part A/B MACs in the U.S., each with its own geographical jurisdiction, and each has its own standards and process for determining coverage and reimbursement for a procedure or product. Private payers often follow the lead of governmental payers in making coverage and reimbursement determinations. Therefore, achieving favorable Medicare coverage and reimbursement is usually a significant gating factor for successful coverage and reimbursement for a new product by private payers.

The coverage and reimbursement framework for products under Medicare is determined in accordance with the Social Security Act and pursuant to regulations promulgated by CMS, as well as the agency's regulatory coverage and reimbursement determinations. Ultimately, however, each of the MACs determines whether and on what conditions they will provide coverage for the product. Such decisions are based on each MAC's assessments of the science and efficacy of the applicable product. As noted below under the heading "*Research and Development*," we have devoted significant resources to clinical studies to provide data to the MACs, as well as other payers, in order to demonstrate the efficacy and clinical effectiveness of our tissue technologies. As of the date of this report, both EpiFix sheets and EpiCord allografts are eligible for coverage by all MACs. In January 2019, EpiFix and EpiCord received separate CMS HCPCS Codes, Q4186 and Q4187, distinguishing each product in coverage and reimbursement policies.

For Medicare reimbursement purposes, our EpiFix and EpiCord allografts are classified as "skin substitutes." Current reimbursement methodology varies between the hospital outpatient department ("***HOPD***") and ASCs setting versus the physician office. Currently, skin substitutes are reimbursed under a "packaged" or "bundled" methodology along with the related application procedure under a two-tier payment system. In the HOPD and ASCs setting, providers receive a single payment that reimburses for the application of the product as well as the product itself. CMS classifies skin substitutes into low cost or high cost groups, based on a geometric mean unit cost and per day cost. For 2019, the geometric mean unit cost threshold applicable to both our EpiFix and EpiCord allograft products was $49 per square centimeter, and the per day cost threshold is $790. The national HOPD average packaged ("bundled") rate for our EpiFix and EpiCord allograft products was $1,427 in 2017, was $1,568 in 2018, was $1,549 in 2019, and is $1,623 in 2020. All skin substitute products administered in the HOPD and ASCs setting are bundled except for those that have been approved by CMS for pass-through status. EpiFix was approved by CMS for pass-through status but that status expired on December 31, 2014, and EpiCord has not been approved by CMS for pass-through status. This "bundled" payment structure applies only to the HOPD and ASCs settings.

Currently, providers that administer EpiFix or EpiCord allografts and other skin substitutes in the physician office setting are reimbursed based on the size of the graft, computed on a per square centimeter basis. The payment rate is calculated using the manufacturer's reported average sales price ("***ASP***") submitted quarterly to CMS. This payment methodology applies only to physician offices. The Medicare payment rates are updated quarterly based on this ASP information for many skin substitute products but not all. EpiFix is included on the Medicare national ASP Drug Pricing File, but EpiCord is not. The published skin substitute Medicare payment rate established by statute is ASP plus 6%. Reimbursement for products not included on the Medicare national ASP Drug Pricing File are at the discretion of each MAC, which typically is invoice cost or wholesale acquisition cost ("***WAC***") plus 3%.

Medicare payments for all items and services, including EpiFix sheet products and EpiCord, since 2013 have been reduced by 2% under the sequestration required by the Budget Control Act of 2011, as amended by the American Taxpayer Relief Act of 2012. Subsequent legislation extended the 2% reduction, on average, to 2027 (although the sequestration was suspended for the remainder of 2020 due to COVID-19). This 2% reduction in Medicare payments affects all parts of the Medicare program. The law allows for additional sequestration orders, potentially resulting in up to a 4% reduction in Medicare payments under a statutory PAYGO sequestration order.

Private Payers

We have devoted considerable resources to clinical trials to support coverage and reimbursement of our products and have confirmed an increasing number of private payers that reimburse for EpiFix in the physician office, the HOPD and the ASCs settings. Coverage and reimbursement vary according to the patient's health plan and related benefits. The majority of health plans currently provide coverage for EpiFix for the treatment of DFUs, and many include treatment of VLUs. In 2019, numerous health plans have added EpiCord coverage for the treatment of DFUs. MiMedx has secured payer coverage for over 286 million covered lives, allowing a significant number of patients access to our products.

We have established and continue to grow a reimbursement support group to educate providers and patients with regard to accurate coverage and reimbursement information regarding our products. See discussion below – "*Risk Factors*" under the heading "*Our revenues depend on adequate reimbursement from public and private insurers and health systems.*"

Hospital Use

Products administered in the hospital inpatient setting are bundled when submitted as part of the hospital's claim under a diagnosis-related group ("***DRG***"). In these cases, we continue to educate the hospital that our products are cost-effective, and have the potential to improve patient outcomes and reduce the length of stay. We are working to develop additional health economic data to support this effort. As noted above, the ability to sell products in a hospital is dependent upon demonstrating to the hospital the product's efficacy and cost effectiveness.

Micronized and Other Products

Currently, our micronized products are available for coverage by only a limited number of Medicare, commercial and state Medicaid plans. EpiFix Micronized is listed on the Medicare national ASP Drug Pricing File and, similar to most Medicare Part B drugs, is reimbursed at ASP plus 6%, effective July 2019. There is currently no specific third-party reimbursement available for AmnioCord or AmnioFill, except to the extent such products are bundled as part of a hospital's claim under a DRG. See discussion below – "*Risk Factors*" under the heading "*Our revenues depend on adequate reimbursement from public and private insurers and health systems.*"

Customer Concentration

A significant portion of our products are purchased by U.S. government accounts (*e.g.*, the VA, the Public Health Service (including the Indian Health Service). For the years ended December 31, 2019, 2018 and 2017, our net sales to all U.S. government accounts comprised approximately 6%, 15%, and 9%, respectively, of our net sales. We have contracted with a third party as our indefinite delivery/indefinite quantity channel partner into the VA and DoD markets. See discussion below – "*Risk Factors*" under the heading "*A significant portion of our revenues and accounts receivable come from government accounts.*"

Competition

Due to lower barriers of entry in the 361 HCT/P regulated market, competition in the placenta-based and allograft tissue field is intense and subject to new entrants and evolving market dynamics. Companies within the industry compete on the basis of price, ease of handling, logistics and efficacy. Another important factor is third-party reimbursement, which is difficult to obtain as it is a time-consuming and expensive process. We believe our success in obtaining third-party reimbursement, robust GPO position and established clinical evidence for our products are competitive advantages.

The Agency for Healthcare Research and Quality ("***AHRQ***") recently published a technology assessment analyzing Skin Substitutes for Treating Chronic Wounds. AHRQ conducted a literature search yielding 164 studies and 81 Supplemental Evidence and Data for Systematic Reviews ("***SEADs***") submissions. Only 22 randomized, controlled trials ("***RCTs***") met the inclusion criteria to be reviewed in the AHRQ analysis, and out of the 22 RCTs MiMedx had 6 RCTs included in the final brief. Of the 22 studies reviewed, only 12 were assessed as low risk of bias (ROB) of which 5 were MiMedx RCTs. This important government assessment highlights our commitment to providing unbiased level 1 clinical evidence in advanced wound treatment. This dedication to elevating the standard of care is further underscored by the fact that the AHRQ points out that MiMedx was the only entity to provide two studies out of the 22 evaluated that performed a subgroup analysis of patients with diabetic foot ulcers that received adequate debridement. Both studies reported an increase in wounds healed with adequate debridement.

Advanced wound care therapies employ technologies to aid in wound healing in cases where the wound is chronic and healing progress has stalled or stopped. The primary competitive products in the skin and dermal substitutes category include, among others, amniotic membrane allografts, tissue-engineered living skin equivalents, porcine-, bovine- and fish skin-derived xenografts and collagen matrix products. Xenografts, or tissue transplants from non-human species, serve mainly as an extracellular matrix and have to undergo aggressive processing to remove immunogenic animal products from the tissue. In addition, challenges with

xenografts include limited clinical published data, and some products may require suturing or stapling to the wound bed, making handling more difficult.

Our main competitors in the skin substitute market are Integra LifeSciences Holdings Corporation, Organogenesis, Inc., and Smith & Nephew plc, which sell a variety of advanced wound care products including allografts.

The primary competitive products in the surgical, orthopedic or sports medicine categories are other amniotic membrane allografts and injectable solutions, such as platelet-rich plasma, evolving cellular alternatives, or steroids.

See discussion below – "*Risk Factors*" under the heading "*We are in a highly competitive and evolving field and face competition from well-established tissue processors and medical device manufacturers, as well as new market entrants.*"

Government Regulation

The products manufactured and processed by the Company are derived from human tissue. As discussed below, Section 361 HCT/Ps are tissue-based products that are regulated solely under Section 361 and do not require pre-market clearance or approval by the FDA. Section 351 HCT/Ps are also tissue products but are regulated as biological products, medical devices or drugs and, in order to be lawfully marketed in the United States, require FDA pre-market clearance or approval. See discussion below – "*Risk Factors*" under the heading "*Risks Related to Regulatory Approval of Our Products and Other Government Regulations*."

Tissue Products

In 1997, the FDA proposed a new regulatory framework for cells and tissues. This framework was intended to provide adequate protection of public health while enabling the development of new therapies and products with as little regulatory burden as possible. A key innovation in the system is that covered HCT/Ps would be regulated solely under Section 361 and would not be subject to pre-market clearance. The registration and listing rules were finalized in January 2001 in 21 CFR Part 1271. Additional rules regarding donor eligibility and good tissue practices were soon adopted. Together, these rules form a comprehensive system intended to encourage significant innovation.

The FDA requires each HCT/P establishment to register and establish that its product meets the requirements to qualify for regulation solely under Section 361. To be a Section 361 HCT/P, a cellular or tissue-based product generally must meet all four of the following criteria (fully set forth in 21 CFR Part 1271):

- it must be minimally manipulated;
- it must be intended for homologous use;
- its manufacture must not involve combination with another article, except for water, crystalloids or a sterilizing, preserving or storage agent; and
- it must not have a systemic effect and must not be dependent upon the metabolic activity of living cells for its primary function.

Amniotic and other birth tissue are considered cellular and tissue-based articles and are therefore eligible for regulation solely as a Section 361 HCT/P depending on whether the specific product at issue and the claims made for it are consistent with the criteria set forth above. HCT/Ps that do not meet these criteria are subject to more extensive regulation as drugs, medical devices, biological products or combination products.

Products Regulated Solely as HCT/Ps

The FDA has specific regulations governing HCT/Ps, including some regulations specific to Section 361 HCT/Ps, which are set forth in 21 CFR Part 1271. All establishments that manufacture Section 361 HCT/Ps must register and list their HCT/Ps with the FDA's Center for Biologics Evaluation and Research within five days after commencing operations. In addition, establishments are required to update their registration annually in December or within 30 days of certain changes and submit changes in HCT/P listing at the time of or within six months of such change.

The regulations in 21 CFR Part 1271 also require establishments to comply with donor screening, eligibility and testing requirements and cGTP to prevent the introduction, transmission and spread of communicable diseases. The cGTP govern, as may be applicable, the facilities, controls and methods used in the manufacture of all HCT/Ps, including processing, storage, recovery, labeling, packaging and distribution of Section 361 HCT/Ps. cGTP require us, among other things, to maintain a quality program, train personnel, control and monitor environmental conditions as appropriate, control and validate processes, properly store, handle and

test our products and raw materials, maintain our facilities and equipment, keep records and comply with standards regarding recovery, pre-distribution, distribution, tracking and labeling of our products and complaint handling. 21 CFR Part 1271 also mandates compliance with adverse reaction and cGTP deviation reporting and labeling requirements.

The FDA conducts periodic inspections of HCT/P manufacturing facilities, and contract manufacturers' facilities, to assess compliance with cGTP. Such inspections can occur at any time with or without written notice at such frequency as determined by the FDA in its sole discretion. To determine compliance with the applicable provisions, the inspection may include, but is not limited to, an assessment of the establishment's facilities, equipment, finished and unfinished materials, containers, processes, HCT/Ps, procedures, labeling, records, files, papers and controls required to be maintained under 21 CFR Part 1271. If the FDA were to find serious non-compliant manufacturing or processing practices during such an inspection, it could take regulatory actions that could adversely affect our business, results of operations, financial condition and cash flows.

FDA Letter Regarding AmnioFix Injectable and Other Micronized Products

In August 2013, the Company received an untitled letter from the Office of Compliance and Biologics Quality ("***OCBQ***") within the FDA's Center for Biologics Evaluation and Research concerning AmnioFix Injectable and other micronized products (the "***Untitled Letter***"). The Untitled Letter asserted that our micronized products, including AmnioFix Injectable, are not properly regulated solely under Section 361 because they are more than "minimally manipulated" as that term is defined in FDA regulations. Accordingly, the Untitled Letter asserted that the products at issue are drugs and biological products that require valid biologics licenses to be in effect in order to be lawfully marketed.

The Company disagreed at the time, taking the position that micronization was allowed for Section 361 HCT/Ps under the then applicable guidance. Because the Untitled Letter seemed to be contrary to existing guidance, the Company attempted to engage with OCBQ and ultimately pursued two levels of supervisory review. As part of that process, the Company agreed to pursue a biologics license for AmnioFix Injectable, and has since filed IND applications with the FDA covering clinical studies for AmnioFix Injectable that are discussed in greater detail below. In November 2016, following this supervisory review process, the Acting Chief Scientist of the FDA informed the Company that additional agency review of the Untitled Letter was not warranted.

Recent FDA Guidance and Transition Policy for HCT/Ps

In November 2017, the FDA released four guidance documents that, collectively, the agency described as a "comprehensive policy framework" for applying existing laws and regulations governing regenerative medicine products, including HCT/Ps. One guidance document in particular, "*Regulatory Considerations for Human Cells, Tissues, and Cellular and Tissue – Based Products: Minimal Manipulation and Homologous Use – Guidance for Industry and Food and Drug Administration Staff,*" offered important clarity on some of the issues that the Company raised on appeal to the Untitled Letter.

The guidance documents confirmed that sheet forms of amniotic tissue are appropriately regulated as solely Section 361 HCT/Ps when intended for use as a barrier or covering. We are in the process of evaluating our marketing materials for each of our products to align with the FDA's guidance.

Second, the guidance documents confirmed the FDA's stance that all micronized amniotic membrane products require a biologics license to be lawfully marketed in the United States. However, the guidance documents also stated that the FDA intends to exercise enforcement discretion under limited conditions with respect to the IND application and pre-market approval requirements for certain HCT/Ps through November 2020. This 36-month period of enforcement discretion was intended to give sponsors time to evaluate their products, have a dialogue with the agency and, if necessary, begin clinical trials and file the appropriate pre-market applications. The FDA's approach is risk-based, and the guidance documents clarified that high-risk products and uses could be subject to immediate enforcement action.

This enforcement discretion applies across our industry, and the Company has continued to market its products under this policy of enforcement discretion. At the same time, we are pursuing the BLA pre-market approval process for certain uses of AmnioFix Injectable. There is no assurance that the FDA will grant these approvals on a timely basis, or at all, or that we will not discontinue our pursuit of a BLA for certain products or indications. We previously announced that we will need more time to file our BLAs with the FDA and that clinical trial protocol amendments and enhancements, further resources and additional capabilities and expertise will be required. See "*Clinical Trials*" below for information regarding the revised timelines.

During the remainder of the 36-month enforcement discretion period, the Company will also continue to explore possible options for extending this enforcement discretion period. To this end, the Company has initiated dialogue and efforts for a further transition plan with the FDA to allow for continued marketing of the impacted products while the Company transitions to compliance with Section 351, the applicable sections of the FD&C Act, the cGMP regulations in 21 CFR Part 210 and 211, and other applicable

FDA regulations. This would be an extension of the current policy, and there is no guarantee that the FDA will provide more time, either for MiMedx or the industry at large.

Products Regulated as Biologics – The BLA Pathway

The typical steps for obtaining FDA approval of a BLA to market a biological product in the United States include:

- Completion of preclinical laboratory tests, animal studies and formulations studies under the FDA's Good Laboratory Practice regulations;
- Submission to the FDA of an IND application for human clinical testing, which must become effective before human clinical trials may begin and which must include independent Institutional Review Board approval at each clinical site before the trials may be initiated;
- Performance of adequate and well-controlled clinical trials in accordance with Good Clinical Practices to establish the safety and efficacy of the product and its dosage (as applicable) for each indication;
- Development of purity, potency and identity tests to demonstrate consistency and reliability of the manufacturing process through a chemistry, manufacturing and control program;
- Submission to the FDA of a BLA for marketing the product, which includes, among other things, reports of the outcomes and full data sets of the clinical trials, and proposed labeling and packaging for the product;
- Satisfactory review of the contents of the BLA by the FDA, including the satisfactory resolution of any questions raised during the review;
- Satisfactory completion of an FDA Advisory Committee review, if applicable;
- Satisfactory completion of an FDA inspection of the manufacturing facility or facilities at which the product is produced to assess compliance with FDA's cGMP regulations, to assure that the facilities, methods and controls are adequate to ensure the product's identity, strength, quality and purity; and
- FDA approval of the BLA, including agreement on post-marketing commitments, if applicable.

Generally, clinical trials are conducted in three phases, though the phases may overlap or be combined. Phase 1 trials typically involve a small number of healthy volunteers and are designed to provide information about the product safety and to evaluate the pattern of drug distribution and metabolism within the body. Phase 2 trials are conducted in a larger but limited group of patients afflicted with a particular disease or condition in order to determine preliminary efficacy, dosage tolerance and optimal dosing, and to identify possible adverse effects and safety risks. Dosage studies are typically designated as Phase 2A, and efficacy studies are designated as Phase 2B. Phase 3 clinical trials are generally large-scale, multi-center, comparative trials conducted with patients who have a particular disease or condition in order to provide statistically valid proof of efficacy, as well as safety and potency. In some cases, the FDA will require Phase 4, or post-marketing trials, to collect additional data after a product is on the market. All phases of clinical trials are subject to extensive record keeping, monitoring, auditing and reporting requirements.

The FDA has broad regulatory compliance and enforcement powers. If the FDA determines that MiMedx has failed to comply with applicable regulatory requirements, it can take a variety of compliance or enforcement actions, such as issuing an FDA Form 483 notice of inspectional observations; sending a warning letter or untitled letter; issuing an order of retention, destruction, or cessation of marketing; imposing civil money penalties; suspending or delaying issuance of approvals; requiring product recalls; imposing a total or partial shutdown of production; withdrawing approvals or clearances already granted; pursuing product seizures, consent decrees or other injunctive relief; and criminal prosecution through the DOJ.

Clinical Trials

Trial Overview

The Company is currently conducting three IND programs investigating the use of AmnioFix Injectable to reduce pain and increase function in patients with plantar fasciitis, Achilles tendonitis, and osteoarthritis of the knee. Based on a review of the studies and interim results, the Company has instituted several actions with respect to its ongoing and anticipated clinical trials to address the resources, capabilities and expertise needed for commercial launch, including our strategy around an increased dialogue with the FDA regarding our BLA progress. The trials were developed and initially overseen by senior managers who are no longer with the Company and, as previously disclosed, we have concluded that the trials must be improved if they are to support BLA submissions and approvals. However, there can be no assurance that we will obtain BLA approval and we may ultimately decide not to pursue a BLA for certain products or indications. See *Risk Factors - "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."*

Plantar Fasciitis

In March 2015, we initiated a Phase 2B prospective, single-blinded, RCT investigating a single injection of 40 mg of AmnioFix Injectable as compared to a single intra-plantar injection of saline (placebo control) in the treatment of patients with recalcitrant plantar fasciitis pain and foot dysfunction. This trial enrolled 145 patients at 15 study sites. In September 2017, we announced the trial had met its efficacy endpoints, and the three-month endpoint data were published in 2018.

In April 2017, we met with the FDA and informally discussed preliminary data from the Phase 2 study, our progress toward achieving GMP compliance, and our proposed Phase 3 study design. We incorporated the FDA's formal feedback into our development plans, and will plan further meetings as needed and required to achieve the goal of successful BLA submission. Based on the Phase 2B interim data, in January 2018 we initiated a Phase 3 prospective, double-blinded, RCT to assess the safety and efficacy of a single 40 mg intra-plantar injection of AmnioFix Injectable as compared to a single intra-plantar injection of saline (placebo control) to treat patients with recalcitrant plantar fasciitis pain. The trial plan was initially to enroll 164 patients. In July 2019, we conducted an interim analysis to assess adequacy of the sample size to assess differences between the two treatment groups. We analyzed the data received from this sample size analysis, conducted on subjects representing 50% of total enrollment that had reached the primary efficacy endpoint. This analysis indicated that a significant increase in sample size would be required to observe clinically and statistically significant improvement and separation between treatment and control groups. We determined that increasing the sample size to 276 patients would provide sufficient power to observe an efficacy result with statistical and clinical significance. We have instituted these changes and amendments and expect to complete enrollment by October 2020. The COVID-19 pandemic has had a major dampening effect on study enrollment. There can be no assurance that this effect will fully resolve and allow completion of the study in the anticipated timeframe, that a second wave of virus infections will not occur, that no further disruptions can be expected, or when completed, that the FDA will view such study as sufficient to support a BLA filing.

If the plantar fasciitis trials are successful, determined to be adequate proof of efficacy and safety, we expect to file a BLA for AmnioFix Injectable to treat patients with plantar fasciitis in the second half of 2021. We expect the outcome of this trial to help inform additional areas of unmet need for potential clinical study. However, we now expect that FDA approval to market AmnioFix Injectable for this indication will take longer than previously expected and may take several years, and there can be no assurance that we will receive FDA approval. Approval may be delayed due to a variety of factors, including failure of the studies to achieve their endpoints, the extra effort and cost required to improve our clinical trials as described above, the impact of the COVID-19 pandemic on study enrollment and FDA operations, the potential that we reevaluate our commercialization strategy, and the work required to achieve commercial and manufacturing readiness. See discussion below - "*Risk Factors*" under the heading "*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."*

Knee Osteoarthritis

In March 2018, the FDA granted AmnioFix Injectable the Regenerative Medicine Advanced Therapy ("***RMAT***") designation for use in the treatment of osteoarthritis of the knee. RMAT-designated products are eligible for increased and earlier interactions with the FDA, similar to those interactions available to fast track and breakthrough-designated therapies. In addition, these products may be eligible for rolling review and accelerated approval. The meetings with sponsors of RMAT-designated products may include discussions of whether accelerated approval would be appropriate based on surrogate or intermediate endpoints reasonably likely to predict long-term clinical benefit or reliance upon data obtained from a meaningful number of sites.

In March 2018, we initiated a Phase 2B prospective, double-blinded RCT investigating a single intra-articular injection of 40 mg of AmnioFix Injectable as compared to a single injection of saline (placebo control) in the treatment of pain and functional impairment in patients with osteoarthritis of the knee. This trial was planned to enroll 318 patients, with an interim analysis to

assess adequacy of this sample size built into the statistical plan. This blinded interim analysis was performed in August 2019 and revealed that while differences in the treatment groups were observed, the power to observe statistically and clinically significant results would be enhanced by increasing the sample size to 466 patients. Amendments to the protocol to allow this increase were subsequently approved and instituted and enrollment is progressing.

We also amended the protocol and established an open label extension to the trial, to allow patients to receive a second injection of the active treatment at six months, nine months, or 12 months subsequent to their completion of study visits, if their pain has not resolved or responded, regardless of treatment arm. The study will still be blinded to subjects, sites and MiMedx during this extension. However, we now expect that FDA approval to market AmnioFix Injectable for this indication will take longer than previously expected, and it may take several years. There can be no assurance that we will ultimately receive FDA approval. Approval may be delayed due to a variety of factors, including failure of the studies to achieve their endpoints, the extra effort and cost required to improve our clinical trials as described above, the impact of the COVID-19 pandemic on study enrollment and FDA operations, and the work required to achieve commercial and manufacturing readiness. See discussion below - "*Risk Factors*" under the heading "*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."*

Achilles Tendonitis

In January 2018, we initiated a Phase 3 prospective, double-blinded RCT investigating a single intra-tendon injection of 40 mg of AmnioFix Injectable as compared to a single injection of saline (placebo control) in the treatment of Achilles tendonitis. The planned trial enrollment was 158 patients, with an interim analysis to assess adequacy of the sample size built into the statistical plan. We analyzed data received from this sample size analysis, conducted on patients representing 50% of total enrollment that had reached the primary efficacy endpoint. This indicated that a substantial increase in sample size would be required to observe clinically and statistically significant improvement and separation between treatment and control groups. With this in mind, we have concluded that the most reasonable approach was to continue the study to completion with the originally planned sample size, and analyze the final results to determine the adequacy of the measures employed and time points of observation to show meaningful clinical and statistical analyses. Enrollment for this study has completed and we anticipate that the last patient visit will occur in the first half of 2021.

Other

In addition, we intend to file an IND for AmnioFill in the second half of 2020, although we have not yet initiated any clinical trials under an IND in furtherance of any regulatory approvals for AmnioFill. We also intend to file an IND for injectable micronized EpiFix for the treatment of DFUs or other areas of advanced wound care in the second half of 2020. Clinical study initiation will depend on FDA feedback for both of these programs. Given the timelines of these proposed filings and anticipated delays at FDA in processing applications due to the COVID-19 pandemic, it is likely that studies will not begin enrollment in this calendar year.

BLA Process

If any of the study results support potential product approval and potential for commercialization, we intend to file BLAs as described above. The process of obtaining an approved BLA requires the expenditure of substantial time, effort and financial resources and may take years to complete. The fee for filing a BLA and the annual user fees payable with respect to any establishment that manufactures biologics and with respect to each approved product are substantial. While there can be no assurance that we will ultimately obtain regulatory approval for our micronized products, we have already completed substantial work towards multiple BLAs, including engineering our manufacturing processes to conform to cGMP guidances.

FDA Post – Market Regulation

Tissue processors regulated solely under Section 361 are still required to register as an establishment with the FDA. As a registered establishment, we are required to comply with regulations regarding labeling, record keeping, donor eligibility, screening and testing. We are also required to process the tissue in accordance with established cGTP, as well as report any adverse reactions caused by a possible transmission of an infectious disease attributed to our tissue. Our facilities are also subject to periodic inspections to assess our compliance with the regulations.

Products covered by a BLA, New Drug Application, 510(k) clearance or a pre-market approval are subject to numerous additional regulatory requirements, which include, among others, compliance with cGMP (or, in the case of devices, with FDA's Quality System Regulation), which imposes certain procedural, substantive and record keeping requirements, and labeling regulations to ensure a product's identity, strength, quality, and purity. These products are also subject to the FDA's general prohibition against promoting products for unapproved or "off-label" uses, and additional adverse reaction reporting.

As part of our BLA development effort, we are updating our manufacturing establishments into compliance with cGMP for production for our injectable and other applicable Section 351 products. We are also pursuing opportunities to partner with a contract manufacturing organization. The transition process includes development and enhancement of production processes, procedures, test and assays, and it requires extensive validation work. It can also involve the procurement and installation of new production or lab equipment. These efforts require human capital, expertise and resources. We have made significant improvements in this transition over the last year. We have engaged industry experts to assess our state of compliance and to provide guidance on the additional activities needed to meet cGMPs. Our goal is to achieve compliance with cGMP for our injectable and other applicable Section 351 products by the time the FDA's current period of enforcement discretion is complete in November 2020. See discussion below – "*Risk Factors*" under the heading "*To the extent our products do not qualify for regulation as human cells, tissues and cellular and tissue-based products solely under Section 361 of the Public Health Service Act, this could result in removal of the applicable products from the market, would make the introduction of new tissue products more expensive and would significantly delay the expansion of our tissue product offerings and subject us to additional post-market regulatory requirements,"* and "*We may be subject to fines, penalties, injunctions and even criminal sanctions if we are deemed to have made a misstatement of compliance to a federal agency."*

Other Regulation Specific to Tissue Products

National Organ Transplant Act

Procurement of certain human organs and tissue for transplantation is subject to the restrictions of the National Organ Transplant Act ("***NOTA***"), which prohibits the transfer of certain human organs, including skin and related tissue, for valuable consideration, but permits the reasonable payment associated with the removal, transportation, implantation, processing, preservation, quality control and storage of human tissue and skin. Our wholly-owned subsidiary, MiMedx Tissue Services, LLC, is registered with the FDA as an establishment that manufactures human cells, tissues and cellular and tissue-based productions and is involved with the recovery and storage of donated human amniotic tissue. We reimburse tissue banks, hospitals and physicians for their services associated with the recovery and storage of donated human tissue.

Tissue Bank Laws, Regulations, and Related Accreditation

As discussed above, we are required to register with the FDA as an establishment that manufactures human cells, tissues and cellular and tissue-based products. We are licensed, registered, or permitted as a tissue bank in California, Georgia, New York, Delaware, Illinois, Oregon, and Maryland. Additionally, we received and actively maintain AATB accreditation. The AATB has issued operating standards for tissue banking. Compliance with these standards is required in order to become an AATB-accredited tissue establishment. AATB standards include specific requirements for recovery, screening, testing, labeling and processing of placenta tissue. We believe we are compliant in all material respects with AATB standards and our state licensure requirements.

To the extent we sell our products outside of the United States, we also are subject to laws and regulations of foreign countries.

Other Healthcare Laws and Compliance Requirements

In the United States, our activities are potentially subject to regulation by various federal, state and local authorities in addition to the FDA, including CMS, other divisions of the HHS (e.g., the Office of Inspector General), the DOJ and individual United States Attorney offices within the DOJ, and state and local governments. These regulations include those described below.

- The federal Anti-Kickback Statute, which is a criminal law that prohibits, among other things, any person from knowingly and willfully offering, soliciting, receiving or providing any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind, to induce or reward referrals, purchases or orders, or arranging for or recommending the purchase, order or referral of any item or service for which payment may be made in whole or in part by a federal healthcare program, such as the Medicare and Medicaid programs. The term "remuneration" has been broadly interpreted to include anything of value. The Patient Protection and Affordable Care Act amended the intent requirement of the federal Anti-Kickback Statute, so that a person or entity no longer needs to have actual knowledge of this statute or specific intent to violate it. A conviction for violation of the Anti-Kickback Statute results in criminal fines and requires mandatory exclusion from participation in federal health care programs. Although there are a number of statutory exceptions and regulatory safe harbors to the federal Anti-Kickback Statute that protect certain common industry practices from prosecution, the exceptions and safe harbors are drawn narrowly, and arrangements may be subject to scrutiny or penalty if they do not fully satisfy all elements of an available exception or safe harbor. See discussion below under "*Risk Factors–We and our sales representatives, whether employees or independent contractors, must comply with various federal and state anti-kickback, self-referral, false claims and similar laws, any breach of which could cause an adverse effect on our business, results of operations and financial condition.*"

- The federal False Claims Act ("***FCA***") imposes significant civil liability on any person or entity that knowingly presents, or causes to be presented, a claim for payment to the U.S. government, including the Medicare and Medicaid programs, that is false or fraudulent. The FCA also allows a private individual or entity as a whistleblower to sue on behalf of the government to recover civil penalties and treble damages. FCA liability is potentially significant in the healthcare industry because the statute provides for treble damages and mandatory penalties of between $11,181 and $22,363 per false claim or statement for penalties assessed after January 29, 2018, with respect to violations occurring after November 2, 2015. As a result of a modification made by the Fraud Enforcement and Recovery Act of 2009, a claim includes "any request or demand" for money or property presented to the U.S. government.

- The federal Health Insurance Portability and Accountability Act of 1996 ("***HIPAA***") fraud and abuse provisions prohibit executing a scheme to defraud any healthcare benefit program, willfully obstructing a criminal investigation of a health care offense, or making false statements or concealing a material fact relating to payment for healthcare benefits, items or services.

- While manufacturers of human cell and tissue products regulated solely under Section 361 are not subject to the federal Physician Payments Sunshine Act and its implementing regulations (together with the Act, the "***Sunshine Act***"), in the future, if we receive a BLA approval, this law will require us (with certain exceptions) to report information to CMS related to certain payments or other transfers of value we make to U.S.-licensed physicians and teaching hospitals, and for reports submitted on or after January 1, 2022, physician assistants, nurse practitioners, clinical nurse specialists, certified nurse anesthetists and certified nurse-midwives. If we receive a BLA approval, the Sunshine Act would also require us to report annually certain ownership and investment interests held by U.S.-licensed physicians and their immediate family members. Such information will subsequently be made publicly available by CMS on the Open Payments website.

- Federal conflicts of interest laws, the Standards of Ethical Conduct for Employees of the Executive Branch, and local site policies for each federal institution we call upon govern our interactions with federal employees at our various government accounts (*e.g.*, Department of Defense ("***DoD***"), VA, *etc*.) and impose a number of limitations on such interactions.

- There are state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws, which may apply to items or services reimbursed by any third-party payer, including commercial insurers, many of which differ from each other in significant ways and often are not preempted by federal laws, thus complicating compliance efforts.

In addition, we may be subject to data privacy and security regulation by both the federal government and the states in which we conduct our business. HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act ("***HITECH***") and its implementing regulations, imposes certain requirements relating to the privacy, security and transmission of protected health information. Among other things, HITECH made HIPAA's privacy and security standards directly applicable to "business associates," independent contractors or agents of covered entities that receive or obtain protected health information in connection with providing a service on behalf of a covered entity. HITECH also created four new tiers of civil monetary penalties, amended HIPAA to make civil and criminal penalties directly applicable to business associates and possibly other persons and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorneys' fees and costs associated with pursuing federal civil actions. In addition, state laws govern the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

Seasonality

We typically experience seasonality, with lower shipments in the first quarter of each year compared to the immediately preceding fourth quarter. This seasonal shipments pattern relates to U.S. annual insurance deductible resets and unfunded flexible spending accounts.

Research and Development

Our research and development group has extensive experience in developing products related to our field of interest, and works to design products that are intended to improve patient outcomes, simplify techniques, shorten procedures, reduce hospitalization and rehabilitation times and, as a result, reduce costs. Our research and development group also works to establish scientific evidence in support of the use of our products. Clinical trials that demonstrate the safety, efficacy and cost effectiveness of our products are key to obtaining broader third-party reimbursement for our products. In addition to our internal staff, we contract with outside labs and physicians who aid us in our research and development process. See Part II, Item 7, below, for information regarding expenditures for research and development in each of the last three fiscal years.

Environmental Matters

Our tissue preservation activities generate a small amount of chemical and biomedical waste, consisting primarily of diluted alcohols and acids and human biological waste, including human tissue and body fluids removed during laboratory procedures. The biomedical waste generated by our tissue processing operations are placed in appropriately constructed and labeled containers and are segregated from other waste. We contract with third parties for transport, treatment, and disposal of our biomedical waste.

Employees

As of December 31, 2019, we had 696 employees. We consider our relationships with our employees to be satisfactory. None of our employees are covered by a collective bargaining agreement.

Available Information

We are required to file proxy statements, annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K with the SEC. The SEC maintains an internet site, www.sec.gov, where these reports are available free of charge.

We also make these reports available free of charge on our website, www.mimedx.com, under the heading "*Investors–SEC Filings*." In addition, our Audit Committee, Compensation Committee, Ethics and Compliance Committee, and Nominating and Corporate Governance Committee Charters as well as our Code of Business Conduct and Ethics, are on our website under the heading "*Investors–Corporate Governance*." The reference to our website does not constitute incorporation by reference of any information contained on that site.

Item 1A. Risk Factors

An investment in our Common Stock involves a substantial risk of loss. Set forth below are descriptions of those risks and uncertainties that we currently believe to be material, but the risks and uncertainties described below are not the only risks and uncertainties that could materially adversely affect our business, financial condition and operating results. If any of these risks materialize, our business, financial condition or operating results could suffer. In this case, the trading price of our Common Stock could decline, and you may lose part or all of your investment.

Risks Related to Our Business and Industry

Our substantial indebtedness may adversely affect our financial health.

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. See Item 9B, "Other Information." Following the closing of the Preferred Stock Transaction and the Hayfin Loan Transaction, and the repayment of the BT Loan Agreement, as of July 2, 2020, the Company had approximately $110 million of cash and cash equivalents and approximately $50 million of long-term debt.

Our substantial outstanding debt may limit our ability to borrow additional funds or may adversely affect the terms on which such additional funds may be available. Additionally, a default under certain other indebtedness constitutes an event of default under the Hayfin Loan Agreement. Consequently, the effects of a default under other debt may be amplified by the lender exercising the remedies available to them in the Hayfin Loan Agreement for events of default, including foreclosure on the collateral securing our obligations and the declaration that all amounts outstanding under the Hayfin Loan Agreement are immediately due and payable. The limitations on our ability to access additional borrowing and the potential effects of a cross-default under the Hayfin Loan Agreement may limit our liquidity and have an adverse effect on our business, financial condition, and results of operations.

The restrictive covenants in the Hayfin Loan Agreement, and the Company's obligation to make debt payments under the Hayfin Loan Agreement, limit our operating and financial flexibility and may adversely affect our business, results of operations and financial condition.

The Hayfin Loan Agreement imposes operating and financial restrictions and covenants. For example, the Hayfin Loan Agreement contains (a) certain covenants that impose certain reporting and/or performance obligations on the Company and its subsidiaries, including (i) a maximum Total Net Leverage Ratio (as defined in the Hayfin Loan Agreement) of 5.0x through December 31, 2020, stepping down to 4.5x through June 30, 2021 and to 4.0x thereafter until July 2, 2025, in each case tested quarterly; and (ii) Minimum Liquidity (as defined in the Hayfin Loan Agreement) of $10 million, an at-all-times covenant tested monthly and (b) certain negative covenants that generally limit, subject to various exceptions, the Company and its subsidiaries from taking certain actions, including, without limitation, incurring indebtedness (including with respect to drawdowns under the delayed draw term loan (the "***DD TL***") if the Total Net Leverage Ratio (pro forma for such drawdowns) exceeds 3.5x), making investments, incurring liens, paying dividends and engaging in mergers and consolidations, sale and leaseback transactions and asset dispositions.

A breach of a financial covenant in the Hayfin Loan Agreement would result in an event of default that would trigger the lenders' remedies, including the right to accelerate the entire principal balance of the loan under the Hayfin Loan Agreement (the "***Hayfin Term Loan***"). There can be no assurances that we will be able to repay all such amounts or be able to find alternative financing in case of such or other event of a default. Even if alternative financing is available in an event of a default under the Hayfin Loan Agreement, it may be on unfavorable terms, and the interest rate charged on any new borrowings could be substantially higher than the interest rate under the Hayfin Loan Agreement, thus adversely affecting our cash flows, liquidity, and results of operations. Acceleration of the repayment of the loan pursuant to the terms of the Hayfin Loan Agreement, in combination with the Company's current commitments and contingent liabilities, could also cast doubt on the Company's ability to continue as a going concern.

Our variable rate indebtedness under the Hayfin Loan Agreement 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.

Borrowings under the Hayfin Loan Agreement bear interest at a per annum rate equal to London Interbank Offered Rate ("***LIBOR,***" subject to a "floor" of 1.5%) plus a margin of 6.75% per annum. (Such margin is subject to step down after December 31, 2020 to 6.5% or 6.0% based on Total Net Leverage Ratio levels, as defined in the Hayfin Loan Agreement.) As a result, we are exposed to interest rate risk, which we do not hedge. If LIBOR rises, the interest rate on outstanding borrowings under the Hayfin Loan Agreement will increase. Therefore, an increase in LIBOR will increase our interest payment obligations under the Hayfin Loan Agreement and have a negative effect on our cash flows and liquidity, and could have a negative effect on our ability to make payments due under the Hayfin Loan Agreement.

If we do not successfully execute our priorities, our business, operating results and financial condition could be adversely affected.

Our priorities are to participate in the growth in the advanced wound care category, increase the Company's market share by demonstrating the positive health economics of our products, and accelerate the timeline to achieve our long-range growth objectives, including our BLA pipeline. We have sought and may continue to seek capital to implement our priorities, which include advancing our BLA programs and seeking FDA approval for micronized dHACM to treat musculoskeletal degeneration across multiple indications.

In developing our priorities, we evaluated many factors including, without limitation, those related to developments in our industry, customer demand, competition, regulatory developments, and the ability of the Company to execute a capital raise and general economic conditions. Actual conditions may be different from our assumptions, and we may not be able to successfully execute our priorities. If we do not successfully execute our priorities, or if actual results vary significantly from our assumptions, our business, operating results and financial condition could be adversely impacted.

In addition, managing our growth may be more difficult than we expect. We anticipate that a period of significant expansion will be required to penetrate and service the market for our existing and anticipated future products and to continue to develop new products. This expansion will place a significant strain on management and operational and financial resources. To manage the expected growth of our operations and personnel, we must both modify our existing operational and financial systems, procedures and controls and implement new systems, procedures and controls. We must also expand our finance, administrative and operations staff. Management may be unable to hire, train, retain, motivate and manage necessary personnel or to identify, manage and exploit existing and potential relationships and market opportunities.

We are in a highly competitive and evolving field and face competition from well-established tissue processors and medical device manufacturers, as well as new market entrants.

Our business is in a very competitive and evolving field. Competition from other tissue processors, medical device companies, and biotherapeutic companies, and from research and academic institutions, is intense, expected to increase and subject to rapid change and could be significantly affected by new product introductions. Established competitors and newer market entrants are investing in additional clinical research that may allow them to gain further clinician usage, adoption and payer coverage of their products. In addition, consolidation and cost containment measures in the healthcare industry may cause hospitals to consolidate their purchases with suppliers that have a broad portfolio of products. This would continue to give rise to demands for price concessions, which could have an adverse effect on our business, results of operations and financial condition. Further, competitors may introduce amniotic membrane products in the future at lower prices, adding new features or gaining additional reimbursement coverage. Further, they may copy our products outside the United States. The presence of this competition may lead to pricing pressure, which could have an adverse effect on our business, results of operations and financial condition.

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.

The technologies underlying our products are subject to rapid and profound technological change. Competition intensifies as technical advances in each field are made and become more widely known. Others may develop services, products or processes with significant advantages over the products, services and processes that we offer or are seeking to develop. Any such occurrence could have an adverse effect on our business, results of operations and financial condition.

We plan to enhance and broaden our product offerings in response to changing customer demands and competitive pressure and technologies. The success of any new product offering or enhancement to an existing product will depend on numerous factors, including our ability to:

- properly identify and anticipate physician and patient needs;
- acquire, through licensing, co-development or outright purchase, new technology developed outside of MiMedx;
- develop and introduce new products or product enhancements in a timely manner;
- adequately protect our intellectual property and avoid infringing upon the intellectual property rights of third parties;
- demonstrate the safety and efficacy of new products; and
- obtain the necessary regulatory clearances or approvals for new products or product enhancements.

If we do not develop and, when necessary, obtain regulatory clearance or approval for new products or product enhancements in time to meet market demand, or if there is insufficient demand for these products or enhancements, our results of operations and financial condition will suffer. Our research and development efforts may require a substantial investment of time and resources before we are adequately able to determine the commercial viability of a new product, technology, material or other innovation. In addition, even if we are able to successfully develop enhancements or new generations of our products, these enhancements or new generations of products may not produce sales in excess of the costs of development, or they may never receive required regulatory approval and they may be quickly rendered obsolete by changing customer preferences or the introduction by our competitors of products embodying new technologies or features.

Our products depend on the availability of tissue from human donors, and any disruption in supply could adversely affect our business.

The success of our human tissue products depends upon, among other factors, the availability of tissue from human donors. Any failure to obtain tissue from our sources will interfere with our ability to effectively meet demand for our products incorporating human tissue. The availability of donated tissue could also be adversely impacted by regulatory changes, public opinion of the donor process and our own reputation in the industry. Obtaining adequate supplies of human tissue involves several risks, including limited control over availability (for example, access to hospital accounts and the number of consenting mothers), quality and delivery schedules. In addition, any interruption in the supply of any human tissue component could harm our ability to manufacture our products until a new source of supply, if any, could be found. We also utilize third-party providers of placental donations to mitigate risks but there can be no assurance that these third parties will be able to provide donated tissues at all times. We may be unable to find a sufficient alternative supply channel in a reasonable time period or on commercially reasonable terms, if at all, which would have an adverse effect on our business, results of operations and financial condition.

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.

The COVID-19 pandemic and governmental and societal responses thereto have adversely affected our business, results of operations and financial condition, and will likely continue to do so. See Item 7, "*Management's Discussion and Analysis - Results of Operations.*"

The continuation or additional waves of the outbreak of the COVID-19 pandemic has adversely affected, and may continue to adversely affect, our operations and increase our costs and expenses in numerous ways. Our clinical researchers and customers have experienced restrictions in their access to hospitals and ability to access other healthcare providers. If our leadership, employees, sales agents, suppliers, medical professionals, or users of our products are impacted by an epidemic, by illness, or through social distancing, quarantine or other precautionary measures, then our manufacturing operations, sales and demand for our product, and clinical trials may be adversely affected. This risk is particularly acute for our manufacturing operations, which take place in a confined area. Additionally, if we experience shortages of donated placentas because donors or our recovery specialists are excluded from hospitals, or because additional testing protocols are implemented for donated tissues based on guidance issued by the AATB, FDA, or other standards and are screened as ineligible, our results of operations may be adversely affected. In many areas, our sales force was excluded from hospitals and the offices of other health care providers from late March until mid-May 2020. This adversely affected our revenues beginning late in the first quarter of 2020 and continuing into April. While access to hospitals and healthcare providers by our sales force had been mostly restored by mid-May, future restrictions on access to hospitals by our sales force or patients may have an additional adverse effect on our revenues and results of operations. Disruptions to the health care system generally, such as if patients are unable or unwilling to visit health care providers, or if health care providers prioritize treatment of acute or communicable illnesses over wound care, have and may continue to adversely affect our revenues and results of operations. For example, from mid-March through mid-May 2020, many patients stayed away from hospitals and other medical facilities, which adversely impacted revenues and stalled enrollments in our clinical trials. Additionally, 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. Also, the severity of the COVID-19 pandemic has been uneven across the country, and additional 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. To date, COVID-19 has had only a modest impact on our ability to source and manufacture our products. However, the negative consequences arising from the pandemic and governmental and societal responses thereto may be more severe the longer COVID-19 continues to circulate domestically or internationally. The ultimate impact of the COVID-19 pandemic is highly uncertain and subject to change. We do not yet know the full extent of delays or impacts on our business, our 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 our business, results of operations and financial condition.

We depend on our senior leadership team and may not be able to retain or replace these employees or recruit additional qualified personnel, which would harm our business, results of operations and financial condition.

Our business and success are materially dependent on attracting and retaining members of our senior leadership team to formulate and execute the Company's business plans. Since June 2018, we have needed to add or replace a number of our senior leadership team members including our Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chief Accounting Officer, and General Counsel and Secretary. We have experienced difficulties in recruiting due to legal and business uncertainties resulting from the issues which were the subject of the Audit Committee Investigation.

Leadership changes can be inherently difficult to manage and may cause material disruption to our business or management team. Changes in senior management could also lead to an environment that presents additional challenges in recruiting and retaining employees, which could have an adverse effect on our business, results of operations and financial condition. Our success will depend, in part, upon our ability to attract and retain skilled personnel, including sales, managerial and technical personnel. There can be no assurance that we will be able to find and attract additional qualified employees to support our expected growth or retain any such personnel. Beginning in June 2018 and continuing into 2019, we experienced higher than normal attrition in our general workforce. Our inability to hire and retain qualified personnel or the loss of services of our key personnel may have an adverse effect on our business, results of operations and financial condition.

A significant portion of our revenues and accounts receivable come from government accounts.

We have significant sales to the government (whether we are selling our products directly to government accounts or through a distributor). Any disruption of our products on the Federal Supply Schedule ("***FSS***"), or of the use of Indefinite Delivery, Indefinite Quantity contracts, or any change in the way the government purchases products like ours or the price it is willing to pay for our products, could adversely affect our business, results of operations and financial condition. Similarly, competitive pricing pressures and any non-compliance with applicable guidelines could cause the Company to lose existing or future contracts with the VA, which may result in an overall decline in revenue.

During 2018 and 2019, the Company conducted a comprehensive review of its pre- and post-award VA sales under its FSS contract and identified a potential issue that it self-disclosed to the VA concerning the eligibility of one of its products for inclusion in the Company's FSS contract. The Company announced in April 2020 that it had resolved this matter for $6.5 million. See Note 16, "*Commitments and Contingencies*," below. However, any resulting negative impact to our contractual relationship with the VA going forward may adversely affect our business, results of operations and financial condition.

Our revenues depend on adequate reimbursement from public and private insurers and health systems.

Our success depends on the extent to which our customers receive adequate reimbursement for the costs of our products and related treatments from third-party payers, including government healthcare programs, such as Medicare and Medicaid, as well as private insurers and health systems. Government and other third-party payers attempt to contain healthcare costs by limiting both coverage and the level of reimbursement of medical products, particularly new products. Therefore, significant uncertainty usually exists as to the reimbursement status of new healthcare products by third-party payers. Although EpiFix has coverage with the majority of payers, a significant number of public and private insurers and health systems currently do not cover or reimburse our other products. If we are not successful in obtaining adequate coverage and reimbursement for our products from these third-party payers, it could have an adverse effect on market acceptance of our products. Inadequate reimbursement levels would likely also create downward price pressure on our products. Even if we do succeed in obtaining widespread coverage and reimbursement rates or policies for our products, future changes in coverage or reimbursement rates or policies could have a negative impact on our business, financial condition and results of operations. For example, through its rule-making process, CMS has requested stakeholder comments on the reimbursement methodology under the Medicare Hospital Outpatient Prospective Payment System for an episode of wound care for future years. In other words, the Medicare reimbursement payment methodology may change after 2020 in the hospital outpatient setting from the current reimbursement methodology, which is based on a bundled payment amount per wound care application (i.e. per skin substitute application), to a fixed, global payment to treat the wound until it is healed (i.e. a lump sum payment that covers the entire wound care episode). We are unable to assess the potential effects of these reimbursement changes on our business at this time, as it is not clear if any changes will take effect and CMS has not disclosed specific reimbursement details for a wound episode model. We are and will continue to participate in discussions with CMS on potential solutions for future wound episode reimbursement models.

Further, we have experienced some reluctance by payers to cover products for applications other than those for which we have published clinical trials. For example, Noridian, the MAC for 13 states, published a Local Coverage Article effective November 8, 2018 that limits coverage for amniotic membrane derived skin substitute products to diabetic foot ulcers and venous stasis ulcers only. Prior to the published article, Noridian did not have a written policy on the matter, which provided a pathway for physicians to utilize amniotic membrane derived skin substitute products, such as ours, based on medical necessity in a wide variety of wounds.

Currently, there are three MACs that do not have a written medical policy in the form of a Local Coverage Determination ("***LCD***") or article. If the three MACs created written medical policy criteria, this could limit providers to the use of products that have published clinical evidence for a specific wound type. As a result of the Noridian published article, our revenues for 2019 declined significantly compared to 2018. Our future revenues could experience additional declines if other MACs or other payers further limit their coverage of our products. This decline would adversely affect our business, financial condition and results of operations.

Our revenue, results of operations and cash flows may suffer upon the loss of a GPO or IDN.

As with many manufacturers in the healthcare space, the Company contracts with GPOs and IDNs to establish contracted pricing and terms and conditions for the members of GPOs and IDNs. Approximately three-quarters of our sales in the year ended December 31, 2019 came from customers that are members of our main GPOs or IDNs.

Our agreements with GPOs and IDNs allow us to sell our products efficiently to large groups of customers. Our agreements with GPOs and IDNs typically provide their members with favorable ordering terms and conditions and access to favorable product pricing. These customers purchase our product through GPO and IDN arrangements in part because of favorable pricing and terms and conditions. If our agreement with any GPO or IDN is terminated or expires without being extended, renewed or renegotiated this could adversely affect our revenue, results of operations and cash flows.

We contract with independent sales agents and distributors.

In 2019, approximately 17% of our sales through our relationships with independent agents and distributors. (Sales agents act directly on behalf of MiMedx to arrange sales, while distributors take title to product and may set their own prices.) See Note 17, "*Revenue Date by Customer Type.*"

Because our agents and distributors are not employees, there is a risk we will be unable to ensure that our sales processes, compliance safeguards, and related policies will be adhered to despite our communication and training of agents and distributors regarding these requirements. Further, if we fail to maintain relationships with our key independent agents, or fail to ensure that our independent agents adhere to our sales processes, compliance safeguards and related policies, there could be an adverse effect on our business, results of operations, and financial condition.

Also, if our relationships with our independent sales agents or distributors were terminated for any reason, it could materially and adversely affect our revenues and profits. Because the independent agent often controls the customer relationships within its territory, there is a risk that if our relationship with the agent ends, our relationship with the customer will be lost.

We may obtain the assistance of additional distributors and independent sales representatives to sell products in certain sales channels, particularly in territories and fields where agents are commonly used. Our success is partially dependent upon our ability to train, retain and motivate our independent sales agencies, distributors, and their representatives to appropriately and compliantly sell our products in certain territories or fields. They may not be successful in implementing our marketing plans or compliance safeguards. Some of our independent sales agencies and distributors do not sell our products exclusively and may offer similar products from other companies. Our independent sales agencies and distributors may terminate their contracts with us, may devote insufficient sales efforts to our products or may focus their sales efforts on other products that produce greater commissions for them, which could have an adverse effect on our business, results of operations and financial condition. We also may not be able to find additional independent sales agencies and distributors who will agree to appropriately and compliantly market or distribute our products on commercially reasonable terms, if at all. If we are unable to establish new independent sales representative and distribution relationships or renew current sales agency and distribution agreements on commercially acceptable terms, our business, financial condition, and results of operations could be materially and adversely affected.

Disruption of our processing could adversely affect our business, financial condition and results of operations.

Our business depends upon the continued operation of our processing facilities in Marietta, Georgia and Kennesaw, Georgia. Risks that could impact our ability to use these facilities include the occurrence of natural and other disasters, the outbreak of pandemics, and the need to comply with the requirements of directives from government agencies, including the FDA. See, for example, Item 1A, Risk Factors - *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.* Either of our processing facilities can serve as a redundant processing facility for our Section 361 products in the event the other facility experiences a disaster event. We have made efforts to transition manufacturing into compliance with cGMPs for commercial production for our Section 351 products. These efforts are concentrated at our Kennesaw, Georgia facility for tissue processing and at our Marietta, Georgia facility for upstream and downstream supply chain activities. However, the unavailability of our processing facilities could have a material adverse effect on our business, financial condition and results of operations during the period of such unavailability.

To be commercially successful, we must convince physicians, where appropriate, that our products are proper alternatives to existing treatments and that our products should be used in their procedures.

We believe physicians will only use our products if they determine, based on their independent medical judgment and experience, clinical data, and published peer reviewed journal articles, that the use of our products in a particular procedure is a favorable alternative to other treatments. Physicians may be hesitant to change their existing medical treatment practices for the following reasons, among others:

- their lack of experience with advanced therapeutics, such as our placenta based allografts;
- lack of evidence supporting additional patient benefits of advanced therapeutics, such as our placenta-based allografts, over conventional methods in certain therapeutic applications;
- perceived liability risks generally associated with the use of new products and procedures;
- limited availability of reimbursement from third-party payers; and
- the time that must be dedicated to physician training in the use of our products.

If we cannot successfully address quality issues that may arise with our products, our brand reputation could suffer, and our business, financial condition, and results of operations could be adversely impacted.

In the course of conducting our business, we must adequately address quality issues that may arise with our products, as well as defects in third-party components included in our products, as any quality issues or defects may negatively impact physician use of our products. Although we have established internal procedures to minimize risks that may arise from quality issues, we may not be able to eliminate or mitigate occurrences of these issues and associated liabilities. If the quality of our products does not meet the expectations of physicians or patients, then our brand reputation could suffer and our business could be adversely impacted. We must also ensure any promotional claims made for our products comport with government regulations.

The formation of physician-owned distributorships ("PODs") could result in increased pricing pressure on our products or harm our ability to sell our products to physicians who own or are affiliated with those distributorships.

PODs are medical product distributors that are owned, directly or indirectly, by physicians. These physicians derive a proportion of their revenue from selling or arranging for the sale of medical products for use in procedures they perform on their own patients at hospitals that agree to purchase from or through the POD, or that otherwise furnish ordering physicians with income that is based directly or indirectly on those orders of medical products. The Office of Inspector General ("***OIG***") of the Department of Health & Human Services has issued a Special Fraud Alert on PODs, indicating that they are inherently suspect under the federal Anti-Kickback Statute.

Our commercial strategy emphasizes selling directly to healthcare providers and, to a limited extent, through distributors. To our knowledge, we do not directly sell to or distribute any of our products through PODs. The number and strength of PODs in the industry may continue to grow as economic pressures increase throughout the industry and hospitals, insurers and physicians search for ways to reduce costs, and, in the case of the physicians, identify additional sources to increase their incomes. These companies and the physicians who own, or partially own, PODs have significant market knowledge, access to and influence on the physicians who use our products and the hospitals that purchase our products, and we may not be able to compete effectively for business from physicians who own PODs.

We face the risk of product liability claims and may not be able to obtain or maintain adequate product liability insurance.

Our business exposes us to the risk of product liability claims that are inherent in the manufacturing, processing and marketing of human tissue products. We may be subject to such claims if our products cause, or appear to have caused, an injury. Claims may be made by patients, healthcare providers or others selling our products. Defending a lawsuit, regardless of merit, could be costly, divert management attention and result in adverse publicity, which could result in the withdrawal of, or reduced acceptance of, our products in the market.

Although we have product liability insurance that we believe is adequate, this insurance is subject to deductibles and coverage limitations, and we may not be able to maintain this insurance. Also, it is possible that claims could exceed the limits of our coverage. If we are unable to maintain product liability insurance at an acceptable cost or on acceptable terms with adequate coverage or otherwise protect ourselves against potential product liability claims or we underestimate the amount of insurance we need, we could be exposed to significant liabilities, which may harm our business. A product liability claim or other claim with

respect to uninsured liabilities or for amounts in excess of insured liabilities could result in significant costs and significant harm to our business.

The products we manufacture and process are derived from human tissue and therefore have the potential for disease transmission.

The utilization of human tissue creates the potential for transmission of communicable disease, including, without limitation, human immunodeficiency virus, viral hepatitis, syphilis and other viral, fungal or bacterial pathogens. We are required to comply with federal and state regulations intended to prevent communicable disease transmission.

We maintain strict quality controls designed in accordance with cGTP to ensure the safe procurement and processing of our tissue, including terminal sterilization of our products. These controls are intended to prevent the transmission of communicable disease. However, risks exist with any human tissue implantation. We are also in the process of developing and enhancing cGMP systems to comply with the regulations that will apply to our Section 351 HCT/Ps following the end of the FDA's enforcement discretion period under the Guidance. In addition, negative publicity concerning disease transmission from other companies' improperly processed donated tissue could have a negative impact on the demand for our products and adversely affect our business, financial condition and results of operations.

We may implement a product recall or voluntary market withdrawal, which could significantly increase our costs, damage our reputation, disrupt our business and adversely affect our business, results of operations and financial condition.

The processing and marketing of our tissue products involves an inherent risk that our tissue products or processes do not meet applicable quality standards and requirements. In that event, we may voluntarily implement a recall or market withdrawal or may be required to do so by a regulatory authority.

For example, in March 2020, MiMedx submitted to the FDA a biological product deviation report ("BPDR") regarding tissue recovered from four donors in Palm Beach County, Florida. These tissues were recovered by a third-party recovery partner. At the time of recovery, Palm Beach County had only just been designated as an area of active Zika transmission by the Center for Disease Control. Our recovery partner received an FDA 483 observation for recovering and providing this tissue to MiMedx in February 2020. MiMedx contacted each facility that received allografts containing the subject tissues. Following MiMedx's submission of the BPDR to the FDA, the FDA notified MiMedx that this event meets the formal definition of a "recall" and will be classified as a Class II recall on the FDA's recall website.

A recall or market withdrawal of one of our products could be costly and may divert management resources. A recall or withdrawal of one of our products, or a similar product processed by another entity, also could impair sales of our products as a result of confusion concerning the scope of the recall or withdrawal, or as a result of the damage to our reputation for quality and safety.

Significant disruptions of information technology systems or breaches of information security could adversely affect our business, results of operation and financial condition.

A breach of cybersecurity, a disruption in availability, or the unauthorized alteration of systems or data could adversely affect our business, results of operations and financial condition. We rely on technology for day-to-day operations as well as positioning to enhance our stance in the market. We generate intellectual property that is central to the future success of the business and transmit large amounts of confidential information. Additionally, we collect, store and transmit confidential information of customers, patients, employees and third parties. We also have outsourced significant elements of our operations to third parties, including significant elements of our information technology infrastructure, and, as a result, we are managing many independent vendor relationships with third parties who may or could have access to our confidential information. The continually changing threat landscape of cybersecurity today makes our systems potentially vulnerable to service interruptions or to security breaches from inadvertent or intentional actions by our employees, partners, and vendors, and from attacks by malicious third parties, including supply chain attacks originating at our third-party partners. Such attacks are of ever-increasing levels of sophistication. Attacks are made by individuals or groups that have varying levels of expertise, some of which are technologically advanced and well-funded including, without limitation, nation states, organized criminal groups and hacktivists organizations.

To ensure protection of our information, we have invested in cybersecurity and have implemented processes and procedural controls to maintain the confidentiality and integrity of such information. We measure these controls and their success through a cybersecurity framework that is based on industry standards. While we have invested in the protection of our data and technology, there can be no guarantees that our efforts will prevent all service interruptions or security breaches. Any such interruption or breach of our systems could adversely affect our business operations and result in the loss of critical or sensitive confidential information or intellectual property, and could result in financial, legal and reputational harm to our business, including legal claims and proceedings, liability under laws that protect the privacy of personal information, government enforcement actions and regulatory

penalties, as well as remediation costs. We maintain cyber liability insurance. However, this insurance may not be sufficient to cover the financial, legal or reputational losses that may result from an interruption or breach of our systems.

We may expand or contract our business through acquisitions, divestitures, licenses, investments, and other commercial arrangements in other companies or technologies, which may adversely affect our business, results of operations and financial condition.

We periodically evaluate opportunities to acquire or divest companies, divisions, technologies, products, and rights through licenses, distribution agreements, investments, and outright acquisitions to grow our business. In connection with one or more of those transactions, we may, subject to the requirements and limitations set forth in the Hayfin Loan Agreement:

- issue additional equity securities that would dilute the value of equity currently held by our shareholders;
- divest or license existing products or technology;
- use cash that we may need in the future to operate our business;
- incur debt that could have terms unfavorable to us or that we might be unable to repay;
- structure the transaction in a manner that has unfavorable tax consequences, such as a stock purchase that does not permit a step-up in the tax basis for the assets acquired;
- be unable to realize the anticipated benefits, such as increased revenues, cost savings, or synergies from additional sales;
- be unable to secure the services of key employees related to the transaction(s); and
- be unable to succeed in the marketplace with the transaction(s).

Any of these items could adversely affect our revenues, results of operations and financial condition. Business acquisitions also involve the risk of unknown liabilities associated with the acquired business, which could be material. Incurring unknown liabilities or the failure to realize the anticipated benefits of any transaction could adversely affect our business if we are unable to recover our initial investment. Inability to recover our investment, or any write off of such investment, associated goodwill or assets could have an adverse effect on our business, results of operations and financial condition.

If any of the BLAs are approved, the Company would be subject to additional regulation which will increase costs and could result in adverse sanctions for non-compliance.

Products subject to the FDA's BLA requirements must comply with a range of pre- and post-market provisions. Pre-market compliance includes the conduct of clinical trials in support of BLA approval, the development and submission of a BLA, and the production of product for use in the clinical trials that meets FDA's quality expectations. Post-approval requirements for BLA products include: compliance with cGMPs, which will require us to make enhancements in our fixed plant as well as incur regular costs and reduced product yields from testing products to ensure quality, identity, purity, and potency; compliance with promotional and labeling requirements, which limit our ability to make claims about regulated products; submission of annual reports in appropriate circumstances; compliance with the FDA's "Biological Product Deviation Reporting System," when applicable; "submission of adverse events;" reporting and correcting product problems within established timeframes; recalling or stopping the manufacture of a product if a significant problem is detected; complying with the appropriate laws and regulations relevant to the biologics license; and identifying any changes needed to help ensure product quality. In some instances, the FDA can also require that applicants conduct post-market studies or trials of the product. This additional compliance burden may increase costs, and failure to comply with such requirements may subject the Company to sanctions that would have an adverse impact on our business, results of operations and financial condition.

New lines of business or new products and services may subject us to additional risks.

From time to time, we may implement or may acquire new lines of business or offer new products and services within existing lines of business. There are risks and uncertainties associated with these efforts, particularly in instances where the markets are not fully developed or are evolving. In developing and marketing new lines of business and new products and services, we may invest significant time and resources. External factors, such as regulatory compliance obligations, competitive alternatives, and shifting market preferences, may also impact the successful implementation of a new line of business or a new product or service. Failure to successfully manage these risks in the development and implementation of new lines of business or new products or services could have an adverse effect on our business, results of operations and financial condition.

Our international expansion and operations outside the U.S. expose us to risks associated with international sales and operations.

We may consider further expansion outside the U.S. Managing a global organization is difficult, time consuming and expensive. Conducting international operations subjects us to risks that could be different than those faced by us in the United States. The sale and shipment of our products across international borders, as well as the purchase of components and products from international sources, subject us to extensive U.S. and foreign governmental trade, import and export and customs regulations and laws, including, without limitation, the Export Administration Regulations and trade sanctions against embargoed countries, which are administered by the Office of Foreign Assets Control within the Department of the Treasury, as well as the laws and regulations administered by the Department of Commerce. These regulations limit our ability to market, sell, distribute or otherwise transfer our products or technology to prohibited countries or persons.

International regulations on allowable promotional claims also make the promotion of our products more difficult.

Compliance with these regulations and laws is costly, and failure to comply with applicable legal and regulatory obligations could adversely affect us in a variety of ways that include, without limitation, significant criminal, civil and administrative penalties, including imprisonment of individuals, fines and penalties, denial of export privileges, seizure of shipments and restrictions on certain business activities. Also, the failure to comply with applicable legal and regulatory obligations could result in the disruption of our distribution and sales activities.

These risks may limit or disrupt our expansion, restrict the movement of funds or result in the deprivation of contractual rights or the taking of property by nationalization or expropriation without fair compensation. Operating outside of the U.S. also requires significant management attention and financial resources.

Risks Related to Regulatory Approval of Our Products and Other Government Regulations

To the extent our products do not qualify for regulation as human cells, tissues and cellular and tissue-based products solely under Section 361 of the Public Health Service Act, this could result in removal of the applicable products from the market, would make the introduction of new tissue products more expensive and would significantly delay the expansion of our tissue product offerings and subject us to additional post-market regulatory requirements.

The products we manufacture and process are derived from human tissue. Amniotic and other birth tissue is generally regulated as an HCT/P and is therefore eligible for regulation solely as a Section 361 HCT/P depending on whether the specific product at issue and the claims made for it are consistent with the applicable criteria. HCT/Ps that do not meet these criteria are subject to more extensive regulation as drugs, medical devices, biological products, or combination products. These HCT/Ps must comply with both the FDA's requirements for HCT/Ps and the requirements applicable to biologics, devices or drugs, including pre-market clearance or approval from the FDA. Obtaining FDA pre-market clearance or approval involves significant time and investment by the Company.

In November 2017, the FDA released a guidance document entitled *"Regulatory Considerations for Human Cells, Tissues, and Cellular and Tissue – Based Products: Minimal Manipulation and Homologous Use – Guidance for Industry and Food and Drug Administration Staff."* The document confirmed the FDA's stance that all micronized amniotic products require a biologics license to be lawfully marketed in the United States. It also indicated that sheet forms of amniotic tissue are appropriately regulated as solely Section 361 HCT/Ps when manufactured in accordance with 21 CFR Part 1271 and intended for use as a barrier or covering. The final guidance also stated that the FDA intends to exercise enforcement discretion under limited conditions with respect to the IND application and pre-market approval requirements for certain HCT/Ps for a period of 36 months from the date of the guidance. The FDA's approach is risk-based, and the guidance clarified that high-risk products and uses could be subject to immediate enforcement action. MiMedx continues to market AmnioFix Injectable and other micronized products under the policy of enforcement discretion as it works on the transition from Section 361 products to Section 351 products. Our sales of micronized products for all uses was $45.0 million, $68.4 million, and $42.4 million respectively, in 2017, 2018, and 2019. At the same time, we are pursuing the BLA pre-market approval process for certain of our micronized products, as more fully discussed under "*Business – Government Regulation.*"

Following the period of enforcement discretion under the Guidance, we may need to cease selling our micronized products and other products regulated under Section 351 until the FDA approves a BLA, and then we will only be able to market such products for indications that have been approved in a BLA. The loss of our ability to market and sell our micronized products would have an adverse impact on our revenues, business, financial condition and results of operations. In addition, we expect the cost to manufacture our products will increase due to the costs to comply with the requirements that apply to Section 351 biological products such as current cGMP and ongoing product testing costs. Increased costs relating to regulatory compliance could have an adverse impact on our business, financial condition and results of operations.

In addition, the FDA might, at some future point, modify the scope of its enforcement discretion or change its position on which current or future products qualify as Section 361 HCT/Ps, or determine that some or all of our micronized products may not be lawfully marketed under the FDA's policy of enforcement discretion. Any regulatory changes could have adverse consequences for us and make it more difficult or expensive for us to conduct our business by requiring pre-market clearance or approval and compliance with additional post-market regulatory requirements with respect to those products. It is also possible that the FDA could decide it will not allow the Company to market any form of a micronized product during the rest of the 36-month enforcement discretion period without a biologics license, and it could even require the Company to recall its micronized products. Further, under the November 2017 guidance, the FDA expressed its expectation that following the expiration of its 36-month enforcement discretion period, sales of micronized amniotic tissue will be limited to those products and indications for which applicants have received a BLA. In April 2019, we announced that we will need more time to file and commercialize our BLAs with the FDA and that clinical trial protocol enhancements, further resources and additional capabilities and expertise will be required for commercial launch; see Item 1, "*Business - Clinical Trials.*" While we do not track all uses of our micronized products by physicians, we believe that our micronized product is being used by physicians for more indications than those for which we presently intend to pursue BLAs, as well as in additional sizes (e.g. 100 mg). If the FDA does allow the Company to continue to market a micronized form of its sheet allografts without a biologics license, the FDA may impose conditions, such as labeling restrictions and the requirement that the product be manufactured in compliance with cGMP. Although the Company is preparing for these requirements in connection with its pursuit of a BLA for certain of its products, earlier compliance with these conditions would require significant additional time and cost investments by the Company.

Moreover, increased regulatory scrutiny within the industry in which we operate could lead to increased regulation of HCT/Ps, including Section 361 HCT/Ps, which could ultimately increase our costs and adversely impact our business, results of operations and financial condition.

If the FDA approves the BLAs we seek, we will incur increased compliance costs on an ongoing basis. See "*If any of the BLAs are approved, the Company would be subject to additional regulation which will increase costs and could result in adverse sanctions for non-compliance."*

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.

The process of obtaining regulatory clearances or approvals to market a biological product or medical device from the FDA or similar regulatory authorities outside of the U.S. may be costly and time consuming, and such clearances or approvals may not be granted on a timely basis, or at all. We are pursuing approval of BLAs for certain of our micronized products, but have not yet submitted a BLA for review. Additionally, the FDA may take the position that some of the other products that we currently market require a BLA as well. Some of the future products and enhancements to our current products that we expect to develop and market may require marketing clearance or approval from the FDA. However, clearance or approval may not be granted with respect to any of our products or enhancements and FDA review will involve delays that may adversely affect our ability to market such products or enhancements.

The process of obtaining an approved BLA requires the expenditure of substantial time, effort and financial resources and may take years to complete. The fee for filing a BLA and program fees payable with respect to any establishment that manufactures biologics are substantial. Additionally, there are significant costs associated with clinical trials that can be difficult to accurately estimate until a BLA is approved. Clinical trials may not be successful or may return results that do not support approval. Moreover, data obtained from clinical activities are not always conclusive and may be susceptible to varying interpretations, which could delay, limit or prevent regulatory approval. The FDA may not grant approval on a timely basis, or at all, or we may decide not to pursue a BLA for certain products or indications. Additionally, the FDA may limit the indications for use or place other conditions on any approvals that could restrict the commercial application of the products. If we do receive approval, some types of changes to the approved product, such as adding new indications, manufacturing changes and additional labeling claims, are subject to further testing requirements and FDA review and approval. Our revenues will be adversely affected if we fail to obtain BLA approvals on a timely basis or at all, if the FDA requires us to stop marketing our products until a BLA is approved, or if the FDA limits the indications for use or places other conditions that restrict the commercial application of our products.

Further, in April 2019, we announced that we will need more time than we originally anticipated to file our BLAs with the FDA. Based on a review of the studies and interim results, the Company has instituted several actions with respect to its ongoing and planned clinical trials to address the resources, capabilities, and expertise needed for commercial launch including our strategy around an increased dialogue with the FDA regarding our BLA progress. For these reasons, we have increased enrollment in our current clinical trials, and will need to initiate additional clinical trials. This has added expense, time, and additional uncertainty to the overall BLA approval process. See Item 1, "*Business - Clinical Trials.*" If the BLAs we seek are approved, we will incur increased compliance costs on an ongoing basis. See "*If any of the BLAs are approved, the Company would be subject to additional regulation which will increase costs and could result in adverse sanctions for non-compliance.*"

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 negative effects on our business, results of operations and financial condition.

As discussed above, the FDA has specific regulations governing our tissue-based products, or HCT/Ps. The FDA has broad post-market and regulatory and enforcement powers, even for Section 361 HCT/Ps. The FDA's regulation of HCT/Ps includes requirements for registration and listing of products, donor screening and testing, processing and distribution, labeling, record keeping and adverse-reaction reporting, and inspection and enforcement.

HCT/Ps that are regulated as drugs, biological products or medical devices are subject to even more stringent regulation by the FDA. Even if pre-market clearance or approval is obtained, the approval or clearance may place substantial restrictions on the indications for which the product may be marketed or to whom it may be marketed, may require warnings to accompany the product or impose additional restrictions on the sale or use of the product. In addition, regulatory approval is subject to continuing compliance with regulatory standards, including the FDA's quality system regulations.

If we fail to comply with the FDA regulations regarding our tissue products, the FDA could take enforcement action, including, without limitation, any of the following sanctions and the manufacture of our products or processing of our tissue could be delayed or terminated:

- untitled letters, warning letters, cease and desist orders, fines, injunctions, and civil penalties;
- recall or seizure of our products;
- operating restrictions, partial suspension or total shutdown of production;
- refusing our requests for clearance or approval of new products;
- withdrawing or suspending current applications for approval or approvals already granted;
- refusal to grant export approval for our products; and
- criminal prosecution.

The FDA's regulation of HCT/Ps may continue to evolve. Complying with any such new regulatory requirements may entail significant time delays and expense, which could have an adverse effect on our business, results of operations and financial condition.

The American Association of Tissue Banks ("***AATB***") has issued operating standards for tissue banking. Compliance with these standards is a requirement in order to become an accredited tissue bank. In addition, some states have their own tissue banking regulations.

In addition, procurement of certain human organs and tissue for transplantation is subject to the restrictions of the National Organ Transplant Act ("***NOTA***"), which prohibits the transfer of certain human organs, including skin and related tissue for valuable consideration, but permits the reasonable payment associated with the removal, transportation, implantation, processing, preservation, quality control and storage of human tissue and skin. We reimburse tissue banks, hospitals and physicians for their services associated with the recovery and storage of donated human tissue. Although we have independent third party appraisals that confirm the reasonableness of the service fees we pay, if we were to be found to have violated NOTA's prohibition on the sale or transfer of human tissue for valuable consideration, we potentially would be subject to criminal enforcement sanctions, which could adversely affect our results of operations.

Finally, we and other manufacturers of skin substitutes are required to provide average selling price ("***ASP***") information to CMS on a quarterly basis. The Medicare payment rates are updated quarterly based on this ASP information. If a manufacturer is found to have made a misrepresentation in the reporting of ASP, such manufacturer is subject to civil monetary penalties of up to $10,000 for each misrepresentation for each day in which the misrepresentation was applied, and potential False Claims Act liability. See *We and our sales representatives, whether employees or independent contractors, must comply with various federal and state anti-kickback, self-referral, false claims and similar laws, any breach of which could cause an adverse effect on our business, results of operations and financial condition.*

We may be subject to fines, penalties, injunctions and other sanctions if we are deemed to be promoting the use of our products for unapproved, or off-label, uses.

As a general rule, we can only market our 361 HCT/Ps for appropriate homologous uses and we can only promote pre-approved biological products or devices for FDA-approved indications. Generally, unless the products are approved by the FDA for alternative uses, the FDA contends that we may not make claims about the safety or effectiveness of our products, or promote them, for such uses. Such limitations present a risk that the FDA or other federal or state law enforcement authorities could determine that the nature and scope of our sales, marketing and support activities, though designed to comply with all FDA requirements, constitute the promotion of our products for an unapproved use in violation of the federal Food, Drug, and Cosmetic Act. We also face the risk that the FDA or other governmental authorities might pursue enforcement based on past activities that we have discontinued or changed, including sales activities, arrangements with institutions and doctors, educational and training programs and other activities.

Investigations concerning the promotion of unapproved product uses and related issues are typically expensive, disruptive and burdensome and generate negative publicity. If our promotional activities are found to be in violation of the law, we may face significant legal action, fines, penalties, and even criminal liability and may be required to substantially change our sales, promotion, grant and educational activities. There is also a possibility that we could be enjoined from selling some or all of our products for any unapproved use. In addition, as a result of an enforcement action against us or any of our executive officers, we could be excluded from participation in government healthcare programs such as Medicare and Medicaid.

However, the FDA's Guidance stated that the FDA intends to exercise enforcement discretion under limited conditions with respect to IND application and pre-market approval requirements for certain HCT/Ps through November 2020. This means that, through November 2020, the FDA does not intend to enforce certain provisions as they currently apply to certain entities or activities. During the period of enforcement discretion, we have marketed, and intend to continue to market, our micronized products while at the same time pursuing a BLA for certain of our micronized products. We have already filed IND applications for three indications for our micronized product: plantar fasciitis, osteoarthritis knee pain, and Achilles tendonitis. We also intend to file additional INDs for both AmnioFill and for injectable micronized EpiFix for the treatment of DFUs or other areas of advanced wound care in the second half of 2020, but we have not yet initiated any clinical trials under an IND in furtherance of any regulatory approvals for these indications.

Nevertheless, while we believe we are in compliance with the FDA's Guidance on HCT/Ps and enforcement discretion regarding products that do not meet some or all of the HCT/P requirements, there can be no assurance that we are correct or that the FDA will not suspend its enforcement discretion and, in such cases, we may need to discontinue marketing a product and/or may be subject to fines, penalties, injunctions, and other sanctions if we are deemed to be promoting the use of our products for unapproved uses.

We and our sales representatives, whether employees or independent contractors, must comply with various federal and state anti-kickback, self-referral, false claims and similar laws, any breach of which could cause an adverse effect on our business, results of operations and financial condition.

Our relationships with physicians, hospitals and other healthcare providers are subject to various federal and state healthcare fraud and abuse laws. Healthcare fraud and abuse laws are complex and, in some instances, even minor or inadvertent violations can give rise to liability. Possible sanctions for violation of the healthcare fraud and abuse laws include, without limitation, monetary fines, civil and criminal penalties, exclusion from participating in the federal and state healthcare programs, including, without limitation, Medicare, Medicaid, the Department of Veterans Affairs ("VA") health programs and TRICARE (the healthcare program administered by or on behalf of the U.S. Department of Defense for uniformed service members, including both those in active duty and retirees, as well as their dependents), and forfeiture of amounts collected in violation of such prohibitions. Many states have similar fraud and abuse laws, imposing substantial penalties for violations. A finding of a violation of one or more of these laws, or even a government investigation or inquiry into the same, would likely result in a material adverse effect on the market price of our Common Stock, as well as on our business, results of operations, and financial condition.

The federal Anti-Kickback Statute is a criminal law that prohibits, among other things, any person from knowingly and willfully offering, paying, soliciting or receiving remuneration, directly or indirectly, in cash or in kind, to induce or reward referrals, purchases or orders or arranging for or recommending the purchase, order or referral of any item or service for which payment may be made in whole or in part by a federal healthcare program, such as the Medicare and Medicaid programs. The term "remuneration" has been broadly interpreted to include anything of value. The Patient Protection and Affordable Care Act (the "***PPACA***") amended the federal Anti-Kickback Statute to clarify the intent that is required to prove a violation. Under the federal Anti-Kickback Statute as amended, a person or entity need not have actual knowledge of this statute or specific intent to violate it. The PPACA also amended the federal Anti-Kickback Statute to provide that any claims for items or services resulting from a violation of the federal Anti-Kickback Statute are considered false or fraudulent for purposes of the federal False Claims Act ("***FCA***"). A conviction for violation of the Anti-Kickback Statute results in criminal fines and requires mandatory exclusion from participation in federal health care programs. Although there are a number of statutory exceptions and regulatory safe harbors to the federal Anti-Kickback Statute that protect certain common industry practices from prosecution, the exceptions and safe harbors

are drawn narrowly, and arrangements may be subject to scrutiny or penalty if they do not fully satisfy all elements of an available exception or safe harbor. We have entered into consulting agreements, speaker agreements, research agreements and product development agreements with physicians, including some who may order or recommend our products or make decisions to use them. In addition, some of these physicians own our stock, which they purchased in arm's-length transactions on terms identical to those offered to non-physicians, or received stock awards from us in the past as consideration for services performed by them. While we believe these transactions generally meet the requirements of applicable laws, including the federal Anti-Kickback Statute and analogous state laws, it is possible that our arrangements with physicians and other providers may be questioned by regulatory or enforcement authorities under such laws, which could lead us to redesign the arrangements and subject us to significant civil or criminal penalties. We have designed our policies and procedures to comply with the federal Anti-Kickback Statute, FCA, and industry best practices. In addition, we have conducted training sessions on these principles. If, however, regulatory or enforcement authorities were to view these arrangements as non-compliant with applicable laws, there would be risk of government investigations/inquiries or penalties. There is also risk that one or more of our employees or agents will disregard the rules we have established. Because our strategy relies on the involvement of physicians who consult with us on the design of our products, perform clinical research on our behalf or educate other health care professionals about the efficacy and uses of our products, we could be materially impacted if regulatory or enforcement agencies or courts interpret our financial relationships with physicians who refer or order our products to be in violation of applicable laws. This could harm our reputation and the reputations of the physicians we engage to provide services on our behalf. In addition, the cost of noncompliance with these laws could be substantial since we could be subject to monetary fines and civil or criminal penalties, and we could also be excluded from federally-funded healthcare programs, including Medicare, Medicaid, VA and TRICARE.

The FCA imposes civil liability on any person or entity that knowingly submits, or causes the submission of, a false or fraudulent claim to the U.S. government. Damages under the FCA can be significant and consist of the imposition of fines and penalties. The FCA also allows a private individual or entity to sue on behalf of the government to recover civil penalties and treble damages as a whistleblower. FCA liability is potentially significant in the healthcare industry because the statute provides for treble damages and mandatory penalties of between $11,181 and $22,363 per false claim or statement for penalties assessed after January 29, 2018, with respect to violations occurring after November 2, 2015.

Manufacturers can be held liable under the FCA even when they do not submit claims directly to government payers if they are deemed to "cause" the submission of false or fraudulent claims. The PPACA provides that claims tainted by a violation of the federal Anti-Kickback Statute are false for purposes of the FCA. The Department of Justice (the "***DOJ***") on behalf of the government has previously alleged that the marketing and promotional practices of pharmaceutical and medical device manufacturers, including the off-label promotion of products or the payment of prohibited kickbacks to doctors, violated the FCA, resulting in the submission of improper claims to federal and state healthcare programs such as Medicare and Medicaid. In certain cases, manufacturers have entered into criminal and civil settlements with the federal government under which they entered into plea agreements, paid substantial monetary amounts and entered into onerous corporate integrity agreements with the government that require, among other things, substantial reporting and remedial actions, as well as oversight and review by an outside entity, an Independent Review Organization ("***IRO***"), at substantial expense to the Company.

Under the Health Insurance Portability and Accountability Act of 1996 ("***HIPAA***") criminal federal healthcare fraud statute, it is a crime to knowingly and willfully execute, or attempt to execute, a scheme or artifice to defraud any health care benefit program or to obtain, by means of false or fraudulent pretenses, representations or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program, in connection with the delivery of or payment for health care benefits, items or services.

There are federal and state laws requiring detailed reporting of manufacturer interactions with and payments to healthcare providers, such as the federal Physician Payments Sunshine Act ("***Sunshine Act***"). The Sunshine Act requires, among others, "applicable manufacturers" of drugs, devices, biological products, and medical supplies reimbursed under Medicare, Medicaid or the Children's Health Insurance Program to annually report to CMS information related to payments and other transfers of value provided to "covered recipients." The term covered recipients includes U.S.-licensed physicians and teaching hospitals, and, for reports submitted on or after January 1, 2022, physician assistants, nurse practitioners, clinical nurse specialists, certified nurse anesthetists, and certified nurse-midwives. While manufacturers of human cell and tissue products regulated solely under Section 361 are not subject to the Sunshine Act, in the future, if we receive a BLA, we will be subject to this law. There is also risk that CMS or another government agency may take the position that our products are not human cell and tissue products regulated solely under Section 361, and thereby assert that we are currently subject to the Sunshine Act, which could subject us to civil penalties and the administrative burden of having to comply with the law.

There are state law equivalents to the Anti-Kickback Statute and FCA. There are also so-called state "all-payer" anti-kickback laws which may apply to items or services reimbursed by any third-party payer, including commercial insurers, as well as when no insurer is involved (*i.e.* cash-pay patients).

The enforcement of all of these laws is uncertain and subject to rapid change. Federal or state regulatory or enforcement authorities may investigate or challenge our current or future activities under these laws. Any investigation or challenge could have a material adverse effect on our business, financial condition and results of operations. Any state or federal regulatory or enforcement review of us, regardless of the outcome, would be costly and time consuming. Additionally, we cannot predict the impact of any changes in these laws, whether these changes are retroactive or will have effect on a going-forward basis only.

We may be subject to fines, penalties, injunctions and even criminal sanctions if we are deemed to have made a misstatement of compliance to a federal agency.

Products that are subject to pre-approval as biologicals must also be manufactured in accord with cGMP. In August 2013, the FDA sent the Company an Untitled Letter asserting that its micronized amniotic allografts were unapproved biologics. The Company disputed the FDA's position at the time and filed various appeals but ultimately agreed during the appeals process to pursue BLAs for certain products, but the transition to cGMP compliance for micronized products sold commercially was a larger task. In February 2016, the FDA inspected the Company's Marietta facility against cGMP requirements for the commercially available product. The transition to cGMP compliance was underway, but the work was in its initial stages. At the close of the inspection, the FDA issued a Form 483 that included 13 observations. In response, the Company developed an action plan (the "Action Plan"). The Action Plan, which was shared with FDA, called for a systematic approach to the work and provided a vehicle to update the FDA on progress. Over the course of the next year, the site did substantial work to transition to cGMP for the commercially available, micronized product and filed several updates with the FDA.

In February 2017, the Company sent a close-out letter to the FDA that indicated the work under the Action Plan had been completed. That letter overstated our state of compliance in regard to the commercially available product. The goal of the letter was to communicate the substantial progress to the FDA and to indicate that the work under the Action Plan had been completed. The site continues to transition to cGMP compliance for its micronized products, and we expect to complete the work by November 2020 when the FDA's industry-wide exercise of enforcement discretion for products like our micronized allografts expires. Exaggeration or misstatement of compliance to a federal agency creates regulatory risk. If the government were to take issue with the letter, it could take any number of actions adverse to the Company. These include issuing a warning letter, terminating the current exercise of enforcement discretion with respect to the sale of micronized products and initiating a civil judicial action against the Company and opening a criminal investigation. Each of these potential actions would be disruptive to the Company's operations, consume considerable resources and potentially prohibit sales of certain products and adversely affect our business, financial condition and results of operations.

In July 2019, the Company formally notified the FDA that its February 2017 correspondence overstated the Company's state of cGMP compliance.

In December 2019, the FDA conducted a cGMP audit of each of the Company's two manufacturing facilities. At the close of the inspection the FDA issued two Form 483s (one for each facility). The Company timely responded to the Form 483s. See the discussion under "Item 1. Business - Processing (Manufacturing)."

Our results of operations may be adversely affected by current and potential future healthcare reforms.

In response to perceived increases in healthcare costs in recent years, there have been and continue to be proposals by the U.S. federal government, state governments, regulators and third-party payers to control these costs and, more generally, to reform the U.S. healthcare system. In the U.S., the PPACA was enacted in 2010 with a goal of reducing the cost of healthcare and substantially changing the way healthcare is financed by both government and private insurers.

In addition, other legislative changes have been proposed and adopted in the U.S. since the PPACA was enacted. The Budget Control Act of 2011 created measures for spending reductions by Congress. A Joint Select Committee on Deficit Reduction, tasked with recommending a targeted deficit reduction of at least $1.2 trillion for the years 2013 through 2021, was unable to reach required goals, thereby triggering the legislation's automatic reduction to several government programs. This included aggregate reductions of Medicare payments to providers of 2% per fiscal year, which went into effect on April 1, 2013. In January 2013, the American Taxpayer Relief Act was signed into law, which, among other things, further reduced Medicare payments to several provider types, including hospitals.

The current U.S. Presidential Administration and certain members of the U.S. Congress have stated that they will seek to modify, repeal or otherwise invalidate all, or certain provisions of, the PPACA. In 2017, the U.S. President signed an executive order which stated that it is the policy of his Administration to seek the prompt repeal of the PPACA and directed executive departments and federal agencies to waive, defer, grant exemptions from or delay the implementation of the provisions of the PPACA to the maximum extent permitted by law. Additionally, the House and Senate attempted, but failed, to pass legislation to repeal all or portions of the PPACA, and these efforts may be resumed. In December 2017, the U.S. President signed the Tax Cuts and Jobs Act, which,

among numerous other actions, repealed the individual mandate of the PPACA, effective on January 1, 2019. In December 2018, a federal district court in Texas ruled the individual mandate was unconstitutional and could not be severed from the PPACA. As a result, the court ruled the remaining provisions of the PPACA were also invalid, though the court declined to issue a preliminary injunction with respect to the PPACA. The court's ruling was appealed to the U.S. Court of Appeals for the Fifth Circuit. On March 25, 2019, the DOJ reversed its prior position and stated in a legal filing with the Fifth Circuit that the district court's ruling that the PPACA was invalid should be upheld. In December 2019, the Fifth Circuit agreed that the individual mandate was unconstitutional, but remanded the case back to the district court to reassess how much of the PPACA would be damaged without the individual mandate provision, and if the individual mandate could indeed be severed. In January 2020, 21 state Attorneys General urged the Supreme Court of the United States to decide whether or not the PPACA should be struck down as unconstitutional, claiming that the Fifth Circuit erroneously remanded the case to the district court. The House of Representatives filed a similar petition and motion. The state Attorneys General and the House of Representatives also filed motions to expedite the Supreme Court's decision to review the case, which the Supreme Court subsequently denied. This litigation is still ongoing, and places great uncertainty upon the longevity and nature of the PPACA moving forward. In addition, further legislative changes to and regulatory changes under PPACA remain possible.

There is uncertainty with respect to the impact the U.S. Administration, the executive order, and the attempted legislation may have, if any, and any changes will likely take time to unfold and could have an impact on coverage and reimbursement for healthcare items and services, including our products. We believe that substantial uncertainty remains regarding the net effect of the PPACA, or its repeal and potential replacement, on our business, including uncertainty over how benefit plans purchased on exchanges will cover our products, how the expansion or contraction of the Medicaid program will affect access to our products, the effect of risk-sharing payment models such as Accountable Care Organizations and other value-based purchasing programs on coverage for our product, and the effect of the general increase or decrease in federal oversight of healthcare payers. The taxes imposed and the expansion in government's role in the U.S. healthcare industry under the PPACA, if unchanged, may result in decreased revenues, lower reimbursements by payers for our products and reduced medical procedure volumes, all of which could have a material adverse effect on our business, results of operations and financial condition.

We may fail to obtain or maintain foreign regulatory approvals to market our products in other countries.

We currently market our products internationally and intend to consider expansion of our international marketing. International jurisdictions require separate regulatory approvals and compliance with numerous and varying regulatory requirements. The approval procedures vary among countries and may involve requirements for additional testing. Certain of our products require clearance or approval by the FDA. However, such clearance or approval does not ensure approval or certification by regulatory authorities in other countries or jurisdictions, and approval or certification by one foreign regulatory authority does not ensure approval or certification by regulatory authorities in other foreign countries or by the FDA. The foreign regulatory approval or certification process may include all of the risks associated with obtaining FDA clearance or approval. We may not obtain foreign regulatory approvals on a timely basis, if at all. We may not be able to file for regulatory approvals or certifications and may not receive necessary approvals to commercialize our products in any foreign jurisdiction. Furthermore, many foreign jurisdictions operate under socialized medical care, and obtaining reimbursement for our products under that construct may also prove difficult. If we fail to receive necessary approvals, certifications, or reimbursements necessary to commercialize our products in foreign jurisdictions on a timely basis, or at all, our business, results of operations and financial condition could be adversely affected.

Federal and state laws that protect the privacy and security of personal information may increase our costs and limit our ability to collect and use that information and subject us to liability if we are unable to fully comply with such laws.

Numerous federal and state laws, rules and regulations govern the collection, dissemination, use, security and confidentiality of personal information, including protected health information and individually identifiable health information. These laws include:

- provisions of HIPAA that limit how covered entities and business associates may use and disclose protected health information, provide certain rights to individuals with respect to that information and impose certain security requirements;
- HITECH, which strengthened and expanded the HIPAA Privacy Rule and Security Rules, imposed data breach notification obligations, created new tiers of civil monetary penalties, amended HIPAA to make civil and criminal penalties directly applicable to business associates and gave state attorneys general new authority to file civil actions for damages or injunctions in U.S. federal courts to enforce the federal HIPAA laws and seek attorneys' fees and costs associated with pursuing federal civil actions;
- other federal and state laws restricting the use and protecting the privacy and security of personal information, including health information, many of which are not preempted by HIPAA;
- federal and state consumer protection laws; and

- federal and state laws regulating the conduct of research with human subjects.

One relevant state law is the California Consumer Protection Act ("***CCPA***"), which became effective on January 1, 2020. The CCPA is a privacy bill that requires certain companies doing business in California to disclose information regarding the collection and use of a consumer's personal data and to delete a consumer's data upon request. The Act also permits the imposition of civil penalties and expands existing state security laws by providing a private right of action for consumers in certain circumstances where consumer data is subject to a breach. We are still evaluating whether and how this rule will impact our U.S. operations and /or limit the ways in which we can provide services or use personal data collected while providing services.

As part of our business operations, including our medical record keeping, third-party billing and reimbursement and research and development activities, we collect and maintain protected health information in paper and electronic format. Standards related to health information, whether implemented pursuant to HIPAA, HITECH, state laws, federal or state action or otherwise, could have a significant effect on the manner in which we handle personal information, including healthcare-related data, and communicate with payers, providers, patients, donors and others, and compliance with these standards could impose significant costs on us or limit our ability to offer services, thereby negatively impacting the business opportunities available to us.

If we are alleged not to comply with existing or new laws, rules and regulations related to personal information, we could be subject to litigation and to sanctions that include monetary fines, civil or administrative penalties, civil damage awards or criminal penalties.

Risks Related to Our Intellectual Property

Our ability to protect our intellectual property and proprietary technology through patents and other means is uncertain and may be inadequate, which could have an adverse effect on our business, results of operations and financial condition.

Our success depends significantly on our ability to protect our proprietary rights to the technologies used in our products. We rely on patent protection, as well as a combination of copyright, trade secret and trademark laws and nondisclosure, confidentiality and other contractual restrictions to protect our proprietary technology, including our licensed technology. These legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep any competitive advantage. In addition, our pending patent applications include claims to material aspects of our products and procedures that are not currently protected by issued patents. The patent application process can be time consuming and expensive. Our pending patent applications might not result in issued patents. Competitors may be able to design around our patents or develop products that provide outcomes that are comparable or even superior to ours. Although we have taken steps to protect our intellectual property and proprietary technology, including entering into confidentiality agreements and intellectual property assignment agreements with some of our officers, employees, consultants and advisors, such agreements may not be enforceable or may not provide meaningful protection for our trade secrets or other proprietary information in the event of unauthorized use or disclosure or other breaches of the agreements.

The failure to obtain and maintain patents or protect our intellectual property rights could have an adverse effect on our business, results of operations, and financial condition. Whether a patent claim is valid is a complex matter of science, facts and law, and therefore we cannot be certain that, if challenged, our patent claims would be upheld. If any of those patent claims are invalidated, our competitive advantage may be reduced or eliminated.

In the event a competitor infringes upon our licensed patents, issued patents, pending patent applications or other intellectual property rights, enforcing those rights may be costly, uncertain, difficult and time consuming. Even if successful, litigation to enforce or defend our intellectual property rights could be expensive and time consuming and could divert our management's attention. Further, bringing litigation to enforce our patents subjects us to the potential for counterclaims. Other companies or entities also have commenced, and may again commence, actions seeking to establish the invalidity of our patents and certain related claims. In the event that any of our patent claims are challenged, a court, the United States Patent and Trademark Office ("***USPTO***"), or the Patent Trial and Appeal Board ("***PTAB***") of the USPTO may invalidate one or more challenged patent claims or determine that the patent is unenforceable, which could harm our competitive position. If the USPTO or the PTAB ultimately cancels or narrows the claim scope of any of our patents through these proceedings, it could prevent or hinder us from being able to enforce them against competitors. Such adverse decisions could negatively impact our business, results of operations, and financial condition. See Item 3, "*Legal Proceedings*" for information regarding our ongoing patent infringement lawsuits and related *inter partes* review proceedings.

In addition, the laws of some foreign countries do not protect intellectual property rights to the same extent as the laws of the United States. Many companies have encountered significant problems in enforcing and defending intellectual property rights in certain foreign jurisdictions. This could make it difficult for us to stop infringement of our foreign patents, if obtained, or the misappropriation of our other intellectual property rights. For example, some foreign countries have compulsory licensing laws

under which a patent owner must grant licenses to third parties. In addition, some countries limit the enforceability of patents against third parties, including government agencies or government contractors. In these countries, patents may provide limited or no benefit. Patent protection must ultimately be sought on a country-by-country basis, which is an expensive and time-consuming process with uncertain outcomes. Accordingly, we may choose not to seek patent protection in certain countries, and we will not have the benefit of patent protection in such countries. Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business. Accordingly, our efforts to protect our intellectual property rights in some countries may be inadequate.

We may become subject to claims of infringement of the intellectual property rights of others, which could prohibit us from developing our products, require us to obtain licenses from third parties or to develop non-infringing alternatives, and subject us to substantial monetary damages.

Third parties could assert that our products infringe their patents or other intellectual property rights. Whether a product infringes a patent claim or other intellectual property right involves a complex combination of legal and factual issues, the determination of which is often uncertain. Therefore, we cannot be certain that we have not infringed the intellectual property rights of others. Because patent applications may take years to issue, there also may be applications now pending of which we are unaware that may later result in issued patent claims that our products or processes infringe. There also may be existing patents or pending patent applications of which we are unaware that our products or processes may inadvertently infringe.

Any infringement claim could cause us to incur significant costs, place significant strain on our financial resources, divert management's attention from our business and harm our reputation. If the relevant patent claims at issue in such a dispute were upheld as valid and enforceable and we were found to infringe, we could be prohibited from selling any product that is found to infringe those claims unless we could obtain licenses to use the technology covered by the asserted patent claims or other intellectual property, or are able to design around the patent claim or claims at issue or other intellectual property. We may be unable to obtain such a license on terms acceptable to us, if at all, and we may not be able to redesign our products to avoid infringement. A court could also order us to pay compensatory damages for such infringement, plus prejudgment interest and could, in addition, treble the compensatory damages and award attorney fees. These damages could be substantial and could harm our reputation, business, financial condition and operating results. A court also could enter orders that temporarily, preliminarily or permanently enjoin us and our customers from making, using, or selling products, and could enter an order mandating that we undertake certain remedial measures. Depending on the nature of the relief ordered by the court, we could become liable for additional damages to third parties.

We may be subject to damages resulting from claims that we, our employees, or our independent contractors have wrongfully used or disclosed alleged trade secrets, proprietary or confidential information of our competitors or are in breach of non-competition or non-solicitation agreements with our competitors.

Some of our employees were previously employed at other medical device, pharmaceutical or tissue companies. We may also hire additional employees who are currently employed at other medical device, pharmaceutical or tissue companies, including our competitors. Additionally, consultants or other independent agents with which we may contract may be or have been in a contractual arrangement with one or more of our competitors. Although no claims are currently pending, we may be subject to claims that we, our employees, or our independent contractors have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of these former employers or competitors. In addition, we have been and may in the future be subject to claims that we caused an employee to breach the terms of his or her non-competition or non-solicitation agreement. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management. If we fail to defend such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. Any future litigation or the threat thereof may adversely affect our ability to hire additional direct sales representatives. A loss of key personnel or their work product could hamper or prevent our ability to market existing or new products, which could severely harm our business, financial condition and operating results.

Risks Related to the Audit Committee Investigation, Consolidated Financial Statements, Internal Controls and Related Matters

We have identified material weaknesses in our internal control over financial reporting, and we have concluded that our internal control over financial reporting and our disclosure controls and procedures were not effective as of December 31, 2019. If we fail to properly remediate these or any future material weaknesses or deficiencies, further material misstatements in our financial statements could occur and impair our ability to produce accurate and timely financial statements, preclude us from relisting our stock on a securities exchange, require significant expenditure of financial and other resources, give rise to litigation against us and otherwise affect our business, financial condition and operating results.

We have concluded that our internal control over financial reporting was not effective as of December 31, 2019 due to the existence of material weaknesses in such controls and we have also concluded that our disclosure controls and procedures were not effective as of December 31, 2019 due to material weaknesses in our control over financial reporting, all as described in Item 9A, "*Controls and Procedures,"* of this Form 10-K.While we continued meaningful remediation efforts during 2019 to address the identified weaknesses, we were not able to fully remediate our material weaknesses in internal controls as of December 31, 2019. In addition, one or more additional material weaknesses in our internal control over financial reporting might arise or be identified in the future. We intend to continue our control remediation activities and, in doing so, we will continue to incur expenses and expend management time on compliance-related issues.

If our remediation measures are insufficient to address the identified deficiencies, or if additional deficiencies in our internal control over financial reporting are discovered or occur in the future, our consolidated financial statements may contain material misstatements and we could be required to restate our financial results. Moreover, because of the inherent limitations of any control system, material misstatements due to error or fraud may not be prevented or detected on a timely basis, or at all. If we are unable to provide reliable and timely financial reports in the future, our business and reputation may be further harmed. Failures in internal controls may also cause us to fail to meet reporting obligations, negatively affect investor confidence in our management and the accuracy of our financial statements and disclosures, or result in adverse publicity and concerns from investors, any of which could have a negative effect on the price of our Common Stock, subject us to further regulatory investigations and penalties or shareholder litigation, and adversely impact our business, results of operations and financial condition.

Matters relating to and arising out of the Audit Committee 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.

We incurred significant expenses in connection with the Investigation, and we are continuing to incur significant expenses, including audit, legal, consulting and other professional fees, in connection with the ongoing review of our accounting practices and systems, the audit of our financial statements and the remediation of deficiencies in our internal control over financial reporting. Specifically, in connection with the Audit Committee Investigation, audit and compliance efforts and related litigation, the Company incurred Investigation, Restatement and related expenses in the aggregate amount of approximately $60.5 million and $51.3 million for the years ended December 31, 2019 and 2018, respectively. We expect to incur expenses in 2020 despite the conclusion of the Investigation and completion of the Restatement, because litigation involving the Company and/or its former officers and directors remains unsettled, and we are obligated to advance the costs of defense to our current and former officers and directors in those matters. See Note 16, "*Commitments and Contingencies.*" To the extent our remediation efforts are unsuccessful or incomplete, or we identify additional problems requiring remediation, our management may be required to devote significant additional time to such efforts and we may be forced to incur significant additional expenses, including legal and accounting expenses. The incurrence of significant additional expense, or the requirement that management devote significant time that could reduce the time available to execute on our business strategies, could have an adverse effect on our business, results of operations and financial condition.

Matters relating to or arising from the Restatement and the Audit Committee Investigation have had and could continue to have an adverse effect on our business, results of operations and financial condition.

We have been and could continue to be the subject of negative publicity focusing on the Restatement and the results of the Investigation. As a result, our customers and others with whom we do business have voiced concerns regarding the effort required to address our accounting and control environment and our ability to be a long-term provider to our customers. Further negative publicity could adversely affect our business, financial condition and results of operations.

We are currently, and may in the future be, subject to substantial litigation and ongoing investigations that could cause us to incur significant legal expenses and result in harm to our business.

We are exposed to potential liabilities and reputational risk associated with litigation, regulatory proceedings and government enforcement actions. See Item 3, "*Legal Proceedings*" and Note 16, "*Commitments and Contingencies*" in the Consolidated Financial Statements for information regarding proceedings that we believe may be material to the Company as of the date of the filing of this Form 10-K. In addition, we are obligated to indemnify and advance expenses to certain individuals involved in certain of these proceedings. Further, volatility in our stock price may also make us vulnerable to future class action litigation.

Any adverse judgment in or settlement of any pending or any future litigation could result in payments, fines and penalties that could adversely affect our business, results of operations and financial condition. Regardless of the outcome, legal proceedings have resulted in, and may continue to result in, significant legal fees and expenses, diversion of management's time and other resources, and adverse publicity. Such proceedings could also adversely affect our business, results of operations and financial condition.

Our Common Stock might not be relisted, or once relisted, it might not remain listed.

Because we are not current in filing our periodic reports with the SEC, we were unable to comply with the listing standards of Nasdaq, and our Common Stock was suspended from trading on The Nasdaq Capital Market effective November 8, 2018 and was subsequently delisted effective March 8, 2019. We have taken initial steps to relist our Common Stock. However, we may not be able to complete the requirements to relist in an expeditious manner or at all. Even if our Common Stock is relisted, an active trading market may not develop or, if one develops, may not continue. The lack of an active trading market may limit the liquidity of an investment in our Common Stock, meaning you may not be able to sell any shares of Common Stock you own at times, or at prices, attractive to you. Any of these factors may adversely affect the price of our Common Stock.

Risks Related to the Securities Markets and Ownership of Our Common Stock

EW Healthcare Partners may have influence over us, and its interests may conflict with those of our other shareholders.

On July 2, 2020, we issued 90,000 shares of Series B Preferred Stock to an affiliate of EW Healthcare Partners ("***EW Healthcare Partners***") pursuant to the Securities Purchase Agreement. As of July 2, 2020, EW Healthcare Partners and their affiliates own 90% of the outstanding shares of Series B Preferred Stock which would result, upon conversion, in an ownership interest of approximately 17.2% of our Common Stock (calculated on the basis set forth under Item 12, "*Security Ownership Of Certain Beneficial Owners And Management*" below). Also, for as long as EW Healthcare Partners and its affiliates collectively hold at least (i) 10% of the outstanding shares of our Common Stock (calculated on an as converted basis), EW Healthcare Partners has the right to designate two directors to our board and (ii) (ii) 5% (but less than 10%) of the outstanding shares of our outstanding Common Stock (calculated on an as converted basis), EW Healthcare Partners has the right to designate one individual to serve on our Board. Such individuals will initially be Preferred Directors and therefore not subject to election by the holders of Common Stock. At the closing of the Preferred Stock Transaction, EW Healthcare Partners designated Martin P. Sutter and William A. Hawkins, III to serve on our board as preferred directors, and they were appointed to our Board on July 2, 2020. The interests of EW Healthcare Partners may conflict with those of our other shareholders, and EW Healthcare Partners may seek to influence, and may be able to influence, us through its director designation rights and its share ownership.

Holders of shares of Series B Preferred Stock have rights, preferences and privileges that are not held by, and are preferential to, the rights of, our common shareholders.

Holders of shares of Series B Preferred Stock are entitled to cumulative dividends at a rate of 4.0% per annum until July 2, 2021 and 6.0% per annum thereafter, in each case compounding quarterly in arrears. The dividends are payable quarterly in whole or in part, in cash. However, the Company may, at its option, elect to not pay any such dividend and to instead accrue the amount of such dividend. The payment of regular dividends in cash to the holders of Series B Preferred Stock could impact our liquidity and reduce the amount of cash available for working capital, capital expenditures, growth opportunities, acquisitions, and other general corporate purposes. If we elect to accrue the dividends in lieu of paying them in cash, holders of Common Stock could effectively be diluted because such accrual of dividends will increase the number of shares of Common Stock into which the Series B Preferred Stock would then be convertible. Our obligations to the holders of Series B Preferred Stock could also limit our ability to obtain additional equity or debt financing or increase our borrowing costs, which could have an adverse effect on our financial condition.

The Series B Preferred Stock ranks senior to our Common Stock with respect to dividends and distributions on liquidation, winding-up, and dissolution. Upon a liquidation, dissolution, or winding-up of the Company, each share of Series B Preferred Stock will be entitled to receive $1,000 per share (subject to adjustment), plus any accrued and unpaid dividends. This amount will be payable prior to any distribution of our available assets to the holders of our Common Stock.

Holders of Series B Preferred Stock generally are entitled to vote together as a single class with the holders of the shares of Common Stock, on an as converted basis, on all matters submitted for a vote of holders of our Common Stock subject to certain limitations on their voting rights contained in the related Articles of Amendment. Additionally, certain matters will require the approval of the holders of the majority of the outstanding shares of Series B Preferred Stock, voting as a separate class, including the following:

- any changes to the rights, preferences, or privileges of the Series B Preferred Stock;
- amendments or restatements of any organizational document of the Company 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 our Common Stock;
- the authorization or creation of any class or series of senior or parity equity securities;
- the declaration of any dividends or any other distributions, or the repurchase or redemption, of any equity securities of the Company ranking junior to or on parity with the Series B Preferred Stock (subject to certain exceptions);

- prior to January 2, 2023, the sale, transfer, or other disposition of any assets, business, or operations for $25 million or more (other than sales of inventory in the ordinary course of business), or the purchase or acquisition of any assets, business, or operations for $75 million or more;

- prior to January 2, 2023, the merger or consolidation of the Company unless either (x) the surviving company will have no class of equity securities ranking superior to or on parity with the Series B Preferred Stock or (y) the holders of shares of the Series B Preferred Stock will receive in connection therewith consideration per share of Series B Preferred Stock valued at 200% or more of the purchase price per share of $1,000;

- prior to January 2, 2023, commencing a voluntary case under any applicable bankruptcy, insolvency, or other similar law or consenting to the entry of an order for relief in an involuntary case under any such law, or effectuating any general assignment for the benefit of creditors; and

- prior to January 2, 2023, entering into any settlement agreement regarding the Company's securities class action litigation.

The interests of our holders of Series B Preferred Stock and our Common Stock may conflict in certain circumstances, and these provisions may constrain the Company from taking certain actions that may be in the best interest of its holders of Common Stock.

The conversion price of the Series B Preferred Stock is subject to anti-dilution adjustments in the event that the Company sells or issues Common Stock to any third-party investor at any time prior to July 2, 2022 at a price that is less than $3.85 per share of Common Stock (although such adjustments cannot result in a conversion price for the Series B Preferred Stock of less than $3.47). Additionally, as long as EW Healthcare Partners holds at least 10% of our outstanding Common Stock (calculated on an as converted basis), it has certain preemptive rights to participate in offerings of Common Stock to any person, subject to customary exceptions.

Furthermore, in the event that the Company undergoes a change of control, the holders of Series B Preferred Stock will have certain redemption rights, which, if exercised, could require us to repurchase all of the outstanding shares of Series B Preferred Stock for cash at the original purchase price of Series B Preferred Stock plus all accrued and unpaid dividends thereon. Any required repurchase of the outstanding Series B Preferred Stock could impact our liquidity and reduce the amount of cash available for working capital, capital expenditures, growth opportunities, acquisitions, and other general corporate purposes.

The preferential rights of the Series B Preferred Stock could also result in divergent interests between the holders of Series B Preferred Stock and our common shareholders.

See Item 9B - "*Other Information*" for more information regarding our Series B Preferred Stock.

Our Series B Preferred Stock is convertible into shares of our Common Stock, and any such conversion may dilute the value of our Common Stock.

Holders of shares of Series B Preferred Stock have the right, at their option, to convert each share of Series B Preferred Stock into shares of our Common Stock, except that no holder may convert its shares of Series B Preferred Stock into shares of Common Stock if such conversion would result in such holder and its affiliates holding more than 19.9% of the aggregate voting power of our Common Stock or beneficially owning in excess of 19.9% of our then-outstanding shares of Common Stock. Additionally, each share of Series B Preferred Stock (including any accrued and unpaid dividends) will automatically convert into shares of our Common Stock at any time after July 2, 2022, provided that our Common Stock has traded at 200% or more of the then conversion price for 20 out of 30 consecutive trading days preceding, and as of the close of trading on the date immediately prior to conversion. The conversion of Series B Preferred Stock may significantly dilute our common shareholders and adversely affect both our net income per share of Common Stock and the market price of our Common Stock.

Our Common Stock has been delisted from The Nasdaq Capital Market, which may negatively impact the trading price of our Common Stock and the levels of liquidity available to our shareholders.

The trading of our Common Stock was suspended from the Nasdaq Capital Market in November 2018 and delisted in March 2019. It is currently quoted on the "over the counter" market operated by the OTC Markets Group, Inc. under the symbol "MDXG," which may negatively impact the trading price of our Common Stock and the liquidity available to our shareholders.

Our Common Stock is subject to SEC rules and regulations relating to the market for penny stocks. A penny stock is any equity security not traded on a national securities exchange that has a market price of less than $5.00 per share. On June 15, 2020, the last sale price per share of our Common Stock as reported on the OTC Markets was $3.65. If our Common Stock is or becomes subject to regulation as a penny stock, such regulations may severely affect the market liquidity for our Common Stock and could limit the ability of shareholders to sell securities in the secondary market. Accordingly, investors in our Common Stock may find it more difficult to dispose of or obtain accurate quotations as to the market value of our Common Stock, and there can be no

assurance that our Common Stock will continue to be eligible for trading or quotation on the over the counter market or any other alternative exchanges or markets.

Further, the delisting of our Common Stock from The Nasdaq Capital Market may adversely affect our ability to raise additional capital through public or private sales of equity securities, may significantly affect the ability of investors to trade our securities and may negatively affect the value and liquidity of our Common Stock. Such delisting may also have other negative effects, including the potential loss of confidence of employees, the loss of institutional investor interest, and fewer business development opportunities. Furthermore, because of the limited market and low volume of trading in our Common Stock that could occur, the share price of our Common Stock could be disproportionately affected by broad market fluctuations, general market conditions, fluctuations in our operating results, changes in the market's perception of our business and announcements made by us, our competitors, parties with whom we have business relationships or third parties.

The price of our Common Stock has been, and will likely continue to be, volatile.

The market price of our Common Stock, like that of the securities of many other healthcare companies that are engaged in research, development, and commercialization, has fluctuated over a wide range, and it is likely that the price of our Common Stock will fluctuate in the future. The market price of our Common Stock could be impacted by a variety of factors, including:

- Fluctuations in stock market prices and trading volumes of similar companies or of the markets generally;
- Our ability to successfully launch, market and earn significant revenue from our products;
- Our ability to obtain additional financing to support our continuing operations;
- Disclosure of the details and results of regulatory applications and proceedings;
- Developments in and disclosure or publicity regarding existing or new litigation or contingent liabilities;
- Changes in government regulations or our failure to comply with any such regulations;
- Additions or departures of key personnel;
- Our investments in research and development or other corporate resources;
- Announcements of technological innovations or new commercial products by us or our competitors;
- Developments in the patents or other proprietary rights owned or licensed by us or our competitors;
- The timing of new product introductions;
- Actual or anticipated fluctuations in our operating results, including any restatements of previously reported results;
- Our ability to effectively and consistently manufacture our products and avoid costs associated with the recall of defective or potentially defective products;
- Our ability and the ability of our distribution partners to market and sell our products;
- Changes in reimbursement for our products or the price for our products to our customers;
- Removal of our products from the FSS, or changes in how government accounts purchase products such as ours or in the price for our products to government accounts;
- Material amounts of short-selling of our Common Stock; and
- The other risks detailed in this Item 1A.

Price volatility or a decrease in the market price of our Common Stock could have an adverse effect on our ability to raise capital, liquidity, business, financial condition and results of operations.

Fluctuations in revenue or results of operations could cause additional volatility in our stock price.

Any unanticipated shortfall in our revenue in any fiscal quarter could have an adverse effect on our results of operations in that quarter. The effect on our net income of such a shortfall could be exacerbated by the relatively fixed nature of most of our costs,

which primarily include personnel costs as well as facilities costs. These fluctuations could cause the trading price of our stock to be negatively affected. Our quarterly operating results have varied substantially in the past and may vary substantially in the future.

We do not intend to pay cash dividends on our Common Stock.

Holders of our Series B Preferred Stock are entitled to contractually-determined dividends before holders of our Common Stock. See *Holders of shares of Series B Preferred Stock have rights, preferences and privileges that are not held by, and are preferential to, the rights of, our common shareholders.*

We have never declared or paid cash dividends on our Common Stock. We currently expect to use available funds and any future earnings to pay dividends on the Series B Preferred Stock; in the development, operation and expansion of our business; to repay debt; and, to the extent authorized by our Board, repurchasing our Common Stock. We do not anticipate paying any cash dividends on our Common Stock in the foreseeable future. As a result, capital appreciation, if any, of our Common Stock will be an investor's only source of potential gain from our Common Stock for the foreseeable future.

Certain provisions of Florida law and anti-takeover provisions in our organizational documents may discourage or prevent a change of control, even if an acquisition would be beneficial to shareholders, which could affect our share price adversely and prevent attempts by shareholders to remove current management.

The Florida Business Corporation Act (the "***FBCA***") includes several provisions applicable to the Company that may discourage potential acquirors. Such provisions include provisions that:

- allow directors to take other stakeholders into account in discharging their duties;
- a requirement that certain transactions with a shareholder of 10% or more ownership must be approved by the affirmative vote of two-thirds of the other shareholders unless approved by a majority of the disinterested directors or certain fair price requirements are met; and
- voting rights acquired by a shareholder at ownership levels at or above one-fifth, one-third and a majority of voting power are denied unless authorized by the Board prior to such acquisition or by a majority of the other shareholders (excluding interested shares (as defined in the FBCA)).

Additionally, our organizational documents contain provisions: authorizing the issuance of blank check preferred stock; restricting persons who may call shareholder meetings; providing for a classified Board; permitting shareholders to remove directors only "for cause" and only by super-majority vote; and providing the Board with the exclusive right to fill vacancies and to fix the number of directors. These provisions of Florida law and our articles of incorporation and bylaws could negatively affect our share price, prevent attempts by shareholders to remove current management, prohibit or delay mergers or other takeovers or changes of control of the Company and discourage attempts by other companies to acquire us, even if such a transaction would be beneficial to our shareholders.

Item 1B. Unresolved Staff Comments

There are no unresolved SEC Staff comments with respect to our SEC filings.

Item 2. Properties

Our corporate headquarters are located in Marietta, Georgia, where we lease office, laboratory, tissue processing and warehouse space. We also lease a facility in Kennesaw, Georgia, which primarily consists of laboratory, tissue processing and warehouse space, and additional warehouse space in Marietta, Georgia. All of our properties are used by our one business segment, Regenerative Biomaterials, which includes the design, manufacture and marketing of products and tissue processing services for the wound care, burn, surgical, orthopedic, spine, sports medicine, ophthalmic and dental sectors of healthcare.

The Company's properties are suitable and adequate for current business operations. We are making investments and exploring alternatives to increase our manufacturing capacity, especially in the context of enhancements to facilitate the processing of products required to be manufactured under cGMP.

Item 3. Legal Proceedings

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

On October 29, 2018, the City of Hialeah Employees Retirement System ("***Hialeah***") filed a shareholder derivative complaint in the Circuit Court for the Second Judicial Circuit in and for Leon County, Florida (the "***Florida Court***"). The complaint alleges claims for breaches of fiduciary duty 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, Bruce L. Hack, Charles E. Koob, Larry W. Papasan, and Neil S. Yeston. 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 moved to stay the action on February 7, 2019, to allow the prior-filed consolidated derivative action in the Northern District of Georgia to be resolved first and to allow the Company's Special Litigation Committee time to complete its investigation. The Company also filed a motion to dismiss on April 8, 2019. As discussed above, the plaintiff participated in the mediation that took place in connection with the prior-filed consolidated derivative action in the Northern District of Georgia and is a party to the agreement in principle to settle that consolidated derivative action. The agreement in principle provides that the plaintiff in this action will file a notice of dismissal to dismiss its action with prejudice within seven calendar days after the date that the judgment entered by the Northern District of Georgia becomes final.

On May 15, 2019, two individuals purporting to be shareholders of the Company filed a shareholder derivative complaint in the Superior Court for Cobb County, Georgia. (*Nix and Demaio v. Evans, et al.*) The complaint alleges claims for breaches of fiduciary duty, corporate waste and unjust enrichment against certain current and former directors and officers of the Company: Parker H. Petit, William C. Taylor, Michael J. Senken, John E. Cranston, Alexandra O. Haden, Chris Cashman, Lou Roselli, Mark Diaz, 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. 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 Court ordered this matter stayed pending the resolution of the consolidated derivative suit pending in the Northern District of Georgia. As discussed above, the plaintiff participated in the mediation that took place in connection with the prior-filed consolidated derivative action in the Northern District of Georgia and is a party to the agreement in principle to settle that consolidated derivative action. The agreement in principle provides that the plaintiffs in this action will file a notice of dismissal to dismiss their action with prejudice within seven calendar days after the date that the judgment entered by the Northern District of Georgia becomes final.

On August 12, 2019, John Murphy filed a shareholder derivative complaint in the United States District Court for the Southern District of Florida (*Murphy v. Petit, et al.*). The complaint alleged claims for breaches of fiduciary duty 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, 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. 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 transfer this action to the Northern District of Georgia. Prior to resolution of that motion, the plaintiff voluntarily dismissed this action without prejudice. As discussed above, the plaintiff participated in the mediation that took place in connection with the prior-filed consolidated derivative action in the Northern District of Georgia and is a party to the agreement in principle to settle that consolidated derivative action. Under the agreement in principle, the plaintiff has agreed that this action shall not be reinstated and, after the judgment entered by the Northern District of Georgia becomes final, this action shall be deemed dismissed with prejudice.

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 (C*assamajor 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

SEC Investigation

On April 4, 2017, the Company received a subpoena from the SEC requesting information related to, among other things, the Company's recognition of revenue, practices with certain distributors and customers, its internal accounting controls and certain employment actions. The Company cooperated with the SEC in its investigation (the "***SEC Investigation***"). In November 2019, the SEC brought claims against the Company and the Company's former officers Parker H. Petit, Michael J. Senken, and William C. Taylor. The SEC alleged that from 2013 to 2017, the Company prematurely recognized revenue from sales to its distributors and exaggerated its revenue growth. The SEC's complaint also alleged that the Company improperly recognized revenue because its former CEO and COO entered into undisclosed side arrangements with certain distributors. These side arrangements allowed distributors to return product to the Company or conditioned distributors' payment obligations on sales to end users. The SEC complaint further alleged that the Company's former CEO, COO, and CFO allegedly covered up their scheme for years, including after the Company's former controller raised concerns about the Company's accounting for specific distributor transactions. The SEC also alleged that the Company's former CEO, COO, and CFO all misled the Company's outside auditors, members of the Company's Audit Committee, and outside lawyers who inquired about these transactions. The SEC brought claims against the Company and its former CEO, COO, and CFO for violating the antifraud, reporting, books and records, and internal controls provisions of the federal securities laws. The SEC also brought claims against the Company's former CEO, COO, and CFO for lying to the Company's outside auditors. In November 2019, without admitting or denying the SEC's allegations, the Company settled with the SEC by consenting to the entry of a final judgment that permanently restrains and enjoins the Company from violating certain provisions of the federal securities laws. As part of the resolution, the Company paid a civil penalty of $1.5 million. The settlement concluded, as to the Company, the matters alleged by the SEC in its complaint. The SEC's litigation continues against the Company's former officers.

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

The USAO-SDNY conducted an investigation into topics similar to those at issue in the SEC Investigation. The USAO-SDNY requested that the Company provide it with copies of all information the Company furnished to the SEC and made additional requests for information. The USAO-SDNY conducted interviews of various individuals, including employees and former employees of the Company. The USAO-SDNY issued indictments in November 2019 against former executives Messrs. Petit and Taylor for securities fraud and conspiracy to commit securities fraud, to make false filings with the SEC, and improperly influence 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.

On January 20, 2017, two former employees of the Company, filed a qui tam False Claims Act complaint in the United States District Court for the District of Minnesota (*Kruchoski et. al. v. MiMedx Group, Inc.*). An amended complaint was filed on January 27, 2017. The operative complaint alleges that the Company failed to provide truthful, complete and accurate information about the pricing offered to commercial customers in connection with the Company's Federal Supply Schedule contract. On May 7, 2019, the Department of Justice ("***DOJ***") declined to intervene, and the case was unsealed. In April 2020, without admitting the allegations, the Company agreed to pay $6.5 million to the DOJ to resolve this matter.

Former Employee Litigation

On December 13, 2016, the Company filed a complaint in the Circuit Court for Palm Beach County, Florida (*MiMedx Group, Inc. v. Academy Medical, LLC et. al.*) alleging several claims against a former employee, primarily based on his alleged competitive activities while he was employed by the Company (breach of contract, breach of fiduciary duty and breach of duty of loyalty). The former employee countersued for monetary damages and injunctive relief, alleging whistleblower retaliation in violation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "***Dodd-Frank Act***"), unlawful discharge and defamation. The Court dismissed the Dodd-Frank Act whistleblower counterclaim, and in response, the former employee filed an amended complaint on September 11, 2018, adding allegations of post-termination retaliation in violation of the Dodd-Frank Act. The court dismissed the former employee's retaliation counterclaim on January 24, 2019. After this dismissal, only the former employee's claims of unlawful discharge and defamation remained pending. The parties resolved this matter and the case was dismissed on September 5, 2019.

On December 29, 2016, the Company filed a complaint in the United States District Court for the Northern District of Illinois (*MiMedx Group, Inc. v. Michael Fox*) alleging several claims against a former employee of the Company, primarily based on his alleged competitive activities while he was employed by the Company (breach of contract, breach of fiduciary duty and breach of duty of loyalty). The former employee countersued the Company for monetary damages and injunctive relief, alleging improper wage rate adjustment, interference with the former employee's job after his termination from the Company and retaliation. The parties resolved this matter and the case was dismissed on November 4, 2019.

On July 13, 2018, a former employee filed a complaint against the Company in the United States District Court for the Northern District of Texas (*Jennifer R. Scott v. MiMedx Group, Inc.*), alleging sex discrimination and retaliation. The parties resolved this matter, and the case was dismissed on November 6, 2019.

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 Bone Bank Action

On May 16, 2014, the Company filed a patent infringement lawsuit against Transplant Technology, Inc. d/b/a Bone Bank Allografts ("***Bone Bank***") and Texas Human Biologics, Ltd. ("Biologics") in the United States District Court for the Western District of Texas (MiMedx Group, Inc. v. Tissue Transplant Technology, LTD. d/b/a/ Bone Bank Allografts et. al.). The Company has asserted that Bone Bank and Biologics infringed certain of the Company's patents through the manufacturing and sale of their placental-derived tissue graft products, and the Company is seeking permanent injunctive relief and unspecified damages. On July 10, 2014, Bone Bank and Biologics filed an answer to the complaint, denying the allegations in the complaint, and filed counterclaims seeking declaratory judgments of non-infringement and invalidity. The matter settled in 2019 prior to trial, and the case was dismissed on April 4, 2019.

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 party 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.

Other Matters

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.

Item 4. Mine Safety Disclosures

Not applicable.

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market for Common Stock

Our Common Stock trades on the "over the counter" market operated by the OTC Markets Group Inc. (the "***OTC Market***") under the symbol "MDXG." The OTC Market quotations reflect inter-dealer prices, without retail markup, mark-down or commission and may not represent actual transactions. Previously, our Common Stock traded on Nasdaq under the symbol "MDXG." Due to our inability to file periodic reports with the SEC, we were not able to comply with Nasdaq listing standards, and our Common Stock was suspended from trading on Nasdaq and subsequently delisted, effective on March 8, 2019.

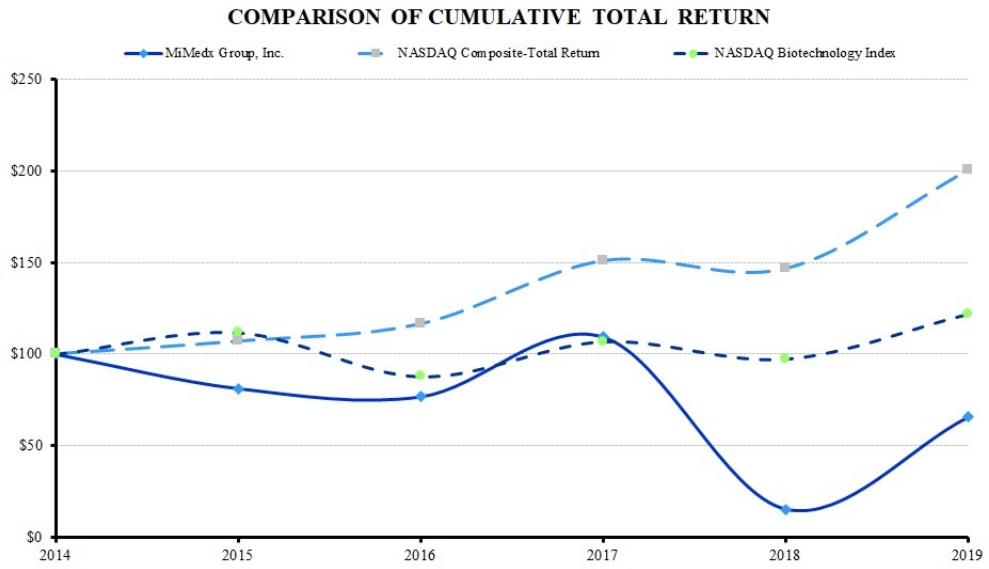
Based upon information supplied from our transfer agent, there were approximately 1,179 shareholders of record of our Common Stock as of June 25, 2020.

We have not paid any cash dividends and do not anticipate paying any cash dividends on our Common Stock in the foreseeable future.

Information required by this Item regarding equity compensation plans is contained in our Proxy Statement under the caption "*Equity Compensation Plan Information*," and is incorporated herein by reference.

Stock Performance Graph

The following graph compares the cumulative total stockholder return on our Common Stock with the cumulative total stockholder return of the Nasdaq Composite Index and the Nasdaq Biotechnology Index, assuming an investment of $100.00 on December 31, 2014, in each of our Common Stock, the stocks comprising the Nasdaq Composite Index, and the stocks comprising the Nasdaq Biotechnology Index.



ASSUMES $100 INVESTED ON DEC. 31, 2014
ASSUMES NO DIVIDENDS
FISCAL YEAR ENDED DEC. 31, 2019

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

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 Rule 10b-18 under the Exchange Act) during the three-month period ended December 31, 2019.

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares that May Yet Be Purchased Under Plans or Programs
October 1, 2019 - October 31, 2019	30,506	$ 5.05	—	$ —
November 1, 2019 - November 31, 2019	204	$ 5.59	—	$ —
December 1, 2019 - December 31, 2019	5,068	$ 6.70	—	$ —
Total for the quarter (1)	**35,778**	$ 5.34	—	$ —

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

Item 6. Selected Financial Data

The selected consolidated financial data displayed below for the years ended December 31, 2019, 2018, and 2017 was derived from our audited consolidated financial statements for the three-year period ended December 31, 2019. As described below, the selected financial data as of and for the years ended December 31, 2016 and 2015 have been derived from our restated audited consolidated financial statements, which reflect the impact of adjustments to, or restatement of, our previously filed financial information, including a January 1, 2014 cumulative effect adjustment to stockholders' equity to correct for accounting errors in periods prior to January 1, 2014. The selected financial data set forth below is not necessarily indicative of results of future operations, and should be read in conjunction with Item 7, "*Management's Discussion and Analysis of Financial Condition and Results of Operations*" and the Consolidated Financial Statements.

	Year Ended December 31, in thousands				
	2019 (1) (3)	2018 (3)	2017 (2) (4)	2016 (2)	2015
Statement of Operations Data:					
Net sales	$ 299,255	$ 359,111	$ 321,139	$ 221,712	$ 153,131
Gross profit	256,174	322,725	285,920	190,774	137,579
Operating (loss) income	(21,160)	(3,924)	46,223	884	(5,880)
Net (loss) income	(25,580)	(29,979)	64,727	390	(16,354)
Net (loss) income per common share - basic	(0.24)	$ (0.28)	$ 0.61	$ 0.00	$ (0.15)
Net (loss) income per common share - diluted	$ (0.24)	$ (0.28)	$ 0.56	$ 0.00	$ (0.14)

(1) 2019 includes the adjustments discussed in Item 8, Note 3 "*Revenue Recognition.*"
(2) Includes the following:

- Sales to external customers by Stability Biologics, LLC, our wholly-owned subsidiary acquired on January 13, 2016 and sold on September 30, 2017, were $7.0 million and $11.7 million during the years ended December 31, 2017 and 2016, respectively.

(3) Includes legal fees, forensic audit fees, and consulting fees relating to the Restatement; and legal fees relating to the SEC Investigation, shareholder derivative lawsuits, and other litigation, as well as settlements made with former employees.

- Investigation, restatement and related expenses were $66.5 million in 2019 as compared with $51.3 million in 2018;
- As a result of the December 2018 broad-based organizational realignment, cost reduction and efficiency program, the Company incurred pre-tax charges of $6.1 million during 2018.

(4) Includes the following:

- Loss on sale of Stability Biologics, LLC of $1.0 million recognized during the year ended December 31, 2017 and further discussed in Item 8, Note 4 "*Stability Biologics, LLC.*"

For information regarding the comparability of the financial data presented in the tables above and factors that may impact comparability of future results, see Item 7. "*Management's Discussion and Analysis of Financial Condition and Results of Operations*" as well as the Consolidated Financial Statements.

	As of December 31, in thousands				
	2019	2018	2017	2016	2015
Balance Sheet Data:					
Cash and cash equivalents	$ 69,069	$ 45,118	$ 27,476	$ 30,321	$ 26,301
Short term investments	—	—	—	—	3,000
Accounts receivable, net	32,327	—	—	1,927	—
Inventory, net	9,104	15,986	9,467	15,872	7,460
Prepaid expenses	6,669	6,673	2,125	1,838	945
Income tax receivable	18	454	656	—	—
Other current assets	6,058	5,818	9,023	9,516	7,260
Total current assets	123,245	74,049	48,747	59,474	44,966
Total assets	$ 167,166	$ 122,844	$ 121,255	$ 117,274	$ 69,560
Current portion of long term debt	$ 3,750	$ —	$ —	$ —	$ —
Accounts payable	8,710	14,864	$ 8,454	12,412	$ 6,987
Accrued compensation	21,302	23,024	20,941	12,691	15,276
Accrued expenses	32,161	31,842	15,768	19,207	9,679
Current portion of earn out liability	—	—	—	8,260	—
Deferred tax liability	—	—	—	1,129	803
Income taxes	—	—	—	5,611	410
Other current liabilities	1,399	1,817	647	1,482	533
Total current liabilities	67,322	71,547	45,810	60,792	33,688
Long term liabilities	65,446	1,642	1,648	8,415	1,148
Additional paid in capital	147,231	164,744	164,649	161,481	163,438
Accumulated deficit	(102,140)	(76,560)	(46,581)	(111,308)	(111,698)
Total stockholders' equity	34,398	49,655	73,797	48,067	34,724
Total liabilities and stockholders' equity	$ 167,166	$ 122,844	$ 121,255	$ 117,274	$ 69,560
Working capital	55,923	2,502	2,937	(1,318)	11,278

Item 7. 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

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.

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

The Investigation has 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. We have incurred additional related costs in 2020 and expect to continue incurring such costs throughout 2020, including the possibility of settlement costs for existing contingencies.

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 did not affect our financial condition and results of operations for the year ended December 31, 2019. It began affecting us late in the first quarter of 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 were successful in mitigating this disruption to our supply by adding additional donor hospitals, using third-party providers of donated placentas, and by 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 as of June 30, 2020 only three manufacturing employees and two sales representatives 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. However, 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 and ability to visit healthcare providers for care, and our sales force' access to healthcare providers. Also, the severity of the COVID-19 pandemic has been uneven across the country, and a second-wave 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. See Item 1A. - Risk Factors - *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.*

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 this initiative will save us approximately $18.6 million. 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, net of minimum balance covenants set forth in our BT Loan Agreement, was $27.4 million.

Liquidity and Capital Resources

On April 22, 2020, we executed the First Amendment (the "***Amendment***") to our 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 one percentage point increase in the interest rate to LIBOR plus 9%. See "*Recent Events*" section below for discussion on the financing transactions.

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. This is not helpful when seeking capital, but we are not otherwise able to quantify the effects of COVID-19 on our ability to obtain additional capital.

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 Events

FDA Guidance and Enforcement Discretion

In November 2017, the FDA published a series of related guidances, including one entitled "*Regulatory Considerations for Human Cells, Tissues, and Cellular and Tissue-Based Products: Minimal Manipulation and Homologous Use–Guidance for Industry and Food and Drug Administration Staff*" that established an updated framework for the FDA's regulation of cellular and tissue-based products. Among other things, the guidances clarified the FDA's views about the criteria that differentiate Section 361 HCT/Ps from Section 351 HCT/Ps. As described elsewhere in this Form 10-K, the guidances clarified the FDA's expectation that certain products, such as micronized products that MiMedx has long marketed as Section 361 HCT/Ps, will be treated as Section 351 HCT/Ps moving forward. The guidances also confirmed that amniotic membrane in sheet form generally can be characterized as "minimally manipulated" and therefore regulated solely under Section 361.

The guidances stated that the FDA intends to exercise enforcement discretion under limited conditions with respect to the IND application and pre-market approval requirements for certain HCT/Ps through November 2020. This means that, through November 2020, the FDA does not intend to enforce certain provisions as they currently apply to certain entities or activities but provided no assurances. The FDA intended this period of enforcement discretion to give sponsors time to evaluate their products, have a dialogue with the agency and, if necessary, begin clinical trials and file the appropriate pre-market applications to transition products that had been marketed as Section 361 HCT/Ps into compliance with Section 351. The FDA's approach is risk-based, and the guidances clarified that high-risk products and uses might be subject to immediate enforcement action. We have continued to market our micronized products under this policy of enforcement discretion while at the same time pursuing BLAs for certain of our micronized products. For more information, refer to Item 1, "*Business–Overview*" and "*Government Regulation,*" and Item 1A, "*Risk Factors,*" under the heading "*To the extent our products do not qualify for regulation as human cells, tissues and cellular and tissue-based products under Section 361 of the Public Health Service Act, this could result in removal of the applicable products from the market, would make the introduction of new tissue products more expensive and significantly delay the expansion of our tissue product offerings and subject us to additional post-market regulatory requirements*."

BLA Development Effort

As part of our BLA development effort, we have also made efforts to transition our manufacturing establishments into compliance with cGMP. During the enforcement discretion period, the FDA is permitting products that will become Section 351 HCT/Ps to be manufactured in compliance with GTP regulation. However, after the end of the enforcement discretion period, these products will be subject to cGMP compliance. The transition from GTP to cGMP compliance includes development and enhancement of production processes, procedures, test and assays, and it requires extensive validation work. It can also involve the procurement and installation of new production or lab equipment. These efforts require human capital, expertise and resources. The Company is developing and enhancing systems to meet these requirements, and expects to complete those efforts by November 2020, though there is no guarantee that the Company will be able to meet the requirements on that timeline or at all. For more information on our clinical trials, BLA development effort, and FDA enforcement discretion, see the section entitled "*Business–Government Regulation*."

Coronavirus Aid, Relief and Economic Security (CARES) Act

On March 27, 2020, the "Coronavirus Aid, Relief and Economic Security (CARES) 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. We applied for and received a $10.0 million loan under the PPP loan. On May 11, 2020 we completed the repayment of the PPP Loan.

In addition, modifications to the tax rules for carryback of net operating losses are expected to result in an estimated federal tax refund of $11.3 million and a resulting income tax benefit.

Financing Transactions

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 $100,000,000. 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. See Item 9B, "*Other Information.*" A portion of the proceeds of the Preferred Stock Transaction and the Hayfin Loan Transaction was used 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 on July 2, 2020. For further information regarding the Preferred Stock Transaction, the Hayfin Loan Transaction and the termination of the BT Loan Agreement, see Item 9B, "*Other Information.*"

Critical Accounting Policies

We believe that of our significant accounting policies, which are described in Note 3 "*Significant Accounting Policies*" to our consolidated financial statements appearing elsewhere in this report, the following accounting policies involve a greater degree of judgment and complexity.

Revenue Recognition

We sell our products primarily to individual customers and independent distributors (collectively referred to as "***customers***"). In 2017, 2018, and into part of 2019 our control environment was such that it created uncertainty surrounding all of our 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 us 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 our revenue recognition methodology.

As a result, our application of the applicable revenue recognition guidance varies for of the years ended December 31, 2019, 2018 and 2017. Additionally, we changed our pattern of revenue recognition effective October 1, 2019. The application of the relevant revenue recognition guidance and the revenue recognition policy are further discussed below for each period presented.

Fiscal Year Ended December 31, 2017

For the year ended December 31, 2017, we applied the revenue recognition guidance in ASC Topic 605, Revenue Recognition ("***ASC 605***"). Under ASC 605, revenue should not be recognized until it is realized or realizable and earned. SEC Staff Accounting Bulletin ("***SAB***") Topic 13.A.1 (as codified in ASC 605-10-S99-1) outlines four criteria that generally indicate when revenue is realized or realizable and earned. If any of these criteria are not met, revenue recognition should be deferred until all criteria have been met.

Based on our evaluation, we determined that the revenue recognition criteria stipulated under ASC 605 were met only when both of the following events had occurred: (1) we fulfilled the customer's purchase order by delivering product ordered, and (2) we collected payment for the product delivered. Furthermore, we determined that the amount of revenue to be recognized should be limited to the amount of payment received in a given period less the amount expected to be refunded or credited to customers for sales returns made after payment.

An exception to the above revenue recognition under ASC 605 during the year ended December 31, 2017 related to the sales generated by our wholly-owned subsidiary, Stability. For sales of our products through Stability, we recognized revenue under ASC 605 only when both of the following events had occurred: (1) we fulfilled the customer's purchase order by delivering all product ordered; and (2) the product has been delivered to the customer. Total sales from Stability were $7.0 million for the year ended December 31, 2017. We divested Stability on September 30, 2017.

Fiscal Year Ended December 31, 2018

We adopted ASC Topic 606, *Revenue from Contracts with Customers ("**ASC 606**")*, on January 1, 2018 by using the modified retrospective method. ASC 606 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 under the relevant criteria. We assessed the impact of the ASC 606 guidance by reviewing customer contracts and accounting policies and practices to identify differences, including identification of the contract and the evaluation of our performance obligations, transaction price, customer payments, transfer of control and principal versus agent considerations.

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.

We concluded that the first three of the above criteria were not met upon shipment of product to the customer, the fourth criteria had been met and we acknowledge that there is a degree of uncertainty as to whether last criteria above had been met. Although the parties to the contract may have approved the contract and purchase orders in writing, we concluded that upon shipment of products to the customer there is not sufficient evidence that our 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.). We could not reliably identify each party's rights regarding the products to be transferred upon shipment of those products to customers.

We determined the transaction price of our 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 our consolidated balance sheet.

Fiscal Year Ended December 31, 2019

We continued to assess new and existing contracts 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 it was determined if 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 and unknown performance by us. Although some of the former executives were employed by us only through June 2018, we 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 our customer contractual terms, we began implementing changes in mid-2018 to remediate the pervasive weaknesses in the control environment, followed by gradually implementing measures to empower our compliance, legal, and accounting departments; educate our sales force on appropriate business practices; and communicate our revised terms of sale to customers. We assessed our 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, we determined that adequate knowledge of the contractual arrangements with our customers did exist in 2019 for new and certain existing arrangements. We 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 and externally with our customers.

To address the tone at the top issues, we noted that proper remediation involved not only the removal of members of management who 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 the end of the second quarter of 2019.

To determine when we had either eliminated or had sufficient knowledge to identify any extra-contractual arrangements, we noted that a key factor contributing to our historical lack of visibility into the arrangements with our customers was the failure to adhere to credit limits, payment terms and return policies. The establishment of additional controls and the emphasis on adherence to our existing policies and controls was an iterative process that continued through the first two quarters of 2019. Additional factors contributing to the increased visibility into our contractual arrangements involved further education and training of the sales personnel regarding our terms and conditions as well as monitoring of the sales personnel and customers for compliance with the contractual arrangements. We implemented a disciplined approach to educating the sales personnel regarding the prior practices that were considered unacceptable, ensuring they were knowledgeable regarding current terms and conditions and implementing an open dialogue with the credit and collections department. Monitoring of the customer base was accomplished through a variety of measures including, but not limited to, analysis of payments made within the original terms, levels of returns post-shipment, and various continued communication with the customer account representatives by members of our credit and collections department. During the third quarter of 2019, management determined that these efforts with the sales personnel and the external customers had been in place for a sufficient period of time to provide us an understanding of its contractual arrangements with customers.

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

We also reassessed whether the Step 1 Criteria had been met for all shipments of product where payment had not been received as of September 30, 2019. While the measures summarized above provided significant evidence necessary to understand the terms of our contractual arrangements with our customers, certain of these customers continued to exhibit behaviors that resulted in extended periods until cash collection. Such delays in collection suggested that uncertainty regarding extra-contractual arrangements may continue, particularly as it relates to payment terms. As a result, we concluded the following for any existing arrangements, which remained unpaid at September 30, 2019.

- For customer arrangements where collection was considered probable within 90 days from the date of the original shipment or implantation of the products, we concluded the Step 1 Criteria were met (the "***Transition Adjustment***").

- For the remaining customer arrangements (the "***Remaining Contracts***"), we concluded that, due to the uncertainty that extracontractual arrangements may continue, the Step 1 Criteria would not be satisfied until we receive payment from the customer. At that point, we determined that an accounting contract would exist and our performance obligations to deliver product to the customer to pay for the product would be satisfied. As of December 31, 2019, upon reassessment, we concluded that the Step 1 Criteria continued to not be met due to the same circumstances described above for these contracts.

We continued to record the deferred cost of sales on the arrangements that failed the Step 1 Criteria where collectibility was reasonably assured and will recognize the costs when the related revenue is recognized. We also continued to offset deferred revenue with the associated accounts receivable obligations for these arrangements that continued to fail the Step 1 Criteria.

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

Under ASC 606, we recognize revenue following the five-step model: (i) identify the contract 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, beginning October 1, 2019, we determined that we had met the Step 1 Criteria for new and certain existing arrangements. We 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 we determined we will collect the consideration we are entitled to in exchange for the product transferred to the customer. As a result, we recognize 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 our contracts gives rise to certain types of variable consideration, including rebates and other discounts. We include 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 and represent our best judgment at the time of sale. We have consignment agreements with several customers and distributors which allow us to better market our products by moving them closer to the end user. We determined that we have fulfilled our performance obligation once control of the product has been delivered to the customer, which occurs simultaneously with the product being implanted.

We act as the principal in all of our customer arrangements and therefore record 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 and we have elected to treat shipping costs as activities to fulfill the promise to transfer the product. We maintain a returns policy that allows our 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. Our payment terms for customers are typically 30 to 60 days from receipt of title of the goods.

Based on the assessment noted above, we concluded that through the first two quarters of 2019, the pattern of revenue recognition under ASC 606 remained the same as the application for the year ended December 31, 2018; that is, revenue was deferred until the product was paid for or returned. In order to account for the determination that the Step 1 Criteria had been met during the third quarter of 2019, for existing customer arrangements, we recorded the following (in millions):

	Amounts Invoiced and Not Collected	Deferred Cost of Sales
Amounts as of September 30, 2019	$ 48,883	$ 6,415
Revenue recognized related to amounts invoiced and not collected at September 30, 2019:		
Transition Adjustment during the three months ended September 30, 2019	(21,385)	(2,565)
Cash collected during the three months ended December 31, 2019 related to the Remaining Contracts	(8,219)	(1,151)
	(29,604)	(3,716)
Write-off of customer contracts where collection is no longer reasonably assured (a)	(10,273)	(1,438)
Amounts as of December 31, 2019	$ 9,006	$ 1,261

(a) The Company determined that for approximately $10.3 million of existing contracts where payment had not been received, collection was no longer reasonably assured. As a result, $1.4 million of deferred cost of sales relating to these customers was written off. Any future collections relating to these customer contracts will be recorded as revenue at the time payment is received.

Goodwill and Impairment of Long-Lived Assets

Goodwill represents the excess of purchase price over the fair value of net assets of acquired businesses. Goodwill is tested for impairment annually on September 30, or whenever an event occurs or circumstances change that would indicate that the carrying amount may be impaired. When testing for goodwill impairment, we first assess qualitative factors to determine whether events or circumstances lead to a determination that it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If we conclude it is more likely than not that the fair value of a reporting unit is less than its carrying amount, we perform a quantitative fair value test to determine any potential impairment loss. We may also choose to bypass the qualitative assessment and proceed directly to the quantitative analysis. As of the date of the filing of this Form 10-K, we have only one reporting unit.

Acquired indefinite lived intangible assets are tested for impairment annually or whenever events or changes in circumstances indicate that the carrying amount of an intangible asset may not be recoverable. Refer to Note 8 to the Consolidated Financial Statements for additional information. Our impairment reviews are based on an estimated future cash flow approach that requires significant judgment with respect to future revenue and expense growth estimates. We use estimates consistent with business plans and a market participant view of the assets being evaluated. Actual results may differ from the estimates used in these analyses.

There were no recorded impairment losses related to goodwill in 2019, 2018, or 2017. We recorded impairment losses of $1.3 million, $0.0 million, and $0.6 million, related to the abandonment of patents in process and write-off of certain customer relationships during 2019, 2018, and 2017, respectively.

Share-based Compensation

Our share-based compensation cost for equity awards granted to employees, members of the Board, and non-employee consultants is measured at the grant date based on the fair value of the award, is adjusted by the estimated forfeitures and is recognized as an expense over the requisite service or vesting period in accordance with Financial Accounting Standards Board ("***FASB***") ASC Topic 718 "*Compensation–Stock Compensation*," and under the recently issued guidance following FASB's pronouncement, ASU 2018-07, "*Compensation-Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting*", which we adopted on January 1, 2019, the effective date of the new guidance.

Determining the appropriate fair value model and calculating the fair value of employee and non-employee stock option and restricted common stock awards requires estimates and judgments. Our share-based compensation is a "critical accounting estimate" because changes in the assumptions used to develop estimates of fair value, the requisite service period, probability of achieving performance vesting conditions, or estimated forfeitures could materially affect key financial measures, including results of operations.

The fair value of restricted common stock is a value of common stock on a grant date. The fair value of stock option grants is estimated using the Black-Scholes option pricing model. Use of the valuation model requires management to make certain

assumptions with respect to selected model inputs. We use the simplified method for share-based compensation to estimate the expected term. The risk-free interest rate is based on the U.S. Treasury yield curve in effect at the time of grant for the estimated option expected term. We estimate volatility using a blend of our own historical stock price volatility as well as that of market comparable publicly traded peer companies, since historically, we did not have enough history to establish volatility based upon our own stock trading. We routinely review our calculation of volatility for potential changes in future volatility, our life cycle, our peer group, and other factors. In addition, an expected dividend yield of zero is used in the option valuation model because we do not pay cash dividends and do not expect to pay any cash dividends in the foreseeable future.

For awards with service conditions only, we recognize stock-based compensation expense on a straight-line basis over the requisite service or vesting period. For awards with service and performance-based vesting conditions, we recognize stock-based compensation expense using the graded vesting expense attribution method over the requisite service period beginning in the period in which the awards are deemed probable to vest. Vesting probability for an award with performance vesting conditions is assessed based upon our expectations to become compliant with applicable securities law regulatory requirements and reporting obligations, as well as other performance vesting conditions specified in the restricted share unit award agreements. We recognize the cumulative effect of changes in the probability outcomes in the period in which the changes occur.

We recognize the fixed dollar amount known on a grant date with respect to the restricted stock unit awards that will be settled by issuing shares on the vesting date, with the number of shares to be determined based on our stock price on the settlement date over the vesting period, with an offsetting liability. Once the number of shares has been fixed and the shares are issued, we reclassify the liability related to the restricted share unit awards to equity.

Income Taxes

Our income tax expense, deferred tax assets and liabilities, and liabilities for unrecognized tax benefits reflect management's best assessment of estimated current and future taxes to be paid. We are subject to income taxes in the United States, including numerous state jurisdictions.

Deferred income taxes arise from temporary differences between the tax basis of assets and liabilities and their reported amounts in the financial statements, which will result in taxable or deductible amounts in the future. In evaluating our ability to recover our deferred tax assets within the jurisdiction from which they arise, we consider all available positive and negative evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income, tax-planning strategies, and results of recent operations. In projecting future taxable income, we begin with historical results adjusted for the results of discontinued operations and incorporate assumptions about the amount of future state, federal, and foreign pretax operating income adjusted for items that do not have tax consequences. The assumptions about future taxable income require significant judgment and are consistent with the plans and estimates we are using to manage the underlying businesses. In evaluating the objective evidence that historical results provide, we consider three years of cumulative operating income (loss). We account for income taxes under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements. Under this method, deferred tax assets and liabilities are determined on the basis of the differences between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in income in the period that includes the enactment date.

We recognize deferred tax assets to the extent that we believe these assets are more likely than not to be realized. If we determine that we would be able to realize our deferred tax assets in the future in excess of their net recorded amount, we would make an adjustment to the deferred tax asset valuation allowance, which would reduce the provision for income taxes.

The calculation of our tax liabilities involves dealing with uncertainties in the application of complex tax laws and regulations both for U.S. federal income tax purposes and across numerous state jurisdictions. ASC Topic 740 ("***ASC 740***") states that a tax benefit from an uncertain tax position may be recognized when it is more likely than not that the position will be sustained upon examination, including resolutions of any related appeals or litigation processes, on the basis of the technical merits. We (1) record unrecognized tax benefits as liabilities in accordance with ASC 740, and (2) adjust these liabilities when our judgment changes as a result of the evaluation of new information not previously available. Because of the complexity of some of these uncertainties, the ultimate resolution may result in a payment that is materially different from our current estimate of the unrecognized tax benefit liabilities. These differences will be reflected as increases or decreases to income tax expense in the period in which new information is available.

We record uncertain tax positions in accordance with ASC 740 on the basis of a two-step process whereby (1) we determine whether it is more likely than not that the tax positions will be sustained on the basis of the technical merits of the position, and (2) for those tax positions that meet the more-likely-than-not recognition threshold, we recognize the largest amount of tax benefit that is more than 50 percent likely to be realized upon ultimate settlement with the related tax authority.

We recognize interest and penalties related to unrecognized tax benefits within the income tax expense line in the accompanying Consolidated Statement of Operations. Accrued interest and penalties, if any, are included within the related tax liability line in the consolidated balance sheet.

As of December 31, 2019, 2018, and 2017, we had a valuation allowance recorded of $30.6 million, $27.3 million, and $0.6 million, respectively, against our net deferred tax assets. The decrease in the valuation allowance during 2017 is primarily related to the weight of available evidence which resulted in a determination to release our valuation allowance and recognize an income tax benefit as of September 30, 2017. The increase in valuation allowance during 2018 is primarily related to the weight of available evidence which resulted in the determination to increase our valuation allowance and recognize income tax expense as of December 31, 2018.

To the extent we determine that, based on the weight of available evidence, all or a portion of our valuation allowance is no longer necessary, we will recognize an income tax benefit in the period such determination is made for the reversal of the valuation allowance. If management determines that, based on the weight of available evidence, it is more-likely-than-not that all or a portion of the net deferred tax assets will not be realized, we may recognize income tax expense in the period such determination is made to increase the valuation allowance.

U.S. Tax Reform

On December 22, 2017, the United States enacted into law the Tax Cuts and Jobs Act ("***Tax Act***"). The Tax Act made broad and complex changes to the U.S. tax code, including a permanent corporate rate reduction to 21%. The Tax Act includes provisions that affected 2017, including: (1) requiring a remeasurement of all U.S. deferred tax assets and liabilities to the newly enacted corporate tax rate of 21%; (2) providing for additional first-year depreciation that allows full expensing of qualified property placed into service after September 27, 2017; (3) repealing the domestic production activities deduction and (4) modifying the deductibility of certain meals & entertainment expenses incurred.

In late December 2017, the SEC staff issued Staff Accounting Bulletin 118 ("***SAB 118***"), which provided guidance on accounting for the tax effects of the Tax Act. SAB 118 provides a measurement period that should not extend beyond one year from the Tax Act enactment date for companies to complete the related accounting under GAAP. The most significant impact of the Tax Act was a one-time reduction in net deferred income tax assets of approximately $12 million, due primarily to the re-measurement of deferred tax assets at the lower 21% U.S. federal corporate income tax rate. Our accounting for the tax implications of the Tax Cuts and Jobs Act was complete as of December 31, 2018.

Contingencies

We are subject to various patent challenges, product liability claims, government investigations and other legal proceedings in the ordinary course of business. Material legal proceedings are discussed in Note 16, "*Commitments and Contingencies*" in the Consolidated Financial Statements. Contingent accruals and legal settlements are recorded in the consolidated statements of operations as litigation-related and other contingencies when we determine that a loss is both probable and reasonably estimable. Legal fees and other expenses related to litigation are expensed as incurred and included in selling, general and administrative expenses in the consolidated statements of operations.

Due to the fact that legal proceedings and other contingencies are inherently unpredictable, our estimates of the probability and amount of any such liabilities involve significant judgment regarding future events. The factors we consider in developing our liabilities for legal proceedings include the merits and jurisdiction of the proceeding, the nature and the number of other similar current and past proceedings, the nature of the product and the current assessment of the science subject to the proceeding, if applicable, and the likelihood of the conditions of settlement being met.

In order to evaluate whether a claim is probable of loss, we may rely on certain information about the claim. Without access to and review of such information, we may not be in a position to determine whether a loss is probable. Further, the timing and extent to which we obtain any such information, and our evaluation thereof, is often impacted by items outside of our control including, without limitation, the normal cadence of the litigation process and the provision of claim information to us by opposing counsel. The amount of our liabilities for legal proceedings may change as we receive additional information and/or become aware of additional asserted or unasserted claims. Additionally, there is a possibility that we will suffer adverse decisions or verdicts of substantial amounts or that we will enter into additional monetary settlements, either of which could be in excess of amounts previously accrued for. Any changes to our liabilities for legal proceedings could have a material adverse effect on our business, financial condition, results of operations and cash flows.

As of December 31, 2019, our reserve for loss contingencies totaled $12.8 million related to the legal proceedings discussed in Note 16, "*Commitments and Contingencies*". Although we believe there is a reasonable possibility that a loss in excess of the

amount recognized exists, we are unable to estimate the possible loss or range of loss in excess of the amount recognized at this time.

Recently Adopted Accounting Pronouncements

See Note 3, "*Significant Accounting Policies*," in the Consolidated Financial Statements for recently adopted accounting pronouncements.

Components of and Key Factors Influencing Our Results of Operations

In assessing the performance of our business, we consider a variety of performance and financial measures. We believe the items discussed below provide insight into the factors that affect these key measures.

Revenue

The majority of our revenues are generated by wound care applications. We have two distribution channels: (1) direct to customers and (2) sales through distributors. Each distribution channel can be further disaggregated between sales to federal customers and non-federal customers.

Several factors affect our reported revenue in any period, including product, payer and geographic sales mix, operational effectiveness, pricing realization, marketing and promotional efforts, timing of orders and shipments, regulatory actions including healthcare reimbursement scenarios, competition, and business acquisitions that involve our customers or competitors.

Cost of goods sold and gross profit

Cost of goods sold includes product testing costs, quality assurance costs, personnel costs, manufacturing costs, raw materials and product costs, and facility costs associated with our manufacturing and warehouse facilities. Fluctuations in our cost of goods sold correspond with the fluctuations in sales units driven by the changes in our sales force and sales territories, product portfolio offerings and the number of facilities that offer our products.

Gross profit is calculated as net revenue less cost of goods sold. Our gross profit is affected by product and geographic sales mix, realized pricing of our products, the efficiency of our manufacturing operations and the costs of materials used to make our products. Regulatory actions, including with respect to reimbursement for our products, may require costly expenditures or result in pricing pressure, and may decrease our gross profit and gross profit margin.

Selling, general and administrative expenses

Selling, general and administrative expenses include personnel costs, commissions, incentive compensation, customer support, administrative and labor costs, insurance, professional fees, depreciation and bad debt expense. We expect our selling, general and administrative expenses to fluctuate based on revenue fluctuations, geographic changes and any changes to the size of our sales and marketing forces.

Research and development expenses

Research and development expenses relate to our investments in improvements to our manufacturing processes (including additional costs to transition our manufacturing establishments into compliance with cGMP for commercial production), product enhancements, and additional investments in our product pipeline and platforms. Our research and development costs also include expenses such as clinical trial and regulatory costs.

We expense research and development costs as incurred. Our research and development expenses fluctuate from period to period primarily based on the ongoing improvement to our manufacturing processes and product enhancements. We expect that these costs will increase in the near term as we continue to transition our manufacturing facilities into compliance with cGMP, advance our IND applications, and pursue BLAs for certain of our micronized products.

Important Cautionary Statement

We caution the reader that actual results may differ materially from our expectations, including those described under the subheadings "*Expected Impact of COVID-19 Pandemic"* above and *"Results of Operations - Recent Developments and Outlook*" below. 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 GPO or IDN; 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 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. See Item 1A, "Risk Factors," for more information.

Recent Developments and Outlook

Revenue for the quarter ended March 31, 2020 of $61.7 million, a $4.8 million or 7.2% decrease over the quarter ended March 31, 2019 revenue of $66.6 million. The decrease primarily resulted from reduced sales of approximately $7.0 million in the Epi Wound product line and, to a lesser extent, due to the COVID-19 Pandemic in March 2020.

Gross profit margin in the first quarter of 2020 was 84% as compared to 89% in the first quarter of 2019. Gross profit decreased due to an increase in standard cost per unit caused by higher overhead/burden cost within production and quality assurance related to more stringent standards/regulations for cGMP compliance and BLA. This was partially offset by lower volume due to reduction in sales.

Investigation, restatement and related expenses were $15.6 million in the quarter ended March 31, 2020.

As of March 31, 2020, the Company had $53.5 million of cash and cash equivalents and $72.2 million of long-term debt.

We expect net sales during the quarter ended June 30, 2020 to decline between 23-27% from $67.4 million of net sales in the quarter ended June 30, 2019. We attribute most of this decline to the impact of COVID-19 as well as the discontinuation of OrthoFlo and AmnioFix Sports Medicine products. The pandemic caused elective procedures to be delayed and/or canceled, as well as increased access restrictions within patient settings making it difficult to retain and generate new business. Gross margin for the quarter ended June 30, 2020, is expected to be between 84-86%. As noted above, the cost-containment actions continued in the second quarter and we expect SG&A expenses in the quarter ended June 30, 2020, to have decreased 16-20%, compared to the quarter ended June 30, 2019. We expect Investigation, restatement and related expenses to be approximately $11.0 million in the quarter ended June 30, 2020.

Our expectations for 2020 results are based on our results to date. However, given the uncertainty regarding the impact on the economy from the COVID-19 virus, it is particularly difficult to reliably forecast 2020 financial metrics. See Item 1A. Risk Factors - "*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.*"

Results of Operations for 2019 Compared to 2018

	Year Ended December 31, (in thousands)			
	2019	2018	$ Change	% Change
Net Sales	$ 299,255	$ 359,111	$ (59,856)	(16.7)%
Gross profit	256,174	322,725	(66,551)	(20.6)%
Selling, general and administrative	198,205	258,528	(60,323)	(23.3)%
Investigation, restatement and related	66,504	51,322	15,182	29.6 %
Research and development	11,140	15,765	(4,625)	(29.3)%
Amortization of intangible assets	1,039	1,034	5	0.5 %
Impairment of intangible assets	446	—	446	100.0 %
Interest (expense) income, net	(4,708)	527	(5,235)	(993.4)%
Other income, net	283	—	283	100.0 %
Income tax provision benefit (expense)	5	(26,582)	26,587	100.0 %
Net loss	$ (25,580)	$ (29,979)	$ 4,399	(14.7)%

Net Sales

We recorded revenue for the year ended December 31, 2019 of $299.3 million, a decrease of $59.9 million or 16.7% over 2018 revenue of $359.1 million. As discussed in the "*Critical Accounting Policies*" section above, the Company assessed its sales arrangements with customers during 2019 beginning with the definition of a contract under ASC 606 at the time of shipment of goods to the customer or upon the delivery of such goods if so stipulated by the terms of sale. Based on this assessment, the Company recognized revenue from a revenue benefit in the third quarter of 2019 related to the Transition and collections from the Remaining Customers during the fourth quarter of 2019 totaling approximately $29.6 million. Excluding this benefit related to the method in which the Company recognizes revenue, the decrease primarily resulted from unfavorable insurance coverage developments, which resulted in a decrease in the number of units sold. Additionally, approximately one-half of the reduction of the Company's workforce announced in December 2018 and completed through 2019 were sales personnel that resulted in fewer visits to customers. Further, both the negative publicity resulting from the Audit Committee Investigation and discontinuing the OrthoFlo and AmnioFix Sports Medicine product lines adversely affected revenues.

Gross Profit Margin

Gross profit margin in 2019 was 85.6%, as compared to 89.9% in 2018. The gross profit margin decrease reflects fixed overhead costs being spread over lower production levels, increased costs of production related to the higher quality standards of cGMP, and higher scrap levels in the second half of the year. We implemented an electronic batch record system late in 2019, and are enhancing that system in 2020, and expect to reduce the incidence of scrap going forward.

Research and Development Expenses

Our research and development expenses decreased approximately $4.6 million, or 29.3%, to $11.1 million in 2019, compared to $15.8 million in the prior year. The decrease is primarily due to year-over-year decreases in clinical trial activities, the reductions in personnel due to the Company's reduction in workforce as well as the decision to significantly reduce animal studies. We anticipate increasing our research and development spend in 2020 as we file additional INDs and work towards the BLAs.

Selling, General and Administrative Expenses

Selling, General and Administrative ("***SG&A***") expense for 2019 decreased approximately $60.3 million, or 23.3%, to $198.2 million (or 66.2% of revenues), compared to $258.5 million (or 72.0% of revenues) for 2018.

Sales and Marketing expense included in SG&A decreased by $33.1 million, or 19.8%, to $134.2 million for 2019 compared to $167.3 million for 2018. The decrease was primarily due to the reduction in the workforce discussed below and lower commissions from the reduction in net sales discussed above.

General and administrative ("***G&A***") expense included in SG&A decreased by $27.2 million, or 29.9%, to $64.0 million for 2019 compared to $91.2 million for 2018. The decrease was largely due to the completion of the Investigation in May 2019 and was

partially offset by costs in 2019 related to the two proxy contests in connection with the 2018 annual meeting of shareholders. The decrease in total G&A was also due to the reduction of our workforce announced in December 2018 by approximately 240 full-time employees, or 24% of our total workforce, of which about half were sales force personnel.

Share-based compensation included in SG&A for the years ended December 31, 2019 and 2018, was approximately $11.3 million and $13.5 million, respectively, a decrease of approximately $2.2 million, or 16.0%. The decrease was primarily due to the reduction in the workforce discussed above.

Investigation, Restatement and Related Expenses

Investigation, restatement, and related expenses increased by $15.2 million, or 29.6% to $66.5 million for 2019 compared to $51.3 million for 2018. The increase in 2019 as compared to 2018 primarily resulted from an increase in restatement, litigation, consulting fees and settlements of $21.7 million partially offset by a decrease in investigation fees of $6.5 million.

- The Investigation was completed in 2019 and we do not expect to incur these costs going forward.
- Restatement costs are third-party service costs related to compiling, completing and auditing the financial statements included in the 2018 Form 10-K and in this filing, and thus we expect to incur these costs in the first half of 2020.
- Litigation fees increased by $11.6 million year over year from $14.6 million for 2018 compared to $26.2 million for 2019 due to the increase in settlement disputes and near-term contingencies related to the internal investigation; we expect to continue incurring these costs in the future as we address our contingent liabilities.
- Consulting costs in 2019 related to staff augmentation for restatement activities and advisory services related to financial reporting, internal controls, and the 2019 proxy contests. We continued to incur such costs in 2020 to assist with our effort to become current with our SEC financial reporting requirements.
- We may incur settlement costs in the future as we resolve contingent liabilities; see Note 16, "*Commitments and Contingencies.*"

Through March 31, 2020, we have incurred $17.6 million of legal and other fees under indemnification agreements for current and former officers and directors. We expect to incur additional indemnification costs in 2020 as these cases continue.

Amortization of Intangible Assets

Amortization expense related to intangible assets remained relatively consistent for 2019 as compared 2018.

Impairment of Intangible Assets

Impairment of intangible assets of $0.4 million for 2019 related to the impairment of customer relationships that were part of the divestiture of Stability in 2017.

Interest (Expense) Income, net

Interest (expense) income, net increased by $5.2 million to $(4.7) million during the year ended December 31, 2019 from $0.5 million during the year ended December 31, 2018. This increase was due to the interest on our borrowings under the BT Loan Agreement entered into on June 10, 2019.

Other Income, Net

Other income, net of $0.3 million during the year ended December 31, 2019 reflects a settlement payment received for patent infringement case.

Income Taxes

The effective tax rate for 2019 was 0.0% on pre-tax book loss of $25.6 million, reflecting the lack of current tax expense due to our net loss position and the offset of deferred tax benefits by the corresponding adjustment to the valuation allowance. During 2019, a valuation allowance was recorded against current year losses resulting in effectively no tax expense or benefit. The effective tax rate in 2018 of (782.6)%, based on pre-tax book loss of $3.4 million, reflects the increase in the valuation allowance.

Results of Operations for 2018 Compared to 2017

	Year Ended December 31, (in thousands)			
	2018	2017	$ Change	% Change
Net Sales	$ 359,111	$ 321,139	$ 37,972	11.8 %
Gross profit	322,725	285,920	36,805	12.9 %
Selling, general and administrative	258,528	220,119	38,409	17.4 %
Investigation, restatement and related	51,322	—	51,322	100.0 %
Research and development	15,765	17,900	(2,135)	(11.9)%
Amortization of intangible assets	1,034	1,678	(644)	(38.4)%
Loss on divestiture	—	(1,048)	1,048	n/a
Interest income (expense), net	527	(87)	614	(705.7)%
Income tax provision (expense) benefit	(26,582)	19,639	(46,221)	235.4 %
Net (loss) income	$ (29,979)	$ 64,727	$ (94,706)	(146.3)%

Revenue

We recorded revenue for the year ended December 31, 2018 of $359.1 million, an increase of $38.0 million or 11.8% over 2017 revenue of $321.1 million. The increase primarily resulted from favorable insurance coverage developments, which resulted in an increase in the number of units sold. Additionally, we increased our direct sales force through the first three quarters of 2018 which resulted in the addition of new customers. Further, revenues benefited from sales made in prior periods and collected during 2018. These effects were partially offset by unfavorable insurance coverage developments, unfavorable publicity resulting from the Investigation, increased turnover of experienced sales personnel and related events in the fourth quarter of 2018.

Gross Profit Margin

Gross profit margin in 2018 was 89.9%, as compared to 89.0% in 2017. Gross profit margin increased due to the mix of products sold in 2018, including as a result of the divestiture of Stability on September 30, 2017 (whose products were relatively lower-margin). During 2018, we also saw an improvement in yield as a result of improved manufacturing efficiency in our wound care line.

Research and Development Expenses

Our research and development expenses decreased approximately $2.1 million, or 11.9%, to $15.8 million in 2018, compared to approximately $17.9 million in the prior year. The decrease is primarily due to year-over-year decreases in clinical trial activities as well as the decision to significantly reduce animal studies in 2018. In 2017, research and development expenses were driven by several multiple-site clinical trials related to our EpiCord and EpiFix products. These projects were completed during 2018.

Selling, General and Administrative Expenses

Selling, General and Administrative ("***SG&A***") expense for 2018 increased approximately $38.4 million, or 17.4%, to $258.5 million (or 72.0% of revenues), compared to $220.1 million (or 68.5% of revenues) for 2017.

Sales and Marketing expense included in SG&A increased by $13.4 million, or 8.7%, to $167.3 million for 2019 compared to $153.9 million for 2017. The increase was primarily due to an increase in compensation related to the additional headcount of 72 employees from December 2017 through August 2018, as well as an increase in sales commissions based on shipments during the year.

General and administrative expense included in SG&A increased by $25.0 million, or 37.7%, to $91.2 million for 2019 compared to $66.2 million for 2017. Legal fees increased by $4.8 million, or 35.7%, to $18.4 million compared to $13.6 million for 2017. Consulting fees included in SG&A were $1.6 million for 2018 as compared with $0.3 million for 2017. The increase was primarily due to an increase in compensation related to the additional headcount of 34 employees from December 2017 through August 2018, prior to the reduction in force in December 2018, as well as an increase in accounting fees due to the change in audit firms in mid-2018.

In December 2018, we announced a reduction of our workforce by approximately 240 full-time employees, or 24% of our total workforce, of which about half were sales force personnel as part of previously announced plans to implement a broad-based organizational realignment, cost reduction and efficiency program to better ensure our cost structure is appropriate given our revenue expectations. As a result of the December 2018 broad-based organizational realignment, cost reduction and efficiency program, we incurred pre-tax charges of $6.1 million during the year ended December 31, 2018.

Investigation, restatement, and related expenses was $51.3 million in 2018 compared to $0 for 2017. The increase in legal, accounting, and other professional consulting fees incurred in 2018 as compared to 2017 primarily resulted from the Investigation, including legal fees, forensic audit fees, and consulting fees relating to the Restatement; and legal fees relating to the SEC Investigation, shareholder derivative lawsuits, and other litigation, as well as settlements made with former employees.

Share-based compensation included in SG&A for the years ended December 31, 2018 and 2017, was approximately $13.5 million and $20.1 million, respectively, a decrease of approximately $6.6 million, or 32.8%. The decrease was primarily due to our reduction in workforce in 2018, forfeitures of outstanding equity awards in connection with the reduction in workforce, and a reduction in the size of new equity-based awards to employees in 2018.

Amortization of Intangible Assets

Amortization expense related to intangible assets decreased approximately $0.7 million, or 38.4%, to $1.0 million for the year ended December 31, 2018, compared to $1.7 million in the prior year. Amortization decreased primarily due to the divestiture of Stability during the third quarter of 2017. We amortize our intangible assets over a period of 4 to 20 years, which we believe represents the remaining useful lives of the patents underlying the licensing rights and intellectual property. We do not amortize goodwill, but we test our goodwill at least annually for impairment and periodically evaluate other intangibles for impairment based on events or changes in circumstances as they occur.

Interest Income (Expense), net

Interest income (expense), net increased to $0.5 million during the year ended December 31, 2018 from $(0.1) million during the year ended December 31, 2017. This increase was due to a decision in late 2017 to begin charging interest on past due customer balances, partially offset by the amortization of deferred financing costs incurred during 2018 related to our $50 million revolving credit facility and commitments and undrawn fees connected to our line of credit. See Note 10, “*Long-Term Debt*,” in the Consolidated Financial Statements for further details.

Income Taxes

The effective tax rate for 2018 was (782.6)% on pre-tax book loss of $3.4 million. This compares to an effective tax rate of (43.6)% based on pre-tax book income of $45.1 million in 2017.

Our 2018 effective tax rate was driven largely by increases in our valuation allowance, causing $26.8 million of incremental income tax expense, an effective tax rate impact of (788.3)%. Other offsetting tax adjustments yielded an effective tax rate of 5.7%. The decrease in the valuation allowance during 2017 is primarily related to the weight of available evidence which resulted in a determination to release our valuation allowance and recognize an income tax benefit as of September 30, 2017.

In 2017, the Company derived significant tax benefits associated with the disposition of the Company’s interest in Stability (total benefit of approximately $5.3 million; effective tax rate impact of (8.9)% along with significant tax benefits associated with stock compensation-related deductions (total benefit of approximately $4.8 million; effective tax rate benefit of (9.9)%.

As a result of the Restatement, we re-evaluated the valuation allowance determinations made in prior years. Our analysis was updated to consider the changes to our historical operating results following the Investigation and subsequent review by management. In that process, we evaluated the weight of all evidence, including the ability or inability to project future income to utilize our deferred tax assets, and we concluded that as of December 31, 2015, our U.S. federal and state net deferred tax assets were no longer more-likely-than-not to be realized and that a valuation allowance was required. The decrease in the valuation allowance during 2017 is primarily related to the weight of available evidence which resulted in a determination to release the Company’s valuation allowance and recognize an income tax benefit as of September 30, 2017. The increase in valuation allowance during 2018 is primarily related to the weight of available evidence which resulted in the determination to increase the Company’s valuation allowance and recognize income tax expense as of December 31, 2018.

Contractual Obligations

Contractual obligations associated with ongoing business activities are expected to result in cash payments in future periods. The table below summarizes the amounts and estimated timing of these future cash payments as of December 31, 2019 (in thousands):

Contractual Obligations	Total	Less than 1 year	1-3 years	3-5 years	Thereafter
BT Term Loan principal	$ 73,125	$ 3,750	$ 69,375	$ —	$ —
BT Term Loan interest	17,965	7,515	10,450	—	—
Operating lease obligations	4,713	1,463	3,250	—	—
Meeting space commitments	1,988	684	1,304	—	—
Other	370	$ 116	$ 254	$ —	$ —
	$ 98,161	$ 13,528	$ 84,633	$ —	$ —

Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements.

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 December 31, 2019, the Company had approximately $69.1 million of cash and cash equivalents.

Our net working capital at December 31, 2019, increased $53.4 million to $55.9 million from $2.5 million at December 31, 2018. The increase in working capital was primarily due to the change in our revenue recognition methodology and the establishment of accounts receivable along with an increase in cash collections. Our current ratio (current assets divided by current liabilities) was 1.8 to 1 as of December 31, 2019 and 1.0 to 1 as of December 31, 2018.

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 under "*Term Loans.*" In addition, on July 2, 2020, we 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.

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. See Note 19, "*Restructuring*," in the Consolidated Financial Statements.

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.

Additionally, as discussed in Note 16, "*Commitments and Contingencies*," and further addressed in Note 21, "*Subsequent Events*," of the Consolidated Financial Statements, we anticipate cash requirements related to the following items within one year from the date of the filing of this Form 10-K:

- 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 current Good Manufacturing Practices ("***cGMPs***").

Following the Preferred Stock Transaction, the Hayfin Loan Transaction, and the repayment and termination of the BT Loan Agreement, 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 discussed below for the 12 months extending from the date of the filing of this 2019 Form 10-K. Based on this analysis, and in combination with existing cash on hand, we believe it is probable that we will meet all obligations as they come due without violating the financial covenants set forth in the Hayfin Loan Agreement, as discussed below. Therefore, we concluded that there is no substantial doubt surrounding our ability to continue as a going concern.

Term Loans

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 "***BT Term Loan***"), the full amount of which was borrowed and funded. The proceeds of 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 was issued net of the original issue discount of $2.3 million. The Company also incurred $6.7 million of deferred financing costs.

The interest rate applicable to any borrowings under the BT Term Loan was 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 equal to 9.95% at March 31, 2020.

The BT Loan Agreement contained financial covenants requiring us 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 four consecutive fiscal quarters. Our total leverage ratio was 1.7 times at December 31, 2019, a cushion of 1.3 times.

- Minimum liquidity of the Company, defined as unrestricted cash and cash equivalents, is not permitted, 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, to be less than $40 million, and (b) beginning with the fiscal month ending June 30, 2020 and for each month ending thereafter, to be less than $30 million; provided that, beginning with fiscal month ending December 31, 2020, the total leverage ratio is less than 2.50 to 1.00 as of the last business day of any fiscal month, the liquidity of the Company shall not be less than $20 million. Our cash on hand was $69.1 million at December 31, 2019, exceeding the $40 million minimum liquidity by $29.1 million, and our cash on hand was $53.5 million as of March 31, 2020.

Effective April 22, 2020, the BT Loan Agreement was amended to provide for an increase in the maximum Total Leverage Ratio, which was a quarterly test, from a Total Leverage Ratio of 3.00 to 1.00 to a new Total Leverage Ratio of 5.00 to 1.00 for the quarterly periods ending on June 30, 2020, September 30, 2020, and December 31, 2020, and also provided for a reduction in the minimum Liquidity covenant, which was a monthly requirement, from $40 million to $20 million for April and May 2020 and form $30 million to $20 million for June through November 2020. 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%.

The BT Loan Agreement provided that any prepayment of the loan 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.

Hayfin Term Loan; Preferred Stock Transaction; Termination of BT Loan Agreement. 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. A portion of the proceeds of the Preferred Stock Transaction and the Hayfin Loan Transaction was used 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 on July 2, 2020. For further information regarding the Preferred Stock Transaction, the Hayfin Loan Transaction (including the terms of the Hayfin Loan Agreement) and the termination of the BT Loan Agreement, see Item 9B, "*Other Information*."

Liquidity Considerations

Prior to the Preferred Stock Transaction and the Hayfin Loan Transaction, at June 26, 2020, the Company had approximately $48 million of cash and cash equivalents and approximately $73 million of long-term debt. Following the closing of the Preferred Stock Transaction and the Hayfin Loan Transaction, and the repayment of the BT Loan Agreement, as of July 2, 2020, the Company had approximately $110 million of cash and cash equivalents and approximately $50 million of long-term debt. See Note 21 "*Subsequent Events*" for additional discussion.

Since receiving the proceeds from our term loan borrowing in June 2019, our cash and cash equivalents were $96.9 million on June 30, 2019, $94.1 million on September 30, 2019, $69.1 million on December 31, 2019, and $53.5 million on March 31, 2020. The decline in cash and cash equivalents during this time is primarily the result of investigation, restatement and legal expenses we have incurred. While investigation activities are primarily completed and restatement activities are nearing completion, costs to remediate our internal controls and resolve outstanding legal matters are expected to continue.

Our net sales declined 14% in 2019 compared to 2018. In the first quarter of 2020, our net sales also declined 14% compared to the first quarter of 2019. Because of the COVID-19 pandemic, we anticipate a steeper reduction to our reported second quarter of 2020 net sales of 23% - 27% compared to the second quarter of 2019.

In addition, all of our revenues from micronized products, which accounted for $45.0 million, $68.4 million, and $42.4 million respectively, in 2017, 2018, and 2019, are at risk upon the expiration of the FDA's enforcement discretion, which is scheduled to expire on November 20, 2020. See Item 1A - Risk Factors - *"To the extent our products do not qualify for regulation as human cells, tissues and cellular and tissue-based products solely under Section 361 of the Public Health Service Act, this could result in removal of the applicable products from the market, would make the introduction of new tissue products more expensive and would significantly delay the expansion of our tissue product offerings and subject us to additional post-market regulatory requirements."*

Further, our liquidity is challenged by expected costs, required investments to bring our manufacturing facilities up to cGMP compliance, required investments in clinical trials to support BLAs, and contingent liabilities:

- We expect to continue to incur costs to indemnify former officers and directors in legal proceedings against them. The Company has already borne substantial costs to satisfy these indemnification and expense advancement obligations and expects to continue to do so in the future. We may need to increase these expenditures if we experience further delays in trial dates or other proceedings and our ability to recovery any of these advanced costs in the future is uncertain. See Note 16, "*Commitments and Contingencies*."

- We need to continue to invest in our manufacturing establishments to bring them into compliance with cGMP for production for our micronized products. We are also pursuing opportunities to partner with a contract manufacturing organization. The transition process includes development and enhancement of production processes, procedures, test and assays, and it requires extensive validation work. It can also involve the procurement and installation of new production or lab equipment. These efforts require human capital, expertise and resources. See Item 1A. – "*Risk Factors*" under the heading "*To the extent our products do not qualify for regulation as human cells, tissues and cellular and tissue-based products solely under Section 361 of the Public Health Service Act, this could result in removal of the applicable products from the market, would make the introduction of new tissue products more expensive and would significantly delay the expansion of our tissue product offerings and subject us to additional post-market regulatory requirements."*

- The clinical program to support our BLAs will involve substantial cost. Products subject to the FDA's BLA requirements must comply with a range of pre- and post-market provisions. Pre-market compliance includes the conduct of clinical trials in support of BLA approval, the development and submission of a BLA, and the production of product for use in the clinical trials that meets FDA's quality expectations. See Item 1A - Risk Factors - *"If any of the BLAs are approved, the Company would be subject to additional regulation which will increase costs and could result in adverse sanctions for non-compliance."*

- We may become obligated to make payment in respect of certain contingent obligations in addition to our indemnity obligations to former officers and directors.

- We are exposed to potential liabilities and reputational risk associated with litigation, regulatory proceedings, and government enforcement actions. See Item 3, "*Legal Proceedings*" and Note 16, "*Commitments and Contingencies*" and *Item 1A. - Risk Factors - "We are currently, and may in the future be, subject to substantial litigation and ongoing investigations that could cause us to incur significant legal expenses and result in harm to our business."*

Even after the amendment of the BT Loan Agreement in April 2020, we remained subject to financial convents in the BT Loan Agreement that would have become more restrictive after November 30, 2020. A breach of a financial covenant in the BT Loan Agreement, if uncured or unable to be cured, would likely have resulted in an event of default that would have triggered the lender's remedies, including acceleration of the entire principal balance of the loan. The BT Loan Agreement covenants are summarized below:

Financial Covenant	**Original BT Loan Agreement**	**Amended BT Loan Agreement**	**Amended BT Loan Agreement (after December 31, 2020)***
Total Leverage Ratio (tested quarterly)	3:1	5:1	3:1
minimum Liquidity Ratio (tested monthly)	$40 million; $30 million 4/2020 and 5/2020	$20 million	$30 million*
Applicable Margin (i.e. interest rate)	3-month LIBOR + 8%	3-month LIBOR + 9%	3-month LIBOR + 9%

**requirement would increase to $30 million effective November 30, 2020 (i.e. for the month ending December 31, 2020); requirement would decrease to $20 million so long as the Total Leverage Ratio is less than 2.5 to 1.*

The relief provided by the April 2020 amendment generally would have expired at the end of 2020. Further, we would have remained at risk of breaching these covenants during 2020 if we had another setback in our business, for example, if we experienced a second wave of the COVID-19 pandemic. Also, if the Company's net revenue decreased by more than 20% in 2020, the Company might have exceeded the applicable maximum leverage ratio permitted by the BT Loan Agreement during the second half of 2020.

A breach of a financial covenant in the BT Loan Agreement, if uncured or unable to be cured, would likely have resulted in an Event of Default that would have triggered the lender's remedies, including acceleration of the entire principal balance of the BT Loan. We might not have been able to repay all such amounts or be able to find alternative financing in an event of a default. Even if alternative financing were available in an event of a default under the BT Loan Agreement, it might have been on unfavorable terms, and the interest rate charged on any new borrowings could have been substantially higher than the interest rate under the BT Loan Agreement, thus adversely affecting our cash flows, liquidity, and results of operations. Acceleration of the repayment of the loan pursuant to the terms of the BT Loan Agreement, in combination with the Company's current commitments and contingent liabilities, also could have cast doubt on the Company's ability to continue as a going concern.

Moreover, as noted above, our revenues for 2020 were down as compared to revenues for 2019. The COVID-19 pandemic makes it difficult to predict future revenues and there is no assurance that the COVID-19 pandemic will not continue to adversely affect revenue in 2020 or 2021. More specifically:

- Our customers have experienced, and may continue to experience, restrictions in their access to hospitals and ability to access other healthcare providers, particularly for elective procedures.

- Our manufacturing operations, sales and demand for our products, and clinical trials may be adversely affected if our leadership, employees, sales agents, suppliers, medical professionals, or users of our products are impacted by illness or through actions taken to stop or slow the spread of the COVID-19 pandemic.

- Our results of operations may be adversely affected if we experience shortages of donated placentas because donors or our recovery specialists are excluded from hospitals, or because additional testing protocols are implemented for donated tissues based on guidance issued by the AATB, FDA, or other standards and are screened as ineligible.

- Because our sales are not evenly spread across the United States, to the extent that areas most impacted by COVID-19 are those where we have more of our sales, the pandemic will have a greater adverse impact on our revenues.

- The ultimate impact of the COVID-19 pandemic is highly uncertain and subject to change, and we do not yet know the full extent of delays or impacts on our business, or how long such effects will endure.

As a result of these factors, there were doubts about our ability to continue as a going concern in the absence of the Preferred Stock Transaction and the Hayfin Loan Agreement.

Due to these factors and concern regarding the Company's ability to continue to comply with the financial covenants contained in the BT Loan Agreement, in December 2019, we engaged a nationally recognized investment bank to act as sole placement agent for the purpose of managing any possible capital sourcing process.

After considering the Company's uncertain ability to estimate cash from operations, the near and mid-term risks to the Company's ability to generate cash, and anticipated future expenses and required investments, the Board, in consultation with management and the Company's outside advisors, considered various financing alternatives. The Company ultimately held discussions with more than 20 potential financing sources. Throughout the process, the Board evaluated the risks associated with deferring any capital raising process, such as until after the filing of this Form 10-K and/or the relisting of our Common Stock. After careful consideration, the Board unanimously approved the Preferred Stock Transaction and the Hayfin Loan Transaction.

Prior to the Preferred Stock Transaction and the Hayfin Loan Transaction, at June 26, 2020, the Company had approximately $48 million of cash and cash equivalents and approximately $73 million of long-term debt. Following the closing of the Preferred Stock Transaction and the Hayfin Loan Transaction, and the repayment of the BT Loan Agreement, as of July 2, 2020, the Company had approximately $110 million of cash and cash equivalents and approximately $50 million of long-term debt.

Discussion of Cash Flows

During the year ended December 31, 2019, net cash (used in) provided by operations decreased approximately $75.2 million to $(39.4) million, compared to $35.8 million for the year ended December 31, 2018. This decrease was primarily attributable to the effect of the change in revenue recognition policy of $17.4 million, an increase in accounts receivable of $10.9 million, as well as the $20.1 million decrease in cash related to the change in other balance sheet accounts in 2019.

During the year ended December 31, 2018, net cash provided by operations decreased approximately $27.1 million to $35.8 million, compared to $62.9 million for the year ended December 31, 2017. This decrease was primarily attributable to decrease in net income (as a result of higher selling, general and administrative expenses primarily as a result of the Investigation and Restatement), partially offset by a $6.6 million increase in accounts payable due to working capital management efforts.

During the year ended December 31, 2019, net cash provided by (used for) investing activities increased approximately $9.7 million to $0.5 million provided by investing activities compared to $9.2 million of cash used in investing activities for the year ended December 31, 2018 due to the repayment of the note receivable from Stability, partially offset by a significant reduction in the equipment purchased during 2019.

During the year ended December 31, 2018, net cash used for investing activities increased approximately $3.8 million to $9.2 million compared to $5.4 million for the year ended December 31, 2017 due to the higher equipment purchases in 2018 as compared with 2017.

During the year ended December 31, 2019, net cash flows provided by (used for) financing activities was approximately $62.9 million compared to $(8.9) million during the year ended December 31, 2018. The increase was primarily due to the BT Term Loan borrowing of $75.0 million in June 2019 partially offset by the deferred financing costs on the BT Term Loan and shares repurchased for tax withholdings on restricted shares. During 2019, the Company repurchased 429,918 shares of Common Stock surrendered by employees to satisfy tax withholding obligations upon vesting of restricted stock. The Company did not otherwise repurchase any shares of our Common Stock during 2019.

During the year ended December 31, 2018, net cash flows used for financing activities was approximately $8.9 million compared to $60.4 million during the year ended December 31, 2017. The decrease was primarily due to lower share repurchases and lower proceeds from stock option exercises.

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. Company management uses these Non-GAAP measurements 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 (income) expense 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 income (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) share-based compensation, (viii) impairment of intangibles, (ix) loss on divestiture, and (x) one-time inventory fair value adjustments.

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

	Years Ended December 31		
	2019	2018	2017
Net (loss) income	$ (25,580)	$ (29,979)	$ 64,727
Non-GAAP Adjustments:			
Depreciation expense	6,546	5,882	4,087
Amortization of intangible assets	1,039	1,034	1,678
Interest expense (income), net	4,708	(527)	87
Income tax provision (benefit) expense	(5)	26,582	(19,639)
EBITDA	(13,292)	2,992	50,940
Additional Non-GAAP Adjustments:			
Costs incurred in connection with Audit Committee Investigation and Restatement	66,504	51,322	—
Effect of change in revenue recognition	(24,450)	—	—
Share-based compensation	12,064	14,768	21,195
Impairment of intangible assets	1,258	—	590
Loss on divestiture	—	—	1,048
One-time inventory fair value adjustments in connection with acquisition	—	—	203
Adjusted EBITDA	$ 42,084	$ 69,082	$ 73,976

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Based on our lack of market risk sensitive instruments outstanding at December 31, 2019, we have determined that we had no material market risk exposure as of such date.

Item 8. Financial Statements and Supplementary Data

Index to Financial Statements

Report of Independent Registered Public Accounting Firm

Stockholders and Board of Directors
MiMedx Group, Inc.
Marietta, Georgia

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of MiMedx Group, Inc. (the "Company") as of December 31, 2019 and 2018, the related consolidated statements of operations, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2019, and the related notes and schedule (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2019**,** in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the Company's internal control over financial reporting as of December 31, 2019, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") and our report dated July 6, 2020 expressed an adverse opinion thereon.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ BDO USA, LLP

We have served as the Company's auditor since 2019.

Atlanta, Georgia

July 6, 2020

Report of Independent Registered Public Accounting Firm

Stockholders and Board of Directors
MiMedx Group, Inc.
Marietta, Georgia

Opinion on Internal Control over Financial Reporting

We have audited MiMedx Group, Inc.'s (the "Company's") internal control over financial reporting as of December 31, 2019, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (the "COSO criteria"). In our opinion, the Company did not maintain, in all material respects, effective internal control over financial reporting as of December 31, 2019, based on the COSO criteria.

We do not express an opinion or any other form of assurance on management's statements referring to any corrective actions taken by the Company after the date of management's assessment.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the consolidated balance sheets of the Company as of December 31, 2019 and 2018, the related consolidated statements of operations, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2019, and the related notes and schedule (collectively referred to as "the financial statements")" and our report dated July 6, 2020 expressed an unqualified opinion thereon.

Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Item 9A, Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit of internal control over financial reporting in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. The following material weaknesses have been identified and described in management's assessment:

- Failure to maintain an effective control environment based on the criteria in the COSO framework;
- Failure to design, implement and maintain controls over certain information technology systems, financial reporting, income tax, revenue, inventory, and procure-to-pay processes, including certain accruals for expenses such as stock-based compensation expense.

These material weaknesses were considered in determining the nature, timing, and extent of audit tests applied in our audit of the 2019 financial statements, and this report does not affect our report dated July 6, 2020 on those financial statements.

Definition and Limitations of Internal Control over Financial Reporting

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are

being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, 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.

/s/ BDO USA, LLP

Atlanta, Georgia

July 6, 2020

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

	December 31, 2019	December 31, 2018
ASSETS		
Current assets:		
Cash and cash equivalents	$ 69,069	$ 45,118
Accounts receivable	32,327	—
Inventory, net	9,104	15,986
Prepaid expenses	6,669	6,673
Income tax receivable	18	454
Other current assets	6,058	5,818
Total current assets	123,245	74,049
Property and equipment, net	12,328	17,424
Right of use asset	3,397	—
Goodwill	19,976	19,976
Intangible assets, net	7,777	9,608
Other assets	443	1,787
Total assets	$ 167,166	$ 122,844
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 8,710	$ 14,864
Accrued compensation	21,302	23,024
Accrued expenses	32,161	31,842
Current portion of long term debt	3,750	—
Other current liabilities	1,399	1,817
Total current liabilities	67,322	71,547
Long term debt, net	61,906	—
Other liabilities	3,540	1,642
Total liabilities	132,768	73,189
Commitments and contingencies (Note 16)	—	—
Stockholders' equity:		
Preferred stock; $0.001 par value; 5,000,000 shares authorized and 0 shares issued and outstanding	—	—
Common stock; $0.001 par value; 150,000,000 shares authorized; 112,703,926 issued and 110,818,649 outstanding at December 31, 2019 and 112,703,926 issued and 109,098,663 outstanding at December 31, 2018	113	113
Additional paid-in capital	147,231	164,744
Treasury stock at cost: 1,885,277 shares at December 31, 2019 and 3,605,263 shares at December 31, 2018	(10,806)	(38,642)
Accumulated deficit	(102,140)	(76,560)
Total stockholders' equity	34,398	49,655
Total liabilities and stockholders' equity	$ 167,166	$ 122,844

See notes to the consolidated financial statements.

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

	Years Ended December 31,		
	2019	2018	2017
Net sales	$ 299,255	$ 359,111	$ 321,139
Cost of sales	43,081	36,386	35,219
Gross profit	256,174	322,725	285,920
Operating expenses:			
Selling, general and administrative	198,205	258,528	220,119
Investigation, restatement and related	66,504	51,322	—
Research and development	11,140	15,765	17,900
Amortization of intangible assets	1,039	1,034	1,678
Impairment of intangible assets	446	—	—
Operating (loss) income	(21,160)	(3,924)	46,223
Other income (expense)			
Loss on divestiture of Stability	—	—	(1,048)
Interest (expense) income, net	(4,708)	527	(87)
Other income, net	283	—	—
(Loss) income before income tax provision	(25,585)	(3,397)	45,088
Income tax provision benefit (expense)	5	(26,582)	19,639
Net (loss) income	$ (25,580)	$ (29,979)	$ 64,727
Net (loss) income per common share - basic	$ (0.24)	$ (0.28)	$ 0.61
Net (loss) income per common share - diluted	$ (0.24)	$ (0.28)	$ 0.56
Weighted average shares outstanding - basic	106,946,384	105,596,256	106,121,810
Weighted average shares outstanding - diluted	106,946,384	105,596,256	116,113,736

See notes to the consolidated financial statements.

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

	Common Stock		Additional Paid-in	Treasury Stock		Accumulated	
	Shares	Amount	Capital	Shares	Amount	Deficit	Total
Balance at December 31, 2016	110,212,547	$ 110	$ 161,481	349,760	$ (2,216)	$ (111,308)	$ 48,067
Share-based compensation expense	—	—	21,195	—	—	—	21,195
Exercise of stock options	1,097,933	1	(3,433)	(1,396,803)	15,419	—	11,987
Issuance of restricted stock	1,393,446	2	(17,840)	(1,954,068)	17,838	—	—
Restricted stock cancellation / forfeited	—	—	3,205	320,117	(3,205)	—	—
Shares issued for services performed	—	—	41	(17,539)	125	—	166
Shares repurchased	—	—	—	5,635,077	(68,263)	—	(68,263)
Shares repurchased for tax withholding on vesting of restricted stock units	—	—	—	419,865	(4,082)	—	(4,082)
Net income	—	—	—	—	—	64,727	64,727
Balance at December 31, 2017	112,703,926	$ 113	$ 164,649	3,356,409	$ (44,384)	$ (46,581)	$ 73,797
Share-based compensation expense	—	—	14,768	—	—	—	14,768
Exercise of stock options	—	—	(8,210)	(786,708)	11,765	—	3,555
Issuance of restricted stock	—	—	(25,657)	(1,947,475)	25,657	—	—
Restricted stock cancellation / forfeited	—	—	19,194	1,861,314	(19,194)	—	—
Shares repurchased	—	—	—	507,600	(7,572)	—	(7,572)
Shares repurchased for tax withholding on vesting of restricted stock units	—	—	—	614,123	(4,914)	—	(4,914)
Net loss	—	—	—	—	—	(29,979)	(29,979)
Balance at December 31, 2018	112,703,926	$ 113	$ 164,744	3,605,263	$ (38,642)	$ (76,560)	$ 49,655
Share-based compensation expense	—	—	11,689	—	—	—	11,689
Exercise of stock options	—	—	(1,343)	(150,000)	1,451	—	108
Issuance of restricted stock	—	—	(37,798)	(3,084,875)	37,798	—	—
Restricted stock cancellation / forfeited	—	—	9,939	1,084,971	(9,939)	—	—
Shares repurchased for tax withholding on vesting of restricted stock units	—	—	—	429,918	(1,474)	—	(1,474)
Net loss	—	—	—	—	—	(25,580)	(25,580)
Balance at December 31, 2019	112,703,926	$ 113	$ 147,231	1,885,277	$ (10,806)	$ (102,140)	$ 34,398

See notes to the consolidated financial statements.

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

	Years Ended December 31,		
	2019	2018	2017
Cash flows from operating activities:			
Net (loss) income	$ (25,580)	$ (29,979)	$ 64,727
Adjustments to reconcile net (loss) income to net cash (used in) provided by operating activities:			
Effect of change in revenue recognition	(17,382)	—	—
Share-based compensation	12,064	14,768	21,195
Depreciation	6,546	5,882	4,087
Amortization of intangible assets	1,039	1,034	1,678
Amortization of inventory fair value step-up	—	—	203
Amortization of deferred financing costs and debt discount	1,431	137	176
Amortization of discount on notes receivable	—	(190)	(12)
Non cash lease expenses	947	—	—
Change in fair value of earn-out consideration	—	—	(3,560)
Loss on fixed asset disposal	318	—	—
Intangible asset impairment	1,258	—	590
Change in deferred income taxes	—	25,541	(26,670)
Loss on divestiture of Stability	—	—	1,048
Increase (decrease) in cash, net of effects of divestiture, resulting from changes in:			
Accounts receivable	(10,938)	—	(479)
Inventory	6,882	(6,519)	2,747
Prepaid expenses	4	(4,548)	(305)
Income tax receivable	436	202	(656)
Other assets	(5,770)	3,562	225
Accounts payable	(6,171)	6,585	(1,324)
Accrued compensation	(1,722)	2,083	8,397
Accrued expenses	(57)	16,074	(3,534)
Income taxes	—	—	(5,611)
Other liabilities	(2,717)	1,164	17
Net cash flows (used in) provided by operating activities	(39,412)	35,796	62,939
Cash flows from investing activities:			
Purchases of property and equipment	(1,752)	(9,419)	(5,126)
Proceeds from property and equipment sale	—	30	—
Principal payments from note receivable	2,722	778	—
Patent application costs	(466)	(609)	(271)
Net cash flows provided by (used in) investing activities	504	(9,220)	(5,397)
Cash flows from financing activities:			
Proceeds from term loan	72,750	—	—
Repayment of term loan	(1,875)	—	—
Deferred financing costs	(6,650)	—	—
Shares repurchased for tax withholdings on vesting of restricted stock	(1,474)	(4,914)	(4,082)

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

Proceeds from exercise of stock options	108	3,555	11,987
Shares repurchased under repurchase plan	—	(7,572)	(68,263)
Payments under capital lease obligations	—	(3)	(29)
Net cash flows provided by (used in) financing activities	62,859	(8,934)	(60,387)
Net change in cash	23,951	17,642	(2,845)
Cash and cash equivalents, beginning of year	45,118	27,476	30,321
Cash and cash equivalents, end of year	$ 69,069	$ 45,118	$ 27,476

See notes to the consolidated financial statements.

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 and tissue processing services for the wound care, burn, surgical, sports medicine, ophthalmic and dental sectors of healthcare. The Company's allograft product families include: dHACM family with AmnioFix® and EpiFix® brands; Umbilical family with EpiCord® and AmnioCord® brands; and 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.

2. Liquidity and Capital Resources

Net Working Capital

As of December 31, 2019, the Company had $69.1 million of cash and cash equivalents. The Company reported total current assets of $123.2 million and current liabilities of $67.3 million and had net working capital of $55.9 million as of December 31, 2019.

Overall Liquidity and Capital Resources

The Company's largest cash requirement for the twelve months ended December 31, 2019 was cash for general working capital needs; investigation, restatement, and related expenses; and other cash requirements included capital expenditures. The Company funded its cash requirements for 2019 through its existing cash reserves, the Term Loan (as defined below) received in 2019 and its operating activities during the period. 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 twelve months from issuance of the consolidated financial statements.

As discussed in Note 16, "*Commitments and Contingencies*," of the consolidated financial statements, the Company anticipates additional cash requirements related to the following items within one year from the date of filing this Form 10-K:

- private securities lawsuits, for which the Company is currently not able to estimate a loss and for which it is unclear whether the Company would be indemnified under various insurance policies; and
- investments and other expenditures required in order to bring the Company's facilities into compliance with current Good Manufacturing Practices ("***cGMPs***").

As discussed further in Note 21, "*Subsequent Events*," the Company consummated the Preferred Stock Transaction (as defined below), entered into a new loan facility with Hayfin Services, LLP, repaid the BT Term Loan (as defined below), and terminated the BT Loan Agreement.

The Company has analyzed its ability to address the aforementioned commitments and potential liabilities while remaining compliant with the financial covenants set forth in the Hayfin Loan Agreement (as defined below) for the 12 months from the date of the issuance of the consolidated financial statements, consistent with the guidance prescribed by Financial Accounting Standards Board ("FASB") Accounting Standards Update ("ASU") 2014-05, "Going Concern: Disclosure of Uncertainties *about an Entity's Ability to Continue as a Going Concern*."

Based on this analysis, and in combination with existing cash on hand, it is probable that the Company will be able to meet all obligations as they become due while remaining in compliance with the financial covenants set forth by the Hayfin Loan Agreement. Therefore, the Company concluded that there is no substantial doubt surrounding its ability to continue as a going concern.

3. Significant Accounting Policies

Use of Estimates

The consolidated financial statements have been prepared in accordance with generally accepted accounting principles ("***GAAP***") in the United States of America ("***U.S.***"). 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, goodwill and intangible assets, estimate for contingent liabilities, estimate of allowance for doubtful accounts, management's assessment of the Company's ability to continue as a going concern, estimate 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, including, for the periods prior to its divestiture further discussed in Note 4, Stability Biologics, LLC ("***Stability***") formerly known as Stability, Inc. All intercompany balances and transactions have been eliminated upon consolidation.

Segment Reporting

Accounting Standards Codification ("***ASC***") 280, "*Segment Reporting*" requires use of the "management approach" model for segment reporting. The management approach model is based on the way a company's chief operating decision-maker organizes segments within the Company for which separate discrete financial information is available regarding resource allocation and assessing performance. The Company has determined it has one operating segment.

Market Concentrations and Credit Risk

The Company places its cash and cash equivalents on deposit with financial institutions in the U.S. Federal Deposit Insurance Corporation ("***FDIC***") coverage is $250,000 for substantially all depository accounts. As of December 31, 2019 and 2018, the Company had cash and cash equivalents of approximately $68.4 million and $44.0 million, respectively, in excess of the insured amounts in four depository institutions.

Cash and Cash Equivalents

Cash and cash equivalents include cash and 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.

Bad debt expense and the allowance for doubtful accounts are based on historical trends. The Company's policy to reserve for potential bad debts is based on the aging of the individual receivables. The Company manages credit risk by not selling to customers who are delinquent, generally after sixty days of delinquency. The individual receivables are written-off after all reasonable efforts to collect the funds have been made. Actual write-offs may differ from the amounts reserved.

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 as part of the divestiture discussed in Note 4 which was repaid in full in the third quarter of 2019. The Company's notes receivable are included in other current and long-term assets in the 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-progress, and finished goods stages as the product progresses through various production steps and stocking locations. Labor and overhead costs are absorbed through the various production processes up to when 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 demand.

Property and Equipment

Property and equipment are recorded at cost and depreciated on a straight-line method over their estimated useful lives, principally three years to seven years. Leasehold improvements are depreciated on a straight-line method over the shorter of the estimated useful lives or the lease term. The Company is party to various lease arrangements for its facility space and equipment. These arrangements include interest, scheduled rent increases and rent holidays which are included in the determination of minimum lease payments when assessing lease classification, and are included in rent expense on a straight line basis over the lease term. See "*Lease Obligations*" below and Note 7 "*Leases,*" for further information regarding capital leases, operating leases and rent expense.

Impairment of Long-lived Assets

The Company evaluates the recoverability of its long-lived assets (property and equipment) whenever adverse events or changes in business climate indicate that the expected undiscounted future cash flows from the related assets may be less than previously anticipated. If the net book value of the related assets exceeds the expected undiscounted future cash flows of the assets, the carrying amount would be reduced to the present value of their expected future cash flows and an impairment loss would be recognized.

Goodwill and Indefinite-lived Intangible Assets

Goodwill represents the excess of purchase price over the fair value of net assets of acquired businesses. The Company assesses the recoverability of its goodwill at least annually on September 30, or more frequently whenever events or substantive changes in circumstances indicate that the asset may be impaired. The Company may first choose to assess qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If the Company determines that it is more likely than not that the fair value of a reporting unit is less than its carrying amount, then the Company performs a quantitative analysis. The Company may also choose to bypass the qualitative assessment and proceed directly to the quantitative analysis.

When testing for goodwill impairment, the Company first assesses qualitative factors to determine whether the existence of events or circumstances lead to a determination that it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If the Company concludes it is more likely than not that the fair value of a reporting unit is less than its carrying amount, a quantitative fair value test is performed. At present, the Company has only one reporting unit.

Under the quantitative test, if the carrying value exceeds the fair value of the reporting unit, goodwill impairment is recorded for the amount that the reporting unit's carrying value exceeds its fair value, not to exceed the total amount of goodwill allocated to the reporting unit. The Company determines the fair value utilizing the income and market approaches. Under the income approach, the fair value of the Company is the present value of its future economic benefits. These benefits can include revenue, cost savings, tax deductions, and proceeds from its disposition. Value indications are developed by discounting expected cash flows to their present value at a rate of return that incorporates the risk-free rate for the use of funds, trends within the industry, and risks associated with particular investments of similar type and quality as of the goodwill impairment testing date. Under the market approach, the Company uses its market capitalization which is calculated by taking the Company's share price times the number of outstanding shares. The Company's estimates associated with the goodwill impairment test are considered critical due to the amount of goodwill recorded on its consolidated balance sheets and the judgment required in determining fair value, including projected future cash flows.

Acquired indefinite live intangible assets are tested for impairment annually on September 30 or whenever events or changes in circumstances indicate that the carrying amount of an intangible asset may not be recoverable. The Company's impairment reviews are based on an estimated future cash flow approach that requires significant judgment with respect to future revenue and expense growth estimates. The Company uses estimates consistent with business plans and a market participant view of the assets being evaluated. Actual results may differ from the estimates used in these analyses.

There were no recorded impairment losses related to goodwill in 2019, 2018, or 2017. The Company recorded impairment losses of $0.8 million, $0, and $0.6 million related to the abandonment of patents in process during 2019, 2018, and 2017, respectively.

Impairment of Intangible Assets with Finite Lives

The Company reviews purchased intangible assets with finite lives for impairment whenever events or changes in circumstances indicate the carrying value of an asset may not be recoverable using a two-step impairment test. In step one, the Company determines the sum of the undiscounted future cash flows of the assets based on management's estimates and compare it to the carrying value of the assets. If the carrying amount is greater than the sum of the undiscounted cash flows, then the asset is impaired and step two is required. In step two, the impairment loss is calculated as the difference between the fair value of the assets and the carrying value of the assets.

Impairment reviews are based on an estimated future cash flow approach that requires significant judgment with respect to future revenue and expense growth rates, selection of appropriate discount rate, asset groupings, and other assumptions and estimates. The Company uses estimates that are consistent with its business plans and a market participant view of the assets being evaluated. Actual results may differ from these estimates.

The Company recorded an impairment loss of $0.5 million during 2019. There were no impairment losses recognized with respect to intangible assets with finite lives in 2018 or 2017.

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 to be 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. The Company capitalized $0.5 million, $0.6 million, and $0.3 million of patent costs for the years ended December 31, 2019, 2018, and 2017, respectively.

Lease Obligations

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 resulting from operating leases were included in Right of use asset, Other current liabilities and Other liabilities, respectively, in the consolidated balance sheet as of 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. 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 determined using the rate of interest that the Company would have to pay on collaterialized or secured borrowing over a similar term. 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, which will include options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option. 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. The Company continues to account for leases in the prior period financial statements under ASC 840. See Note 7, *"Leases"* for further information regarding lease obligations.

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 determined using the rate of interest that the Company would have to pay on collaterialized or secured borrowing over a similar term. 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.

Contingencies

The Company is subject to various patent challenges, product liability claims, government investigations, shareholder derivative suits, former employee matters and other legal proceedings, see Note 16 "*Commitments and Contingencies*." Legal fees and other expenses related to litigation are expensed as incurred and included in selling, general and administrative expenses in the consolidated statements of operations. The Company records an accrual for legal settlements and other contingencies in the consolidated financial statements when the Company determines that a loss is both probable and reasonably estimable. The Company discloses all ongoing legal matters for which a loss is probable, regardless of whether an estimate can be reasonably determined.

Due to the fact that legal proceedings and other contingencies are inherently unpredictable, the Company's estimates of the probability and amount of any such liabilities involve significant judgment regarding future events. The actual costs of resolving a claim may be substantially different from the amount of reserve the Company recorded. The Company records a receivable from its product liability insurance carriers only when the resolution of any dispute has been reached and realization of the amounts equal to the potential claim for recovery is considered probable. Any recovery of an amount in excess of the related recorded contingent loss will be recognized only when all contingencies relating to recovery have been resolved.

Revenue Recognition

The Company sells its products primarily to individual customers and independent distributors (collectively referred to as "***customers***"). In 2017, 2018, and into part of 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 of the years ended December 31, 2019, 2018 and 2017. 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.

Fiscal Year Ended December 31, 2017

For the year ended December 31, 2017, the Company applied the revenue recognition guidance in ASC Topic 605, *Revenue Recognition* ("**ASC 605**"). Under ASC 605, revenue should not be recognized until it is realized or realizable and earned. *SEC Staff Accounting Bulletin* ("***SAB***") *Topic 13.A.1* (as codified in ASC 605-10-S99-1) outlines four criteria that generally indicate when revenue is realized or realizable and earned. If any of these criteria are not met, revenue recognition should be deferred until all criteria have been met. Therefore, the Company assessed these four criteria as follows:

1. *Persuasive evidence of an arrangement exists* - The Company's sales are driven either by contracts or purchase orders. These types of documents are typically used to establish persuasive evidence of an arrangement. The Company's customary business practices, however, must be taken into account as a contract can be written, oral, or modified based on customary business practices. Throughout 2017, although the Company may have created a legal contract upon the execution of a contract and/or fulfillment of a purchase order, the lack of clarity around the final terms of the arrangement due to the pervasive side agreements with customers precluded the Company's sales transactions from meeting this criterion upon shipment of product. Therefore, even though there may have been a legal contract governing the arrangement (which typically would indicate persuasive evidence of an arrangement), the Company's selling and collection practices amended the stated contract terms. After considering these factors, the Company concluded that persuasive evidence of an arrangement did not exist upon shipment of product.

2. *Delivery has occurred or services have been rendered* - For sales to customers, physical possession and title transferred upon shipment to the customer. However, the Company concluded that it did not pass the risks of ownership to the customer upon shipment because customers were allowed to return product for multiple reasons, which included being unable to sell the product, damages which may have occurred subsequent to delivery, and dropped product. See below

for additional discussion of the Company's rationale for concluding that delivery had not yet occurred upon shipment to the customer.

3. *The seller's price to the buyer is fixed or determinable* - At certain quarter-ends, the Company was significantly increasing sales to customers without having visibility into the level of product remaining unsold at the customer's location. This practice made it difficult to develop an appropriate estimate of future credits to be issued to customers at the time of sale, which, in turn, impacted whether the price at the time of transfer of physical possession to the customer was fixed or determinable. This previous practice in combination with the following actions of the Company precluded the price of the Company's sales transactions from being fixed or determinable upon shipment of product:

    - Offering customers an unconditional right of return,
    - Offering extended payment terms to customers, and
    - A history of exceeding established credit limits for customers.

4. *Collectibility is reasonably assured* - At the time of transfer of physical possession to the customer, collectibility of the sales was questionable. The Company determined that the customers' intention to pay amounts when due was uncertain in light of the conflicting messages customers received with respect to the payment terms, rights of return and lack of adherence to credit limits. Although the Company did have processes in place to establish credit limits, evidence indicated that those credit limits were overridden by certain sales personnel and members of management. The Company recovered the majority of its billings made in 2017 with insignificant write-offs recorded; however, a significant amount of these billings were collected well after payment was due under the contractual terms. Furthermore, the quantitative and qualitative evidence gathered by the Company raised considerable doubt as to the collectibility of its billings at the time of shipment, but this evidence was not persuasive enough for the Company to reach a conclusion as to whether collectibility was reasonably assured.

In the Company's evaluation of the point at which delivery occurred (the second criterion discussed above), the Company further considered the fact that there are instances under ASC 605 where the transfer of title of the product did not coincide with revenue recognition. Based on its review of all facts and circumstances, the Company determined that it did not meet all of the criteria to recognize revenue at the time of shipment of product to the customer. Specifically, the Company determined that they did not transfer the risks of ownership upon the transfer of physical possession because the Company's customers were routinely granted an extended return period with very limited restrictions on the right of return and extended payment terms which raised doubt as to the intent or ability of customers to use and pay for the product delivered. Customers were allowed to return product for multiple reasons which included being unable to sell the product, damages which may have occurred subsequent to delivery, and dropped product (i.e., product that becomes contaminated and unusable). In other words, only upon use of the product in a surgical application (whether by the customer or by the ultimate end user in the case of distributors) would the customer no longer have the ability to return the product.

Accordingly, the Company determined that the aforementioned revenue recognition criteria were met only when both of the following events had occurred: (1) the Company fulfilled the customer's purchase order by delivering product ordered, and (2) the Company collected payment for the product delivered. Furthermore, the Company determined that the amount of revenue to be recognized should be limited to the amount of payment received in a given period less the amount expected to be refunded or credited to customers for sales returns made after payment.

An exception to the above revenue recognition under ASC 605 during the year ended December 31, 2017 related to the sales generated by the Company's wholly owned subsidiary, Stability. On January 13, 2016, the Company completed the acquisition of Stability, a provider of human tissue products to surgeons, facilities, and distributors serving the surgical, spine, and orthopedic sectors of the healthcare industry. For sales of the Company's products through Stability, the Company recognized revenue under ASC 605 only when both of the following events had occurred: (1) the Company has fulfilled the customer's purchase order by delivering all product ordered; and (2) the product has been delivered to the customer. Total sales from Stability were $7.0 million for the year ended December 31, 2017. Stability was divested on September 30, 2017.

Prior to 2015, substantially all federal healthcare providers, including the Department of Veterans Affairs, purchased Company product from one distributor customer of the Company, AvKARE Inc. ("***AvKARE***"), which is a veteran-owned General Services Administration Federal Supply Schedule contractor. In 2015, the Company began selling product directly to federal customers rather than exclusively allowing federal healthcare providers to purchase Company product from AvKARE. Upon expiration of the Company's agreement with AvKARE on June 30, 2017, the Company had an obligation to repurchase AvKARE's remaining inventory within 90 days in accordance with the terms of the agreement. As of September 30, 2017, the Company had satisfied the repurchase obligation.

Additionally, the Company considered how to account for costs associated with the delivered products of the contract for which revenue has been deferred, which is whether to match the related cost of sales expense with revenue or to recognize expense upon shipment. In making this assessment, the Company considered the financial viability of its distributors and customers based on their creditworthiness to determine if collectibility of amounts sufficient to realize the costs of the products shipped was reasonably assured at the time of shipment. As the Company determined that there was a probable future economic benefit associated with the sales transactions, the Company deferred the costs of sales until the revenue was recognized.

The Company offset deferred revenue with the associated accounts receivable obligations in connection with the sales of products to its customers. The Company believes that because the conditions for revenue recognition have not yet been met and payment has not been received, neither party has fulfilled its obligations under the contract. The amount shipped and billed but not recorded as revenue was $64.8 million for the year ended December 31, 2017.

Fiscal Year Ended December 31, 2018

The Company adopted ASC Topic 606, *Revenue from Contracts with Customers ("**ASC 606**")*, on January 1, 2018 by using the modified retrospective method. ASC 606 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. The Company assessed the impact of the ASC 606 guidance by reviewing customer contracts and accounting policies and practices to identify differences, including identification of the contract and the evaluation of the Company's performance obligations, transaction price, customer payments, transfer of control and principal versus agent considerations.

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.

The Company concluded that the first three of the above criteria were not met upon shipment of product to the customer, the fourth criteria had been met and the Company acknowledges that there is a degree of uncertainty as to whether last criteria 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 could not reliably identify each party's rights regarding the products to be transferred upon shipment of those products to customers. The Company's sales personnel continued to make side agreements with customers which directly conflicted with the explicitly stated terms of sale. These side agreements created significant ambiguity around the rights and obligations of both parties involved in the transaction. This practice continued to result in extended payment terms and returns occurring long after the original sale was made. The Company's business practices created an implied right for the customer to demand future, unknown, performance by the Company. As a result, each party (and in particular the Company) could not at the time of product shipment adequately determine its rights regarding the good transferred as required by ASC 606-10-25-1. Upon shipment of product to the customer, the Company could not reliably identify the payment terms for the products it sold to customers. Although the written payment terms were known to both parties, the Company's pervasive business practices (e.g., informal and undocumented side agreements) overrode the written payment terms and often resulted in extensions of the terms for payment. The Company's contracts did appear to have commercial substance (i.e., the risk, timing, or amount of the Company's future cash flows was expected to change as a result of the contract) upon fulfillment of a purchase order, as most fulfillments have eventually resulted in the Company receiving cash. Therefore, the Company concluded that this criterion appears to be met upon shipment of product to customers (i.e., fulfillment of the purchase order).

The probability that the Company would collect the consideration to which it was entitled in exchange for products shipped to the customer was questionable. In evaluating whether the collectibility of an amount of consideration was probable, the Company considered the customer's ability and intention to pay that amount of consideration when it was due. Historically, the customers' intention to pay amounts when due was uncertain in light of the conflicting messages customers received with respect to the payment terms and rights of return and lack of adherence to credit limits. The assessment in ASC 606 is based on whether the customer has the ability and intention to pay for the product being delivered by the Company. Assessment of a customer's ability to pay is typically done through a credit check process and the establishment of a credit limit for each customer by the Company's accounts receivable team. Although the Company did have a process in place to establish credit limits, the evidence previously mentioned indicates that those credit limits were routinely overridden by certain sales personnel and members of management. Despite these overrides, the Company recovered the majority of its billings made in 2018. Furthermore, the quantitative and qualitative evidence gathered by the Company raised considerable doubt as to the collectibility of its billings at the time of shipment, but this evidence was not persuasive enough for the Company to conclude that collectibility was not probable. As a result of the considerations outlined above, the Company determined that it did not meet the criteria necessary for its revenue arrangements to qualify as "contracts" under the requirements of ASC 606 (i.e., these arrangements did not pass the Step 1 Criteria of the revenue recognition model).

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, as of the date of the Company's adoption of ASC 606 effective January 1, 2018 and for the remainder of the year ended December 31, 2018, the Company concluded that it did not meet the Step 1 Criteria upon physical delivery of the product. Subsequent to the delivery 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.

The Company continued to defer the costs of sales consistent with the assessment noted above for the year ended December 31, 2017. The Company also continued to offset deferred revenue with the associated accounts receivable obligations in connection with the sales of products to its customers. The amount shipped and billed but not recorded as revenue was $51.0 million for the year ended December 31, 2018.

Fiscal Year Ended December 31, 2019

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 it was determined if 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 for new and certain existing arrangements. 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 who were setting an inappropriate tone but also the establishment of new management throughout the organization who 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.

To determine when the Company had either eliminated or had sufficient knowledge to identify any extra-contractual arrangements, the Company noted that a key factor contributing to its historical lack of visibility into the arrangements with its customers was the failure to adhere to credit limits, payment terms and return policies. The establishment of additional controls and the emphasis on adherence to the Company's existing policies and controls was an iterative process that continued through the first two quarters of 2019. Additional factors contributing to the increased visibility into its contractual arrangements involved further education and training of the sales personnel regarding the Company's terms and conditions as well as monitoring of the sales personnel and customers for compliance with the contractual arrangements. The Company implemented a disciplined approach to educating the sales personnel regarding the prior practices that were considered unacceptable, ensuring they were knowledgeable regarding current terms and conditions and implementing an open dialogue with the credit and collections department. Monitoring of the customer base was accomplished through a variety of measures including, but not limited to, analysis of payments made within the original terms, levels of returns post-shipment, and various continued communication with the customer account representatives by members of the Company's credit and collections department. During the third quarter of 2019, management determined that these efforts with the sales personnel and the external customers had been in place for a sufficient period of time to provide the customers an understanding of the Company's contractual arrangements with them.

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.

The Company also reassessed whether the Step 1 Criteria had been met for all shipments of products where payment had not been received as of September 30, 2019. While the measures summarized above provided significant evidence necessary to understand the terms of the Company's contractual arrangements with its customers, certain of these customers continued to exhibit behaviors that resulted in extended periods until cash collection. Such delays in collection suggested that uncertainty regarding extracontractual arrangements may continue, particularly as it relates to payment terms. As a result, the Company concluded the following for any existing arrangements, which remained unpaid at September 30, 2019:

- For customer arrangements where collection was considered probable within 90 days from the date of original shipment or implantation of the products, the Company concluded the Step 1 Criteria were met (the "***Transition Adjustment***").

- For the remaining customer arrangements (the "***Remaining Contracts***"), the Company concluded that due to the uncertainty that extracontractual arrangements 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 December 31, 2019, upon reassessment, the Company concluded that the Step 1 Criteria continued to not be met due to the same circumstances described above.

The Company continued to record the deferred costs of sales on the arrangements that failed the Step 1 Criteria where collectibility was reasonably assured and will recognize the costs when the related revenue is recognized. The Company also continued to offset deferred revenue with the associated accounts receivable obligations for these arrangements that continued to fail the Step 1 Criteria.

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, beginning October 1, 2019, the Company determined that they had met the Step 1 Criteria for new customer arrangements. The Company has 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 and the Company has elected to treat shipping costs as activities to fulfill the promise to transfer the product. 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 given consideration to any changes in historical periods presented. The Company's payment terms for customers are typically 30 to 60 days from receipt of title of the goods.

Based on the assessment noted above, the Company concluded that through the first two quarters of 2019, the pattern of revenue recognition under ASC 606 remained the same as the application for the year ended December 31, 2018; that is, revenue was deferred until the product was paid for or returned. In order to account for the determination that the Step 1 Criteria had been met during the third quarter of 2019, for certain existing customer arrangements, the Company recorded the following (in thousands):

	Amounts Invoiced and Not Collected	Deferred Cost of Sales
Amounts as of September 30, 2019	$ 48,883	$ 6,415
Revenue recognized related to amounts invoiced and not collected at September 30, 2019:		
Transition Adjustment during the three months ended September 30, 2019	(21,385)	(2,565)
Cash collected during the three months ended December 31, 2019 related to the Remaining Contracts	(8,219)	(1,151)
	(29,604)	(3,716)
Write-off of customer contracts where collection is no longer reasonably assured (a)	(10,273)	(1,438)
Amounts as of December 31, 2019	$ 9,006	$ 1,261

(a) The Company determined that for approximately $10.3 million of existing contracts where payment had not been received, collection was no longer reasonably assured. As a result, $1.4 million of deferred cost of sales relating to these customers was written off. Any future collections relating to these customer contracts will be recorded as revenue at the time payment is received.

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. Prior to adoption of ASC 606, for all periods presented prior to January 1, 2018, the Company presented the administrative fees paid to GPOs as a reduction of revenues as the benefit received by the Company in exchange for the GPO fees was not sufficiently separable from the GPO member's purchase of the Company's products. Upon adoption of ASC 606, the Company concluded that although it benefited from the access that a GPO provides to its members, this benefit was neither distinct from other promises in the Company's contracts with GPOs nor was the benefit separable from the sale of goods by the Company to the end customer. Therefore, the Company continued presenting fees paid to GPOs as a reduction of product revenues.

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, including depreciation, freight charges, costs to operate equipment and other shipping and handling costs for products shipped to customers.

Prior to the Transition, the Company deferred the cost of sales resulted from transactions where title to inventory transferred from the Company to the customer, but for which all revenue recognition criteria have not yet been met. Once all revenue recognition criteria are met, the revenue and associated cost of sales was recognized. These amounts were recorded within other current assets on the consolidated balance sheet in the amount of $4.3 million as of December 31, 2018.

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 $1.3 million as of December 31, 2019.

Research and Development Costs

Research and development costs consist of direct and indirect costs associated with the development of the Company's technologies. These costs are expensed as incurred.

Advertising expense

Advertising expense consists primarily of print media promotional materials. Advertising costs are expensed as incurred. Advertising expense for each of the years ended December 31, 2019, 2018 and 2017 amounted to $0.1 million.

Income Taxes

Income tax expense (benefit), deferred tax assets and liabilities, and liabilities for unrecognized tax benefits reflect management's best assessment of estimated current and future taxes to be paid. The Company is subject to income taxes in the United States, including numerous state jurisdictions.

Deferred income taxes arise from temporary differences between the tax basis of assets and liabilities and their reported amounts in the financial statements, which will result in taxable or deductible amounts in the future. The Company recognizes deferred tax assets to the extent that it believes these assets are more likely than not to be realized. If the Company determines that it would be able to realize its deferred tax assets in the future in excess of their net recorded amount, the Company would make an adjustment to the deferred tax asset valuation allowance.

In evaluating the Company's ability to recover its deferred tax assets within the jurisdiction from which they arise, management considers all available positive and negative evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income, tax-planning strategies, and results of recent operations. In projecting future taxable income, the Company begins with historical results and incorporates assumptions about the amount of future state and federal pretax operating income adjusted for items that do not have tax consequences. The assumptions about future taxable income require significant judgment and are consistent with the plans and estimates the Company uses to manage the underlying businesses. In evaluating the objective evidence that historical results provide, management considers three years of cumulative income (loss). The Company accounts for income taxes under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements. Under this method, deferred tax assets and liabilities are determined on the basis of the differences between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in the tax provision (benefit) in the period that includes the enactment date.

The calculation of income tax liabilities involves dealing with uncertainties in the application of complex tax laws and regulations both for U.S. federal income tax purposes and across numerous state jurisdictions. ASC Topic 740 ("***ASC 740***") states that a tax benefit from an uncertain tax position may be recognized when it is more likely than not that the position will be sustained upon examination, including resolutions of any related appeals or litigation processes, on the basis of the technical merits. The Company (1) records unrecognized tax benefits as liabilities in accordance with ASC 740 included within other liabilities on the consolidated balance sheets, and (2) adjusts these liabilities when management's judgment changes as a result of the evaluation of new information not previously available. Because of the complexity of some of these uncertainties, the ultimate resolution may result in a payment that is materially different from management's current estimate of the unrecognized tax benefit liabilities. These differences will be reflected as increases or decreases to the deferred tax asset or income tax expense in the period in which new information is available.

The Company records uncertain tax positions in accordance with ASC 740 on the basis of a two-step process whereby (1) it determines whether it is more likely than not that the tax positions will be sustained on the basis of the technical merits of the position, and (2) for those tax positions that meet the more-likely-than-not recognition threshold, it recognizes the largest amount of tax benefit that is more than 50 percent likely to be realized upon ultimate settlement with the related tax authority.

The Company recognizes interest and penalties related to unrecognized tax benefits within the income tax expense line in the consolidated statements of operations. Accrued interest and penalties, if any, are included within the related deferred tax liability line in the consolidated balance sheet and recorded as a component of income tax expense.

Share-based Compensation

The Company grants share-based awards to employees and members of the Company's Board of Directors (the "***Board***") and non-employee consultants. Such awards are recognized as share-based payment expense over the requisite service or vesting period, to the extent such awards are expected to vest in accordance with FASB ASC Topic 718 "*Compensation—Stock Compensation*," and under the issued guidance following FASB's pronouncement, ASU 2018-07, "*Compensation-Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting*", which the Company adopted on January 1, 2019, the effective date of the new guidance. The amount of expense to be recognized is determined by the fair value of the award using inputs available as of the grant date.

The fair value of restricted common stock is the value of common stock on the grant date. The fair value of stock option grants is estimated using the Black-Scholes option pricing model. Use of the valuation model requires management to make certain assumptions with respect to selected model inputs. The Company uses the simplified method for share-based compensation to estimate the expected term. The risk-free interest rate is based on the U.S. Treasury yield curve in effect at the time of grant for the estimated option expected term. The Company estimates volatility using a blend of its own historical stock price volatility as well as that of market comparable publicly traded peer companies, since historically, the Company did not have enough history to establish volatility based upon its own stock trading. The Company routinely reviews its calculation of volatility for potential changes in future volatility, the Company's life cycle, its peer group, and other factors. In addition, an expected dividend yield of zero is used in the option valuation model because the Company does not pay cash dividends and does not expect to pay any cash dividends in the foreseeable future.

For awards with service conditions only, the Company recognizes share-based compensation expense on a straight-line basis over the requisite service or vesting period. For awards with service and performance-based vesting conditions, the Company recognizes stock-based compensation expense using the graded vesting method over the requisite service period beginning in the period in which the awards are deemed probable to vest. Vesting probability for an award with performance vesting conditions is assessed based upon the Company's expectations to become compliant with applicable securities law regulatory requirements and reporting obligations, as well as other performance vesting conditions specified in the restricted share unit award agreements. The Company recognizes the cumulative effect of changes in the probability outcomes in the period in which the changes occur.

The Company recognizes the fixed dollar amount known on a grant date with respect to the restricted stock unit awards that will be settled by issuing shares on the vesting date, with the number of shares to be determined based on the Company's stock price on the settlement date over the vesting period, with an offsetting liability. Once the number of shares has been fixed and the shares are issued, the Company reclassifies the liability related to the restricted share unit awards to equity.

Basic and Diluted Net (Loss) Income per Share

Basic net (loss) income per share is determined by dividing net (loss) income by the weighted average ordinary shares outstanding during the period. Diluted net income per ordinary share is based on the weighted average number of ordinary shares outstanding and potentially dilutive ordinary shares outstanding determined by using the treasury stock method. For all periods presented with a net loss, the shares underlying the common share options, warrants and restricted stock have been excluded from the calculation because their effect would have been anti-dilutive. Therefore, the weighted average shares outstanding used to calculate both basic and diluted loss per share are the same for periods with a net loss.

Fair Value of Financial Instruments and Fair Value Measurements

The respective carrying value of certain on-balance sheet financial instruments approximated their fair values due to the short-term nature and type of these instruments. These financial instruments include cash and cash equivalents, accounts receivable, notes receivable, and certain current financial liabilities.

The Company measures certain non-financial assets at fair value on a non-recurring basis. These non-recurring valuations include evaluating assets such as long-lived assets, and non-amortizing intangible assets for impairment, allocating value to assets in an acquired asset group, and accounting for business combinations. The Company uses the fair value measurement framework to value these assets and reports these fair values in the periods in which they are recorded or written down.

Fair value financial instruments are recorded in accordance with the fair value measurement framework. The fair value measurement framework includes a fair value hierarchy that prioritizes observable and unobservable inputs used to measure fair values in their broad levels. These levels from highest to lowest priority are as follows:

- Level 1: Quoted prices (unadjusted) in active markets that are accessible at the measurement date for identical assets or liabilities;
- Level 2: Quoted prices in active markets for similar assets or liabilities or observable prices that are based on inputs not quoted on active markets, but corroborated by market data.
- Level 3: Unobservable inputs or valuation techniques that are used when little or no market data is available.

The determination of fair value and the assessment of a measurement's placement within the hierarchy require judgment. Level 3 valuations often involve a higher degree of judgment and complexity. Level 3 valuations may require the use of various cost, market, or income valuation methodologies applied to unobservable management estimates and assumptions. Management's assumptions could vary depending on the asset or liability valued and the valuation method used. Such assumptions could include: estimates of prices, earnings, costs, actions of market participants, market factors, or the weighting of various valuation methods. The Company may also engage external advisors to assist it in determining fair value, as appropriate.

Although the Company believes that the recorded fair value of its financial instruments is appropriate, these fair values may not be indicative of net realizable value or reflective of future fair values.

Recently Adopted Accounting Pronouncements

In February 2016, FASB issued ASU No. 2016-02, Leases (Topic 842), ("***ASU 2016-02***") 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 ASU 2016-02 effective January 1, 2019 using the additional (optional) approach, in accordance with ASU 2018-11 Leases (Topic 842): Targeted Improvements. The Company initially recorded a right of use asset and lease liability of $4.3 million, net of the $0.9 million rent credit, and $5.2 million, in Right of use asset, Other current liabilities and Other liabilities for the non-current portion, respectively. There was no effect on opening retained earnings, and the Company continues to account for leases in the prior period financial statements under ASC Topic 840.

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 7 for additional information on leases.

In February 2018, the FASB issued ASU No. 2018-02, Income Statement - Reporting Comprehensive Income (Topic 220) ("***ASU 2018-02"***), 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 has adopted ASU 2018-02 as of 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**.**

Recently Issued Accounting Pronouncements Not Yet Adopted

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. This ASU is effective for the Company and all public filers which do not qualify as smaller reporting companies for fiscal years beginning after December 15, 2019. The Company does not expect adoption to materially affect the consolidated financial statements.

All other ASUs issued and not yet effective for the twelve months ended December 31, 2019, 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 current or future financial position or results of operations.

4. Stability Biologics, LLC

On January 13, 2016, the Company completed the acquisition of Stability Inc., a provider of human tissue products to surgeons, facilities, and distributors serving the surgical, spine, and orthopedic sectors of the healthcare industry. As a result of this transaction, the Company acquired all of the outstanding shares of Stability, Inc. in exchange for $6.0 million cash, $3.3 million (or 441,009 shares) of the Company's common stock, par value $0.001 per share ("***Common Stock***"), and assumed debt of $1.8 million. Additional one-time costs incurred in connection with the transaction totaled $1.1 million and were included within selling, general and administrative expenses on the consolidated statements of operations. Contingent consideration might have been payable based on a formula determined by sales less certain expenses for the years 2016 and 2017. The contingent consideration was valued at $17.5 million as of January 13, 2016 and is shown in the schedule below as fair value of earn-out. The contingent consideration was classified as a liability.

On September 30, 2017, the Company completed its divestiture of Stability pursuant to the Membership Interest Purchase Agreement by and among the Company, Stability, each person that, as of January 13, 2016, was a stockholder of Stability Inc., a Florida corporation and a predecessor-in-interest to Stability, and Brian Martin, as stockholder representative.

A summary of the assets divested and consideration received follows (in thousands):

	Year ended December 31, 2017
Assets divested	
Trade receivables	$ 2,406
Inventories	3,455
Prepaid expenses and other assets	955
Goodwill (a)	227
Intangible assets	11,857
Property and equipment, net	1,446
Total assets divested	20,346
Liabilities divested	
Accounts payable and accrued liabilities	3,488
Total liabilities divested	3,488
Total net assets divested	$ 16,858
Transaction costs	400
Consideration received	
Non-trade receivable (b)	150
Note receivable (c)	3,190
Intangible assets (d)	630
Extinguishment of earn out liability (e)	12,240
Total consideration received	$ 16,210
Loss on sale	$ (1,048)

(a) In accordance with ASC 350-20-35-52 when a portion of a reporting unit is disposed of, goodwill associated with that business shall be included in the carrying amount of the business in determining the gain on disposal. In accordance with ASC 350-20-35-53, the amount of goodwill to be included in that carrying amount shall be based on the relative fair values of the business to be disposed of and the portion of the reporting unit that will be retained. Based on an estimated fair value of Stability of $16.2 million representing a consideration received for the business compared to the fair value of business retained determined based on the market approach, approximately $0.2 million of the total goodwill of $20.2 million residing in the reporting unit was included in the carrying amount of the business sold.
(b) non-trade receivable represents a cash payment due within 60 days of closing.
(c) a promissory note issued by Stability in the principal amount of $3.5 million in favor of the Company recognized at a discounted value of $3.2 million.
(d) a fair value of $0.5 million for the distributor agreements with Stability and a fair value of $0.1 million for the non-compete agreements with the former stockholders of Stability Inc.
(e) a waiver by the former stockholders of Stability Inc. of all claims and rights to earn-out consideration, which was recorded as a liability at a fair value of $12.2 million immediately prior to the divestiture. The fair value of the earn-out liability was determined based on the income approach and includes the actual realized results of operations and expected future performance over the remaining earn-out period.

The total loss on the Stability Divestiture of $0.5 million is comprised of a pretax book loss of $1.0 million and an associated tax benefit of $0.5 million.

The earn-out arrangement was classified as a liability on the Stability acquisition date of January 13, 2016 and remeasured at fair value each reporting period until the Stability was divested on September 30, 2017. A decrease in fair value of $3.6 million for the year ended December 31, 2017 was included in Selling, general and administration expenses on the consolidated statements of operations.

5. Inventory

Inventory consists of the following (in thousands):

	December 31,	
	2019	2018
Raw materials	$ 318	$ 516
Work in process	4,299	11,123
Finished goods	5,206	4,936
Inventory, gross	9,823	16,575
Reserve for obsolescence	(719)	(589)
Inventory, net	$ 9,104	$ 15,986

6. Property and Equipment

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

	December 31,	
	2019	2018
Leasehold improvements	$ 5,321	$ 4,804
Laboratory and clean room equipment	14,894	13,787
Furniture and equipment	15,118	15,145
Construction in progress	972	1,507
Property and equipment, gross	36,305	35,243
Less accumulated depreciation and amortization	(23,977)	(17,819)
Property and equipment, net	$ 12,328	$ 17,424

Depreciation expense for each of the years ended December 31, 2019, 2018, and 2017 was recorded in certain captions of the consolidated statements of operations for those periods in the amounts shown in the table below (in thousands):

	For the year ended December 31,		
	2019	2018	2017
Cost of sales	$ 1,965	$ 1,757	$ 1,417
Selling, general and administrative expenses	4,223	3,760	2,354
Research and development expenses	358	365	316
Total	$ 6,546	$ 5,882	$ 4,087

7. Leases

As discussed in Note 3, on January 1, 2019, the Company 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 determined using the rate of interest that the Company would have to pay on collaterialized or secured borrowing over a similar term. 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 $1.5 million for the year ended December 31, 2019 and was recorded in Selling, general, and administrative expenses. Interest on lease obligations was $0.5 million for the year ended December 31, 2019 and was recorded in Selling, general, and administrative expenses. Cash paid for amounts included in the measurement of operating lease liabilities was $1.7 million at December 31, 2019. The amortization of leased assets for the year ended December 31, 2019 was $0.9 million.

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

	December 31, 2019
Assets	
Right of use asset	$ 3,397
Liabilities	
Short term lease liability	$ 1,168
Long term lease liability	$ 2,919
Weighted-average remaining lease term (years)	3.1 years
Weighted-average discount rate	11.5%

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

Year ending December 31,	Maturities
2020	$ 1,561
2021	1,528
2022	1,552
2023	196
2024	—
Thereafter	—
Total lease payments	4,837
Less: imputed interest	(750)
	$ 4,087

Future minimum lease payments under operating leases at December 31, 2018 and thereafter were as follows (amounts in thousands):

Year ending December 31,	
2019	$ 1,640
2020	1,579
2021	1,625
2022	1,673
2023	205
Thereafter	—
Total lease payments	$ 6,722

8. Goodwill and Intangible Assets

Intangible assets are summarized as follows (in thousands):

	December 31, 2019			December 31, 2018		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Amortized intangible assets						
Licenses	$ 1,414	$ (1,200)	$ 214	$ 1,414	$ (1,066)	$ 348
Patents and know how	9,099	(5,070)	4,029	9,180	(4,475)	4,705
Customer and supplier relationships	3,761	(2,417)	1,344	4,271	(2,202)	2,069
Non-compete agreements	120	(68)	52	120	(38)	82
Total amortized intangible assets	$ 14,394	$ (8,755)	$ 5,639	$ 14,985	$ (7,781)	$ 7,204
Unamortized intangible assets						
Trade names and trademarks	$ 1,008		$ 1,008	$ 1,008		$ 1,008
Patents in process	1,130		1,130	1,396		1,396
Total intangible assets	$ 16,532		$ 7,777	$ 17,389		$ 9,608

Amortization expense for the years ended December 31, 2019, 2018, and 2017, was $1.0 million. $1.0 million, and $1.7 million, respectively. Patents and patents in process related write-downs due to abandonment were $1.3 million, $0.0 million, and $0.6 million during the years ended December 31, 2019, 2018, and 2017, respectively and are recorded in Selling, general and administrative expenses.

Expected future amortization of intangible assets as of December 31, 2019, is as follows (in thousands):

Year ending December 31,	Estimated Amortization Expense
2020	$ 985
2021	977
2022	955
2023	955
2024	955
Thereafter	812
	$ 5,639

Goodwill is evaluated for impairment on an annual basis on September 30 and in interim periods when events or changes indicate the carrying value may not be recoverable. The Company operates under one reporting unit.

For the year ended December 31, 2019, the Company elected to perform a qualitative analysis to determine whether it was more likely than not that the fair value of its reporting unit was less than their carrying value. As a result of this assessment, the Company determined that it was not necessary to perform a quantitative impairment test and concluded that goodwill was not impaired at December 31, 2019. For the year ended December 31, 2018, the Company performed a quantitative analysis to determine if there was any impairment. As a result of this assessment, the Company determined that there was no impairment for the year ended December 31, 2018.

The following represents the changes in the carrying amount of goodwill for 2019 and 2018 (in thousands):

	Goodwill
Balance as of January 1, 2018	$ 19,976
Activity	—
Balance as of December 31, 2018	19,976
Activity	—
Balance as of December 31, 2019	$ 19,976

9. Accrued Expenses

Accrued expenses consist of the following (in thousands):

	December 31, 2019	December 31, 2018
Legal costs	$ 12,202	$ 10,056
Settlement costs	5,931	8,673
Pricing adjustment settlement with Veterans Affairs	6,894	6,894
Estimated returns	2,581	2,325
External commissions	1,722	962
Accrued clinical trials	1,076	1,233
Other	1,755	1,699
Total	$ 32,161	$ 31,842

10. Long Term Debt

Credit Facility

On October 12, 2015, the Company and its subsidiaries entered into a Credit Agreement (the "Credit Agreement") with certain lenders and Bank of America, N.A., as administrative agent. The Credit Agreement established a senior secured revolving credit facility in favor of the Company with a maturity date of October 12, 2018 and an aggregate lender commitment of up to $50 million. In September 2017, the expiration date of the Credit Agreement was extended to October 12, 2019. The Credit Agreement also provided for an uncommitted incremental facility of up to $35 million, which could be exercised as one or more revolving commitment increases or new term loans, all subject to certain customary terms and conditions set forth in the Credit Agreement. The obligations of the Company under the Credit Agreement were guaranteed by the Company's subsidiaries. The obligations of the loan parties under the Credit Agreement and the other credit documents were secured by liens on and security interests in substantially all of the assets of each of the loan parties and a pledge of the equity interests of each subsidiary owned by a loan party, subject to certain customary exclusions. Borrowings under the facility had an interest at LIBOR plus 1.5% to 2.25%. Fees paid in connection with the initiation of the credit facility totaled approximately $0.5 million. These deferred financing costs were being amortized to interest expense over the three-year life of the facility. The Credit Agreement contained customary representations, warranties, covenants, and events of default, including restrictions on certain payments of dividends by the Company.

On August 31, 2018, the lending parties' terminated their commitments to make loans and issue letters of credit under the Credit Agreement due to the Company's failure to timely file its periodic reports with the SEC. Accordingly, since then, the Company has not had the ability to borrow under the Credit Agreement. There were no outstanding borrowings or letters of credit issued under the Credit Agreement at the time of termination, and the Company never drew down any amounts under the credit facility during the entire term of the Credit Agreement. No termination penalties were paid as a result of the termination.

BT Term Loan

On June 10, 2019, the Company entered into a loan agreement (the "***BT Loan Agreement***") with Blue Torch Finance LLC ("***Blue Torch***"), as administrative agent and collateral agent, to borrow funds with a face value of $75.0 million (the "***BT Term Loan***"), of which the full amount 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. The BT Loan Agreement provided that the BT Term Loan would mature on June 20, 2022 and was repayable in quarterly installments of $0.9 million, with the balance 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. The BT Term Loan was amended on April 22, 2020 and was repaid on July 2, 2020, each of which is addressed in Note 21, "*Subsequent Events*," of the consolidated financial statements.

The interest rate 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. The interest as of December 31, 2019 was 10.11%.

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 was less than 2.50 to 1.0 as of the last business day of any fiscal month, the Company was not permitted to have liquidity of less than $20.0 million.

The BT Loan Agreement also provided that any prepayment of the loan, voluntary or mandatory, as defined in the BT Loan Agreement, would subject MiMedx to a prepayment penalty as of the date of the prepayment with respect to the 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 the BT Loan Agreement provided that upon the occurrence of such events of default, subject to customary cure rights, all outstanding loans under the BT Loan Agreement may be accelerated and/or the lenders' commitments terminated.

The balances of the BT Term Loan as of December 31, 2019 was as follows (amounts in thousands):

	December 31, 2019	
	Current portion	Long-term
Liability component - principal	$ 3,750	$ 69,375
Original issue discount	—	(1,890)
Deferred financing cost	—	(5,579)
Liability component - net carrying value	$ 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 Year Ended December 31, 2019
Interest expense - stated interest rate	$ 4,331
Interest expense - amortization of original issue discount	360
Interest expense - amortization of deferred financing costs	1,071
Total term loan interest expense	$ 5,762

The future principal payments for the Company's BT Term Loan as of December 31, 2019 were as follows (in thousands):

Year ending December 31,	Principal
2020	$ 3,750
2021	3,750
2022	65,625
2023	—
2024	—
Thereafter	—
Total Long Term Debt	$ 73,125

As of December 31, 2019, the fair value of the Company's BT Term Loan was $70.6 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 December 31, 2019 with this calculated discount rate to derive the fair value as of that date.

As described below in Note 21, "*Subsequent Events*," on July 2, 2020, a portion of the proceeds from the Preferred Stock Transaction (as defined below) and the Hayfin Loan Transaction (as defined below) was 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.

11. Net (Loss) Income Per Share

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

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

	Year Ended December 31,		
	2019	**2018**	**2017**
Net (loss) income	$ (25,580)	$ (29,979)	$ 64,727
Denominator for basic earnings (loss) per share - weighted average shares	106,946,384	105,596,256	106,121,810
Effect of dilutive securities: Stock options and restricted stock (a)	2,135,806	3,538,921	9,991,926
Denominator for diluted (loss) earnings per share - weighted average shares adjusted for dilutive securities	106,946,384	105,596,256	116,113,736
(Loss) income per common share - basic	$ (0.24)	$ (0.28)	$ 0.61
(Loss) income per common share - diluted	$ (0.24)	$ (0.28)	$ 0.56

(a)Securities that are included in the computation of the denominator above, utilizing the treasury stock method for the years ended December 31, 2019, 2018 and 2017 are as follows:

Effect of dilutive securities:	2019	2018	2017
Stock options	978,243	3,172,943	7,813,153
Restricted stock awards	1,157,563	365,978	2,178,773
	2,135,806	3,538,921	9,991,926

12. Equity

Stock Incentive Plans

The Company has two share-based compensation plans which provide for the granting of equity awards, including qualified incentive and non-qualified stock options, stock appreciation awards and restricted Common Stock awards: the MiMedx Group, Inc. 2016 Equity and Cash Incentive Plan (the "***2016 Plan***"), which was approved by shareholders on May 18, 2016 and the MiMedx Group, Inc. Assumed 2006 Stock Incentive Plan (the "***Prior Incentive Plan***"). During the years ended December 31, 2019, 2018 and 2017 the Company used only the 2016 Plan to make grants.

The 2016 Plan permits the grant of equity awards to the Company's employees, directors, consultants and advisors for up to 5,000,000 shares of the Company's Common Stock plus (i) the number of shares of the Company's Common Stock that remain available for issuance under the Prior Incentive Plan, and (ii) the number of shares that are represented by outstanding awards that later become available because of the expiration or forfeiture of the award without the issuance of the underlying shares. The awards are subject to a vesting schedule as set forth in each individual agreement. Option awards are generally granted with an exercise price equal to the market price of the Company's stock at the date of grant, and those option awards generally vest based on three years of continuous service and have 10-year contractual terms. Restricted Common Stock awards generally vest over three years. Certain option and restricted stock awards provide for accelerated vesting if there is a change in control and upon death or disability.

A summary of stock option activity as of December 31, 2019, and changes during the year then ended are presented below:

	Number of Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Outstanding at January 1, 2019	3,697,147	$ 4.59		
Granted	—	—		
Exercised	(150,000)	0.72		
Unvested options forfeited	—	—		
Vested options expired	(661,813)	6.21		
Outstanding at December 31, 2019	2,885,334	4.42	2.73	$ 9,191,697
Exercisable at December 31, 2019	2,885,334	$ 4.42	2.73	$ 9,191,697

The intrinsic values of the options exercised during the years ended December 31, 2019, 2018 and 2017 were $0.6 million, $7.9 million, and $18.5 million, respectively. Cash received from option exercise under all share-based payment arrangements for the years ended December 31, 2019, 2018, and 2017, was $0.1 million, $3.6 million, and $12.0 million, respectively. The actual tax benefit for the tax deductions from option exercise of the share-based payment arrangements totaled $0.2 million, $5.9 million, and $12.5 million, respectively, for the years ended December 31, 2019, 2018, and 2017. The Company has a policy of using its available repurchased treasury stock to satisfy option exercises.

The fair value of options vested during the years ended December 31, 2019, 2018 and 2017 were $1.4 million, $0.1 million, and $3.7 million, respectively. There were no options granted during the years ended December 31, 2019, 2018 and 2017 and no unrecognized compensation expense at December 31, 2019.

During the year ended December 31, 2019, the Company extended the contractual life of 612,000 fully vested share options held by 7 members of the Board and 278,916 fully vested share options held by a former employee. As a result of that modification, the Company recognized incremental share-based compensation expense of $0.4 million for the year ended December 31, 2019.

The incremental fair value of the modified options in 2019 was estimated on the modification date using the Black-Scholes-Merton option-pricing model that uses assumptions for expected volatility, expected dividends, expected term, and the risk-free interest rate. Expected volatilities were the blend of the Company's historical stock price volatility as well as that of market comparable publicly traded peer companies and other factors estimated over the expected term of the options. The term of the modified options was the remaining time until the end of the contractual maturity of ten years. The risk-free rate was based on the U.S. Treasury yield curve in effect at the time of modification for the period of the expected term.

2019 Option Modification	
Expected volatility	65% - 95%
Expected life (in years)	0.28 - 5.12
Expected dividend yield	—
Risk-free interest rate	1.56% - 2.02%

Restricted Stock Awards

Following is summary information for restricted stock awards for the year ended December 31, 2019. Shares vest over a one to three year period in equal annual increments and require continuous service.

As of December 31, 2019, there was approximately $11.4 million of total unrecognized stock-based compensation related to non-vested restricted stock. That expense is expected to be recognized over a weighted-average period of 1.8 years, which approximates the remaining vesting period of these grants. All shares noted below as unvested are considered issued and outstanding at December 31, 2019.

	Number of Shares	Weighted-Average Grant Date Fair Value
Unvested at January 1, 2019	2,999,135	$ 8.83
Granted	3,084,875	3.35
Vested	(1,474,998)	8.58
Forfeited	(1,084,971)	5.31
Unvested at December 31, 2019	3,524,041	$ 5.21

The total fair value of restricted stock awards vested during the years ended December 31, 2019, 2018, and 2017, was $5.2 million, $17.9 million, and $17.3 million, respectively.

During the year ended December 31, 2019, the Company granted a fixed dollar value restricted share unit award to the members of its Board in the amount of $1.6 million. The restricted share unit awards vest upon the earlier of one year or the date of the 2019 Annual Meeting and will be settled in Common Stock with the number of shares of Common Stock to be determined based on the Company's closing share price on the future settlement date. During the year ended December 31, 2019, the Company recognized $0.4 million of share-based compensation expense, with an offsetting liability recorded in Accrued compensation in the consolidated balance sheets.

For the years ended December 31, 2019, 2018, and 2017 the Company recognized share-based compensation as follows (in thousands):

	Years Ended December 31,		
	2019	2018	2017
Cost of sales	$ 477	$ 705	$ 539
Research and development	265	584	604
Selling, general and administrative	11,322	13,479	20,052
Total share-based compensation	$ 12,064	$ 14,768	$ 21,195
Income tax benefit	(3,081)	(3,803)	(5,345)
Total share-based compensation, net of tax benefit	$ 8,983	$ 10,965	$ 15,850

Treasury Stock

On May 8, 2014, the Board authorized the repurchase of up to $10 million of shares of Common Stock from time to time through December 31, 2014. The Board increased the authorization during the year ended December 31, 2015 to $60 million, during the year ended December 31, 2016 to $66 million, and during the year ended December 31, 2017 to $130 million. In January 2018 the Board announced that it had increased the total authorization to $140 million. The share repurchase program subsequently expired during the year ended December 31, 2018.

For the years ended December 31, 2018 and 2017, the Company purchased 507,600, and 5,635,077 shares of its Common Stock, respectively, for an aggregate purchase price of approximately $7.6 million, and $68.3 million, respectively, exclusive of commissions of approximately $0.0 million, and $0.2 million, respectively.

Repurchases of shares of Common Stock in connection with the satisfaction of employee tax withholding obligations upon vesting of restricted stock for the years ended December 31, 2019, 2018 and 2017 were 429,918, 614,123, and 419,928, respectively, for an aggregate purchase price of approximately $1.5 million, $4.9 million, and $4.1 million, respectively.

13. Income Taxes

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes.

Significant components of the Company's deferred tax assets and liabilities are as follows (in thousands):

	December 31,	
	2019	2018
Deferred Tax Assets:		
Accrued expenses	$ 3,759	$ 3,572
Deferred revenue	—	13,719
Bad debts	4,859	—
Sales return and allowances	659	2,296
Accrued settlement costs	3,276	2,689
Research and development and other tax credits	2,349	2,326
Net operating loss	14,350	3,118
Share-based compensation	3,439	3,425
Lease obligation	1,044	—
Other	2,124	971
Deferred Tax Liabilities:		
Prepaid expenses	(1,189)	(1,823)
Right of use asset	(868)	—
Property and equipment	(1,582)	(2,519)
Unearned insurance refund	(894)	—
Deferred costs of goods sold	(322)	—
Intangible assets	(389)	(443)
Net Deferred Tax Assets	30,615	27,331
Less: Valuation allowance	(30,615)	(27,331)
Net Deferred Tax Assets after Valuation Allowance	$ —	$ —

The reconciliation of the federal statutory income tax rate of 21% for 2019 and 2018, and 35% for 2017 to the effective rate is as follows:

	December 31,		
	2019	2018	2017
Federal statutory rate	21.00 %	21.00 %	35.00 %
State taxes, net of federal benefit	(1.36)%	3.52 %	0.40 %
Nondeductible compensation	(1.49)%	(15.33)%	0.66 %
Meals and entertainment	(2.04)%	(24.16)%	1.93 %
Keyman life insurance	(0.02)%	(0.15)%	0.02 %
Inventory contribution deduction	0.06 %	0.48 %	(0.06)%
Domestic production activities deduction	— %	— %	(1.54)%
Fair value adjustment	— %	— %	(2.76)%
Share-based compensation	(5.05)%	10.82 %	(9.90)%
Tax credits	0.45 %	19.75 %	(3.37)%
Uncertain tax position	1.22 %	(2.35)%	0.46 %
Write-off of net operating losses	— %	(11.81)%	— %
Payable true-up	0.52 %	(2.69)%	0.65 %
Sale of Stability	— %	— %	(8.86)%
Fixed asset true-up	— %	5.33 %	— %
Federal provision to return	0.02 %	1.58 %	0.13 %
Impact of federal rate change	— %	— %	26.79 %
Other	(0.46)%	(0.25)%	(0.03)%
Valuation allowance	(12.83)%	(788.33)%	(83.08)%
	0.02 %	(782.59)%	(43.56)%

Share-based Compensation had a significant impact on the Company's effective tax rate as of December 31, 2019. Additionally, state taxes, Meals and Entertainment, and Nondeductible Compensation had a significant impact on the Company's effective tax rate.

Meals and Entertainment had a significant impact on the Company's effective tax rate as of December 31, 2018 due to the impact of the Act on the Company's method of calculating this permanent adjustment. Additionally, Federal and state tax credits, mostly related to the Company's Research and Development activities, had a significant impact on the Company's effective rate.

Stock based compensation had a significant impact on the Company’s effective tax rate as of December 31, 2017 due to the Company’s adoption of ASU 2016-09. Additionally, on September 30, 2017, the Company completed the Stability Divestiture, which resulted in a significant reduction in the Company’s effective tax rate. See Note 4 for details regarding the transaction.

Current and deferred income tax expense (benefit) is as follows (in thousands):

	December 31,		
	2019	2018	2017
Current:			
Federal	$ (53)	$ 614	$ 5,868
State	48	427	1,163
Total current	(5)	1,041	7,031
Deferred:			
Federal	—	19,452	(19,441)
State	—	6,089	(7,229)
Total deferred	—	25,541	(26,670)
Total expense (benefit)	$ (5)	$ 26,582	$ (19,639)

Certain items of income and expense are not reported in tax returns and financial statements in the same year. The tax effect of such temporary differences is reported as deferred income taxes. The measurement of deferred tax assets is reduced, if necessary, by the amount of any tax benefit that, based on available evidence, is not expected to be realized. The Company establishes a valuation allowance for deferred tax assets for which realization is not likely. As of each reporting date, management considers new evidence, both positive and negative, that could affect its view of the future realization of deferred tax assets.

A valuation allowance of $30.6 million and $27.3 million was recorded against the deferred tax asset balance as of December 31, 2019 and December 31, 2018, respectively. To the extent the Company determines that, based on the weight of available evidence, all or a portion of its valuation allowance is no longer necessary, the Company will recognize an income tax benefit in the period such determination is made for the reversal of the valuation allowance. If management determines that, based on the weight of available evidence, it is more-likely-than-not that all or a portion of the net deferred tax assets will not be realized, the Company may recognize income tax expense in the period such determination is made to increase the valuation allowance.

At December 31, 2019 and 2018, the Company had income tax net operating loss ("***NOL***") carryforwards for federal and state purposes of $56.8 million and $49.3 million and $11.4 million and $15.6 million, respectively. A portion of the Company's NOLs and tax credits are subject to annual limitations due to ownership change limitations provided by Internal Revenue Code Section 382. If not utilized, the federal and state tax NOL carryforwards will expire between 2027 and 2037. As of December 31, 2019, the Company has recorded a deferred tax asset for both federal and state NOL carryforwards of approximately $11.9 million and $3.1 million, respectively. As of December 31, 2018, the Company has recorded a deferred tax asset for federal and state NOL carryforwards of $2.4 million and approximately $0.9 million, respectively.

The following is a tabular reconciliation of the total amounts of unrecognized tax benefits (in thousands) included in other liabilities in the consolidated balance sheets:

	2019	2018	2017
Unrecognized tax benefits - January 1	$ 938	$ 847	$ 336
Gross increases - tax positions in current period	56	91	130
Gross increases - tax positions in prior period	—	—	381
Gross decreases - lapse of statute of limitations	(367)	—	—
Unrecognized tax benefits - December 31	$ 627	$ 938	$ 847

Included in the balance of unrecognized tax benefits as of December 31, 2019 and December 31, 2018, are $0.6 million and $0.9 million, respectively, of tax benefits that, if recognized, would affect the effective tax rate.

The Company recognizes accrued interest related to unrecognized tax benefits and penalties as income tax expense. Related to the unrecognized tax benefits noted above, the Company accrued $0.1 million of interest during 2019, and, in total, as of December 31, 2019 has recognized $0.1 million of interest. The Company accrued $0.1 million of interest during 2018, and, in total, as of December 31, 2018 had recognized $0.1 million of interest. The Company accrued $0.1 million of interest during 2017, and, in total, as of December 31, 2017 had recognized $0.1 million of interest.

Certain positions included in the tabular reconciliation above will be reduced as a result of the expiration of statutes of limitations within the next 12 months. The reserve would be reduced by approximately $0.2 million.

The Company is subject to taxation in the U.S. and various state jurisdictions. As of December 31, 2019, the Company's tax returns for 2018, 2017 and 2016 were subject to full examination by the tax authorities. The 2013, 2011, 2010, 2009, and 2008 federal tax returns were open to the extent of the NOL carryovers generated. As of December 31, 2019, the Company was generally no longer subject to state or local examinations by tax authorities for years before 2016, except to the extent of NOLs generated in prior years claimed on a tax return.

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

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

	Years Ended December 31,		
	2019	2018	2017
Cash paid for interest	$ 4,331	$ 197	$ 127
Income taxes paid	308	859	12,755
Non-cash activities:			
Purchases of equipment included in accounts payable	1,184	1,168	1,343
Deferred financing costs	6,650	—	30
Stock issuance in exchange for services performed	—	—	166

15. 401(k) Plan

The Company has a 401(k) plan (the "***401(k) Plan***") covering all employees who have completed one month of service. Under the 401(k) Plan, participants could defer up to 90% of their eligible wages to a maximum of $19,000 per year (annual limit for 2019). Employees age 50 or over in 2018 could make additional pre-tax contributions up to $6,000. Annually, the Company could elect to match employee contributions up to 5% of the employee's eligible compensation. Additionally, the Company could elect to make a discretionary contribution to the 401(k) Plan. The Company did not provide matching contributions for the year ended December 31, 2017. The matching contribution for the year ended December 31, 2019 and 2018 was $1.5 million and $1.9 million, respectively.

16. Commitments and Contingencies

Contractual Commitments

In addition to the leases noted under Note 7 "*Leases*," the Company has commitments for meeting space. These leases expire over 3 to 3.5 years following December 31, 2019, and generally contain renewal options. The Company anticipates that most of these leases will be renewed or replaced upon expiration.

The estimated annual lease payment and meeting space commitments are as follows (in thousands):

Years Ended December 31,		
2020	$	2,263
2021		2,259
2022		2,344
2023		205
2024		—
Thereafter		—
	$	7,071

Rent expense for the years ended December 31, 2019, 2018 and 2017, was approximately $1.4 million, $1.5 million, and $1.6 million, respectively, and is allocated among cost of sales, research and development, and selling, general and administrative expenses.

Letters of Credit

Previously, as a condition of the leases for the Company's facilities, the Company was obligated under standby letters of credit in the amount of approximately $0.1 million. The Company amended its lease during 2018 to eliminate this obligation.

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 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 Company's Annual Report on Form 10-K for the year ended December 31, 2019. The Company has paid Mr. Borkowski the full amount of $4.0 million as of the date of the issuance of these consolidated financial statements payable under the Separation Agreement.

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 December 31, 2019 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.

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

On October 29, 2018, the City of Hialeah Employees Retirement System ("***Hialeah***") filed a shareholder derivative complaint in the Circuit Court for the Second Judicial Circuit in and for Leon County, Florida (the "***Florida Court***"). The complaint alleges claims for breaches of fiduciary duty 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, Bruce L. Hack, Charles E. Koob, Larry W. Papasan, and Neil S. Yeston. 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 moved to stay the action on February 7, 2019, to allow the prior-filed consolidated derivative action in the Northern District of Georgia to be resolved first and to allow the Company's Special Litigation Committee time to complete its investigation. The Company also filed a motion to dismiss on April 8, 2019. As discussed above, the plaintiff participated in the mediation that took place in connection with the prior-filed consolidated derivative action in the Northern District of Georgia and is a party to the agreement in principle to settle that consolidated derivative action. The agreement in principle provides that the plaintiff in this action will file a notice of dismissal to dismiss its action with prejudice within seven calendar days after the date that the judgment entered by the Northern District of Georgia becomes final.

On May 15, 2019, two individuals purporting to be shareholders of the Company filed a shareholder derivative complaint in the Superior Court for Cobb County, Georgia. (*Nix and Demaio v. Evans, et al.*) The complaint alleges claims for breaches of fiduciary duty, corporate waste and unjust enrichment against certain current and former directors and officers of the Company: Parker H. Petit, William C. Taylor, Michael J. Senken, John E. Cranston, Alexandra O. Haden, Chris Cashman, Lou Roselli, Mark Diaz, 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. 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 Court ordered this matter stayed pending the resolution of the consolidated derivative suit pending in the Northern District of Georgia. As discussed above, the plaintiff participated in the mediation that took place in connection with the prior-filed consolidated derivative action in the Northern District of Georgia and is a party to the agreement in principle to settle that consolidated derivative action. The agreement in principle provides that the plaintiffs in this action will file a notice of dismissal to dismiss their action with prejudice within seven calendar days after the date that the judgment entered by the Northern District of Georgia becomes final.

On August 12, 2019, John Murphy filed a shareholder derivative complaint in the United States District Court for the Southern District of Florida (*Murphy v. Petit, et al.*). The complaint alleged claims for breaches of fiduciary duty 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, 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. 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 transfer this action to the Northern District of Georgia. Prior to resolution of that motion, the plaintiff voluntarily dismissed this action without prejudice. As discussed above, the plaintiff participated in the mediation that took place in connection with the prior-filed consolidated derivative action in the Northern District of Georgia and is a party to the agreement in principle to settle that consolidated derivative action. Under the agreement in principle, the plaintiff has agreed that this action shall not be reinstated and, after the judgment entered by the Northern District of Georgia becomes final, this action shall be deemed dismissed with prejudice.

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 (C*assamajor 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

SEC Investigation

On April 4, 2017, the Company received a subpoena from the SEC requesting information related to, among other things, the Company's recognition of revenue, practices with certain distributors and customers, its internal accounting controls and certain employment actions. The Company cooperated with the SEC in its investigation (the "***SEC Investigation***"). In November 2019, the SEC brought claims against the Company and the Company's former officers Parker H. Petit, Michael J. Senken, and William C. Taylor. The SEC alleged that from 2013 to 2017, the Company prematurely recognized revenue from sales to its distributors and exaggerated its revenue growth. The SEC's complaint also alleged that the Company improperly recognized revenue because its former CEO and COO entered into undisclosed side arrangements with certain distributors. These side arrangements allowed distributors to return product to the Company or conditioned distributors' payment obligations on sales to end users. The SEC complaint further alleged that the Company's former CEO, COO, and CFO allegedly covered up their scheme for years, including after the Company's former controller raised concerns about the Company's accounting for specific distributor transactions. The SEC also alleged that the Company's former CEO, COO, and CFO all misled the Company's outside auditors, members of the Company's Audit Committee, and outside lawyers who inquired about these transactions. The SEC brought claims against the Company and its former CEO, COO, and CFO for violating the antifraud, reporting, books and records, and internal controls provisions of the federal securities laws. The SEC also brought claims against the Company's former CEO, COO, and CFO for lying to the Company's outside auditors. In November 2019, without admitting or denying the SEC's allegations, the Company settled with the SEC by consenting to the entry of a final judgment that permanently restrains and enjoins the Company from violating certain provisions of the federal securities laws. As part of the resolution, the Company paid a civil penalty of $1.5 million. The settlement concluded, as to the Company, the matters alleged by the SEC in its complaint. The SEC's litigation continues against the Company's former officers.

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

The USAO-SDNY conducted an investigation into topics similar to those at issue in the SEC Investigation. The USAO-SDNY requested that the Company provide it with copies of all information the Company furnished to the SEC and made additional requests for information. The USAO-SDNY conducted interviews of various individuals, including employees and former employees of the Company. The USAO-SDNY issued indictments in November 2019 against former executives Messrs. Petit and Taylor for securities fraud and conspiracy to commit securities fraud, to make false filings with the SEC, and improperly influence 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.

On January 20, 2017, two former employees of the Company, filed a qui tam False Claims Act complaint in the United States District Court for the District of Minnesota (*Kruchoski et. al. v. MiMedx Group, Inc.*). An amended complaint was filed on January 27, 2017. The operative complaint alleges that the Company failed to provide truthful, complete and accurate information about the pricing offered to commercial customers in connection with the Company's FSS contract. On May 7, 2019, the Department of Justice ("*DOJ*") declined to intervene, and the case was unsealed. In April 2020, without admitting the allegations, the Company agreed to pay $6.5 million to the DOJ to resolve this matter.

Former Employee Litigation

On December 13, 2016, the Company filed a complaint in the Circuit Court for Palm Beach County, Florida (*MiMedx Group, Inc. v. Academy Medical, LLC et. al.*) alleging several claims against a former employee, primarily based on his alleged competitive activities while he was employed by the Company (breach of contract, breach of fiduciary duty and breach of duty of loyalty). The former employee countersued for monetary damages and injunctive relief, alleging whistleblower retaliation in violation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "***Dodd-Frank Act***"), unlawful discharge and defamation. The Court dismissed the Dodd-Frank Act whistleblower counterclaim, and in response, the former employee filed an amended complaint on September 11, 2018, adding allegations of post-termination retaliation in violation of the Dodd-Frank Act. The court dismissed the former employee's retaliation counterclaim on January 24, 2019. After this dismissal, only the former employee's

claims of unlawful discharge and defamation remained pending. The parties resolved this matter and the case was dismissed on September 5, 2019.

On December 29, 2016, the Company filed a complaint in the United States District Court for the Northern District of Illinois (*MiMedx Group, Inc. v. Michael Fox*) alleging several claims against a former employee of the Company, primarily based on his alleged competitive activities while he was employed by the Company (breach of contract, breach of fiduciary duty and breach of duty of loyalty). The former employee countersued the Company for monetary damages and injunctive relief, alleging improper wage rate adjustment, interference with the former employee's job after his termination from the Company and retaliation. The parties resolved this matter and the case was dismissed on November 4, 2019.

On July 13, 2018, a former employee filed a complaint against the Company in the United States District Court for the Northern District of Texas (*Jennifer R. Scott v. MiMedx Group, Inc.*), alleging sex discrimination and retaliation. The parties resolved this matter, and the case was dismissed on November 6, 2019.

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 Bone Bank Action

On May 16, 2014, the Company filed a patent infringement lawsuit against Transplant Technology, Inc. d/b/a Bone Bank Allografts ("***Bone Bank***") and Texas Human Biologics, Ltd. ("Biologics") in the United States District Court for the Western District of Texas (MiMedx Group, Inc. v. Tissue Transplant Technology, LTD. d/b/a/ Bone Bank Allografts et. al.). The Company has asserted that Bone Bank and Biologics infringed certain of the Company's patents through the manufacturing and sale of their placental-derived tissue graft products, and the Company is seeking permanent injunctive relief and unspecified damages. On July 10, 2014, Bone Bank and Biologics filed an answer to the complaint, denying the allegations in the complaint, and filed counterclaims seeking declaratory judgments of non-infringement and invalidity. The matter settled in 2019 prior to trial, and the case was dismissed on April 4, 2019.

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 party 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 December 31, 2019, 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.

As of December 31, 2018, the Company accrued $15.6 million related to legal proceedings and other matters of litigation.

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.

17. Revenue Data by Customer Type

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 years ended December 31, 2019, 2018 and 2017.

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

	Years Ended December 31,		
	2019	2018	2017
Direct Customers	$ 288,800	$ 343,464	$ 286,742
Distributors	10,455	15,647	27,431
Other[(1)]	—	—	6,966
Total	$ 299,255	$ 359,111	$ 321,139

(1) The "Other" balances are comprised entirely of the Net Sales generated by Stability while it was a subsidiary of the Company.

18. Related Party Transactions

The Company employs Simon Ryan, the brother-in-law of the Company's former General Counsel, Alexandra O. Haden (who resigned from the Company effective August 12, 2019), as a sales representative. In 2018, the Company paid Mr. Ryan total compensation of $0.2 million, consisting of a salary of $0.1 million and sales commissions, equity and other compensation of $0.1 million. In 2019, the Company paid Mr. Ryan total compensation of $0.2 million, consisting of a salary of $0.1 million and sales commissions, equity and other compensation of $0.1 million.

The Company has employed Thomas Koob as its Chief Scientific Officer (a non-executive officer) since 2006. Thomas Koob is the brother of a director, Charles Koob. Subsequent to the Company's employment of Thomas Koob, Charles Koob was appointed as a director of the Company in March 2008. In 2018, the Company paid Thomas Koob a salary of $0.2 million and provided equity, incentive compensation and other compensation of $0.3 million. In 2019, the Company paid Thomas Koob an annual salary of $0.2 million and provided equity, incentive compensation and other compensation of $0.2 million.

19. Restructuring

Set forth below are disclosures relating to restructuring initiatives that resulted in material expenses or cash expenditures during the year ended December 31, 2019, and resulted in material restructuring liabilities at December 31, 2019. Employee retention and certain other employee benefit-related costs related to the Company's restructuring are expensed ratably over an agreed-upon service period. One-time employee separation and related employee benefit costs are generally expensed as incurred.

In December 2018, the Company announced a reduction of the Company's workforce by approximately 240 full-time employees, or 24% of its total workforce, of which approximately half were sales personnel as part of the plans to implement a broad-based organizational realignment, cost reduction and efficiency program to better ensure the Company's cost structure was appropriate given its revenue expectations.

As a result of the December 2018 broad-based organizational realignment, cost reduction and efficiency program, the Company incurred pre-tax charges of $8.5 million and $6.1 million during the years ended December 31, 2019 and 2018, respectively. The charges related to employee retention and other one-time employee separation benefit-related costs. These charges are included in the cost of sales, research and development, and selling, general and administrative expenses in the consolidated statements of operations.

The liability related to restructuring activities during 2019 are included in accrued compensation in the consolidated balance sheets. Changes to this liability during the year ended December 31, 2019 were as follows (in thousands):

Liability balance as of January 1, 2018	$ —
Expenses	6,055
Cash distributions	(448)
Liability balance as of December 31, 2018	5,607
Expenses	8,543
Cash distributions	(10,589)
Liability balance as of December 31, 2019	$ 3,561

20. Quarterly Financial Data (Unaudited) (in thousands except per share data)

The following table sets forth selected quarterly financial data for 2019 and 2018:

		First Quarter	Second Quarter	Third Quarter (1)	Fourth Quarter
Net sales	2019	$ 66,555	$ 67,437	$ 88,863	$ 76,400
	2018	84,149	$ 95,417	86,959	92,586
Gross profit	2019	$ 59,137	$ 57,688	$ 75,658	$ 63,691
	2018	74,791	$ 86,147	$ 79,604	82,183
Income tax (provision) benefit	2019	$ (42)	$ (42)	$ 309	$ (220)
	2018	1,552	13	(650)	(27,497)
Net income (loss)	2019	$ (13,273)	$ (17,210)	$ 12,379	$ (7,476)
	2018	4,619	1,804	(178)	(36,224)
Net income (loss) per common share - basic	2019	$ (0.12)	$ (0.16)	$ 0.12	$ (0.07)
	2018	0.04	0.02	0.00	(0.34)
Net income (loss) per common share - diluted	2019	$ (0.12)	$ (0.16)	$ 0.11	$ (0.07)
	2018	0.04	0.02	0.00	(0.34)

(1) - Third quarter amounts include the transition adjustment discussed in Note 3.

21. Subsequent Events

Coronavirus Aid, Relief and Economic Security (CARES) Act

On March 27, 2020, the “Coronavirus Aid, Relief and Economic Security (CARES) Act” was signed into law. The 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. The Company applied for and received a $10.0 million loan under the Paycheck Protection Program. On May 11, 2020 the Company repaid the PPP loan.

In addition, modifications to the tax rules for carryback of net operating losses are expected to result in an estimated federal tax refund of $11.3 million and a resulting income tax benefit.

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 a second-wave 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.

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.

BT Term Loan Amendment

On April 22, 2020, the Company amended 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 1.0 to 5.0 to 1.0 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, 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%.

Repayment and Termination of BT Loan Agreement

On July 2, 2020, the Company terminated the BT Loan Agreement and repaid the $72.0 million outstanding balance of principal and accrued but unpaid interest under the BT Loan Agreement. As a result of the early repayment of the loans under the BT Loan Agreement, the Company also paid a prepayment premium in the amount of $1.4 million. The Company paid the outstanding balance, accrued but unpaid interest, and prepayment premium using a portion of the proceeds from the Preferred Stock Transaction and the Hayfin Loan Transaction.

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 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, for an aggregate purchase price of $100,000,000 (the "***Preferred Stock Transaction***"). See Item 9B, "*Other Information.*"

$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 was 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 "***Term Loan***") and an additional $25 million delayed draw term loan (the "***DD TL***") in the form of a committed but undrawn facility. The Term Loan and the DD TL mature on July 2, 2025 (the "***Maturity Date***"). The 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 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 calculation 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 $10M, an at-all-times covenant tested monthly.

Schedule II Valuation and Qualifying Accounts

MIMEDX GROUP, INC. AND SUBSIDIARIES
SCHEDULE II VALUATION AND QUALIFYING ACCOUNTS
Years ended December 31, 2019, 2018 and 2017 (in thousands)

	Balance at Beginning of Year	Additions charged to Expense or Revenue	Deductions and write-offs	Balance at End of Year
For the Year ended December 31, 2019				
Allowance for product returns	8,510	—	(4,395)	4,115
Allowance for obsolescence	589	1,204	(1,074)	719
For the Year ended December 31, 2018				
Allowance for product returns	$ 7,362	$ 1,148	$ —	$ 8,510
Allowance for obsolescence	768	511	(690)	589
For the Year ended December 31, 2017				
Allowance for product returns	$ 11,283	$ —	$ (3,921)	$ 7,362
Allowance for obsolescence	829	1,192	(1,253)	768

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

Item 9A. 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 CEO and 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 December 31, 2019 because of certain material weaknesses in internal control over financial reporting, as further described below.

Management's Report on Internal Control Over Financial Reporting

Management, including our CEO and CFO, is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act and based upon the criteria established in Internal Control-Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (the "COSO framework"). The Company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of our financial reporting and the preparation of our financial statements for external purposes in accordance with United States generally accepted accounting principles (“***GAAP***”).

An effective internal control system, no matter how well designed, has inherent limitations, including the possibility of human error or overriding of controls, and therefore can provide only reasonable assurance with respect to reliable financial reporting. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. 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 demonstrate.

Under the supervision and with the participation of our management, including our CEO and CFO, we have conducted an evaluation of the effectiveness of our internal control over financial reporting based on the COSO framework. Based on evaluation under these criteria, management determined, based upon the existence of the material weaknesses described below, that we did not maintain effective internal control over financial reporting as of December 31, 2019.

A material weakness (as defined in Rule 12b-2 under the Exchange Act) is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that a reasonable possibility exists that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

The Company previously disclosed material weaknesses in internal control over financial reporting as of December 31, 2018 in our Annual Report on Form 10-K for the year ended December 31, 2018. The previously disclosed material weaknesses related to our control environment, risk assessment, control activities, information and communication, and monitoring activities. The material weaknesses led to the delayed filing of our annual consolidated financial statements for the years ended December 31, 2018 and 2017 and the restatement of our financial statements for the year ended December 31, 2016. As described below, while management has developed and implemented certain remediation actions to address the material weaknesses, further actions are still ongoing or have not been implemented for a sufficient amount of time to test and conclude on the effectiveness of the remediation actions as of December 31, 2019. As a result, the material weaknesses continue to be present as of December 31, 2019. Management has reported to the Audit Committee the status of these remediation actions. These control deficiencies could have resulted in other misstatements in financial statement accounts and disclosures that would result in a material misstatement to the annual or interim consolidated financial statements that might not have been prevented or detected.

The Company identified material weaknesses corresponding to the control environment and control activities components of internal control as defined by COSO as described below:

Control Environment

The Company did not maintain an effective control environment based on the criteria established in the COSO framework. Specifically, the Company identified control deficiencies that constitute material weaknesses, either individually or in the aggregate, relating to: (i) appropriate organizational structure, reporting lines, and authority and responsibilities in pursuit of objectives, and (ii) holding individuals accountable for their internal control related responsibilities.

Control Activities

The control deficiencies identified specific to the Control Activities COSO element constitute material weaknesses, either individually or in the aggregate, relating to: (i) the operation of control activities and general information technology controls that contribute to the mitigation of risks and support achievement of objectives for a sufficient period of time during the year ended December 31, 2019 and (ii) deploying control activities through policies that establish what is expected and procedures that put policies into action. Deficiencies in control activities contributed to the potential for there to have been material accounting errors in substantially all financial statements account balances and disclosures, specifically:

- Information Technology General Controls (ITGC's) for certain information technology systems and other ITGCs did not operate effectively for a sufficient period of time for the Company to rely on the accuracy and completeness of information on which certain business process controls (automated and manual) are dependent. As a result, it is possible that the Company's business process controls that depend on the accuracy and completeness of data or financial reports generated by the information technology system could be adversely affected due to the lack of operating effectiveness of ITGC's.

- There was a lack of robust, established and documented accounting policies and insufficiently detailed Company procedures to ensure controls operated as designed and policies were applied effectively to ensure material transactions were recorded in the financial statements.

- The Company did not have adequate management documentation around the completeness and accuracy of data material to financial reporting of certain transactions including revenue recognition and completeness of inventory.

- The Company, for certain processes, did not maintain adequate controls around segregation of duties within the revenue process. Other application controls related to revenue were not evaluated because of ineffective ITGCs or failed due to inadequate evidentiary matter or controls did not operate in a consistent manner during the year ended December 31, 2019.

- The Company did not design and maintain adequate controls to ensure that accounting for income tax provisions were appropriately recorded in accordance with GAAP.

- The Company did not have adequate staffing resources to properly perform review of certain accounting determinations, including (but not limited to) the following: review of significant assumptions for stock-based compensation expense, timely review of consignment inventory, the review of significant assumptions used to estimate accrued expenses.

- The Company did not design and maintain adequate controls over the inventory process and related accounting assumptions, to ensure that accounting determinations related to inventory appropriately considered and recorded in accordance with GAAP, that the inventory balance was complete and accurate and that disclosures related to the inventory balance were appropriately reflected within the financial statements.

- The Company's controls over financial close and reporting did not operate effectively for a sufficient period of time to meet a variety of its financial reporting objectives which exposed the financial statements to potential for disclosure that did not meet the requirements of GAAP.

BDO USA, LLP, our independent registered public accounting firm, has audited the effectiveness of our internal control over financial reporting as of December 31, 2019. BDO USA, LLP has expressed an adverse report on internal control over financial reporting which appears on page F-2 of this Form 10-K.

Remediation Plan and Status

Remediation of the identified material weaknesses and strengthening our internal control environment was an identified priority for us throughout 2019 and will continue to be a priority in 2020. We will test the design and ongoing operating effectiveness of the new and existing controls in future periods. The material weaknesses cannot be considered completely remediated until the applicable controls have operated for a sufficient period of time and management has concluded, through testing, that these controls are operating effectively. With continued oversight from the Audit Committee, the Company's management has designed and begun implementing changes in processes and controls to remediate the material weaknesses described above and has

improved the Company's internal control over financial reporting as follows:

Control Environment

The Board created an Ethics and Compliance Committee consisting solely of independent directors which is responsible for reviewing the status of the Company's ethics and compliance program, reviewing and advising the Board regarding any open cases and trends that may impact the business, and recommending future initiatives to improve compliance performance and effectiveness.

Management reinforced the importance of integrity, accountability, and adherence to the redesigned internal controls, policies, and procedures through the adoption of a revised Code of Business Conduct Policy. All Board members and employees, including executives, newly hired employees and agents are required to certify that they read and understood the policy upon hire and all said individuals then re-certify their reading and understanding of the policy annually thereafter.

The Company enhanced the onboarding training provided to newly hired salespeople to emphasize the importance of compliance with the various regulations specific to the Life Sciences industry to which the Company is subject. The Company is implementing a policy to ensure required trainings are completed by relevant personnel.

Management began, and will continue, to schedule training sessions with the Company's Sales Department to ensure that they are familiar with the Company's current sales related policies and procedures, including those which are significant to the Company's financial reporting objectives. Portions of these training sessions are facilitated by the Chief Accounting Officer (*"**CAO**"*), who presents on topics such as the Company's current sales return policy, acceptable credit terms for customers, events that would trigger commission claw-backs, customer credit limit modification approval protocol, and the importance of proper revenue recognition.

The Ethics and Compliance Committee of the Board, and the full Board, have received regular updates of the ethics and compliance efforts of the Company from the SVP and Chief Compliance Officer. This includes an explanation of all the policies and procedures that have either been revised and reissued or newly created. Both the Ethics and Compliance Committee and the Board have also both helped in reviewing, approving and training on the new Code of Business Conduct and Ethics.

The purpose of the whistleblower hotline and the mechanics of its use were formally communicated by the Chief Compliance Officer during numerous meetings with all levels of the sales department during 2019, with an emphasis on the following: (a) each employee's responsibility to report any actual or apparent violations of law or ethical standards and any questionable accounting or auditing matters so that they may be investigated and dealt with appropriately, (b) management's commitment to ensuring that any employees communicating such an issue via the hotline will not be subject to retaliation, and (c) the Board of Directors' oversight of complaints raised through the hotline to ensure appropriate actions are taken.

In addition to enhancing processes and controls over adoption of new accounting standards and the proper application of existing accounting standards, the Company enhanced the technical capabilities of its accounting department by leveraging third party consultants with expertise in GAAP. As of the date of the filing of this Form 10-K, the Company has hired a new Chief Financial Officer and a Chief Accounting Officer. Furthermore, the Company intends to lessen its reliance on third-party consultants for its technical accounting needs during 2020 by transitioning roles currently assigned to outside consultants to full-time employees with similar technical accounting competencies.

Management plans to develop and implement a contract management policy that defines who is required to review new, extended, or amended contracts (including those with distributors and agents). This policy includes the implementation of a checklist for standard and non-standard contracts to ensure that the revenue recognition criteria are properly considered for each of the standard and non-standard contracts.

Control Activities

We previously disclosed that in 2018, management concluded there to be a material weakness in the application of the Company's revenue recognition methodology which was not aligned with the Company's customary business practices, resulting in certain revenue events being recorded prior to the time at which all of the sales recognition criteria were met. To remediate the material weakness specific to the revenue recognition methodology, the Company implemented controls in which the customary business practices were aligned to GAAP criteria to determine the point at which revenue recognition is appropriate. See Transition in Revenue Recognition footnote disclosures.

Management collaborated with outside consultants possessing significant financial reporting and internal control expertise to perform an extensive review of the design of the Company's internal controls over financial reporting. This review included the identification of internal control deficiencies and the development of remediation plans for each identified deficiency. These

internal control deficiencies identified included (but were not limited to) the following: improvements to the financial close and reporting process, accounting for satisfaction of performance obligations related to revenue recognition, calculation of inventory costing and related accuracy of inventory, accounting for income taxes, accurate calculation of stock-based compensation expense, timely review of consignment inventory and the development of quality estimates related to accrued expenses.

The Company is enhancing its financial close process by formalizing its accounting policies, introducing additional layers of independent reviews by appropriately qualified individuals, improving the precision and timeliness of reviews applied to various financial result analyses, and providing required education and training to the members of the finance department.

The Company is enhancing the design and adherence to controls addressing the accuracy and completeness of the accounting for income taxes, including retention of evidence of review and review of significant judgements to ensure proper application of GAAP.

Management is enhancing its oversight of the completeness and accuracy of data material to financial reporting by establishing criteria in the performance of controls to evaluate the accuracy and completeness of data. Management is implementing required training for control owners specific to the evaluation of the accuracy and completeness of data used in control activities.

The Company continues to conduct required training and education for control owners in critical financial reporting roles.

The Company has enhanced its review of salesperson activity which may indicate noncompliance with the Company's sales policies, such as a quarterly review of data by the CFO, CAO, and SVP of Sales and other key metrics both by region and at the individual salesperson level and has added controls to monitor potential instances of noncompliance.

Management has gained a better understanding of system functionality through a comprehensive review of permissions and profiles within each 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, however, these controls have not operated for a sufficient period of time for management to evaluate the effectiveness of these remediated controls.

Management modified its policy regarding the periodic review of sales to involve the Finance Department in an effort to enhance the Finance Department's awareness and oversight of sales activities in order to verify the validity and proper accounting treatment of sales transactions.

Risk Assessment

We previously disclosed that in 2018, management concluded there to be a material weakness in the Risk Assessment specific to the lack of an appropriate risk assessment, the lack of processes for communicating changes to risks throughout the organization and lack of policy to ensure the accounting department was aware of sales practices. Through the completion of the following activities, the previously disclosed material weaknesses related to risk assessment have been remediated:

- The Compliance function, led by the SVP and Chief Compliance Officer, has conducted several enterprise-wide risk assessments since 2018. The results of those audits have been shared with the Ethics and Compliance Committee initially and regular updates have been provided on the Company’s risk assessment program.
- Management developed a process to prepare and did prepare an annual comprehensive fraud risk assessment designed to evaluate risks related to fraudulent financial reporting, management override, potential loss of assets, and corruption. The methodology adopted within this assessment is designed to evaluate the impact and likelihood of various fraud risks susceptible to the Company. Such risks, if relevant, are then mapped to controls within the current risk environment.
- Management developed a set of controls to identify and define its population of related parties, identify transactions with those related parties, and analyze such transactions to determine whether additional approval or financial statement disclosure is required.
- The Company established a Disclosure Committee comprised of senior management representatives from all relevant departments within the organization. Members of this committee were and are responsible for reviewing quarterly and annual SEC filings to ensure that the disclosures within the filings are reflective of the knowledge of the Company and the Company’s operations that each member of the committee brings to the review process. The members of the committee met prior to each filing to discuss the completeness and accuracy of the document being filed, if applicable, suggest

additional disclosure, and once the Committee believed the disclosure to be appropriate, approved the draft filing for audit committee consideration.

- The Company designed and implemented a variety of new controls, including monthly operational meetings amongst senior management that are attended by members of the accounting department, to ensure that the accounting department is aware of operational changes that may affect the Company's accounting policies.

- On an annual basis (or more frequently, should a significant triggering event occur), the Company now performs a risk assessment designed to ensure that the scope of its Sarbanes-Oxley compliance program adequately reflects changes to the business and its operations. If a significant triggering event occurs, the Company evaluates the key control activities related to the transaction or activity and determines that the related controls are within the scope of the Sarbanes-Oxley compliance program.

Information and Communication

We previously disclosed that in 2018, management concluded there to be a material weakness in the Company's Information and Communications activities specific to the generation and provision of quality information as established under the requirements of COSO. Through the completion of the following activities, the previously disclosed material weaknesses related to information and Communication have been remediated:

- Management conducted required internal training courses over Sarbanes-Oxley regulations, the Company's internal control over financial reporting program and documentation evidencing the operation of controls for Company personnel and management involved in the execution of controls.

- Management developed a regular cadence for reporting the results of control testing to the board of directors of the Company.

- Management implemented quarterly required communications amongst relevant members of senior management in the form of certification surveys. A control certification survey is distributed to obtain information regarding any internal control related issues or concerns that control owners may have, and additional certification surveys are distributed to Disclosure Committee members and key members of the sales department which address (to the best of their knowledge) whether the period's financial statements are free from either material misstatements, material misclassifications, or material omissions.

Monitoring Activities

We previously disclosed that in 2018, management concluded there to be a material weakness in the Company's monitoring activities specific to the assessment of controls, the competency of those monitoring the control environment and the lack of adequate procedures to monitor when controls are overridden. Through the completion of the following activities, the previously disclosed material weaknesses related to monitoring activities have been remediated:

- Established its Internal Audit Department, led by a VP of Internal Audit under the direction of the audit committee. The Internal Audit Department identified and hired internal resources with the appropriate level of competency, who are tasked with continually evaluating and monitoring the effectiveness of the Company's internal controls over financial reporting.

- Management established a framework for identifying, communicating and remediating internal control deficiencies, which includes appropriate escalation of issues to appropriate stakeholders in the internal control framework and communication of remediation status, as relevant, to the board of directors on a regular basis.

- Management led required training sessions with the Company's Sales Department to ensure that they are familiar with the Company's current sales related policies and procedures, including those which are significant to the Company's financial reporting objectives. Portions of these training sessions were facilitated by the CAO, who presents on topics such as the Company's current sales return policy, acceptable credit terms for customers, events that would trigger commission claw-backs, customer credit limit modification approval protocol, and the importance of proper revenue recognition.

Changes in Internal Control Over Financial Reporting

Other than the changes described above in "Remediation Plan and Status," there were no changes during the quarter ended December 31, 2019 in our internal control over financial reporting (as such term is defined in the Exchange Act) that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information

Item 1.01 Entry into a Material Definitive Agreement.
Item 3.02 Unregistered Sales of Equity Securities.
Item 3.03 Material Modification to Rights of Security Holders.
Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

Issuance of $100 Million of Series B Convertible Preferred Stock

On June 30, 2020, the Company entered into a Securities Purchase Agreement (the "***Purchase Agreement***" or "***Securities Purchase Agreement***") with Falcon Fund 2 Holding Company, L.P. (the "***EW Purchaser***"), an affiliate of EW Healthcare Partners, and certain funds managed by Hayfin Capital Management LLP (the "***Hayfin Purchasers***" and together with the EW Purchaser, the "***Purchasers***"), in connection with the offering, issuance, and sale of (1) 90,000 shares of the Company's Series B Convertible Preferred Stock, par value $0.001 per share (the "***Series B Preferred Stock***") to the EW Purchaser for an aggregate purchase price of $90,000,000, and (2) 10,000 shares of Series B Preferred Stock in the aggregate to the Hayfin Purchasers for an aggregate purchase price of $10,000,000, in each case on the terms and subject to the conditions of the Purchase Agreement (such shares, the "***Purchased Shares***" and such transaction, the "***Preferred Stock Transaction***").

Pursuant to the Purchase Agreement, the Company has filed an amendment to its articles of incorporation, as amended, setting forth the terms of the Series B Preferred Stock (the "***Preferred Stock Amendment***"). The Company completed the closing of the sale and purchase of the Purchased Shares (the "***Preferred Stock Closing***") on July 2, 2020. The offering and sale of the Purchased Shares was exempt from registration under the Securities Act of 1933, as amended (the "***Securities Act***"), pursuant to Section 4(a)(2) of the Securities Act and certain rules and regulations thereunder. The shares of Common Stock issuable upon conversion of the shares of Series B Preferred Stock will be issued in reliance upon the exemption from registration in Section 3(a)(9) of the Securities Act.

The proceeds from the sale of the Purchased Shares have been or will be used to repay outstanding debt, as further described below, for working capital and general corporate purposes and to pay transaction fees, costs and expenses incurred in connection with the transactions contemplated by the Purchase Agreement.

Terms of the Purchase Agreement

The Purchase Agreement contains representations, warranties and covenants of the Company and the Purchasers customary for transactions of this type. In addition, certain specific terms and conditions of the Purchase Agreement are described below.

Purchaser Director and Nominees

On the terms and subject to the conditions of the Purchase Agreement and the Preferred Stock Amendment, for so long as the EW Purchaser and its affiliates have beneficial ownership of (i) at least 10.0% of the total number of outstanding shares of common stock of the Company, par value $0.001 per share ("***Common Stock***") (calculated on a fully-diluted, as converted basis) (a "***10% Holder***"), the EW Purchaser will be entitled to designate two individuals to serve on the Board, and (ii) at least 5.0% but less than 10% of the total number of outstanding shares of Common Stock (calculated on a fully-diluted, as converted basis) (a "***5% Holder***"), the EW Purchaser will be entitled to designate one individual to serve on the Board (such appointed directors, the "***Preferred Directors***"). The Preferred Directors will not be members of any class of directors that is elected by the holders of shares of Common Stock (a "***Common Director***"). However, the Board may, by notice to the EW Investor, either appoint such Preferred Director as a Common Director or nominate such director for election as a Common Director, provided that (i) no such appointment or nomination takes place such that such director would be up for election as a Common Director prior to the 2022 annual meeting of shareholders of the Company, and (ii) if anyone the EW Purchaser has designated to serve on the Board has been appointed or nominated as a Common Director prior to July 2, 2022, then no other person designated by the EW Purchaser to serve on the Board may be appointed or nominated as a Common Director prior to July 2, 2022. From and after the time that no Series B Preferred Stock remains outstanding, the EW Purchaser's right to designate directors in accordance with the preceding sentence will convert into a right, subject to the same ownership thresholds described above, to designate up to two individuals to be nominated by the Company to serve on the Board. The initial Preferred Directors are Martin P. Sutter and William A. Hawkins, III, who were appointed to the Board of Directors effective as of July 2, 2020.

Lock-Up Period

The Purchasers may not transfer any of the Purchased Shares (or any Common Stock into which the Purchased Shares are convertible) for a period of two years after the Preferred Stock Closing (the "***Lock-Up Period***"), subject to certain customary exceptions. After the Lock-Up Period, the Purchasers may transfer the Purchased Shares (or shares of Common Stock into which the Purchased Shares are convertible) to any person subject to certain limited restrictions designed to prevent transfers to competitors of the Company.

Standstill

Subject to certain customary exceptions, the Purchasers are subject to a standstill provision which restricts them and their affiliates from taking certain actions without the consent of the board of directors (acting upon a majority vote of the directors other than the designees of the EW Purchaser to the board) including (i) acquiring any securities or material assets or businesses of the Company or its subsidiaries, (ii) proposing any merger, business combination, recapitalization, restructuring or other extraordinary transaction with the Company or its subsidiaries, (iii) initiating shareholder proposals or convening a shareholder's meeting of the Company or its subsidiaries, (iv) soliciting proxies or otherwise seeking to influence, advise or direct the voting of capital stock of the Company, (v) influencing, advising, changing or controlling the management, board of directors, governing instruments, affairs or policies of the Company or any of its subsidiaries, and (vi) forming, joining or participating in any "group" (within the meaning of Section 13(d)(3) of the Exchange Act), until (1) in the case of the EW Purchaser, the later of (x) July 2, 2023, and (y) the date on which the EW Purchaser is no longer a 10% Holder nor a 5% Holder, and (2) in the case of the Hayfin Purchaser, July 2, 2023.

Preemptive Rights

Subject to customary exceptions, so long as the EW Purchaser is a 10% Holder, if the Company intends to issue and sell equity securities to any person, then the EW Purchaser has the right to participate in such equity offering up to its pro-rata percentage of such equity securities (calculated on a fully-diluted, as converted basis).

Terms of the Series B Preferred Stock

Ranking and Liquidation Preference:	The Series B Preferred Stock ranks senior to Common Stock with respect to dividends and distributions on liquidation, winding-up, and dissolution. Upon a liquidation, dissolution, or winding-up of the Company, each share of Series B Preferred Stock will be entitled to receive $1,000 per share (the "Purchase Price Per Share"), plus any accrued and unpaid dividends (the "Liquidation Preference").
Conversion at Purchaser's Option:	Each holder of Series B Preferred Stock (each a "Holder" and collectively, the "Holders") will have the right, at its option, to convert its Series B Preferred Stock, in whole or in part, into a number of fully paid and non-assessable shares of Common Stock equal to the Purchase Price Per Share, plus any accrued and unpaid dividends, divided by $3.85 (the "Conversion Price"). No Holder may convert its shares of Series B Preferred Stock into shares of Common Stock if such conversion would result in the Holder, together with its affiliates, holding more than 19.9% of the votes entitled to be cast at any stockholders meeting or beneficially owning in excess of 19.9% of the then-outstanding shares of Common Stock (the "Beneficial Ownership Cap").
Mandatory Conversion:	The Series B Preferred Stock (including any accrued and unpaid dividends) will, subject to the Beneficial Ownership Cap, automatically convert into Common Stock at any time after July 2, 2023, provided that the Common Stock has traded at 200% or more of the Conversion Price for 20 out of 30 consecutive trading days and as of the close of trading on the trading day immediately prior to the date of conversion, the Common Stock has traded at 200% or more of the Conversion Price. To the extent any Series B Preferred Stock cannot be converted due to operation of the Beneficial Ownership Cap, it shall remain outstanding and automatically convert at such time as such conversion would be permitted under the Beneficial Ownership Cap.
Dividends:	The Holders will be entitled to cumulative dividends at a rate of 4.0% per annum for the period ending June 30, 2021 and 6.0% per annum thereafter, in each case compounding quarterly in arrears. The dividends are payable quarterly in whole or in part, in cash. However, the Company may, at its option, elect to not pay such dividend and to instead accrue the amount of such dividend. Accrued and unpaid dividends will be paid in cash or included in the conversion of the Series B Preferred Stock upon the occurrence of the Mandatory Conversion or the Company's redemption of the Series B Preferred Stock.
Voting:	Subject to certain exceptions, each share of Series B Preferred Stock is entitled to be voted on by the Holders and will vote on an as-converted basis as a single class with the Common Stock, subject to certain limitations on voting set forth in the related Articles of Amendment.

Consent Rights:	The following matters will require the approval of the majority of the outstanding Series B Preferred Stock, voting as a separate class: - any changes to the rights, preferences, or privileges of the Series B Preferred Stock; - amendments or restatements of any organizational document of the Company 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; - the authorization or creation of any class or series of senior or parity equity securities; - the declaration of any dividends or any other distributions, or the repurchase or redemption, of any equity securities of the Company ranking junior to or on parity with the Series B Preferred Stock (subject to certain exceptions); - prior to January 2, 2023 the sale, transfer, or other disposition of any assets, business, or operations for $25 million or more (other than sales of inventory in the ordinary course of business), or the purchase or acquisition of any assets, business, or operations for $75 million or more; - prior to January 2, 2023, the merger or consolidation of the Company unless either (x) the surviving company will have no class of equity securities ranking superior in parity with the Series B Preferred Stock or (y) the Holders of the Series B Preferred Stock will receive in connection therewith consideration per share of Series B Preferred Stock valued at 200% or more of the Purchase Price Per Share; - prior to January 2, 2023, commencing a voluntary case under any applicable bankruptcy, insolvency, or other similar law or consenting to the entry of an order for relief in an involuntary case under any such law, or effectuating any general assignment for the benefit of creditors; and - prior to the January 2, 2023, enter into any settlement agreement regarding the Company's securities class action litigation.
Change of Control:	If the Company undergoes a Change of Control (as defined in the Preferred Stock Amendment), the Company will have the option to repurchase any or all of a Holder's then-outstanding shares of Series B Preferred Stock for cash in an amount equal to the Liquidation Preference, plus all accrued and unpaid dividends, subject to the right of each Holder to convert its Series B Preferred Stock into Common Stock. If the Company does not exercise such repurchase right, the Holder will have the option to (i) require the Company to repurchase any or all of its then-outstanding shares of Series B Preferred Stock for cash in an amount equal to the Liquidation Preference or (ii) convert its Series B Preferred Stock (including accrued and unpaid dividends) into Common Stock and receive its pro rata consideration thereunder.
Anti-dilution	The Conversion Price is subject to certain customary anti-dilution adjustments if the Company issues shares of Common Stock as a dividends or distribution on the Common Stock or effects a stock split or stock combination of the Common Stock. The Conversion Price is also subject to a weighted average anti-dilution adjustment if the Company issues Common Stock (or securities convertible into Common Stock) at a price per share less than the Conversion Price within two years after Preferred Stock Closing but such adjustment may not result in a Conversion Price of less than $3.47.

Registration Rights Agreement

On July 2, 2020, the Company and the EW Purchaser also entered into a registration rights agreement obligating the Company to register for resale shares of Common Stock issued upon conversion of its Series B Preferred Stock, which rights may be exercised from and after the date 90 days prior to the expiration of the Lock-Up Period. In general, the Registration Rights Agreement provides the EW Purchaser with the right to request a shelf registration in respect of such resales (including up to two underwritten shelf takedowns (but no more than one in any twelve month period)), up to two demand registrations (but only if no shelf registration is then in effect covering the resale of all securities held by the EW Purchaser) and unlimited piggyback registration rights.

The foregoing descriptions of the Purchase Agreement, the terms of the Series B Preferred Stock, and the Registration Rights Agreement are not complete and are qualified in their entirety by reference to the full text of the Purchase Agreement and the Preferred Stock Amendment, and the Registration Rights Agreement, copies of which are filed as Exhibits 10.38, 3.3, and 10.39 to this Annual Report on Form 10-K and are incorporated herein by reference.

The Purchase Agreement contains representations and warranties by each of the parties to the Purchase Agreement, which were made only for purposes of that agreement and as of specified dates. The representations, warranties, and covenants in the Purchase Agreement were made solely for the benefit of the parties to the Purchase Agreement; are subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosure schedules; may have been made for the purposes of allocating contractual risk between the parties to the Purchase Agreement instead of establishing these matters as facts; and are

subject to standards of materiality applicable to the contracting parties that may differ from those applicable to investors. Investors should not rely on the representations, warranties, and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the Company or any of its subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations, warranties, and covenants may change after the date of the Purchase Agreement, which subsequent information may or may not be fully reflected in the Company's public disclosures.

$75 Million Loan Facility with Hayfin

The Company entered into a Loan Agreement, dated as of June 30, 2020, (the "***Hayfin Loan Agreement***"), by and among the Company, certain of the Company's subsidiaries, Hayfin Services LLP, as administrative agent and collateral agent, and other funds managed by Hayfin Capital Management LLP, that provides the Company with a senior secured term loan in an aggregate principal amount of $50 million (the "***Hayfin Term Loan***"), which was funded on July 2, 2020 (the "***Hayfin Loan Closing Date***"), and an additional $25 million delayed draw term loan (the "***DD TL***" and together with the Hayfin Term Loan, the "***Loans***") in the form of a committed facility that is available for drawdown from the Hayfin Loan Closing Date (as defined below) to the first anniversary thereof (the "***Hayfin Loan Transaction***").

The Hayfin Loan Agreement does not provide for the issuance of warrants or other equity interests in the Company.

The proceeds of the Loans are permitted to be used for (i) working capital and general corporate purposes (including, without limitation, the funding of forecasted growth, compliance and capital expenditures initiatives), (ii) to consummate the refinancing of the BT Loan Agreement as defined and described below, and (iii) to pay transaction fees, costs and expenses incurred in connection with the Loan Agreement and related transactions.

Repayment; Maturity. The Loans, including any DD TL, if borrowed, mature on July 2, 2025 (the "***Maturity Date***"). The Hayfin Term Loan and the DD TL have no fixed amortization (i.e. accrued interest only is payable through the Maturity Date).

Interest Rate; Fees. The Loans will bear interest at a per annum rate equal to LIBOR (subject to a "floor" of 1.5%) plus a margin of 6.75%. Such margin is subject to step down after December 31, 2020 to 6.5% or 6.0% based on Total Net Leverage Ratio levels, as defined in the Hayfin Loan Agreement. The Company paid an upfront fee of 2% of the aggregate amount of the Loans on the Hayfin Loan Closing Date. The DD TL is subject to a commitment fee of 1% of the undrawn DD TL commitments, payable quarterly in arrears on the first day of each fiscal quarter.

Mandatory Prepayments. A mandatory prepayment of the Loans is required upon (i) the incurrence of any indebtedness in breach of the Hayfin Loan Agreement, in an amount equal to 100% of the proceeds of such indebtedness, (ii) the occurrence of an event of default under the Hayfin Loan Agreement that results in an acceleration of the Loans, in an amount equal to the portion of the Loans accelerated together with all related outstanding amounts under the Hayfin Loan Agreement, (iii) a change of control, in an amount equal to the aggregate Loans together with all related outstanding amounts under the Hayfin Loan Agreement, and (iv) the receipt of proceeds for certain asset dispositions or insurance events, in an amount equal to the net proceeds thereof. In addition, 50% of Excess Cash Flow, as defined in the Hayfin Loan Agreement, for any year is required to be applied to prepay the Loans, with step-downs to (i) 25% based on Total Net Leverage Ratio levels of less than 1.00:1.00, but greater than or equal to 0.50:1.00, and (ii) 0% based on Total Net Leverage Ratio levels of less than 0.50:1.00 as set out and defined in the Hayfin Loan Agreement.

Prepayment Penalties. The Hayfin Loan Agreement imposes the following penalties with respect to any voluntary prepayment and any mandatory prepayment (other than pursuant to the Excess Cash Flow sweep or resulting from insurance events and, with respect to disposal actions, only to the extent they relate to a sale of all or substantially all of the assets and properties of the Company and its subsidiaries): (i) make-whole during the first year after the Hayfin Loan Closing Date; (ii) 102% after the first year but on or before the end of the second year after the Hayfin Loan Closing Date; (iii) 101% after the second year but on or before the end of the third year after the Hayfin Loan Closing Date and (iii) par thereafter.

Representations; Covenants; Events of Default.

The Hayfin Loan Agreement contains customary representations and warranties by the Company and its subsidiaries, subject, in certain instances, to customary materiality, material adverse effect or knowledge qualifiers. The Hayfin Loan Agreement also contains (a) certain affirmative and financial covenants that impose certain reporting and/or performance obligations on the Company and its subsidiaries, including (i) maximum Total Net Leverage Ratio (as defined in the Hayfin Loan Agreement) of 5.0x through December 31, 2020, stepping down to 4.5x through June 30, 2021, stepping down to 4.0x through the Maturity Date, in each case tested quarterly; and (ii) minimum Liquidity (as defined in the Hayfin Loan Agreement) of $10 million, an at-all-times covenant tested monthly; (b) certain negative covenants that generally limit, subject to various exceptions, the Company and its subsidiaries from taking certain actions, including, without limitation, incurring indebtedness (including with respect to the incurrence of DD TL if the Total Net Leverage Ratio (pro forma for such DD TL) exceed 3.5x), making investments, incurring

liens, paying dividends and engaging in mergers and consolidations, sale and leaseback transactions and asset dispositions, and (c) customary events of default for financings of this type. The Loans and other obligations under the Hayfin Loan Agreement may be declared due and payable upon the occurrence and during the continuance of any event of default and become automatically due and payable upon the occurrence of customary bankruptcy or insolvency events of default.

The summary set forth above is not intended to be complete and is qualified in its entirety by reference to the full text of the Hayfin Loan Agreement, which is filed as Exhibit 10.36 to this Annual Report.

The Hayfin Loan Agreement contains representations and warranties by each of the Company and its subsidiaries that are parties to the Hayfin Loan Agreement, which were made only for purposes of that agreement and as of specified dates. The representations, warranties and covenants in the Hayfin Loan Agreement were made solely for the benefit of the lenders and agents parties to the Hayfin Loan Agreement; are subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosure schedules; may have been made for the purposes of allocating contractual risk between the parties to the Hayfin Loan Agreement instead of establishing these matters as facts; and are subject to standards of materiality applicable to the applicable contracting parties that may differ from those applicable to investors. Investors should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the Company or any of its subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations, warranties and covenants may change after the date of the Hayfin Loan Agreement, which subsequent information may or may not be fully reflected in the Company's public disclosures.

Repayment and Termination of the Blue Torch Loan Agreement

Item 1.02 Termination of a Material Definitive Agreement.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

Item 2.04 Trigger Events That Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement.

On July 2, 2020, the Company terminated the BT Loan Agreement and repaid the $72,013,859 outstanding balance of principal and accrued but unpaid interest under the BT Loan Agreement. As a result of the early repayment of the loans under the BT Loan Agreement, the Company also paid a prepayment premium in the amount of $1,439,438. The Company paid the outstanding balance, accrued but unpaid interest, and prepayment premium using a portion of the proceeds from the Preferred Stock Transaction and the Hayfin Loan Transaction.

Appointment of Two Directors

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

Effective July 2, 2020, pursuant to the terms of the Purchase Agreement and the Preferred Stock Amendment, the Company increased the size of the Board of Directors and appointed Martin P. Sutter and William A. Hawkins III to serve as Preferred Directors. It is expected that each will serve on at least one committee of the Board of Directors, which have yet to be determined. Each will have the same compensation arrangement as the Company's other non-employee directors.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

Board of Directors

Set forth below is certain information regarding our current directors. There are no family relationships among any of our directors or executive officers.

Name	Age	Since	Tenure	Independent	Committees
Richard J. Barry	61	2019	1	ü	CC*
M. Kathleen Behrens	67	2019	1	ü	COB, EC
James L. Bierman	67	2019	1	ü	AC, CC
J. Terry Dewberry	76	2009	11	ü	AC, NCG
Charles R. Evans	73	2012	8	ü	AC, NCG*
William A. Hawkins III	66	2020	NA	TBD	TBD
Charles E. Koob	75	2008	12		—
K. Todd Newton	57	2019	1	ü	AC*, EC
Martin P. Sutter	65	2020	N/A	TBD	TBD
Timothy R. Wright	62	2019	1		—
Neil S. Yeston	77	2012	8	ü	CC, EC*, SL

** = Chair; AC = Audit Committee; CC = Compensation Committee; COB = Chairperson of the Board; EC = Ethics & Compliance Committee; NCG = Nominating and Corporate Governance Committee; SL = Science and Research Liaison; TBD = to be determined.*

Pursuant to the terms of the Purchase Agreement and the Preferred Stock Amendment, the Company increased the size of the Board of Directors and appointed Martin P. Sutter and William A. Hawkins III to serve as Preferred Directors effective July 2, 2020. It is expected that each will serve on at least one committee of the Board of Directors, which have yet to be determined. The Board has not yet made a determination regarding the independence under the Nasdaq listing standards for director independence with respect to Mr. Hawkins or Mr. Sutter.

Richard J. Barry, age 61. Mr. Barry has served as a director of Sarepta Therapeutics, Inc. (SRPT), a genetic medicine company, since June 2015, and he has been a Partner and Advisory Board member of the San Diego Padres since 2009. Earlier in his career, he was a founding member of Eastbourne Capital Management LLC, a large equity hedge fund investing in a variety of industries, including health care, and served as the Managing General Partner and Portfolio Manager from 1999 to its close in 2010. Prior to that, he was a Portfolio Manager and Managing Director of Robertson Stephens Investment Management, an investment company, from 1995 until 1999. Before that, Mr. Barry spent over 13 years in various roles in institutional equity and investment management firms, including Lazard Frères, Legg Mason and Merrill Lynch. Mr. Barry has served as a Managing Member of GSM Fund, LLC, a fund established for the sole purpose of investing in Elcelyx Therapeutics, and previously served as a director of Elcelyx Therapeutics, Inc., a private pharmaceutical company, from 2013 until 2019. Mr. Barry previously served as a director of Cluster Wireless, LLC, a software company, from 2011 until 2014, and of BlackLight Power, Inc. (n/k/a Brilliant Light Power, Inc.), an energy research company, from 2009 until 2010. Mr. Barry holds a B.A. from Pennsylvania State University and is a member of its Shreyer's Honors College Advisory Board. Mr. Barry has served on the Board since June 2019 and was nominated as a director because of his substantial experience, including in the healthcare and biotechnology sectors.

M. Kathleen Behrens, Ph.D., age 67. Dr. Behrens has worked as an independent life sciences consultant and investor since December 2009. Dr. Behrens served as the Co-Founder, President and Chief Executive Officer, and as a director, of the KEW Group Inc., a private oncology services company, from January 2012 until June 2014. Earlier in her career, Dr. Behrens served as a general partner for selected venture funds for RS Investments, a mutual fund firm, from 1996 until December 2009. While Dr. Behrens worked at RS Investments, from 1996 to 2002, she served as a managing director at the firm and, from 2003 to December 2009, she served as a consultant to the firm. During that time, Dr. Behrens also served as a member of the President's Council of Advisors on Science and Technology (PCAST) from 2001 to 2009 and as chairwoman of PCAST's Subcommittee on Personalized Medicine, as well as the President, director and chairwoman of the National Venture Capital Association, an organization that advocates for public policy that supports the American entrepreneurial ecosystem, from 1993 until 2000. Prior to that, she served as a general partner and managing director for Robertson Stephens & Co., an investment company, from 1983 through 1996. Dr. Behrens has served as a member of the board of directors of each of Sarepta Therapeutics, Inc. (NASDAQ:

SRPT), a medical research and drug development company, since March 2009 (Chairwoman of the Board since April 2015) and IGM Biosciences, Inc. (NASDAQ: IGMS), a clinical stage biotechnology company focused on creating and developing IgM antibodies, since January 2019. She served as a director of Amylin Pharmaceuticals, Inc. (formerly NASDAQ: AMLN), a biopharmaceutical company, from 2009 until its sale in 2012 to Bristol-Myers Squibb Co. Prior to that, she served on the board of directors of Abgenix, Inc. (formerly NASDAQ: ABGX), a biopharmaceutical company, from 2001 until the company was sold to Amgen, Inc. in 2006. From 1997 to 2005, Dr. Behrens was a director of Science, Technology and Economic Policy for the National Research Council. Dr. Behrens was also a Co-Founder of the Coalition for 21st Century Medicine, a trade association for new generation diagnostics companies. Dr. Behrens holds a B.S. in biology and a Ph.D. in microbiology from the University of California, Davis. Dr. Behrens has served on the Board since June 2019 and was nominated as a director because of her substantial experience in the financial services and biotechnology sectors, as well as in healthcare policy.

James L. Bierman, age 67. Mr. Bierman served as President and Chief Executive Officer and as a member of the board of directors of Owens & Minor, Inc. (NYSE: OMI), a Fortune 500 company and a leading distributor of medical and surgical supplies, from September 2014 to June 2015. Previously, he served in various other senior roles at Owens & Minor, including President and Chief Operating Officer from August 2013 to September 2014, Executive Vice President and Chief Operating Officer from March 2012 to August 2013, Executive Vice President and Chief Financial Officer from April 2011 to March 2012, and Senior Vice President and Chief Financial Officer from June 2007 to April 2011. Earlier in his career Mr. Bierman served as Executive Vice President and Chief Financial Officer at Quintiles Transnational Corp. (formerly NASDAQ: QTRN). Quintiles was a market leader in providing product development and commercialization solutions to the pharmaceutical, biotech, and medical device industries. As a member of management, he helped lead the successful privatization of the company in 2004. Before joining Quintiles, Mr. Bierman was a partner with Arthur Andersen LLP from 1988 to 1998. Mr. Bierman currently serves on the board of directors of Tenet Healthcare Corporation (NYSE: THC), a Fortune 100 company and a diversified healthcare services company operating more than 500 facilities, acute care hospitals and outpatient centers, throughout the United States. He previously served on the board of directors of Team Health Holdings, Inc. (formerly NYSE: TMH) where as Independent Lead Director, he helped lead the successful privatization of the company in 2017. Team Health is one of the largest suppliers of outsourced healthcare professional staffing and administrative services to hospitals and other healthcare providers in the United States. Mr. Bierman earned his B.A. from Dickinson College and his M.B.A. at Cornell University's Johnson Graduate School of Management. Mr. Bierman has served on the Board since June 2019 and was nominated as a director because of his substantial operational and financial experience in the healthcare sector.

J. Terry Dewberry, age 76. Mr. Dewberry is a private investor with significant experience at both the management and board levels in the healthcare industry. He has extensive experience in corporate mergers and takeovers on both the buy and sell sides for consideration up to $5 billion. Mr. Dewberry has served on the boards of directors of several publicly traded healthcare products and services companies, including Respironics, Inc. (Nasdaq: RESP) (1998-2008), Matria Healthcare, Inc. (Nasdaq: MATR) (2006-2008), Healthdyne Information Enterprises, Inc. (1996-2002), Healthdyne Technologies, Inc. (1993-1997), Home Nutritional Services, Inc. (1989-1994) and Healthdyne, Inc. (1981-1996). From March 1992 until March 1996, Mr. Dewberry was Vice Chairman of Healthdyne, Inc. From 1984 to 1992, he served as President and Chief Operating Officer, and Executive Vice President of Healthdyne, Inc. Mr. Dewberry received a Bachelor of Electrical Engineering from Georgia Institute of Technology in 1967 and a Master of Professional Accountancy from Georgia State University in 1972. Mr. Dewberry has served on the Board since 2009 and was nominated as a director due to his extensive business and financial background and experience as a member of the boards of directors of other publicly traded companies and a member of the audit committee of at least one other public company.

Charles R. Evans, age 73. The Board named Mr. Evans Lead Director on March 9, 2018, and he served as Chairman from July 2, 2018 through June 2019. Mr. Evans has over 40 years of experience in the healthcare industry. He is currently President of the International Health Services Group, an organization he founded to support health services development in underserved areas of the world. Since 2009, he has served as a senior adviser with Jackson Healthcare, a consortium of companies that provide physician and clinical staffing, anesthesia management and information technology solutions for hospitals, health systems and physician groups. In addition, Mr. Evans is a Fellow in the American College of Healthcare Executives having previously served as Governor of the College from 2004 to 2007 and as Chairman Officer from 2008 to 2011. In 2012, he attained the Board Leadership Fellow credential of the National Association of Corporate Directors. Previously, Mr. Evans was a senior officer with Hospital Corporation of America (HCA), having managed various HCA divisions and completing his service with the responsibility for operations in the Eastern half of the country. Mr. Evans currently serves on the board of directors of Jackson Healthcare and WellStreet Urgent Care. Mr. Evans also serves on the boards of nonprofit organizations including American International Health Alliance and FaithBridge Foster Care. Mr. Evans has served on the Board since 2012 and was nominated as a director due to his healthcare management expertise.

William A. Hawkins III, age 66. Mr. Hawkins serves as a Senior Advisor to EW Healthcare Partners, a life sciences private equity firm. Mr. Hawkins is the former Chairman and CEO of Medtronic, Inc., a global leader in medical technology. He was at

Medtronic from 2002 until 2011. After retiring from Medtronic, he served as President and Chief Executive Officer of Immucor, Inc., a private equity backed global leader in transfusion and transplant medicine from October 2011 to July 2015. From 1998 to 2001 Mr. Hawkins served as President and Chief Executive Officer of Novoste Corporation (NASDAQ:NOVST), an interventional cardiology company. Prior to that, Mr. Hawkins served in a variety of senior roles at American Home Products, a consumer, pharma and medical device company, Johnson & Johnson, a healthcare company, Guidant Corporation, a medical products company, and Eli Lilly and Company, a global pharmaceutical company. Mr. Hawkins also serves as a director of Biogen Inc. (NASDAQ: BIIB), a biopharmaceutical company; Avanos Medical, Inc. (NYSE:AVNS), a medical technology company; as Chairman of Bioventus, LLC; as Chairman of 4 Tech; and as a director of AskBio, Cirtec, Virtue Labs, Immucor, Inc., Cereius, Inc. and Baebies, Inc., all of which are life science companies. He previously served on the board of Thoratec Corporation. Mr. Hawkins is Vice Chair of the Duke University Board of Trustees and is Chair of the Duke University Health System. Mr. Hawkins was elected as a member of the AIMBE College of Fellows and the National Academy of Engineering. He has a dual B.S.E.E. degree in Electrical and Biomedical Engineering from Duke University and a M.B.A. from the University of Virginia's Darden School of Business. Mr. Hawkins has significant leadership experience as a chief executive officer, significant knowledge of, and experience in, the healthcare industry and significant international experience. He also has extensive governance and public company board experience.

Charles E. (***"Chuck"***) ***Koob***, age 75. In 2007, Mr. Koob retired as a partner in the law firm of Simpson Thacher & Bartlett, LLP. While at that firm, Mr. Koob was the co-head of the Litigation Department and served on the firm's Executive Committee. Mr. Koob specialized in competition, trade regulation and antitrust issues. Throughout his 37-year tenure, he represented clients before the Federal Trade Commission, the Antitrust Division of the Department of Justice, and numerous state and foreign competition authorities. He received his B.A. from Rockhurst College in 1966 and his J.D. from Stanford Law School in 1969. Mr. Koob serves on the board of Stanford Hospital and Clinics. He previously served on the board of a private drug development company and MRI Interventions (OTCBB: MRIC), a publicly traded medical device company. Mr. Koob has served on the Board since 2008 and was nominated as a director due to his extensive legal expertise in representing both publicly traded and privately held businesses.

K. Todd Newton, age 57. Mr. Newton has served as Chief Executive Officer and as a member of the board of directors of Apollo Endosurgery, Inc. (NASDAQ: APEN), a medical device company, since July 2014. Earlier in his career, Mr. Newton served as Executive Vice President, Chief Financial Officer and Chief Operating Officer at ArthroCare Corporation (formerly NASDAQ: ARTC), a medical device company, from 2009 to June 2014. Prior to that, Mr. Newton served in a number of executive officer roles, including President and Chief Executive Officer and as a director, at Synenco Energy, Inc., a Canadian oil sands company, from 2004 until 2008. Mr. Newton was a Partner at Deloitte & Touche LLP, a professional services network and accounting organization, from 1994 to 2004. Mr. Newton holds a B.B.A. in accounting from The University of Texas at San Antonio. Mr. Newton has served on the Board since June 2019 and was nominated as a director because of his significant experience in the medical device sector as well as strong executive leadership experience.

Martin P. Sutter, age 65. Since 1985, Mr. Sutter has been the Co-Founder and a Managing Director of EW Healthcare Partners, previously known as Essex Woodlands Health Ventures, a healthcare-focused growth equity firm. Mr. Sutter has been directly involved with more than 30 of EW Healthcare Partners' portfolio company investments. Educated in chemical engineering and finance, Mr. Sutter has more than 35 years of management experience in operations, marketing, finance and venture capital. Mr. Sutter holds a Bachelor of Science degree from Louisiana State University and a Master of Business Administration from the University of Houston. He currently serves on the Boards of Abiomed, Inc. (NASDAQ: ABMD), Bioventus LLC and Prolacta Bioscience. He previously served on the boards of directors of the following EW Healthcare Partners' portfolio investments: ATS Medical (later acquired by Medtronic, Inc.); BioForm Medical (later acquired by Merz GmbH & Co KGaA); LifeCell (later acquired by Kinetic Concepts); St. Francis Medical (later acquired by Kyphon, Inc./Medtronic, Inc.); Confluent Surgical (later acquired by Tyco International/Covidien); and Rinat Neurosciences (later acquired by Pfizer, Inc.). We believe that Mr. Sutter's in-depth knowledge of the medical device industry, his skills as an investor in developing medical device companies, his extensive board experience and his position as a representative of a large stockholder in our Company qualify him to serve as a member of our Board of Directors.

Timothy R. Wright, age 62, joined the Company as its Chief Executive Officer on May 13, 2019. Mr. Wright has more than 30 years of experience in the pharmaceutical, biotech and medical devices industries. Most recently, Mr. Wright served as a Partner at Signal Hill Advisors, LLC, a consulting practice, since February 2011. Mr. Wright served as President and Chief Executive Officer of M2Gen Corp., a privately held cancer and health informatics company, between July 2017 and September 2018. Prior to M2Gen Corp., Mr. Wright served as Executive Vice President, Mergers and Acquisitions, Strategy and Innovation for Teva Pharmaceutical Industries Ltd. ("***Teva***"), a pharmaceutical company specializing in generic medicines, from April 2015 until August 2017. Before Teva, Mr. Wright was the founding partner of The Ohio State University Comprehensive Cancer Drug Development Institute. Mr. Wright also served as Chairman, Interim Chief Executive Officer and a director of Curaxis Pharmaceutical Corporation ("***Curaxis***"), a pharmaceutical company specializing in the development of drugs for the treatment

of Alzheimer's disease and various cancers, from July 2011 to July 2012. Curaxis had been experiencing financial difficulties prior to Mr. Wright's tenure and, as a result, the company filed for Chapter 11 bankruptcy in July 2012. Mr. Wright has been a director of Agenus, Inc. (NASDAQ: AGEN), an immune oncology company, since 2006 and its lead director since 2009. Mr. Wright also serves as Chairperson of The Ohio State University Comprehensive Cancer Center Drug Development Institute, serves as director of The Ohio State Innovation Foundation and sits on The Ohio State University College of Pharmacy Dean's Corporate Council. Over his career, Mr. Wright has served on boards of directors in North America, Europe and Asia. Mr. Wright earned a Bachelor's of Science in Marketing from The Ohio State University. Mr. Wright has served on the Board since June 2019 and was nominated as a director to bring the perspective of the Chief Executive Officer on the Board and also for the benefit of his many years of experience in the healthcare and pharmaceutical industry.

Neil S. Yeston, M.D., age 77 Dr. Yeston is the Past President of the New England Surgical Society and currently serves as Active Senior Staff, Department of Surgery at Hartford Hospital. During his association with Hartford Hospital, Dr. Yeston previously served in various roles including Vice President of Academic Affairs, Director of Corporate Compliance, Vice President of Quality Management and Director of the Section on Critical Care Medicine, Department of Surgery. In addition, Dr. Yeston was responsible for the enterprise wide acquisition of all biomedical engineering technology. Dr. Yeston has formerly served as Professor of Surgery at the University of Connecticut and the Assistant Dean, Medical Education at the University of Connecticut School of Medicine. Prior to his associations with Hartford Hospital and the University of Connecticut, Dr. Yeston served in various positions with the Boston University Medical Center including the Vice Chairman of the Department of Surgery, Associate Professor of Anesthesiology, Director Progressive Care Unit, and Associate Professor of Surgery. Dr. Yeston has served on the Board since 2012 and was nominated as a director because of his in-depth understanding of healthcare issues from the perspective of the practitioner, academician, administrator and executive.

Audit Committee and Audit Committee Financial Expert

The following directors serve on the Audit Committee: K. Todd Newton (Chair), James L. Bierman, J. Terry Dewberry, and Charles R. Evans, each of whom satisfies NASDAQ's independence standards for audit committee members. The Board has determined that each of Messrs. Bierman, Dewberry, and Newton is an "audit committee financial expert" as that term is defined by the SEC in Item 407(d)(5)(ii) of Regulation S-K.

Code of Business Conduct and Ethics

We have adopted a Code of Business Conduct and Ethics that applies to all of our employees, officers and directors, a copy of which is on our website at https://mimedx.gcs-web.com/corporate-governance/highlights. Any amendments to or waivers of the Code of Business Conduct and Ethics that require disclosure under applicable law or listing standards will be disclosed on our website at www.mimedx.com. We undertake to provide a copy to any person, without charge, upon written request to Secretary, MiMedx Group, Inc., 1775 West Oak Commons Court, NE Marietta, Georgia 30062.

Procedures by which Security Holders May Nominate Individuals for Election to the Board

To nominate a person for election as a director at an annual meeting of shareholders, the Company's Amended and Restated Bylaws require that timely notice of the nomination in proper written form, including all required information as specified in the Amended and Restated Bylaws, be mailed to the Secretary, at 1775 West Oak Commons Court, NE, Marietta, Georgia 30062. The Nominating and Corporate Governance Committee will consider for nomination candidates recommended by shareholders on the same basis as candidates recommended by members of the Board or other sources. Any proposed director candidate shall satisfy the criteria for Board membership set forth in the charter of the Nominating and Corporate Governance Committee or otherwise approved by the Nominating and Corporate Governance Committee and the Board from time to time.

Cooperation Agreement

The Company entered into a Cooperation Agreement, dated as of May 29, 2019 (the "***Cooperation Agreement***"), with M. Kathleen Behrens, K. Todd Newton, Richard J. Barry, Prescience Partners, LP, a Delaware limited partnership ("***Prescience Partners***"), its affiliates and Eiad Asbahi (Prescience Partners, together with Prescience Point Special Opportunity LP, Prescience Capital, LLC, Prescience Investment Group, LLC d/b/a Prescience Point Capital Management LLC and Mr. Asbahi, "***Prescience Point***"; Prescience Point, Dr. Behrens, Mr. Barry and Mr. Newton collectively, the "***Investor Group***"). With certain exceptions relating to breaches of the Cooperation Agreement, the Cooperation Agreement terminates at least five business days after the Company or the Investor Group delivers notice of termination (the "***Termination Date***") following the date of the 2020 Annual Meeting. Pursuant to the Cooperation Agreement, the Company nominated Dr. Behrens, Mr. Newton and Mr. Wright as three Class II director candidates for election to the Board at the 2018 Annual Meeting. The 2018 Annual Meeting was duly held on June 17, 2019, and Dr. Behrens, Mr. Newton, and Mr. Wright were elected to the Board. The Board also appointed Mr. Barry and

Mr. Bierman as Class III directors pursuant to the Cooperation Agreement. The Cooperation Agreement further provides for the Company and Prescience Point to identify and mutually agree upon an individual (the "***Mutual Designee***") to stand for election as a Class III director at the 2019 Annual Meeting. As of the date of this Form 10-K, the Board and Prescience Point have yet to identify the Mutual Designee for election as Class III directors at the 2019 Annual Meeting (which will be held in 2020).

The Cooperation Agreement provides Prescience Point with certain other rights with respect to designating replacement Board nominees and with respect to the designated directors' service on certain Board committees, as long as Prescience Point holds more than 5.0% of the outstanding shares of Common Stock. The Cooperation Agreement contains customary standstill restrictions, and through the Termination Date and subject to certain exceptions, Prescience Point is required to vote all of its shares of Common Stock at any annual or special meeting, and any consent solicitation of the Company's shareholders, in accordance with the recommendations of the Board. Pursuant to the Cooperation Agreement, the Company reimbursed Prescience Point for $500,000 of its reasonable, documented out-of-pocket fees and expenses incurred in connection with the matters related to the 2018 Annual Meeting.

Executive Officers

The following persons currently serve as our executive officers:

Timothy R. Wright, 62, became the Company's Chief Executive Officer in May 2019. The biography for Mr. Wright can be found under the heading "Board of Directors" above.

Peter M. Carlson, age 56, was appointed Chief Financial Officer in March 2020. He joined the Company as Executive Vice President - Finance in December 2019. From 2017 to 2018, Mr. Carlson served as Chief Operating Officer at Brighthouse Financial, Inc., where he helped establish the $200 billion (assets) U.S. life and annuity insurance company as a separate entity following its August 2017 spin-off from MetLife, Inc., one of the world's leading financial services companies. He was the Chief Accounting Officer at MetLife, Inc. from 2009 to 2017 where his global responsibilities included accounting, financial planning, tax, and investment finance. Prior to joining MetLife in 2009, Carlson was the Corporate Controller at Wachovia Corporation. He currently serves as a director of White Mountains Insurance Company (NYSE: WTM). Mr. Carlson holds a Bachelor of Science from Wake Forest University and is a trustee of the university. He is licensed as a certified public accountant in North Carolina and New York.

Mark P. Graves, age 55, was appointed Chief Compliance Officer in July 2018. Prior to joining the Company, he served as the U.S. leader for the global Patient Experience & Value function in the neurology division of UCB, Inc., a biopharmaceutical company. From 2011 to 2015, he was UCB's Deputy Compliance Officer involved in all aspects of compliance including the implementation and management of the company's corporate integrity agreement. Prior to that, Graves was Senior Director in the Office of Ethics and Compliance for the Pharmaceutical Products Division of Abbott Laboratories, as well as Deputy Ethics & Compliance Officer for Takeda Pharmaceuticals North America, Inc. and TAP Pharmaceutical Products, Inc. Prior to his pharmaceutical and biotech career, he practiced labor and employment law. Mr. Graves holds a B.A. in Criminology and Law, and a J.D., from the University of Florida as well as an MBA from the University of Chicago Booth School of Business.

William F. "Butch" Hulse IV, age 47, has served as General Counsel since December 2019. Prior to joining the Company, Mr. Hulse was a member of Dykema Gossett, PLLC, a national law firm since 2017. Prior thereto, he was with Acelity, LP, Inc. (formerly Kinetic Concepts, Inc.), a global medical technology company with leadership positions in advanced wound care, surgical solutions and regenerative medicine, from 2008 to 2017 in a variety of roles of increasing responsibility. From 2013 to 2017, he served as Acelity's Chief Compliance Officer and Senior Vice President for Enterprise Risk Management, Quality, and Regulatory. Prior to that, he served as Division General Counsel for Acelity's advanced wound care business unit and as Associate General Counsel for litigation matters. Mr. Hulse holds a Bachelor of Arts from Angelo State University and a J.D. from the Baylor University School of Law.

Scott M. Turner, age 55, has served as Senior Vice President, Operations and Procurement since April 2017. Mr. Turner oversees supply chain including donor recovery services, procurement, processing, and facilities. Mr. Turner joined the Company in April 2016 as Vice President, Procurement. Prior to joining the Company, Mr. Turner served as a director with Alvarez & Marsal North America, LLC in their Corporate Performance Improvement group from October 2015 until March 2016. Prior thereto, Mr. Turner served as Vice President, Supply Chain, with Larson-Juhl, a Berkshire Hathaway company, from June 2013 until September 2015. Additionally, Mr. Turner has more than 20 years of Supply Chain and Procurement leadership in life sciences at Shionogi and Johnson & Johnson, spanning the consumer, medical device, and pharmaceutical sectors domestically and overseas. Mr. Turner holds a Bachelor of Science in Commerce & Engineering from Drexel University and a President / Key Executives MBA from Pepperdine University.

Item 11. Executive Compensation

COMPENSATION DISCUSSION AND ANALYSIS

The Compensation Committee is responsible for evaluating and determining the compensation paid to the executive officers who are listed in the Summary Compensation Table (the "***NEOs***"). All components of compensation for the NEOs are then recommended by the Compensation Committee for approval by the Board. This Compensation Discussion and Analysis ("***CD&A***") pertains to 2019 compensation.

For 2019, the Company's NEOs were:

- Timothy R. Wright. Mr. Wright joined MiMedx as Chief Executive Officer on May 13, 2019.

- David Coles. Mr. Coles served as Interim Chief Executive Officer from July 2, 2018 until May 13, 2019. He was an employee of Alvarez & Marsal North America, LLC. We paid Alvarez & Marsal for Mr. Cole's services, as described below under "Agreements with Our Executive Officers-Agreement with Alvarez & Marsal to Employ Mr. Coles."

- Edward Borkowski. Mr. Borkowski served as Executive Vice President and Interim Chief Financial Officer from June 7, 2018 until his resignation on November 15, 2019. Subsequently, he served as Acting Chief Financial Officer through March 17, 2020 pursuant to a Separation and Transition Services Agreement, as described below under "Agreements with Our Executive Officers - Agreement with Mr. Borkowski."

- Peter M. Carlson. Mr. Carlson joined the Company as Executive Vice President - Finance in December 2019. He became Chief Financial Officer in March 2020.

- I. Mark Landy. Mr. Landy served as Executive Vice President and Chief Strategy Officer from December 5, 2018 until the Company eliminated this role effective September 16, 2019 (which terminated his employment).

- Scott M. Turner. Mr. Turner has served as Senior Vice President—Operations & Procurement since December 5, 2018 and continues to serve in such role.

Prior Say-on-Pay Proposal and Shareholder Support

The Company conducted an advisory say-on-pay vote at the 2016 annual meeting of shareholders, where approximately 95% of the votes cast were in favor of the proposal. The Board and Compensation Committee reviewed these final vote results together with the other factors and data discussed in this Compensation Discussion and Analysis and determined that, given the significant level of support of the Company's approach to compensation by its shareholders, no changes to its executive compensation policies and related decisions were necessary at such time.

The next shareholder vote with respect to say-on-pay and the frequency of the say-on-pay vote will occur at the 2019 Annual Meeting, which will be held in 2020. The Board intends to recommend annual say-on-pay votes to allow for more timely shareholder feedback.

Compensation Philosophy

MiMedx's executive compensation philosophy is based on the belief that competitive compensation is essential to attract and retain highly-qualified executives and incentivize them to achieve the Company's operational and financial goals. In line with this philosophy, the Company's practice is to provide total compensation that is competitive with comparable positions at peer organizations. The compensation program is based on individual and organizational performance and includes components that reinforce the Company's incentive and retention-related compensation objectives.

The principal components of compensation for MiMedx's NEOs are base salary, annual cash incentives and long-term equity incentives. Cash incentives are included to encourage and reward effective performance relative to the Company's near-term plans and objectives. Equity incentives are included to promote longer-term focus, to help retain key contributors and to align the interests of the Company's executives and shareholders.

Pay-Setting Process

Compensation Consultant

Beginning in mid-2018, the Compensation Committee engaged an independent executive compensation consulting firm, Meridian Compensation Partners, LLC ("***Meridian***"), to provide compensation consulting services relating to (1) NEO compensation, (2) peer group composition and practices, (3) incentives design, (4) compensation governance, (5) amount and form of director compensation and (6) alternatives to equity compensation. Meridian's services were provided only to the Compensation Committee, and the Compensation Committee determined that Meridian's work did not raise any conflict of interest.

In October, 2019, following changes in the membership of the Compensation Committee and the Board, the Compensation Committee engaged a new, independent executive compensation consulting firm, Aon Consulting, Inc. through its Radford subdivision ("***Radford***"), to replace Meridian and to provide compensation consulting services relating to (1) NEO compensation, (2) peer group composition and practices, (3) incentives design, (4) compensation governance, (5) amount and form of director compensation and (6) alternatives to equity compensation. Radford's services were provided only to the Compensation Committee, and the Compensation Committee determined that Radford's work did not raise any conflict of interest.

Use of a Peer Group

In making compensation decisions, the Compensation Committee has considered the recommendations of the CEO and of a senior HR executive, which, in turn, have been informed by a compensation analysis of the practices of peer group companies, which are publicly-traded companies in the medical device, pharmaceuticals, biotechnology and life sciences sectors of the healthcare industry. The peer group was determined primarily using organizational criteria, revenue, market capitalization, and industry sector. Organizational criteria include number of employees as well as qualitative factors such as industry, markets, and development stage. The data from the peer group companies for the NEOs provides the Compensation Committee with a benchmark that it views as a point of reference, but not as a determining factor, for the compensation of the NEOs. In 2019, the Company's peer group was as follows:

Abiomed, Inc.	Geron Corporation	LivaNova PLC
Acorda Therapeutics, Inc.	Halozyme Therapeutics, Inc.	Momenta Pharmaceuticals, Inc.
AMAG Pharmaceuticals, Inc.	ImmunoGen, Inc.	Newlink Genetics Corp.
Array BioPharma, Inc.	Infinity Pharmaceuticals, Inc.	OPKO Health, Inc.
CryoLife, Inc.	Insulet Corporation	Osiris Therapeutics, Inc.
DexCom, Inc.	Insys Therapeutics, Inc.	Seattle Genetics, Inc.
Exelixis, Inc	Ionis Pharmaceuticals, Inc.	Spectrum Pharmaceuticals, Inc.
Genomic Health, Inc.	Ironwood Pharmaceuticals, Inc.	Vanda Pharmaceuticals, Inc.
		Wright Medical Group, Inc.

In order to compete effectively for top executive-level talent, the Compensation Committee generally targets cash compensation for the NEOs between the 50th and 60th percentile and long-term equity compensation between the 60th and 75th percentile of compensation paid to similarly-situated executives of the companies comprising the peer group. However, in practice and in the case of 2019, total compensation actually awarded by the Compensation Committee has generally lagged these targets primarily due to the award of below-median long-term incentives. Although peer data and compensation survey data are useful guides for comparative purposes, the Compensation Committee believes that a successful compensation program also requires the application of judgment and subjective determinations of individual performance. In that regard, the Compensation Committee applies its judgment in reconciling the program's objectives with the realities of attracting and retaining key employees.

2019 Compensation Components

Base Salaries

MiMedx employees, including its NEOs, are paid a base salary commensurate with the responsibilities of their positions, the skills and experience required for the position, their individual performance, business performance, labor market conditions, and with reference to peer company salary levels. Base salaries may be increased depending on the compensation of comparable positions within the peer group companies and published compensation surveys, the executive's responsibilities, skills, expertise, experience and performance, the executive's contributions to the Company's results, and the overall performance of the Company compared to its peer group and other participants within the industry. In determining the increases, the Compensation Committee relies on judgment about each individual, as well as on recommendations from its compensation consultant and senior management, rather than applying a stated formula. Base salaries to the NEOs in 2019 were as follows:

NEO	Base Salary	Revised Base Salary[1]
Mr. Wright	$750,000	n/a
Mr. Borkowski	$550,000	$600,000
Mr. Carlson	$525,000	n/a
Mr. Landy	$425,000	$455,000
Mr. Turner	$340,000	$355,000

(1) During 2019, in recognition of Mr. Borkowski's assumption of the duties of Interim Chief Financial Officer, the Board increased Mr. Borkowski's base salary to $600,000. The Board also increased Mr. Landy's base salary to $455,000 and Mr. Turner's to $355,000 during 2019 following their assumption of increased responsibilities.

Annual Non-Equity Incentive Awards

Historically, the Company has adopted an annual non-equity incentive plan in which the NEOs participate. Through this plan, the Company delivers a target bonus opportunity expressed as a percentage of each executive's base salary as shown below. During 2019, following Mr. Borkowski's assumption of the duties of Interim Chief Financial Officer, the Board increased Mr. Borkowski's target annual incentive from 60% to 65% of his base salary.

NEO	Base Salary	Target Annual Incentive as a Percent of Base Salary	Target Annual Incentive	Bonus Paid in 2019
Mr. Wright	$750,000	100%	$750,000	$720,000
Mr. Borkowski	$600,000	65%	$390,000	n/a[1]
Mr. Carlson	$525,000	55%	$288,750	n/a[2]
Mr. Landy	$455,000	50%	$227,500	n/a[3]
Mr. Turner	$355,000	40%	$142,000	$136,320

(1) The Company made payments to Mr. Borkowski pursuant to Separation and Transition Services Agreement in lieu of, among other things, his annual incentive.
(2) Mr. Carlson joined the Company effective December 16, 2019 and therefore was not eligible for an annual incentive for 2019.
(3) The Company eliminated Mr. Landy's role during 2019 and made payments to him in 2020 equal to one times his base salary and target annual incentive.

However, 2019 was a year of rapid and significant change for the Company. Ultimately, the Board did not approve an annual incentive plan for 2019 due to the following factors:

- a rapidly changing financial forecast following adverse insurance coverage decisions relating to the Company's products in late 2018 and the reduction in force in December 2018;
- the failure to complete the audit of the financial statements for the year ended December 31, 2018, which also affected the Company's ability to establish meaningful quantitative goals for 2019;
- the adoption of a new strategic plan which addressed the changing regulatory landscape for several of the Company's products and investments related to future BLA products; and
- changes in several of the Company's key officers, including its CEO and CFO.

Nevertheless, the Board determined that it was important to grant bonuses for 2019 in recognition of extraordinary efforts during the year, to retain key leaders during a period of significant change and risk, and for internal pay equity. For 2019, the Board authorized the Company to pay discretionary bonuses to each of the NEOs who was still employed by the Company at the end of the year equal to 96% of each NEO's target annual incentive as follows: Mr. Wright - $720,000; and Mr. Turner - $136,320. Mr. Carlson joined the Company on December 15, 2019 and was not eligible for an annual incentive award in 2019.

For 2020, the Committee and the Board have adopted a managing incentive plan ("MIP"), which is an annual cash incentive plan designed to incentivize and reward achievement of the current year's financial and operational goals with three equally-weighted performance criteria - revenue, Adjusted EBITDA, and individual performance goals. Potential payouts under the 2020 MIP are capped at 1.5 times an executive's target bonus.

Long-Term Equity Incentives

All equity incentive awards are granted under the Company's 2016 Equity and Cash Incentive Plan (the "***2016 Plan***"), which was approved by shareholders in 2016. The 2016 Plan is designed to align the interests of the Company's Named Executive Officers and other MiMedx officers, members of management and key employees with the interests of the Company's shareholders, and serve as a key retention tool. Restricted stock vests over a period of time, generally pro rata annually over three years. The Company generally makes its an annual equity grant to a broad group of its management employees, including the NEOs in February or March of each year. The Company also typically grants restricted stock to certain newly-hired executive officers in connection with the commencement of their employment by the Company.

The Committee believes that equity grants are a positive motivator for the Company's officers, management and key employees to focus their strategy and efforts on the Company's long-term goals. Working toward the long-term growth of the price of the Company's stock produces the ultimate financial gain for the executives' equity awards and increase in value for the Company's shareholders.

In recent years, the Compensation Committee has granted only restricted stock awards, rather than a mix of stock and stock options to conserve the number of shares available under the 2016 Plan. The Compensation Committee believes that restricted stock awards are an effective form of equity compensation because the vesting period is a strong retention tool for NEOs and other key executives. Restricted stock awards increase in value as the Company's stock price increases over time, but they also continue to have value in the event of a stock price decline. Thus, unlike stock options, restricted stock does not lose its retention value in the event of a decline in stock price.

All awards of restricted stock granted to Named Executive Officers in 2019 were approved by the Compensation Committee for recommendation to the full Board for approval. All awards of restricted stock granted to all other eligible participants in the 2016 Plan were determined and approved by the Compensation Committee.

In determining the approved level of equity grants, the Compensation Committee considers the individual's target annual long-term incentive value, the Company's overall option "overhang," the employee's level of responsibility and performance, prior equity awards, comparative compensation information, and the anticipated expense to the Company. For 2019, all awards of restricted stock were dated and priced as follows:

- All awards of restricted stock to current employees were granted and priced as of the close of the business day on which the Committee approved the grant.
- All awards of restricted stock granted to newly-hired employees were granted and priced as of the later of the business day on which the Board approved such grants or the date of employment.

The Committee establishes vesting schedules for awards under the 2016 Plan at the time of the grant. To optimize the retention value of the awards and to orient recipients to the achievement of longer-term goals, objectives and success, awards typically vest in three equal installments on the first, second and third anniversaries of the Grant Date. The Company generally makes its an annual equity grant to a broad group of its management employees, including the Named Executive Officers, in February or March of each year. In 2019, all equity-based awards were issued under plans previously approved by the Company's shareholders.

2019 Restricted Stock Grants to Named Executive Officers

The Compensation Committee's philosophy with respect to annual grants is to benchmark long-term equity incentive awards at the 60th to 75th percentile of awards to similarly-situated executives of companies in the peer group. However, the actual amount of equity awards granted to the NEOs in 2019 was less than the benchmark target grant value in order to conserve the number of shares available for awards under the 2016 Plan. In general, in determining the level of equity grants, the Compensation Committee considers the individual's target annual long-term incentive value, the Company's unexercised and unvested grants, the employee's level of responsibility and performance, prior equity awards, comparative compensation information, and the anticipated expense to the Company.

Grants to Current Officers

On February 21, 2019, the Company granted Mr. Borkowski 203,305 shares of restricted stock that were required to be granted to him pursuant to the Company's agreement with him. On April 26, 2019, the Company granted each of Messrs. Landy and Turner 279,271 and 52,067 shares of restricted stock, respectively. It made no grant to its then-CEO, Mr. Coles, because he was an employee of Alvarez & Marsal. The grant to Mr. Turner vest pro rata annually over three years.

Grants to Newly-Hired Officers

In addition to the annual grants described above, the Company made certain grants of restricted stock to newly-hired employees during 2019. On May 6, 2019, the Company granted Mr. Wright 681,818 shares of restricted stock upon his appointment as Chief Executive Officer, scheduled to vest pro rata annually over three years; refer to the discussion "*Agreement with Mr. Wright*" below. In addition, in connection with the commencement of Mr. Carlson's employment with the Company, the Company made a $350,000 restricted stock grant to Mr. Carlson on December 16, 2019 that vests pro rata annually over three years, and a $1 million restricted stock grant that vests upon the achievement of each of four discrete performance goals; refer to the discussion "*Agreement with Mr. Carlson*" below. Each of these awards will be settled in a number of shares of common stock based on our stock 30 days after the Company first becomes current with its SEC reporting obligations.

Agreements with our Executive Officers

Agreement with Alvarez & Marsal to employ Mr. Coles

The Board appointed Mr. Coles as Interim Chief Executive Officer of the Company, effective as of July 2, 2018. In connection with his appointment, the Company entered into an engagement letter with Alvarez & Marsal North America, LLC ("***A&M***"), where Mr. Coles had been employed since 1997, providing for Mr. Coles' services and the services of additional A&M employees as needed to assist Mr. Coles in the execution of his duties. Under the terms of the engagement letter, during his service at the Company, Mr. Coles continued to be employed by A&M and was not entitled to receive any compensation directly from the Company or participate in any of the Company's employee benefit plans. The Company instead paid A&M an hourly rate of $975 per hour for Mr. Coles' services. In 2019, the Company paid A&M $908,663 for Mr. Coles' services. Mr. Coles resigned on May 13, 2019 upon the hiring of Mr. Wright as our permanent Chief Executive Officer.

Agreement with Mr. Wright

In connection with his appointment as Chief Executive Officer in May 2019, Mr. Wright entered into a letter agreement (the "Letter Agreement") with the Company that provides for an annual base salary of $750,000. The Company agreed in the Letter Agreement that he will be eligible to participate in the MIP with an annual target cash bonus amount equal to one hundred percent (100%) of his base salary. The Letter Agreement also provided for a special one-time signing bonus of $500,000, which was subject to repayment in full in the event that Mr. Wright resigned without "good reason" or had his employment terminated by the Company for "cause," in each case within 12 months following the commencement of his employment with the Company. The Letter Agreement also provides that Mr. Wright's MIP bonus would not be prorated for 2019, and that the Compensation Committee of the Board had approved and recommended to the Board for approval a minimum payout of not less than fifty percent (50%) of what his target bonus would have been if the Board had adopted the 2019 MIP. For 2019, the Company paid Mr. Wright a discretionary bonus in lieu of his target MIP bonus, as discussed above under "Annual Non-Equity Incentive Awards."

In addition, pursuant to the Letter Agreement, the Company granted Mr. Wright a restricted stock award with a value of $3,375,000 as of the date that Mr. Wright commenced employment with the Company, which vests pro rata annually over three years and is subject to the terms and conditions of the 2016 Plan. In addition, the Letter Agreement provides that, following 2019, Mr. Wright will have a target long-term incentive award in an amount equal to four hundred and fifty percent (450%) of his then-current annual base salary.

The Letter Agreement further provided that in the event of the termination of Mr. Wright's employment by the Company other than for "cause" or by Mr. Wright for "good reason," Mr. Wright will be eligible to receive the following, subject to the execution and non-revocation of a release of claims (and continued compliance with any applicable restrictive covenant obligations): (i) a severance payment equal to 24 months of his then-current annual base salary plus two times his then-current annual target bonus amount and (ii) provided that Mr. Wright timely elects continued coverage under COBRA, continued participation in applicable Company benefit plans for him and his eligible dependents at active employee rates for 24 months following the termination of Mr. Wright's employment. Notwithstanding the foregoing, in the event that Mr. Wright's employment with the Company is terminated following a "change in control" for reasons other than death, disability, retirement, termination by the Company for "cause" or termination by Mr. Wright without "good reason," Mr. Wright will be eligible to receive the following, subject to the execution and non-revocation of a release of claims (and continued compliance with any applicable restrictive covenant obligations): (i) a severance payment equal to 30 months of his then-current annual base salary plus 2.5 times his then-current annual target bonus amount, (ii) provided that Mr. Wright timely elects continued coverage under COBRA, continued participation in applicable Company benefit plans for him and his eligible dependents at active employee rates for 30 months following the termination of Mr. Wright's employment and (iii) continued participation in life or other similar insurance or death benefit plans (excluding short-term or long-term disability insurance) for 30 months following the termination of Mr. Wright's employment and at the Company's expense.

The Letter Agreement also entitles Mr. Wright to certain relocation and commuting benefits.

Agreements with Mr. Borkowski

The Board appointed Mr. Borkowski, an Executive Vice President of the Company, as interim Chief Financial Officer effective June 6, 2018. In 2018, Mr. Borkowski received an annual salary of $550,000 and a target annual performance bonus of 60% of his base salary. The Board increased his salary and target bonus to $600,000 and 65%, respectively, during 2019.

The Company awarded Mr. Borkowski two restricted stock grants on February 21, 2019: one for 100,000 shares, one-third of which vested immediately and the other two-thirds were to vest ratably over a two-year period from the date of grant; and the other for 103,305 shares was to vest ratably over a two-year period from the date of grant. These awards were contemplated, but not granted, at the time Mr. Borkowski joined the Company. The Company made these grants with an abbreviated vesting schedule to approximate the result as if they had been granted as originally agreed because the grants were made nearly a year later than agreed.

In addition, the Company agreed to provide Mr. Borkowski severance, both in connection with a change in control and other than in connection with a change in control. The Company entered into a double-trigger Change in Control Severance Agreement with Mr. Borkowski, which provided for severance payments equal to 1.75 times his base salary and target bonus; and continuation of benefits for the period for which the severance is computed. The Company also entered into a severance agreement with Mr. Borkowski that was not conditioned upon a change in control and which provided for severance payments equal to 1.0 times his annual base salary plus target bonus, plus continuation of benefits for the period for which the severance is computed, if his employment was terminated for qualifying reasons. Mr. Borkowski was also eligible for relocation benefits.

On November 18, 2019, the Company entered into a Separation and Transition Services Agreement (the “Transition Agreement”) with Mr. Borkowski pursuant to which (i) he 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, (ii) he agreed to perform the duties of the Acting Chief Financial Officer with respect to filing the 2018 Form 10-K and assist with the transition of his duties, and (iii) until March 31, 2020, he agreed to provide services as may be requested by the Company with respect to matters related to the 2018 Form 10-K and the Company’s Annual Report on Form 10-K for the fiscal year ending December 31, 2019. The Agreement provided for the Company to make special payments to Mr. Borkowski in installments as follows: (i) $1,700,000, which was paid within seven business days following the Transition Agreement, (ii) $1,750,000 which was paid following the filing of the 2018 Form 10-K with the SEC; and (iii) after March 31, 2020, $500,000 which was paid following the execution and delivery of a supplemental release by Mr. Borkowski. These payments were, among other things, in lieu of his equity grant and annual incentive for 2019. Mr. Borkowski forfeited all restricted stock owned by him which had not already vested, and all other claims to stock and other benefits. The Agreement also includes terms and conditions governing the Company’s and Mr. Borkowski’s general release of claims and other customary provisions.

Agreement with Mr. Carlson

The Company entered into an agreement with Mr. Carlson effective December 16, 2019 to employ him as Executive Vice President - Finance. The Company later named Mr. Carlson Chief Financial Officer effective March 18, 2020. Pursuant to the Company’s agreement with Mr. Carlson, he receives an annual base salary of $525,000 and will be eligible for a target annual incentive of fifty-five percent (55%) of his base salary and a target long-term incentive equal to two hundred percent (200%) of his base salary. In addition, he received (i) a special one-time signing bonus of $50,000 (which is subject to repayment in full in the event that he resigns or has his employment terminated by the Company within 12 months following the commencement of his employment with the Company), (ii) a restricted stock grant with a value of $350,000 which vests pro rata annually over three years, and (iii) a restricted stock grant with a value of $1,000,000, which vests upon the achievement of each of four discrete performance goals.

Agreement with Mr. Landy

On September 16, 2019, the Company eliminated the position of Chief Strategy Officer and terminated the employment of Mr. Landy without cause. Effective April 23, 2020, the Company entered into a Termination Agreement with Mr. Landy pursuant to which the Company will pay Mr. Landy twelve (12) months of his salary ($425,000) and target bonus (50%) that was in effect on the day his position was eliminated.

Additional Compensation Practices and Policies

Perquisites

The Company generally does not provide executive officers with perquisites and other personal benefits beyond the Company benefits offered to similarly situated employees, with the following exception: when the Company hosts performance incentive trips for its best-performing sales people, it requires certain executives to attend and assumes the incremental cost if the executive's spouse attends, and when this occurs the Company reports the aggregate incremental travel expenses of the spouse as a perquisite. Also, during the Company's transition, when its ability to attract and retain executives was reduced, the Company agreed to reimburse certain executives (Messrs. Wright and Borkowski) for commuting and transportation expenses between their respective homes and our corporate headquarters, temporary lodging, relocation and rental car expenses, and paid a tax-gross up on these amounts.

Stock Ownership Guidelines

The Board has adopted stock ownership guidelines that apply to the NEOs. Under the guidelines, covered persons are required to own stock, including unvested time-based restricted stock, equal to certain multiples of their annual cash compensation:

Person Subject to Policy	Requirement
CEO	3.0X
CFO	2.0X
General Counsel	1.5X

Until such time as the NEO reaches his or her applicable threshold and subject to certain exceptions, the NEOs are required to hold 100% of the shares of Common Stock awarded to him/her from the Company or received upon vesting of restricted stock and upon exercise of stock options (net of any shares utilized to pay for tax withholding and any exercise price).

However, the Board has suspended the stock ownership guidelines until the Company becomes current in its SEC reporting obligations since subject persons may be prohibited by applicable insider trading laws from buying or selling Company securities. We expect to implement similar requirements once the Company's officers are permitted to buy Company stock.

Recoupment of Compensation

The Board adopted a recoupment (clawback) policy, effective April 1, 2016, covering executive officers of the Company. The policy provides that if the Company is required to restate its financial results due to material noncompliance with financial reporting requirements under the securities laws, the Compensation Committee may seek reimbursement of any cash or equity-based bonus or other incentive compensation paid or awarded to the officer or effect cancellation of previously granted equity awards to the extent the bonus or incentive compensation was based on erroneous financial data and was in excess of what would have been paid to the officer under the restatement.

With the completion of the restatement of Company's previously issued consolidated financial statements and financial information, the Compensation Committee has reviewed the annual non-equity incentive awards paid to executive officers based on financial performance for the years 2015 and 2016, and the amounts that would have been paid to such officers under the restated financial statements. In addition, the Compensation Committee has reviewed the annual non-equity incentive awards paid to executive officers for 2017 and 2018 (which had never been published and therefore technically not restated), and the amounts that would have been paid to such officers under the corrected financial statements. This review determined that the Company paid annual non-equity incentive awards between 2015 and 2018 to the following persons in excess of what would have been paid to such executive officers under the restated or revised financial metrics, by the following, aggregate amounts: our former Chief Executive Officer, Mr. Petit - $468,504; our former Chief Financial Officer, Mr. Senken - $215,550; our former President, Mr. Taylor - $356,555; our former General Counsel, Ms. Haden - $183,725; our former Interim Chief Financial Officer, Mr. Borkowski - $88,000; our former Chief Strategy Officer, Mr. Landy - $31,267; and Mr. Turner - $28,933. (The Company did not grant any equity awards based on incorrect financial metrics.)

The Compensation Committee notes that the Company effectively recovered $26.3 million of vested, unexercised options and unvested restricted stock as a result of the Board's determination in September 2018 that the terminations of employment of Messrs. Petit, Senken and Taylor were "for cause," which resulted in the forfeiture of those awards. Under the Plans, all unvested restricted stock awards and vested and unvested stock option awards were forfeited, as follows:

Former NEO	Options Forfeited	Value on 9/20/2018 at $6.20 per share	Unvested Restricted Stock Forfeited	Value on 9/20/2018 at $6.20 per share	Total Value of Equity Forfeited
Petit	2,867,820	$12.1 million	361,667	$2.2 million	$14.3 million
Senken	887,107	$3.7 million	120,368	$0.7 million	$4.4 million
Taylor	1,558,221	$6.2 million	229,234	$1.4 million	$7.6 million
TOTAL	**5,313,148**	**$22.0 million**	**711,269**	**$4.3 million**	**$26.3 million**

(The value of forfeited options is based on the closing price of Common Stock on the date of forfeiture, which was $6.20 per share on September 20, 2018, less the exercise price. The value of forfeited restricted stock is based on the closing price of Common Stock on the date of forfeiture.)

The Compensation Committee also notes that on November 26, 2019, the SEC filed suit against Messrs. Petit, Senken and Taylor in the U.S. District Court for the Southern District of New York, including claims for relief as to Messrs. Petit and Senken for the disgorgement of all bonuses and all incentive-based and equity-based compensation pursuant to Section 304 of the Sarbanes-Oxley Act of 2002, among other claims for relief. The Committee further notes that Messrs. Landy and Turner only became executive officers in December 2018 and therefore were subject to the policy for less than one month.

In view of the pending criminal trials against Messrs. Petit and Taylor, and the SEC's civil claims against Messrs. Petit, Taylor, and Senken, the Compensation Committee has not yet reached a final determination as to whether or how to recoup the amounts previously paid to these executives or to the other executives.

Anti-Hedging and Anti-Pledging Policies

Hedging transactions may permit the ownership of Company securities without the full risks and rewards of ownership. If a director, officer or employee engages in hedging transactions with respect to Company securities, he or she may no longer have the same objectives as the Company's other shareholders. For this reason, the Company prohibits directors, officers and employees from engaging in hedging transactions in Company securities, subject to exceptions that may be granted in the sole discretion of the Company's General Counsel in limited circumstances.

Securities held in a margin account as collateral for a margin loan may be sold by the broker without the customer's consent if the customer fails to meet a margin call. Similarly, securities pledged as collateral for a loan may be sold if the borrower defaults on the loan, including at a time when the pledgor is aware of material nonpublic information or otherwise is not permitted to trade in Company securities. For these reasons, the Company prohibits directors, officers and other employees from holding Company securities in a margin account or otherwise pledging Company securities as collateral for a loan.

Compensation Risk Assessment

On an ongoing basis, the Compensation Committee considers the risks inherent in the Company's compensation programs. With the change in the structure of the annual non-equity incentive compensation awards in late 2018, which de-emphasized revenue, the Compensation Committee believes that our compensation policies and practices do not encourage excessive and unnecessary risk-taking, and that the level of risk that they do encourage is not reasonably likely to have a material adverse effect on the Company. The Compensation Committee believes that the design of our compensation policies and practices encourages our employees to remain focused on both our short- and long-term goals.

COMPENSATION COMMITTEE REPORT

The Compensation Committee has reviewed the Compensation Discussion and Analysis in this Annual Report and discussed it with management. Based on its review and discussions with management, the Compensation Committee recommended to the Board that the Compensation Discussion and Analysis be included in this Annual Report and in the proxy statement for the Company's 2019 annual meeting of shareholders. This report is provided by the following independent directors, who comprise the Compensation Committee:

Richard J. Barry, Chair *(member of the Committee since June 2019)*
James L. Bierman *(member of the Committee since July 2019)*
Neil S. Yeston *(member of the Committee since September 2012)*

July 6, 2020

CEO Pay Ratio

In 2019, we paid total annual compensation to our median employee of $62,995. The annual total compensation of our CEO in 2019, as reported in the Summary Compensation Table, was $5,069,353. Based on this information, for 2019 the ratio of the annual total compensation of our CEO to the median annual total compensation of all employees was 80 to 1. (We note that the compensation paid to our CEO for 2019 was for a partial year, and we estimate that he would have received approximately$5,372,238 over the course of a full year, which equates to a ratio of 85 to 1.) We determined our median employee using all income as shown in Form W-2 box 1 for all employees other than our CEO, based on information as of December 31, 2019. As permitted by SEC rules, we excluded all non-U.S. employees in determining the median employee, which consisted of a single employee in Canada. The total number of U.S. and non-U.S. employees as of December 31, 2019 was 696.

2019 SUMMARY COMPENSATION TABLE

Name and Principal Position	Period	Salary	Bonus[6]	Stock[7] Awards	Option Awards	Non-Equity Incentive Plan Compensation Awards	All Other[8] Compensation	Total
Timothy R. Wright,[1] *Chief Executive Officer*	2019	$447,115	$1,220,000	$3,375,000	$0	$0	$27,239	$5,069,354
David Coles,[2] *Former Interim Chief Executive Officer*	2019	$0	$0	$0	$0	$0	$0	$0
	2018	$0	$0	$0	$0	$0	$0	$0
Edward Borkowski,[3] *EVP and Interim Chief Financial Officer*	2019	$597,885	$0	$610,014	$0	$0	$4,095,931	$5,303,830
	2018	$363,846	$150,000	$0	$0	$330,000	$47,294	$891,140
Peter M. Carlson,[4] *EVP - Finance*	2019	$24,231	$0	$1,349,994	$0	$0	$0	$1,374,225
I. Mark Landy,[5] *EVP and Chief Strategy Officer*	2019	$367,001	$0	$673,043	$0	$0	$690,924	$1,730,968
	2018	$327,788	$100,000	$199,824	$0	$117,250	$0	$744,862
Scott M. Turner, *SVP, Operations & Procurement*	2019	$351,596	$136,320	$125,481	$0	$0	$6,059	$619,456
	2018	$302,788	$0	$156,592	$0	$108,500	$9,978	$577,858

(1) The Board appointed Mr. Wright as Chief Executive Officer effective May 13, 2019.

(2) Mr. Coles served as Interim Chief Executive Officer from July 2, 2018 until May 12, 2019. The Company paid his employer, A&M, $908,663 and $1,147,751 for Mr. Coles' services in 2019 and 2018, respectively.

(3) Mr. Borkowski served as Interim Chief Financial Officer from June 6, 2018 until his resignation effective November 15, 2019. Subsequently, he served as Acting Chief Financial Officer.

(4) The Board appointed Mr. Carlson EVP - Finance effective December 16, 2019. The Company later named Mr. Carlson Chief Financial Officer effective March 18, 2020.

(5) Mr. Landy served as Executive Vice President and Chief Strategy Officer from December 5, 2018 until the Company eliminated this position on September 16, 2019.

(6) Reflects a one-time $500,000 cash signing bonus. Messrs. Wright and Turner also received discretionary bonuses in 2020 in lieu of their 2019 annual incentive in the amounts of $720,000 and $136,320, respectively.

(7) Represents the aggregate grant date fair value of awards of restricted stock made to the executive officer in accordance with FASB ASC Topic 718. The restricted stock awards vest pro rata annually over a three-year period.

(8) Represents the following amounts: (a) commuting expenses: Wright - $18,135; Borkowski - $43,733; (b) reimbursement for travel expenses for their spouses to attend certain work-related events: Borkowski - $5,098; Landy - $3,924; (c) severance: Borkowski - $4,000,000 (including $2,250,000 to be paid to him or on his behalf in 2020); Landy - $687,750 (paid in 2020); (c) 401(k) match: Wright - $1,442; Borkowski - $4,659; Turner - $6,059; and (d) tax gross-up on commuting expenses: Wright $7,662; Borkowski $42,441. Does not include $2,250,000 paid to Mr. Borkowski in 2020 pursuant to the Separation and Transition Services Agreement between the Company and him. See "Compensation, Discussion & Analysis - *Agreements with Mr. Borkowski*, above."

GRANTS OF PLAN-BASED AWARDS FOR 2019

The following table provides information regarding grants of plan-based awards to the Company's NEOs during 2019.

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards[1]			All Other Stock Awards: Number of Shares of Stock or Units[2]	All Other Option Awards: Number of Securities Underlying Options	Exercise or Base Price of Option Awards	Grant Date Fair Value of Stock and Option Awards[3]
		Threshold	Target	Maximum				
Wright	6/7/2019	$0	$0	$0	681,818			$3,374,999
Coles	—	$0	$0	$0	—	—	—	$0
Borkowski	2/21/2019	$0	$0	$0	203,305 [4]			$616,014
Carlson	12/16/2019	$0	$0	$0	49,295			$349,995
Carlson	12/16/2019	$0	$0	$0	140,845 [5]			$1,000,000
Landy	4/26/2019	$0	$0	$0	279,271 [4]			$673,043
Turner	4/26/2019	$0	$0	$0	52,067			$125,481

(1) The Board never formally approved the annual incentive plan in 2019. Refer to discussion of "annual incentive plan" in the Compensation Discussion & Analysis, above.

(2) Represents restricted stock awards granted under the 2016 Plan. The shares of restricted stock generally vest ratably over three years from the grant date.

(3) The amounts shown reflect the grant date fair market values of the awards computed in accordance with FASB ASC Topic 718—"Compensation-Stock compensation."

(4) As discussed under "Compensation Discussion and Analysis," Messrs. Landy and Borkowski forfeited all unvested restricted stock held by them upon the termination of their employment during 2019.

(5) Represents performance-based restricted stock units.

OUTSTANDING EQUITY AWARDS ON DECEMBER 31, 2019

The following table shows the number of shares covered by exercisable and un-exercisable options and unvested restricted stock awards held by the Company's NEOs on December 31, 2019. As discussed in the CD&A, Messrs. Landy and Borkowski forfeited all unvested restricted stock held by them upon the termination of their employment during 2019.

	Option Awards				Stock Awards		
Name	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price	Option Expiration Date	Number of Securities Unvested		Market Value of Unvested Securities[1]
Wright	—	—			681,818	(2)	$ 5,168,180
Coles	—	—			—		$0
Borkowski	—	—			—		$0
Carlson	—	—			190,140	(3)	$ 1,441,261
Landy	—	—			—		$0
Turner	—	—			10,000	(4)	$75,800
					10,600	(5)	$80,348
					6,667	(6)	$50,536
					52,067	(7)	$394,668

(1) Calculated based on a closing stock price of $7.58 per share on December 31, 2019.

(2) A portion vested on June 7, 2020, and the remaining balance is scheduled to vest on June 7, 2021 and 2022.

(3) Reflects (a) a time-vested restricted stock grant with a value of $350,000 which vests pro rata annually over three years on December 16, 2020, 2021, and 2022; and (b) a performance-vested restricted stock unit grant with a value of $1,000,000, which vests upon the achievement of each of four discrete performance goals.

(4) The remaining balance vested on February 22, 2020.

(5) The remaining balance is scheduled to vest on February 22, 2021.

(6) The remaining balance is scheduled to vest in two installments on December 11, 2020 and 2021.

(7) A portion vested on April 26, 2020, and the remaining balance is scheduled to vest in on April 26, 2021 and 2022.

2019 OPTION EXERCISES AND STOCK VESTED TABLE

The following table provides information concerning each exercise of stock options and each vesting of restricted stock during 2019, on an aggregated basis with respect to each of the Company's NEOs.

	Option Awards		Stock Awards	
Name	Number of Securities Acquired on Exercise	Value Realized on Exercise	Number of Securities Acquired on Vesting	Value Realized on Vesting[1]
Wright	—	$0	—	$0
Coles	—	$0	—	$0
Borkowski	—	$0	33,333	$100,999
Carlson	—	$0	—	$0
Landy	—	$0	25,433	$103,193
Turner	—	$0	25,800	$71,411

(1) Represents the number of shares acquired on vesting multiplied by the closing price of Common Stock on the vesting date.

2019 POTENTIAL PAYMENTS UPON TERMINATION OR CHANGE IN CONTROL

This section describes additional payments that the Company would make to the NEOs assuming a hypothetical termination of employment occurred on December 31, 2019 under various scenarios. We did not include Messrs. Coles or Borkowski in the table below because they voluntarily resigned their employment before December 31, 2019. See “Compensation Discussion and Analysis - Agreements with Our Executive Officers” for a discussion of certain severance payments to and arrangements made with Messrs. Borkowski and Landy.

The Company’s agreement with Mr. Wright provides for, and its agreement with Mr. Landy provided for, compensation to the executive in the event the executive’s employment with the Company is terminated involuntarily without “Cause” (as defined in the agreement), or if the executive voluntarily terminates employment for “Good Reason” (as defined in the agreement). The compensation payable under the agreements is a lump sum severance payment equal to a multiple of two times in the case of Mr. Wright, or one time in the case of Mr. Landy, the executive’s annual base salary and targeted base bonus as of the date of termination. In addition, following termination of employment, he is entitled to receive life, health insurance coverage (subject to a COBRA election), and certain other fringe benefits equivalent to those in effect at the date of termination for period of 24 months in the case of Mr. Wright, or 12 months in the case of Mr. Landy.

The Company’s agreements with Messrs. Wright and Turner provide for compensation to the executive in the event the executive’s employment with the Company is terminated following the consummation of a “change-in-control” for reasons other than the executive’s death, disability or for “Cause” (as defined in the respective agreements), or if the executive voluntarily terminates employment for “Good Reason” (as defined in the respective agreements). The compensation payable under the agreements is a lump sum severance payment equal to a multiple of the executive’s annual base salary and targeted base bonus as of the date of the change-in-control. The multiples are 2.5 and 0.5 Messrs. Wright and Turner, respectively. In addition, following termination of employment, these executives are entitled to receive life, health insurance coverage (subject to a COBRA election), and certain other fringe benefits equivalent to those in effect at the date of termination for periods of 30 months and 6 months for Messrs. Wright and Turner, respectively. The agreements require the executive to comply with certain covenants that preclude the executive from competing with the Company or soliciting customers or employees of the Company for a period following termination of employment equal to the period for which fringe benefits are continued under the applicable agreement. The agreements expire three years after a change in control of the Company or any successor to the Company.

Upon a “change in control,” as defined in the 2006 Plan and subject to any requirements of Section 409A of the Internal Revenue Code of 1986, as amended, all outstanding awards vest and become exercisable. The Compensation Committee has discretion whether to provide that awards granted under the 2016 Plan will vest upon a “change in control.” Thus far, the Committee has exercised such discretion and provided for full vesting upon a change in control for all awards granted under the 2016 Plan to NEOs to date.

2019 POTENTIAL PAYMENTS UPON TERMINATION OR CHANGE IN CONTROL

Executive	Involuntary Without Cause or for Good Reason		Involuntary or for Good Reason with Change in Control		Death or Disability	
Wright						
cash severance	3,000,000	(1)	$3,750,000	(1)(2)	$0	
estimated benefits	$24,881	(3)	$31,101	(2)(3)	$0	
estimated value of accelerated equity awards	—		$5,168,180	(4)	$5,168,180	(5)
Carlson						
cash severance	$0		$0		$0	
estimated benefits	$0		$0		$0	
estimated value of accelerated equity awards	$0		$0		$1,441,261	(5)
Turner						
cash severance	$0		$248,500	(1)(2)	$0	
estimated benefits	$0		$8,644	(2)(3)	$0	
estimated value of accelerated equity awards	$0		$601,352	(4)	$601,352	(5)
Landy						
cash severance	$687,750		n/a	(6)	n/a	(6)
estimated benefits	$55		n/a	(6)	n/a	(6)
estimated value of accelerated equity awards	$0		n/a	(6)	n/a	(6)

(1) Includes (a) annual base salary as of December 31, 2019, plus (b) annual targeted bonus for the year ended December 31, 2019, times the multiple applicable to the NEO.
(2) Payable only in the event the executive's employment is terminated without cause or for "good reason" within three years following a change in control.
(3) Includes (a) the estimated value of medical, dental, vision and life insurance, plus (b) the employer's cost of FICA for the duration of the severance period.
(4) Includes the value of unvested restricted stock based on the December 31, 2019 stock price, the vesting of which is deemed accelerated to December 31, 2019.
(5) If the Participant's employment with the Company terminated on account of the Participant's death or disability, the shares shall become vested and non-forfeitable on termination of the Participant's employment with the Company on account of the Participant's death or disability.
(6) Mr. Landy's employment actually terminated on September 16, 2009 when the Company eliminated his position.

2019 DIRECTOR COMPENSATION

The Company compensates non-employee directors with a mix of equity and cash. Directors who are full-time Company employees do not receive any compensation for their service as directors or as members of Board committees. The Company compensates non-employee directors at approximately the median of peer practices. The 2016 Plan imposes limits on awards to directors for their service as directors of (i) 125,000 shares granted during any calendar year and (ii) a maximum of $300,000 for any consecutive 12-month period for awards stated with reference to a specific dollar amount.

Equity Compensation

Upon initial election or appointment to the Board, each non-employee director receives a one-time grant of restricted shares of Common Stock valued at $50,000, plus a prorated portion of the prior year's annual grant (based on the number of months between the date of appointment to the Board and targeted date for the next annual meeting of shareholders). This grant vests on the first anniversary of the grant date. In addition, each non-employee director receives an annual grant of restricted shares of Common Stock valued at $175,000. The Board usually makes this grant on the date of the annual meeting of shareholders, and it vests on the earlier of the next annual meeting or the first anniversary of the grant date. Because, in 2019, the Restatement was incomplete and there was incomplete information publicly available about the Company, the Board made its annual grants in the form of restricted stock units, initially denominated in cash but which will be converted to a number of shares of common stock based on the stock price on the date thirty (30) days following the date the Company first becomes current with its SEC reporting obligations. The Board altered its grant practices in an attempt to ensure that the grants are based on a reliable price for the Company's stock and which reflects all available information and current financial statements, to prevent the possibility of a windfall, and to ensure alignment with shareholders.

Due to the pending Audit Committee investigation in early 2018 and the expectation that the Company's financial statements might need to be restated, the Board did not make the expected $175,000 equity grant to directors in 2018. Instead, on June 13, 2019 (prior to the election or appointment of Dr. Behrens and Messrs. Barry, Bierman and Newton to the Board), the Board, in its capacity as Administrator of the 2006 Plan, modified all options then outstanding held by non-employee directors under the Company's Assumed 2006 Stock Incentive Plan, as amended and restated as of February 25, 2014 (the "***2006 Plan***"), such that all options held by incumbent directors who served on the Board prior to the Company's 2018 annual meeting of shareholders would expire on the original expiration date of such options, rather than on the first to occur of (i) three months following the date of termination of a director's service on the Board for any reason and (ii) the expiration date of the option. The modification resulted in an incremental expense charge under GAAP, which varied by director based upon the number of outstanding options then held by the director as well as other factors. The incremental fair value of such modified options has been included in the table below in the column, "Options."

The Nominating and Corporate Governance Committee has adopted stock ownership guidelines for the Company's non-employee directors to better align the interests of non-employee directors with shareholders. The guidelines require non-employee directors to own shares of Common Stock with a value equal to or greater than three times their annual gross cash compensation. Newly elected directors have three years from the date of election to the Board to comply with the ownership guidelines. Shares must be owned directly by the director or the director's immediate family members residing in the same household, held in trust for the benefit of the non-employee director or the director's immediate family or owned by a partnership, limited liability company or other entity to the extent of the director's interest therein (including the interests of the director's immediate family members residing in the same household) provided that the individual has the power to vote or dispose of the shares. Unvested shares of restricted stock and unexercised stock options (vested or unvested) do not count toward satisfaction of the guidelines. The Board has suspended application of these stock ownership guidelines because the Company is not current in its SEC reporting obligations and the Company's insider trading policy prevents the non-employee directors from buying or selling shares of Common Stock at this time.

Cash Compensation

In 2019, the Company also paid the following cash amounts to non-employee directors:

	Chairman	Non-Chair Member
Board	$71,000	$42,000
Audit Committee	$21,000	$11,000
Compensation Committee	$16,000	$8,500
Nominating and Corporate Governance	$11,000	$6,000
Science and Research Liaison	$15,000	n/a
Ethics and Compliance Committee	$12,500	$6,500
Special Litigation Committee (ad hoc)	$15,000	$7,500

In addition, for 2019, the Board paid excess meeting fees, subject to a cap, once the number of meetings for a particular body exceeded a threshold, as follows:

Supplemental Meeting Fees	Threshold # of Meetings	Per Meeting Fee	Supplemental Meeting Fee Cap
Board Meetings	12 meetings	$2,500 Chair $1,250 Member	$30,000 Chair $15,000 Member
Audit Committee	15 meetings	$2,000 Chair $1,000 Member	$24,000 Chair $12,000 Member
Compensation; Science & Research liaison; Special Litigation (ad hoc)	12 meetings		
Nominating & Governance; Ethics & Compliance	10 meetings		

The following table provides information concerning compensation of the Company's non-employee directors who served in 2019.

Name	Fees Earned or Paid in Cash	Stock Awards[1]	Options	Total
Luis A. Aguilar[2]	$113,250	$0	$0	$113,250
Richard J. Barry	$14,500	$225,000 [6][7]	$0	$239,500
M. Kathleen Behrens	$34,471	$225,000 [6][7]	$0	$259,471
James L. Bierman	$18,038	$225,000 [6][7]	$0	$243,038
Joseph G. Bleser[3]	$78,750	$0	$89,437 [5]	$168,187
J. Terry Dewberry	$108,000	$175,000 [6]	$82,019 [5]	$365,019
Charles R. Evans	$152,925	$175,000 [6]	$0 [5]	$327,925
Bruce L. Hack[3]	$51,000	$0	$89,437 [5]	$140,437
Charles E. Koob	$57,000	$175,000 [6]	$0	$232,000
K. Todd Newton	$15,913	$225,000 [6][7]	$0	$240,913
Larry W. Papasan[4]	$61,125	$0	$105,073 [5]	$166,198
Neil S. Yeston[8]	$107,125	$175,000 [6]	$0 [5]	$282,119

1. The following directors had stock options outstanding as of December 31, 2019: Papasan - 87,000; Koob - 75,000; and Bleser, Dewberry, Evans, Hack, Koob, and Yeston—each with 60,000. In addition, on December 31, 2019 each of Messrs. Barry, Bierman, and Newton, and Ms. Behrens, had restricted stock units with a value of $225,000, and each of Messrs. Dewberry, Evans, Koob and Yeston had restricted stock units with a value of $175,000.
2. Mr. Aguilar resigned from the Board on September 19, 2019.
3. The terms of Mr. Bleser and Mr. Hack expired on June 17, 2019 following the 2018 Annual Meeting.
4. Mr. Papasan resigned from the Board on June 17, 2019 following the 2018 Annual Meeting.
5. Reflects incremental fair value of options as a result of modifications effective on June 13, 2019: Bleser - $89,437; Dewberry - $82,019; Hack $89,437; Papasan $105,073; Evans, Koob and Yeston - $0.
6. Reflects grant of $175,000 restricted stock unit award to all directors serving after June 17, 2019.
7. Reflects grant of $50,000 restricted stock unit award to new directors.
8. Mr. Yeston serves as the Science and Research liaison to the Board and as the Chairman of the ad hoc special litigation committee.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

EQUITY COMPENSATION PLAN INFORMATION

The following table provides information about the Company's equity compensation plans as of December 31, 2019.

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans
Equity compensation plans approved by security holders	2,885,334	$4.42	6,334,170
Equity compensation plans not approved by security holders	—	—	—
Total	2,885,334	$4.42	6,334,170

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following tables sets forth certain information regarding the Company's capital stock, beneficially owned by each person known to the Company to beneficially own more than 5% of the outstanding shares of Common Stock, each NEO, each director, and all directors and executive officers as a group. Unless otherwise indicated below the address of those identified in the table is c/o MiMedx Group, Inc., 1775 West Oak Commons Court, NE, Marietta, Georgia 30062.

SERIES B CONVERTIBLE PREFERRED STOCK

Name of Beneficial Owner	Number of Shares of Series B Convertible Preferred Stock	Number of Shares of Common Stock Into Which They May Convert[(b)]	Voting Percentage[(c)]
EW Healthcare Partners[(a)]	90,000	23,376,623	16.9%

(a)Represents shares of Common Stock issuable upon conversion of 90,000 shares of Series B Preferred Stock owned by Falcon Fund 2 Holding Company, L.P., a partnership controlled by EW Healthcare Partners. EW Healthcare Partners Fund 2-UGP, LLC, the general partner of Falcon Fund 2 Holding Company, L.P., may also be deemed to have sole voting and investment power with respect to such shares of Common Stock. EW Healthcare Partners Fund 2-UGP, LLC disclaims beneficial ownership of such shares of Common Stock except to the extent of its pecuniary interest therein. Martin P. Sutter, Scott Barry, Ronald W. Eastman, Petri Vainio and Steve Wiggins are each a manager and collectively the managers of EW Healthcare Partners Fund 2-UGP, LLC. Each of the managers may be deemed to exercise shared voting and investment power with respect to such shares. Each manager disclaims beneficial ownership of such shares of Common Stock except to the extent of his pecuniary interest therein. Martin P. Sutter is a member of the Company's Board of Directors. The principal address of the EW Healthcare Partners entities and each of the managers is 21 Waterway Avenue, Suite 225, The Woodlands, Texas 77380.

(b)Each holder of Series B Preferred Stock (each a "Holder" and collectively, the "Holders") will have the right, at its option, to convert its Series B Preferred Stock, in whole or in part, into a number of fully paid and non-assessable shares of Common Stock equal to the Purchase Price Per Share, plus any accrued and unpaid dividends, at the conversion price. For purposes of this table the conversion price is presumed to be $3.85. No Holder may convert its shares of Series B Preferred Stock into shares of Common Stock if such conversion would result in the Holder, together with its affiliates, holding more than 19.9% of the votes entitled to be cast at any stockholders meeting or beneficially owning in excess of 19.9% of then-outstanding shares of Common Stock.

(c)Subject to certain exceptions, each share of Series B Preferred Stock is entitled to be voted on by the Holders and will vote on an as-converted basis as a single class with the Common Stock, subject to certain limitations on voting set forth in the related Articles of Amendment. Percentage ownership set forth in the table is based on 110,328,875 shares of Common Stock outstanding on June 25, 2020, plus 2,359,043 shares deemed outstanding pursuant to Rule 13d-3 under the Exchange Act, which includes 25,022,299 shares of Common Stock to be issued upon conversion of the Series B Stock.

Name of Beneficial Owner	Number of Shares	Percentage Ownership[1]
Prescience Investment Group, LLC[2]	7,618,335	5.5%
Group One Trading, LP[3]	6,379,103	4.6%

NEOs, Executive Officers, and Directors	Number of Shares	Percentage Ownership[1]
Richard J. Barry[4][5]	3,300,000	2.4%
M. Kathleen Behrens, Ph.D.[4]	—	*
James L. Bierman[5]	—	*
Edward J. Borkowski[6]	21,194	*
Peter M. Carlson[7]	49,295	*
David Coles[8]	—	*
J. Terry Dewberry[9][10]	187,126	*
Charles R. Evans[10][11]	125,460	*
William A. Hawkins[17]	—	*
Charles E. Koob[10][12]	1,520,628	1.1%
I. Mark Landy[13]	33,529	*
K. Todd Newton[4]	—	*
Martin P. Sutter[17]	23,376,623	16.9%
Scott M. Turner[14]	104,843	*
Timothy R. Wright[15]	592,227	*
Neil S. Yeston[10][16]	130,460	*
Total Directors and Executive Officers[18] (15 persons)	29,232,524	21.1%

* Less than 1%

(1) The beneficial ownership set forth in the table is determined in accordance with SEC rules. The percentage of beneficial ownership is based on 110,328,875 shares of Common Stock outstanding on June 25, 2020, plus 2,359,043 shares deemed outstanding pursuant to Rule 13d-3 under the Exchange Act and 25,974,026 shares deemed outstanding upon conversion of the Company's Series B Preferred Stock at $3.85 per share. See notes (b) and (c), above.

(2) On May 30, 2019, Prescience Investment Group, LLC filed an amendment to its Schedule 13D indicating shared voting power and dispositive power over 7,618,335 shares, shared voting power and dispositive power over 4,888,652 shares by Prescience Partners, LP, shared voting power and dispositive power over 1,845,539 shares by Prescience Point Special Opportunity LP, and shared voting power and dispositive power over 6,734,191 shares by Prescience Capital, LLC. The address for Prescience Investment Group, LLC is 1670 Lobdell Avenue, Suite 200, Baton Rouge, LA 70806.

(3) According to the most recent Schedule 13G filed with the SEC on January 31, 2019, Group One Trading, LP had sole voting and dispositive power with respect to 6,379,103 shares. The address for Group One Trading, LP is 440 South LaSalle St, Ste. 3232, Chicago, IL 60605

(4) Does not include restricted stock units granted on October 22, 2019 with a value of $225,000 which will be settled in Common Stock based on a stock price determined after the 2019 annual meeting of shareholders and after the Company becomes current in its reporting obligations.

(5) Reflects beneficial ownership of shares held by the Richard and Susan Barry Family Trust.

(6) Mr. Borkowski resigned as Executive Vice President and Interim Chief Financial Officer effective November 15, 2019.

(7) Mr. Carlson joined the Company as Executive Vice President, Finance, on December 16, 2019. Does not include 140,844 restricted stock units granted on December 16, 2019 that will vest based upon the achievement of certain performance criteria.

(8) Mr. Coles served as Interim Chief Executive Officer until May 13, 2019.

(9) Includes 60,000 shares issuable upon the exercise of options.

(10) Does not include restricted stock units granted on October 22, 2019 with a value of $175,000 which will be settled in Common Stock based on a stock price determined after the 2019 annual meeting of shareholders and after the Company becomes current in its reporting obligations.

(11) Includes 60,000 shares issuable upon the exercise of options.

(12) Includes 1,375,627 shares held by a trust and 60,000 shares issuable upon the exercise of options.

(13) The Company eliminated Mr. Landy's position of Chief Strategy Officer effective September 16, 2019.

(14) Does not include restricted stock units granted on February 18, 2020 with a value of $284,000 which will be settled in Common Stock based on a stock price determined after the Company becomes current in its reporting obligations.

(15) Does not include restricted stock units granted on February 18, 2020 with a value of $3,375,000 which will be settled in Common Stock based on a stock price determined after the Company becomes current in its reporting obligations.

(16) Includes 60,000 shares issuable upon the exercise of options.

(17) For purposes of this table all shares of Series B Preferred Stock are deemed to have converted to Common Stock at $3.85 per share. Effective July 2, 2020, pursuant to the terms of the Purchase Agreement and the Preferred Stock Amendment, the Company increased the size of the Board of Directors and appointed Martin P. Sutter and William A. Hawkins III to serve as Preferred Directors. Mr. Sutter is deemed to own beneficially shares controlled by EW Healthcare Partners. See notes (b), (c) and (1), above. No Holder may convert its shares of Series B Preferred Stock into shares of Common Stock if such conversion would result in the Holder, together with its affiliates, holding more than 19.9% of the votes entitled to be cast at any stockholders meeting or beneficially owning in excess of 19.9% of then-outstanding shares of Common Stock.

(18) Represents the ownership of only those persons currently serving as a director or executive officer of the Company.

Item 13. Certain Relationships and Related Transactions, and Director Independence

Policies and Procedures for Approval of Related Party Transactions

Under its charter, the Audit Committee is responsible for reviewing and approving all transactions or arrangements between the Company and Section 16 reporting persons and any of their respective affiliates, associates or related parties. In determining whether to approve or ratify a related party transaction, the Audit Committee considers all relevant facts and circumstances available to it, such as:

- Whether the terms of the transaction are fair to the Company and at least as favorable to the Company as would apply if the transaction did not involve a related party;
- Whether there are demonstrable business reasons for the Company to enter into the transaction;
- Whether the transaction would impair the independence of an outside director; and
- Whether the transaction would present an improper conflict of interest for any director or executive officer, taking into account the size of the transaction, the direct or indirect nature of the related party's interest in the transaction and the ongoing nature of any proposed relationship, and any other factors the Audit Committee deems relevant.

Related Party Transactions

The Company has employed Thomas Koob as its Chief Scientific Officer (a non-executive officer) since 2006. Thomas Koob is the brother of a director, Charles Koob. Subsequent to the Company's employment of Thomas Koob, Charles Koob was appointed as a director of the Company in March 2008. In 2019, the Company paid Thomas Koob an annual salary of $235,210 and provided equity, incentive compensation and other compensation of $155,957.

The Company employs Simon Ryan, the brother-in-law of its former General Counsel, Alexandra O. Haden (who resigned from the Company effective August 12, 2019), as a sales representative. In 2019, the Company paid Mr. Ryan total compensation of $152,126, consisting of a salary of $95,000 and sales commissions, equity and other compensation of $57,126.

Director Independence

Although the Common Stock is no longer listed on NASDAQ due to the Company's failure to timely file periodic reports, the Board continues to comply with NASDAQ's listing standards with respect to Board independence. NASDAQ listing standards require that a majority of the members of the Board be independent, which means that they are not officers or employees of the Company and are free of any relationship that would interfere with the exercise of their independent judgment. The Board has determined that Dr. Behrens and Messrs. Barry, Bierman, Dewberry, Evans, Newton, and Yeston are "independent" under NASDAQ listing standards.

Compensation Committee Interlocks and Insider Participation

During 2019, the following persons served on the Compensation Committee: Richard J. Barry, James L. Bierman, Joseph G. Bleser, Larry W. Papasan, and Neil S. Yeston. No member of the Compensation Committee is or has been an officer or employee of the Company. During 2019, none of the Company's executive officers served on the board of directors or compensation committee of any other entity that had an executive officer that serves on the Company's Board or Compensation Committee.

Item 14. Principal Accounting Fees and Services

Audit Firm Fees

The Audit Committee's duties include pre-approving audit and non-audit services provided to the Company by the Company's independent registered public accounting firm, BDO USA, LLP ("***BDO***"). All of the services in respect of 2019 and 2018 under the Audit Fees, Audit-Related Fees, Tax Fees and All Other Fees categories below were pre-approved by the Audit Committee.

Type of Fee	Year Ended December 31, 2019	Year Ended[1] December 31, 2018
Audit Fees[2]	$3,875,000	$2,433,333
Audit-Related Fees[3]	$19,000	$21,400
Tax Fees	$0	$0
All Other Fees	$0	$0

(1) The Company engaged BDO in May 2019 to audit its financial statements for the years ended December 31, 2018, 2017, and 2016. Total fees incurred by BDO were $7.3 million and were apportioned equally to each of the three years for the purposes of this tabular presentation. The Company paid or incurred these fees in 2019.

(2) This category includes fees for the audit of the Company's annual financial statements and review of financial statements included in its quarterly reports on Form 10-Q.

(3) This relates to BDO's audit of the Company's 401(k) plan.

PART IV

Item 15. Exhibits, Financial Statement Schedules

(a) Documents filed as part of this report:

(1) Financial Statements

(2) Financial Statement Schedule:

The following Financial Statement Schedule is filed as part of this Report:

Schedule II Valuation and Qualifying Accounts for the years ended December 31, 2019, 2018 and 2017

(3) Exhibits

See Item 15(b) below. Each management contract or compensation plan has been identified with an asterisk.

(b) Exhibits

Notes

*	Indicates a management contract or compensatory plan or arrangement
#	Filed herewith
##	Certain exhibits and schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K, but a copy will be furnished supplementally to the Securities and Exchange Commission upon request.

Exhibit Number	Description
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 (incorporated by reference to Exhibit 3.1 to the Registrant's Form 10-K filed on March 1, 2017).
3.2	Articles of Amendment to the Articles of Incorporation effective November 6, 2018 (incorporated by reference to Exhibit 3.1 to the Registrant's Form 8-A filed on November 7, 2018).
3.3#	Articles of Amendment to the Articles of Incorporation of MiMedx Group, Inc., effective July 1, 2020.
3.4	Bylaws of MiMedx Group, Inc., as amended and restated as of October 3, 2018 (incorporated by reference to Exhibit 3.1 to the Registrant's Form 8-K filed on October 4, 2018).
4.1#	The description of the Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934.
10.1	Technology License Agreement dated January 29, 2007 between MiMedx, Inc., Shriners Hospitals for Children and University of South Florida Research Foundation (incorporated by reference to Exhibit 10.32 to the Registrant's Form 8-K filed on February 8, 2008).
10.2	Lease effective May 1, 2013 between Hub Properties of GA, LLC and MiMedx Group, Inc. (incorporated by reference to Exhibit 10.1 to the Registrant's Form 10-Q filed on May 10, 2013).
10.3	First Amendment to Lease dated March 7, 2017 between CPVF II West Oak LLC (as successor in interest to HUB Properties of GA, LLC) and MiMedx Group, Inc. (incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed on March 13, 2017).
10.4	Second Amendment to Lease made as of August 29, 2018 for real property and improvements located at 1775 West Oak Commons Court, Marietta, Georgia between RE Fields, LLC, successor in interest to HUB Properties GA, LLC, and CPVF II West Oak LLC, and MiMedx Group, Inc., dated January 25, 2013, as amended March 7, 2017 (incorporated by reference to Exhibit 10.4 to Annual Report on Form 10-K filed March 17, 2020).
10.5*	MiMedx Group, Inc. Assumed 2006 Stock Incentive Plan, as amended and restated effective February 25, 2014 (incorporated by reference to Exhibit 10.2 to the Registrant's Form 8-K filed on March 3, 2014).
10.6*	Form of Incentive Stock Option Agreement under the MiMedx Group, Inc. Assumed 2006 Stock Incentive Plan (incorporated by reference to Exhibit 10.4 to the Registrant's Form 10-K filed on March 4, 2014).
10.7*	Form of Nonqualified Stock Option Agreement under the MiMedx Group, Inc. Assumed 2006 Stock Incentive Plan (incorporated by reference to Exhibit 10.5 to the Registrant's Form 10-K filed on March 4, 2014).
10.8*	Form of Restricted Stock Agreement for Non-Employee Directors under the MiMedx Group, Inc. 2006 Assumed Stock Incentive Plan (incorporated by reference to Exhibit 10.66 to the Registrant's Form 10-Q filed on August 8, 2013).

Exhibit Number	Description
10.9*	Form of Restricted Stock Agreement under the MiMedx Group, Inc. 2006 Assumed Stock Incentive Plan (incorporated by reference to Exhibit 10.3 to the Registrant's Form 10-K filed on March 4, 2014).
10.10*	2016 Equity and Cash Incentive Plan (incorporated by reference to Appendix A to the Registrant's Definitive Proxy Statement on Schedule 14A filed on April 12, 2016).
10.11*	Form of Incentive Stock Option Agreement under the MiMedx Group, Inc. 2016 Equity and Cash Incentive Plan (incorporated by reference to Exhibit 10.2 to the Registrant's Form 10-Q filed on August 2, 2016).
10.12*	Form of Restricted Stock Agreement under the MiMedx Group, Inc 2016 Equity and Cash Incentive Plan (for shares not registered under the Securities Act of 1933) (incorporated by reference to Exhibit 10.9 to the Registrant's Form 8-K filed on May 30, 2019).
10.13*	Form of Restricted Stock Agreement under the MiMedx Group, Inc. 2016 Equity and Cash Incentive Plan (incorporated by reference to Exhibit 10.3 to the Registrant's Form 10-Q filed on August 2, 2016).
10.14*	Form of Restricted Stock Agreement for Non-Employee Directors under the MiMedx Group, Inc. 2016 Equity and Cash Incentive Plan (incorporated by reference to Exhibit 10.11 to the Registrant's Form 8-K filed on May 30, 2019).
10.15*	Form of Nonqualified Stock Option Agreement under the MiMedx Group, Inc. 2016 Equity and Cash Incentive Plan (incorporated by reference to Exhibit 10.4 to the Registrant's Form 10-Q filed on August 2, 2016).
10.16*	Form of Director Restricted Stock Unit Award Agreement (incorporated by reference to Exhibit 10.16 to the Registrant's Annual Report on Form 10-K filed March 17, 2020).
10.17*	Consulting Agreement with Alexandra O. Haden dated August 27, 2019 (incorporated by reference to Exhibit 10.26 to the Registrant's Annual Report on Form 10-K filed March 17, 2020).
10.18*	Cooperation Agreement dated as of May 29, 2019 among MiMedx Group, Inc., M. Kathleen Behrens Wilsey, K. Todd Newton, Richard J. Barry, Prescience Partners, LP, Prescience Point Special Opportunity LP, Prescience Capital LLC, Prescience Investment Group, LLC d/b/a Prescience Point Capital Management LLC and Eiad Asbahi (incorporated by reference to Exhibit 10.32 to the Registrant's Form 8-K filed on May 30, 2019).
10.19##	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 (incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K Filed June 11, 2019).
10.20	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 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed April 27, 2020).
10.21*	Form of Change in Control Severance Compensation and Restrictive Covenant Agreement (incorporated by reference to Exhibit 10.24 to the Registrant's Form 8-K filed on May 30, 2019).
10.22*	Form of (Non-change in Control) Executive Severance Agreement (incorporated by reference to Exhibit 10.25 to the Registrant's Form 8-K filed on May 30, 2019).
10.23*	Form of Indemnification Agreement (incorporated by reference to Exhibit 10.65 to the Registrant's Form 8-K filed July 15, 2008).
10.24*	Form of Employee Inventions and Assignment Agreement (incorporated by reference to Exhibit 10.4 to the Registrant's Form 8-K/A filed on June 12, 2018).
10.25*	Form of Confidentiality and Non-Solicitation Agreement (incorporated by reference to Exhibit 10.2 to the Registrant's Form 8-K/A filed on June 12, 2018).
10.26*	Form of Non-Competition Agreement (incorporated by reference to Exhibit 10.3 to the Registrant's Form 8-K/A filed on June 12, 2018).
10.27*	Letter Agreement dated April 10, 2019 between MiMedx Group, Inc. and Timothy R. Wright (incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed on May 9, 2019).
10.28*	Engagement Letter dated July 2, 2018 between MiMedx Group, Inc. and Alvarez & Marsal North America, LLC (incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K/A filed on July 11, 2018).
10.29*#	Employment Offer Letter between the Company and Peter M. Carlson, as amended and restated on April 29, 2020.
10.30*#	Employment Offer Letter between the Company and William F. Hulse IV as of November 4, 2019.
10.31*	Employment Offer Letter dated April 3, 2018 between MiMedx Group, Inc. and Edward Borkowski (incorporated by reference to Exhibit 10.22 to the Registrant's Form 8-K filed on May 30, 2019).
10.32*	Separation and Transition Services Agreement, dated as of November 15, 2019, between MiMedx Group, Inc. and Edward J. Borkowski (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed November 20, 2019).
10.33*#	Form of Employee (Time-Vested) Restricted Stock Unit Award Agreement.
10.34*#	Form of Employee (Performance-Vested, uncertain number of shares) Restricted Stock Unit Award Agreement.
10.35*#	Form of Employee (Performance-Vested, certain number of shares) Restricted Stock Unit Award Agreement.
10.36# ##	Loan Agreement dated as of June 30, 2020 by and among MiMedx Group, Inc., certain subsidiaries of MiMedx Group, Inc. parties thereto, the Lenders from time to time party hereto, Hayfin Services LLP, as administrative agent for the Lenders and as collateral agent for the Secured Parties.

Exhibit Number	Description
10.37*#	Employment Offer Letter between the Company and William L. Phelan dated as of April 30, 2020.
10.38# ##	Securities Purchase Agreement, dated as of June 30, 2020, by and between MiMedx Group, Inc., Falcon Fund 2 Holding Company, L.P. and certain other investors.
10.39#	Registration Rights Agreement dated as of July 2, 2020, by and between MiMedx Group, Inc. and Falcon Fund 2 Holding Company, L.P.
16.1	Letter from Cherry Bekaert LLP dated August 9, 2017 (incorporated by reference to Exhibit 16.1 to Current Report on Form 8-K filed August 10, 2017).
16.2	Letter from Ernst & Young LLP dated December 7, 2018 (incorporated by reference to Exhibit 16.1 to Current Report on Form 8-K filed December 7, 2018).
21.1#	Subsidiaries of MiMedx Group, Inc.
23.1#	Consent of Independent Registered Public Accounting Firm.
24.1#	Power of Attorney (included on the signature page to this Report).
31.1#	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2#	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1#	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2#	Certification of Chief Financial Officer 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

Item 16. Form 10-K Summary

Not applicable.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints William F. Hulse IV and David A. Wisniewski and each of them acting individually, as his or her true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for him or her in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K for the year ended December 31, 2019, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming our signatures as they may be signed by our said attorney to any and all amendments to said Annual Report on Form 10-K.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature / Name	Title	Date
/s/ Timothy R. Wright Timothy R. Wright	Chief Executive Officer and Director (Principal Executive Officer)	July 6, 2020
/s/ Peter M. Carlson Peter M. Carlson	Chief Financial Officer (Principal Financial Officer)	July 6, 2020
/s/ William L. Phelan William L. Phelan	Senior Vice President and Chief Accounting Officer (Principal Accounting Officer)	July 6, 2020
/s/ M. Kathleen Behrens M. Kathleen Behrens	Chair of the Board (Director)	July 6, 2020
/s/ Richard J. Barry Richard J. Barry	Director	July 6, 2020
/s/ James L. Bierman James L. Bierman	Director	July 6, 2020
/s/ J. Terry Dewberry J. Terry Dewberry	Director	July 6, 2020
/s/ Charles R. Evans Charles R. Evans	Director	July 6, 2020
 William A. Hawkins III	Director	
/s/ Charles E. Koob Charles E. Koob	Director	July 6, 2020
/s/ K. Todd Newton K. Todd Newton	Director	July 6, 2020
 Martin P. Sutter	Director	
/s/ Neil S. Yeston Neil S. Yeston	Director	July 6, 2020

Exhibit 4.1

Description of the Registrant's Securities
Registered Pursuant to Section 12 of the
Securities Exchange Act of 1934

The following is a description of certain material terms of the common stock, $0.001 par value per share ("Common Stock"), of MiMedx Group, Inc., a Florida corporation (the "Company"):

The Company's Articles of Incorporation, together with Articles of Amendment effective each of May 14, 2010, August 8, 2012, November 8, 2012, and May 15, 2015 (as so amended, the "Articles of Incorporation"), authorize the Company to issue up to 150,000,000 shares of Common Stock.

The holders of Common Stock are entitled to receive such dividends as are from time to time declared by the Company's Board of Directors (the "Board") out of funds legally available therefor. Holders of Common Stock are entitled to one vote per share on all matters.

The Common Stock is not redeemable. The holders of the Common Stock have no pre-emptive, conversion or cumulative voting rights. There are no sinking fund provisions for or applicable to the Common Stock. The outstanding shares of Common Stock are not liable to further call or to assessment by the Company.

The Company's Articles of Incorporation provide that the Board is comprised of three classes of directors and that each director shall be elected for a three year term lasting until the next annual meeting of shareholders upon which his or her term expires or until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal.

The Company reserves the rights to repeal, alter, amend or rescind any provision contained in the Articles of Incorporation or Bylaws.

The Company is subject to the Florida affiliated transactions statute, which generally requires approval by the disinterested directors or supermajority approval by shareholders for "affiliated transactions" between a corporation and an "interested stockholder." An "interested stockholder" is any person who is the beneficial owner of more than 10% of the outstanding voting stock of the corporation. The "affiliated transactions" covered by the statute include, with certain exceptions, (a) mergers and consolidations to which the corporation and the interested stockholder are parties, (b) sales or other dispositions of the corporation's assets to the interested stockholder having an aggregate market value of 5% or more of the outstanding shares of the corporation, having an aggregate value of 5% or more of the assets, on a consolidated basis, of the corporation, or representing 5% or more of the earning power or net income of the corporation, (c) issuances by the corporation of its securities to the interested stockholder having an aggregate market value equal to 5% or more of the aggregate market value of all the corporation's outstanding shares, (d) the adoption of any plan for the liquidation or dissolution of the corporation proposed by or pursuant to an arrangement with the interested stockholder, (e) any reclassification of the corporation's securities that has the effect of increasing by more than 5% the percentage of outstanding voting shares of the corporation beneficially owned by the interested stockholder, and (f) the receipt by the interested stockholder of certain loans or other financial assistance from the corporation. Accordingly, these provisions may discourage attempts to acquire the Company.

In addition, the Company's Articles of Incorporation and Bylaws include a number of provisions that may deter or impede hostile takeovers or changes of control or management. These provisions include the following:

- The authority of the Board to issue up to 5,000,000 shares of serial Preferred Stock and to determine the price, rights, preferences and privileges of such Preferred Stock without shareholder approval;

- The division of our Board into three classes with staggered three-year terms;

- restricting persons who may call shareholder meetings;

- allowing the Board to fill vacancies & to fix the number of meetings; and

- Cumulative voting is not allowed in the election of the Company's directors.

These provisions of Florida law and the Company's Articles of incorporation and Bylaws could prohibit or delay mergers or other takeover or change of control of the Company and may discourage attempts by other companies to acquire us, even if such a transaction would be beneficial to the Company's shareholders.

The foregoing description of the Common Stock is qualified in its entirety by the provisions of the Company's Articles of Incorporation and Bylaws, which are filed as exhibits to the Company's reports with the Securities and Exchange Commission.

Exhibit 10.29

April 29, 2020

Mr. Peter M. Carlson
[**]

Dear Pete,

I am pleased to confirm our offer of employment to you for the position of Chief Financial Officer on behalf of MiMedx Group, Inc. ("MiMedx" or "Company"), which employment is to commence on or around December 16, 2019. In this position, you will report directly to Timothy R. Wright, Chief Executive Officer.

Upon commencement of employment with the Company, you shall have the title "Senior Vice President - Finance." However, during the period commencing on the first date of employment with the Company and ending on the first business day after the Company files with the Securities and Exchange Commission the Company's annual report on Form 10-K for the fiscal years ended December 31, 2018 (the "**Transition Period**"), the Company currently intends that Ed Borkowski ("Borkowski") shall remain principal financial and accounting officer of the Company and perform all functions commensurate with that role. During the Transition Period, you shall not enter into any agreement that creates any binding obligation on behalf of Company without the express prior written consent of the Company's Chief Executive Officer. During the Transition Period, Borkowski will perform the duties of the Company's principal financial and accounting officer and execute and deliver to Company the signatures and certifications required in connection with the filing of the Super 10-K with the SEC in his capacity as principal financial officer and principal accounting officer of Company.

Following the filing of the Form 10-K for the year ended December 31, 2018, the Company expects that you will assume the role of principal financial and accounting officer.

Your initial base salary will be $20,192 (gross before deductions) per biweekly pay period, which is equivalent to the gross amount of $525,000 on an annualized basis. Your salary will be payable on a biweekly basis. Your future salary adjustments will be in accordance with Company policy and based upon individual and Company performance.

As an incentive to enter into the employ of the Company, you will be eligible to receive a one-time bonus payment in the amount of $50,000 (gross before deductions). This amount will be payable within forty-five (45) days following the commencement of your employment with MiMedx. You must be an active employee with the Company on the date of payment in order to remain eligible for the above referenced one-time bonus. In accordance with Company policy, should you voluntarily elect to discontinue employment with MiMedx within twelve (12) months following the date that the above-described one-time bonus was paid, you agree to repay to MiMedx the full amount of the one-time bonus paid to you.

You will be eligible to participate in the MiMedx Group Management Incentive Plan ("MIP") with an annual target bonus amount equal to fifty-five percent (55%) of the base salary paid to you in accordance with the terms of such program in effect from time-to-time. You will be eligible to begin participating in the MIP effective January 1, 2020. Your 2020 MIP incentive will be calculated based on the achievement of MiMedx financial targets and your individual objectives. The individual objectives will be comprised of one or more key operational measures and/or outcomes that are specific to your position and directly influenced by your performance. In the 2020 MIP, specified portions of your above-referenced target bonus are expected to be

allocated to a) MiMedx revenue performance, b) MiMedx Adjusted Earnings Before Interest, Taxes, Depreciation and Amortization ("Adjusted EBITDA") and c) your performance in the attainment of your 2020 individual objectives. Following the final approval of the 2020 MIP by the MiMedx Board of Directors, you will receive further confirmation of the details of the 2020 MIP.

Based on the Company's analysis of competitive data, the Company has established a target annual long-term incentive value for each position eligible to participate in the Company's stock incentive program. This target is expressed as a percentage of the participant's annual base salary, and is used as a guide by which to measure the appropriate and competitive value of the annual equity grant to be proposed by the Company for approval by the Compensation committee. In your position, your target annual long-term incentive value is two hundred percent (200%) of your annual base salary.

As an incentive to enter into employ of the Company, you will be eligible for a restricted stock grant with a value of $350,000 dollars; the grant is contingent upon approval of the Board of Directors, but the Company agrees to recommend the grant to the Board no later than the next meeting of the Board. The grant will be made on later of the date your employment commences or the date the Board approves the grant (the "Grant Date"). The award will vest pro rata annually over three years, provided that you continue to be employed by the Company on each vesting date. The number of shares granted will be equal to such value divided by our closing stock price on the Grant Date.

As an additional incentive to enter into employ of the Company, you will be eligible for an additional restricted stock grant with a value of $1 million dollars. The grant is contingent upon approval of the Board of Directors, but the Company agrees to recommend the grant to the Board no later than the next meeting of the Board. The grant will be made on later of the date your employment commences or the date the Board approves the grant (the "Grant Date"). The number of shares granted will be equal to such value divided by our closing stock price on the Grant Date. One quarter of the shares granted will vest upon the achievement of each of the following milestones:

1. The Company files its annual report on Form 10-K for the year ended December 31, 2019 no later than 100 days following the date it filed its annual report on Form 10-K for the year ended December 31, 2018;
2. MiMedx is relisted on either the NASDAQ or NYSE no later than 6 months following the filing of the 2019 Form 10-K;
3. With the consent of the Company's independent registered accountants, the Company transitions from cash accounting to accrual based accounting no later than October 1, 2020;
4. You submit an ERM plan which is approved in full by the Board of Directors no later than June 30, 2021.

The Company will not require your relocation to the Marietta, Georgia area, but rather allow you to commute on a weekly basis from your residence in Charlotte, North Carolina to Marietta, Georgia. During this time, you will be expected to primarily work from the Company's Marietta, Georgia office and maintain a schedule averaging no less than four and one-half (4.5) days per week working from the Marietta office or traveling on Company business, unless otherwise agreed between you and the CEO of MiMedx.

The MiMedx Board of Directors will review your full compensation package as you are expected to be a Section 16 officer. The terms of your offer include the specific compensation arrangements described above as well as a Change of Control Severance and Restrictive Covenant Agreement. This Agreement will be equal to one times your annual base compensation and one times your annual target bonus. The Company has retained a compensation consultant, which is, among other things, reviewing the Company's severance plan(s) for executives. The consultant will make a formal recommendation to the Compensation Committee of the Board of Directors. You will be entitled to the severance benefits approved by the Compensation

Committee for non-CEO executives and will be presented a retention agreement once such benefits are approved.

You will be eligible to participate in the Company's medical, dental, vision, life insurance, and disability benefits programs the first day of the month following the date of your employment. You will be eligible to participate in the MiMedx Group 401(k) Plan effective the first day of the month following your employment.

Each such benefit shall be provided in accordance with the terms of the applicable benefit plans, which may be revised at any time at the Company's discretion. A summary of the Company's benefits is enclosed for your review. More detailed benefits eligibility and enrollment information will be sent to you shortly after you begin employment.

This offer is contingent upon a favorable background investigation and a pre-employment drug screen result. You will receive an email to complete the application process on ADP which includes the background authorization form. You must sign and complete the form before the background investigation and drug screen can commence. Once we receive the executed *Background Authorization* form, you will receive an email from Pembrooke with instructions for the drug screen process and a Chain of Custody ID number for specimen collection.

To find the nearest LabCorp location, please go online to www.labcorp.com, go to the "I am a Patient" locator tab, and click on "Find a lab". Type in your street address, city, state and zip code and make sure the testing service selection is "Routine clinical laboratory collections", then click "Search". The lab locations in proximity to your address will be shown. No appointments are necessary. Please make sure that you bring the Chain of Custody ID number and photo identification, such as your driver's license. If you cannot find a location that is close to you, please call 1-800-247-0717, Monday – Friday from 6am to midnight (CST).

The Company is committed to the highest standards of integrity and to treating its customers, employees, fellow workers, business partners and competitors in good faith and fair dealing. We expect employees to share the same standard and values. By accepting this offer, you agree that throughout your employment, you will observe all of the Company's rules governing conduct of its business and employees, including its policies protecting employees from illegal discrimination and harassment, as those rules and policies may be amended from time to time.

As an employee of MiMedx, you are prohibited from the use or disclosure of confidential information or trade secrets obtained from your past employers. If you have any such documents in your possession, you are expected to return them to the respective organization, and during the course of your employment with the Company, not bring onto MiMedx premises or utilize in any manner such documents, confidential information or trade secrets. While you have not made the Company aware of any such information in your possession, we urge you to abide by this prohibition if such information is currently in your possession.

This offer of employment is contingent on the absence of any restrictive covenants that would prevent you from conducting the duties and responsibilities of your position with MiMedx. By your acceptance of this offer, you represent that you are not a party to any non-disclosure, restrictive covenant or invention assignment agreements currently in effect. If you become aware of any such agreements to which you are a party, by your acceptance of this offer, you agree to provide us with a copy of such additional agreements.

As a condition of your employment, you will be required to sign and comply with the enclosed MiMedx Confidentiality and Non-Solicitation Agreement, MiMedx Employee Inventions Assignment Agreement, and MiMedx Non-Competition Agreement. If the provisions of this offer are agreeable to you, please sign

this letter to indicate your acceptance and return one copy along with the above-referenced agreements in the enclosed self-addressed envelope.

Pete, I am delighted to extend this offer to you and look forward to an exciting and mutually rewarding business association. We look forward to your joining MiMedx. Please feel free to contact me via email or on my cell phone at 404-796-5670 if you have any questions.

Sincerely,

/s/ Lee Ann Lawson

Lee Ann Lawson
Senior Vice President, Human Resources

cc: Timothy R. Wright

ACCEPTANCE

I have read and understand the foregoing which constitutes the entire and exclusive agreement between the Company and the undersigned and supersedes all prior or contemporaneous proposals, promises, understandings, representations, conditions, oral or written, relating to the subject matter of this agreement. I understand and agree that my employment is at-will and is subject to the terms and conditions contained herein.

/s/ Peter M. Carlson

Peter M. Carlson

Exhibit 10.30

November 4, 2019

Mr. William F. Hulse, IV, Esq.
[**]

Dear Butch,

I am pleased to confirm our offer of employment to you for the position of General Counsel and Secretary on behalf of MiMedx Group, Inc. ("MiMedx" or "Company"), which employment is to commence on or before December 2, 2019. In this position you will report directly to Tim Wright, Chief Executive Officer.

Your initial base salary will be $18,269.23 (gross before deductions) per biweekly pay period, which is equivalent to the gross amount of $475,000 on an annualized basis. Your salary will be payable on a biweekly basis. Your future salary adjustments will be in accordance with Company policy and based upon individual and Company performance. You will be eligible for your first salary review on May 1, 2020.

You will be eligible to participate in the MiMedx Group 2020 Management Incentive Plan ("MIP") with an annual target bonus amount equal to fifty percent (50%) of the base salary paid to you in accordance with the terms of such program in effect from time-to-time. You will be eligible to begin participating in the MIP effective January 1, 2020. Your 2020 MIP incentive will be calculated based on the achievement of MiMedx financial targets and your individual objectives. The individual objectives will be comprised of one or more key operational measures and/or outcomes that are specific to your position and directly influenced by your performance. In the 2020 MIP, specified portions of your above-referenced target bonus will be allocated to a) MiMedx revenue performance, b) MiMedx Adjusted Earnings Before Interest, Taxes, Depreciation and Amortization ("Adjusted EBITDA") and c) your performance in the attainment of your 2020 individual objectives. Following the final approval of the 2020 MIP by the MiMedx Board of Directors, you will receive further confirmation of the details of the 2020 MIP.

Based on the Company's analysis of competitive data, the Company has established a target annual long-term incentive value for each position eligible to participate in the Company's stock incentive program. This target is expressed as a percentage of the participant's annual base salary, and is used as a guide by which to measure the appropriate and competitive value of the annual equity grant to be proposed by the Company for approval by the Compensation committee. In your position of General Counsel and Secretary, your target annual long-term incentive value is one hundred fifty percent (150%) of your annual base salary.

As an incentive to enter into the employ of the Company prior to your receipt of the bonus from your current employer, you will be eligible to receive a one-time bonus payment in the amount of $125,000 (gross before deductions). This amount will be payable within forty-five (45) days following the commencement of your employment with MiMedx. You must be an active employee with the Company on the date of payment in order to remain eligible for the above referenced one-time bonus. In accordance with Company policy, should you voluntarily elect to discontinue employment with MiMedx within twelve (12) months following the date that the above-described one-time bonus was paid, you agree to repay to MiMedx the full amount of the one-time bonus paid to you.

The MiMedx Board of Directors will review your full compensation package as you are expected to be a 16b officer. The terms of your offer include the specific compensation arrangements described above as well as a Change of Control Severance and Restrictive Covenant Agreement. This Agreement would be equal to one times your annual base compensation and one times your annual target bonus. The Severance Agreement will be proposed at the December 12, 2019 Board of Directors meeting. The Company has retained a compensation consultant which is, among other things, reviewing the Company's severance plan(s) for executives. The consultant will make a formal recommendation to the Compensation Committee of the Board of Directors. You will be entitled to the severance benefits approved by

the Compensation Committee for non-CEO executives and will be presented a retention agreement once such benefits are approved.

You will be eligible to participate in the Company's medical, dental, vision, life insurance, and disability benefits programs the first day of the month following the date of your employment. You will be eligible to participate in the MiMedx Group 401(k) Plan effective the first day of the month following your employment.

Each such benefit shall be provided in accordance with the terms of the applicable benefit plans, which may be revised at any time at the Company's discretion. A summary of the Company's benefits is enclosed for your review. More detailed benefits eligibility and enrollment information will be sent to you shortly after you begin employment.

This offer is contingent upon a favorable background investigation and a pre-employment drug screen result. Please find attached the *Background Authorization* form that authorizes the above referenced background investigation, including drug testing, to be conducted. You must sign and complete the form and return it to my attention before the background investigation and drug screen can commence. Drug screenings must be completed within 48 hours of receiving this offer letter. Once we receive the executed *Background Authorization* form, you will receive an email from Pembrooke with instructions for the drug screen process and a Chain of Custody ID number for specimen collection.

To find the nearest LabCorp location, please go online to www.labcorp.com, go to the "I am a Patient" locator tab, and click on "Find a lab". Type in your street address, city, state and zip code and make sure the testing service selection is "Routine clinical laboratory collections", then click "Search". The lab locations in proximity to your address will be shown. No appointments are necessary. Please make sure that you bring the Chain of Custody ID number and photo identification, such as your driver's license. If you cannot find a location that is close to you, please call 1-800-247-0717, Monday – Friday from 6am to midnight (CST).

The Company is committed to the highest standards of integrity and to treating its customers, employees, fellow workers, business partners and competitors in good faith and fair dealing. We expect employees to share the same standard and values. By accepting this offer, you agree that throughout your employment, you will observe all of the Company's rules governing conduct of its business and employees, including its policies protecting employees from illegal discrimination and harassment, as those rules and policies may be amended from time to time.

As an employee of MiMedx, you are prohibited from the use or disclosure of confidential information or trade secrets obtained from your past employers. If you have any such documents in your possession, you are expected to return them to the respective organization, and during the course of your employment with the Company, not bring onto MiMedx premises or utilize in any manner such documents, confidential information or trade secrets. While you have not made the Company aware of any such information in your possession, we urge you to abide by this prohibition if such information is currently in your possession.

This offer of employment is contingent on the absence of any restrictive covenants that would prevent you from conducting the duties and responsibilities of your position with MiMedx. By your acceptance of this offer, you represent that you are not a party to any non-disclosure, restrictive covenant or invention assignment agreements currently in effect. If you become aware of any such agreements to which you are a party, by your acceptance of this offer, you agree to provide us with a copy of such additional agreements.

As a condition of your employment, you will be required to sign and comply with the enclosed MiMedx Confidentiality and Non-Solicitation Agreement, MiMedx Employee Inventions Assignment Agreement, and MiMedx Non-Competition Agreement. If the provisions of this offer are agreeable to you, please sign this letter to indicate your acceptance and return one copy along with the above-referenced agreements in the enclosed self-addressed envelope.

Butch, I am delighted to extend this offer to you and look forward to an exciting and mutually rewarding business association. We look forward to your joining MiMedx. Please feel free to contact me via email or telephonically at 770-651-9155 if you have any questions.

Sincerely,

/s/ Lee Ann Lawson

Lee Ann Lawson
Senior Vice President, Human Resources

cc: Timothy Wright

ACCEPTANCE

I have read and understand the foregoing which constitutes the entire and exclusive agreement between the Company and the undersigned and supersedes all prior or contemporaneous proposals, promises, understandings, representations, conditions, oral or written, relating to the subject matter of this agreement. I understand and agree that my employment is at-will and is subject to the terms and conditions contained herein.

/s/ William F. Hulse IV

William F. Hulse, IV

Exhibit 10.33

MIMEDX GROUP, INC.

2016 EQUITY AND CASH INCENTIVE PLAN

Employee Restricted Stock Unit Agreement

THIS RESTRICTED STOCK UNIT AGREEMENT (this "Agreement") dated as of the ___ day of _____, 20___ (the "Grant Date"), between MiMedx Group, Inc. (the "Company") and _____ (the "Participant"), is made pursuant and subject to the provisions of the Company's 2016 Equity and Cash Incentive Plan (the "Plan"), **a copy of which is attached hereto**. All terms used herein that are defined in the Plan shall have the same meaning given them in the Plan.

1. *Grant of Restricted Stock Units.*

(a) Pursuant to the Plan, the Company, on the Grant Date granted to the Participant, subject to the terms and conditions of the Plan and subject further to the terms and conditions set forth herein, this Restricted Stock Unit Award with a value of $_____ (the "Award Value").

(b) The number of restricted stock units ("RSUs") shall be determined by dividing the Award Value by the closing stock price of the Company on the Determination Date.

(c) The "Determination Date" shall mean the date that is 30 calendar days following the date on which the Company has both (x) filed with the United States Securities and Exchange Commission its audited financial statements for the fiscal year ending December 31, 2019, and (y) has otherwise become current with all other applicable filing requirements of the SEC or has been excused therefrom.

(d) Each RSU represents the right to receive one share of Common Stock (a "Share"). The RSUs will vest as set forth in Section 2 below and, upon vesting, will be settled as set forth in Section 3 below.

2. *Vesting of the RSUs.* Subject to earlier expiration, termination or vesting as provided herein, the RSUs will vest as follows:

(a) *Time-Based Vesting*. The RSUs will vest and be nonforfeitable with respect to one-third (1/3) of the RSUs on each of the first and second anniversaries of the Grant Date, and with respect to the remaining Shares on the third anniversary of the Grant Date, provided in each case that the Participant has been continuously employed by, or providing services to, the Company or an Affiliate of the Company from the Grant Date until such time(s) (the "Vesting Date").

(b) *Change in Control*. Notwithstanding the foregoing, upon the occurrence of a Change in Control, the RSUs shall become fully vested at the time of the Change in Control, provided the Participant has been continuously providing services as an employee of the Company from the Grant Date until the time of the Change in Control. For purposes of this Agreement, "Vesting Date" shall be deemed to include the date upon which a Change in Control occurs.

(c) *Death and Disability*. Additionally, if the Participant's service as an employee of the Company is terminated on account of the Participant's death or Disability, the RSUs shall become fully vested upon termination of the Participant's service as an employee of the Company on account of the

Participant's death or Disability. For purposes of his Agreement, “Vesting Date” shall be deemed to include the date of termination of the Participant’s service as an employee of the Company on account of the Participant’s death or Disability.

3. *Settlement of RSUs*.

(a) Except as otherwise required by applicable law or as set forth below or in the Plan, the Company shall cause one Share to be issued to the Participant for each RSU that vests upon an applicable Vesting Date, with such Shares to be delivered to the Participant within forty-five (45) days after the applicable Determination Date.

(b) Except as set forth in Section 4(e) below, in the event that the Company is unable to settle any vested RSUs in Shares within forty-five (45) days after the later of the Determination Date and the Vesting Date, the Company shall cause any such RSUs that vest to be settled in cash by the delivery to the Participant of a cash payment equal to the initial Award Value (or portion thereof) as soon as administratively practicable after the later of such Determination Date or Vesting Date.

4. *Non-Transferability of the RSUs; Securities Law Compliance.*

(a) *Transfer Restrictions*. The Participant shall not assign or transfer any RSUs other than by will or the laws of descent and distribution. No right or interest of the Participant or any transferee in the RSUs shall be subject to any lien or any obligation or liability of the Participant or any transferee.

(b) *Investment Intent.* The Participant represents and warrants to the Company that the Shares that the Participant may acquire in respect of the RSUs would be acquired only for investment and without any present intention to sell or distribute such Shares.

(c) *Securities Law Compliance*. The Participant acknowledges that neither the grant of these RSUs nor the delivery of Shares, if any, upon the vesting of any RSUs has been or will be registered under the Securities Act of 1933, as amended. Notwithstanding any other provision of this Agreement or the Plan, the Participant may not sell or otherwise transfer any Shares acquired in respect of the RSUs unless the sale of such Shares is registered under the Securities Act of 1933, as amended, or unless an exemption from such registration requirement exists and the Participant provides a prior opinion of counsel acceptable to the Company as to the existence of such exemption.

(d) *Legend.* The Participant understands and agrees that the certificate representing any Shares acquired in respect of the RSUs shall bear a restrictive legend as follows: “The shares represented by this certificate have not been registered under the Securities Act of 1933, as amended. The shares have been acquired for investment and may not be offered, sold or otherwise transferred in the absence of an effective registration statement with respect to the shares or an exemption from the registration requirement of said act that is then applicable to the shares, as to which a prior opinion of counsel acceptable to the issuer or transfer agent may be required.”

(e) *Delivery of Shares.* The Company may postpone the delivery of any Shares issuable to the Participant in respect of the RSUs for so long as the Company determines to be necessary or advisable to satisfy the following: (1) compliance of such Shares with any applicable securities law requirements; (2) compliance with any requests for representations; and (3) receipt of proof satisfactory to the Company that a person seeking such Shares on the Participant's behalf upon the Participant's Disability or upon the Participant's estate's behalf after the death of the Participant, is appropriately authorized. Notwithstanding

any other provision of the Plan or any agreement entered into by the Company pursuant to the Plan, the Company shall not be obligated, and shall have no liability for failure, to issue or deliver any Shares under the Plan unless such issuance or delivery would comply with applicable state and federal securities laws, with such compliance determined by the Company in consultation with its legal counsel.

(f) *Stock Holding Requirements*. Notwithstanding any other provision of this Agreement, the Shares that may be acquired by the Participant in respect of the RSUs may not be sold, transferred or otherwise disposed of until the level of ownership provided in the Company's Stock Ownership Guidelines is met, to the extent applicable to the Participant. All Shares acquired hereunder ("net" any Shares deducted for withholding) shall be subject to the terms and conditions of the Company's Stock Ownership Guidelines, as they may be amended from time to time.

5. *Forfeiture of the RSUs.* RSUs that do not vest pursuant to Sections 2(a), (b) or (c) as of the date of termination of the Participant's service as an employee of the Company will be forfeited automatically at the close of business on that date (or immediately upon notice of termination for Cause). In no event may RSUs vest, in whole or in part, after forfeiture pursuant to this Section 5.

6. *Agreement to Terms of the Plan and this Agreement.* The Participant has received a copy of the Plan, has read and understands the terms of the Plan and this Agreement, and agrees to be bound by their terms and conditions. All decisions and interpretations made by the Company or the Committee with regard to any question arising under this Agreement will be binding and conclusive on the Company and the Participant and any other person who has any rights under this Agreement.

7. *Tax Consequences.* The Participant acknowledges (i) that there may be adverse tax consequences upon acquisition or disposition of the Shares or, if applicable, cash payment that may be received upon vesting of the RSUs and (ii) that the Participant should consult a tax adviser prior to such acquisition or disposition. The Participant is solely responsible for determining the tax consequences of the Restricted Stock Unit Award and for satisfying the Participant's tax obligations with respect to the Restricted Stock Unit Award (including, but not limited to, any income or excise tax as resulting from the application of Code Sections 409A or 4999 or related interest and penalties), and the Company and its Affiliates shall not be liable if this grant is subject to Code Sections 409A, 280G or 4999.

8. *Fractional Shares.* Fractional Shares shall not be issuable hereunder, and when any provision hereof may entitle the Participant to a fractional Share such fractional Share shall be disregarded.

9. *Change in Capital Structure.* The RSUs shall be adjusted in accordance with the terms and conditions of the Plan as the Committee determines is equitably required in the event the Company effects one or more stock dividends, stock splits, subdivisions or consolidations of shares or other similar changes in capitalization.

10. *Notice.* Any notice or other communication given pursuant to this Agreement, or in any way with respect to the RSUs, shall be in writing and shall be personally delivered or mailed by United States registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

If to the Company: MiMedx Group, Inc.
1775 West Oak Commons Ct. NE
Marietta, Georgia 30062
Attn: General Counsel

If to the Participant: _____

_____

_____

11. *Shareholder Rights.* Except as provided below, the Participant shall have no rights as a shareholder of the Company with respect to Shares underlying the RSUs unless and until Shares are delivered to the Participant in respect of such RSUs upon vesting. Notwithstanding the above, if dividends are paid on Shares represented by the RSUs that have not yet either vested or been forfeited:

(a) If such dividends are cash dividends, the Company shall accumulate amounts equivalent to the amount of such dividends and pay to the Participant such amount upon distribution of the underlying Shares (or cash payment in respect of such Shares, if applicable) to the Participant in accordance with this Agreement; and

(b) If such dividends are Share dividends, the Company shall credit the Participant with a number of additional RSUs equal to the number of dividend Shares that would have been paid to the Participant if the Participant's RSUs had been Shares, with such additional RSUs being subject to the same terms and conditions as the RSUs to which such dividend credits relate (including with respect to vesting and settlement).

For the avoidance of doubt, if the Participant receives a cash payment in respect of vested RSUs pursuant to Section 3(b) above, the Participant shall have no rights as a shareholder of the Company with respect to the Shares that were previously underlying such vested RSUs.

12. *No Right to Continued Service.* Neither the Plan, the granting of the RSUs nor any other action taken pursuant to the Plan or this Agreement constitutes or is evidence of any agreement or understanding, expressed or implied, that the Company or any Affiliate shall retain the Participant as a service provider for any period of time or at any particular rate of compensation.

13. *Binding Effect.* Subject to the limitations stated above and in the Plan, this Agreement shall be binding upon and inure to the benefit of the legatees, distributees, and personal representatives of the Participant and the successors of the Company.

14. *Conflicts.* In the event of any conflict between the provisions of the Plan and the provisions of this Agreement, the provisions of the Plan shall govern. All references herein to the Plan shall mean the Plan as in effect on the date hereof.

15. *Counterparts.* This Agreement may be executed in a number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument.

16. *Miscellaneous.* The parties agree to execute such further instruments and take such further actions as may be necessary to carry out the intent of the Plan and this Agreement. This Agreement and the Plan shall constitute the entire agreement of the parties with respect to the subject matter hereof.

17. *Section 409A.* Notwithstanding any of the provisions of this Agreement, it is intended that the RSUs granted pursuant to this Agreement be exempt from Section 409A of the Code as short-term deferrals, pursuant to Treasury regulation §1.409A-1(b)(4), or otherwise comply with Section 409A of the Code. Notwithstanding the preceding, neither the Company nor any Affiliate shall be liable to the Participant or any other person if the Internal Revenue Service or any court or other authority have any jurisdiction over

such matter determines for any reason that the RSUs are subject to taxes, penalties or interest as a result of failing to be exempt from, or comply with, Section 409A of the Code. For the avoidance of doubt, the provisions of this Agreement shall be construed and interpreted consistent with Article XXII of the Plan.

18. *Compensation Recoupment Policy*. Notwithstanding any other provision of this Agreement, the rights, payments and benefits with respect to the RSUs (including any amounts received by the Participant in connection with a sale of Shares received upon the vesting of RSUs) shall be subject to reduction, reimbursement, cancellation, forfeiture, recoupment or return by the Company, to the extent any reduction, reimbursement, cancellation, forfeiture, recoupment or return is required under applicable law or the Company's Compensation Recoupment Policy or any similar policy that the Company may adopt.

19. *Governing Law.* This Agreement shall be governed by the governing laws applicable to the Plan.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Company has caused this Agreement to be signed by a duly authorized officer, and the Participant has affixed the Participant's signature hereto.

COMPANY:

MIMEDX GROUP, INC.

By:_____
Name:_____
Title:_____

PARTICIPANT:

_____

[Participant's Name]

Exhibit 10.34

MIMEDX GROUP, INC.

2016 EQUITY AND CASH INCENTIVE PLAN

Employee Performance-Vested Restricted Stock Unit Agreement

THIS RESTRICTED STOCK UNIT AGREEMENT (this "Agreement") dated as of the ___ day of _____, 20___ (the "Grant Date"), between MiMedx Group, Inc. (the "Company") and _____ (the "Participant"), is made pursuant and subject to the provisions of the Company's 2016 Equity and Cash Incentive Plan (the "Plan"), **a copy of which is attached hereto**. All terms used herein that are defined in the Plan shall have the same meaning given them in the Plan.

1. *Grant of Restricted Stock Units.*

(a) Pursuant to the Plan, the Company, on the Grant Date granted to the Participant, subject to the terms and conditions of the Plan and subject further to the terms and conditions set forth herein, this Restricted Stock Unit Award with a value of $_____ (the "Award Value").

(b) The number of restricted stock units ("RSUs") shall be determined by dividing the Award Value by the closing stock price of the Company on the Determination Date.

(c) The "Determination Date" shall mean the date that is 30 calendar days following the date on which the Company has both (x) filed with the United States Securities and Exchange Commission its audited financial statements for the fiscal year ending December 31, 2019, and (y) has otherwise become current with all other applicable filing requirements of the SEC or has been excused therefrom.

(d) Each RSU represents the right to receive one share of Common Stock (a "Share"). The RSUs will vest as set forth in Section 2 below and, upon vesting, will be settled as set forth in Section 3 below.

2. *Vesting of the RSUs.* Subject to earlier expiration, termination or vesting as provided herein, the RSUs will vest as follows:

(a) *Performance-Based Vesting*. The RSUs will vest and be nonforfeitable upon the attainment of all of the criteria set forth on **Exhibit A** attached hereto, provided that the Participant has been continuously employed by, or providing services to, the Company or an Affiliate of the Company from the Grant Date until such time(s) (the "Vesting Date").

(b) *Change in Control*. Notwithstanding the foregoing, upon the occurrence of a Change in Control, the RSUs shall become fully vested at the time of the Change in Control, provided the Participant has been continuously providing services as an employee of the Company from the Grant Date until the time of the Change in Control. For purposes of this Agreement, "Vesting Date" shall be deemed to include the date upon which a Change in Control occurs.

(c) *Death and Disability*. Additionally, if the Participant's service as an employee of the Company is terminated on account of the Participant's death or Disability, the RSUs shall become fully vested upon termination of the Participant's service as an employee of the Company on account of the Participant's death or Disability. For purposes of his Agreement, "Vesting Date" shall be deemed to include

the date of termination of the Participant's service as an employee of the Company on account of the Participant's death or Disability.

3. *Settlement of RSUs*.

(a) Except as otherwise required by applicable law or as set forth below or in the Plan, the Company shall cause one Share to be issued to the Participant for each RSU that vests upon an applicable Vesting Date, with such Shares to be delivered to the Participant within forty-five (45) days after the applicable Determination Date.

(b) Except as set forth in Section 4(e) below, in the event that the Company is unable to settle any vested RSUs in Shares within forty-five (45) days after the later of the Determination Date and the Vesting Date, the Company shall cause any such RSUs that vest to be settled in cash by the delivery to the Participant of a cash payment equal to the initial Award Value (or portion thereof) as soon as administratively practicable after the later of such Determination Date or Vesting Date.

4. *Non-Transferability of the RSUs; Securities Law Compliance.*

(a) *Transfer Restrictions*. The Participant shall not assign or transfer any RSUs other than by will or the laws of descent and distribution. No right or interest of the Participant or any transferee in the RSUs shall be subject to any lien or any obligation or liability of the Participant or any transferee.

(b) *Investment Intent.* The Participant represents and warrants to the Company that the Shares that the Participant may acquire in respect of the RSUs would be acquired only for investment and without any present intention to sell or distribute such Shares.

(c) *Securities Law Compliance*. The Participant acknowledges that neither the grant of these RSUs nor the delivery of Shares, if any, upon the vesting of any RSUs has been or will be registered under the Securities Act of 1933, as amended. Notwithstanding any other provision of this Agreement or the Plan, the Participant may not sell or otherwise transfer any Shares acquired in respect of the RSUs unless the sale of such Shares is registered under the Securities Act of 1933, as amended, or unless an exemption from such registration requirement exists and the Participant provides a prior opinion of counsel acceptable to the Company as to the existence of such exemption.

(d) *Legend.* The Participant understands and agrees that the certificate representing any Shares acquired in respect of the RSUs shall bear a restrictive legend as follows: "The shares represented by this certificate have not been registered under the Securities Act of 1933, as amended. The shares have been acquired for investment and may not be offered, sold or otherwise transferred in the absence of an effective registration statement with respect to the shares or an exemption from the registration requirement of said act that is then applicable to the shares, as to which a prior opinion of counsel acceptable to the issuer or transfer agent may be required."

(e) *Delivery of Shares.* The Company may postpone the delivery of any Shares issuable to the Participant in respect of the RSUs for so long as the Company determines to be necessary or advisable to satisfy the following: (1) compliance of such Shares with any applicable securities law requirements; (2) compliance with any requests for representations; and (3) receipt of proof satisfactory to the Company that a person seeking such Shares on the Participant's behalf upon the Participant's Disability or upon the Participant's estate's behalf after the death of the Participant, is appropriately authorized. Notwithstanding any other provision of the Plan or any agreement entered into by the Company pursuant to the Plan, the

Company shall not be obligated, and shall have no liability for failure, to issue or deliver any Shares under the Plan unless such issuance or delivery would comply with applicable state and federal securities laws, with such compliance determined by the Company in consultation with its legal counsel.

(f) *Stock Holding Requirements*. Notwithstanding any other provision of this Agreement, the Shares that may be acquired by the Participant in respect of the RSUs may not be sold, transferred or otherwise disposed of until the level of ownership provided in the Company's Stock Ownership Guidelines is met, to the extent applicable to the Participant. All Shares acquired hereunder ("net" any Shares deducted for withholding) shall be subject to the terms and conditions of the Company's Stock Ownership Guidelines, as they may be amended from time to time.

5. *Forfeiture of the RSUs.* RSUs that do not vest pursuant to Sections 2(a), (b) or (c) as of the date of termination of the Participant's service as an employee of the Company will be forfeited automatically at the close of business on that date (or immediately upon notice of termination for Cause). In no event may RSUs vest, in whole or in part, after forfeiture pursuant to this Section 5.

6. *Agreement to Terms of the Plan and this Agreement.* The Participant has received a copy of the Plan, has read and understands the terms of the Plan and this Agreement, and agrees to be bound by their terms and conditions. All decisions and interpretations made by the Company or the Committee with regard to any question arising under this Agreement will be binding and conclusive on the Company and the Participant and any other person who has any rights under this Agreement.

7. *Tax Consequences.* The Participant acknowledges (i) that there may be adverse tax consequences upon acquisition or disposition of the Shares or, if applicable, cash payment that may be received upon vesting of the RSUs and (ii) that the Participant should consult a tax adviser prior to such acquisition or disposition. The Participant is solely responsible for determining the tax consequences of the Restricted Stock Unit Award and for satisfying the Participant's tax obligations with respect to the Restricted Stock Unit Award (including, but not limited to, any income or excise tax as resulting from the application of Code Sections 409A or 4999 or related interest and penalties), and the Company and its Affiliates shall not be liable if this grant is subject to Code Sections 409A, 280G or 4999.

8. *Fractional Shares.* Fractional Shares shall not be issuable hereunder, and when any provision hereof may entitle the Participant to a fractional Share such fractional Share shall be disregarded.

9. *Change in Capital Structure.* The RSUs shall be adjusted in accordance with the terms and conditions of the Plan as the Committee determines is equitably required in the event the Company effects one or more stock dividends, stock splits, subdivisions or consolidations of shares or other similar changes in capitalization.

10. *Notice.* Any notice or other communication given pursuant to this Agreement, or in any way with respect to the RSUs, shall be in writing and shall be personally delivered or mailed by United States registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

If to the Company: MiMedx Group, Inc.
1775 West Oak Commons Ct. NE
Marietta, Georgia 30062
Attn: General Counsel

If to the Participant: _____

11. *Shareholder Rights.* Except as provided below, the Participant shall have no rights as a shareholder of the Company with respect to Shares underlying the RSUs unless and until Shares are delivered to the Participant in respect of such RSUs upon vesting. Notwithstanding the above, if dividends are paid on Shares represented by the RSUs that have not yet either vested or been forfeited:

(a) If such dividends are cash dividends, the Company shall accumulate amounts equivalent to the amount of such dividends and pay to the Participant such amount upon distribution of the underlying Shares (or cash payment in respect of such Shares, if applicable) to the Participant in accordance with this Agreement; and

(b) If such dividends are Share dividends, the Company shall credit the Participant with a number of additional RSUs equal to the number of dividend Shares that would have been paid to the Participant if the Participant's RSUs had been Shares, with such additional RSUs being subject to the same terms and conditions as the RSUs to which such dividend credits relate (including with respect to vesting and settlement).

For the avoidance of doubt, if the Participant receives a cash payment in respect of vested RSUs pursuant to Section 3(b) above, the Participant shall have no rights as a shareholder of the Company with respect to the Shares that were previously underlying such vested RSUs.

12. *No Right to Continued Service.* Neither the Plan, the granting of the RSUs nor any other action taken pursuant to the Plan or this Agreement constitutes or is evidence of any agreement or understanding, expressed or implied, that the Company or any Affiliate shall retain the Participant as a service provider for any period of time or at any particular rate of compensation.

13. *Binding Effect.* Subject to the limitations stated above and in the Plan, this Agreement shall be binding upon and inure to the benefit of the legatees, distributees, and personal representatives of the Participant and the successors of the Company.

14. *Conflicts.* In the event of any conflict between the provisions of the Plan and the provisions of this Agreement, the provisions of the Plan shall govern. All references herein to the Plan shall mean the Plan as in effect on the date hereof.

15. *Counterparts.* This Agreement may be executed in a number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument.

16. *Miscellaneous.* The parties agree to execute such further instruments and take such further actions as may be necessary to carry out the intent of the Plan and this Agreement. This Agreement and the Plan shall constitute the entire agreement of the parties with respect to the subject matter hereof.

17. *Section 409A.* Notwithstanding any of the provisions of this Agreement, it is intended that the RSUs granted pursuant to this Agreement be exempt from Section 409A of the Code as short-term deferrals, pursuant to Treasury regulation §1.409A-1(b)(4), or otherwise comply with Section 409A of the Code. Notwithstanding the preceding, neither the Company nor any Affiliate shall be liable to the Participant or any other person if the Internal Revenue Service or any court or other authority have any jurisdiction over such matter determines for any reason that the RSUs are subject to taxes, penalties or interest as a result of

failing to be exempt from, or comply with, Section 409A of the Code. For the avoidance of doubt, the provisions of this Agreement shall be construed and interpreted consistent with Article XXII of the Plan.

18. *Compensation Recoupment Policy*. Notwithstanding any other provision of this Agreement, the rights, payments and benefits with respect to the RSUs (including any amounts received by the Participant in connection with a sale of Shares received upon the vesting of RSUs) shall be subject to reduction, reimbursement, cancellation, forfeiture, recoupment or return by the Company, to the extent any reduction, reimbursement, cancellation, forfeiture, recoupment or return is required under applicable law or the Company's Compensation Recoupment Policy or any similar policy that the Company may adopt.

19. *Governing Law.* This Agreement shall be governed by the governing laws applicable to the Plan.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Company has caused this Agreement to be signed by a duly authorized officer, and the Participant has affixed the Participant's signature hereto.

COMPANY:

MIMEDX GROUP, INC.

By:_____
Name:_____
Title:_____

PARTICIPANT:

_____
[Participant's Name]

Exhibit A

(performance criterion/criteria)

Exhibit 10.35

MIMEDX GROUP, INC.

2016 EQUITY AND CASH INCENTIVE PLAN

Employee Performance-Vested Restricted Stock Unit Agreement

THIS RESTRICTED STOCK UNIT AGREEMENT (this "Agreement") dated as of the ___ day of _____, 20___ (the “Grant Date”), between MiMedx Group, Inc. (the "Company") and _____ (the "The Participant"), is made pursuant and subject to the provisions of the Company's 2016 Equity and Cash Incentive Plan (the "Plan"), **a copy of which is attached hereto**. All terms used herein that are defined in the Plan shall have the same meaning given them in the Plan.

1. *Grant of Restricted Stock Units.* Pursuant to the Plan, the Company, on _____ ____, 202__ (the "Date of Grant"), granted to the Participant, subject to the terms and conditions of the Plan and subject further to the terms and conditions set forth herein, this Restricted Stock Unit Award for _____ restricted stock units (the “RSUs”), each representing the right to receive one share of Common Stock (a "Share"). The RSUs will vest as set forth in Section 2 below and, upon vesting, will be settled as set forth in Section 3 below.

2. *Vesting of the RSUs.* Subject to earlier expiration, termination or vesting as provided herein, the RSUs will vest as follows:

(a) *Performance-Based Vesting*. The RSUs will vest and be nonforfeitable upon the attainment of all of the criteria set forth on **Exhibit A** attached hereto, provided that the Participant has been continuously employed by, or providing services to, the Company or an Affiliate of the Company from the Grant Date until such time(s) (the “Vesting Date”).

(b) *Change in Control*. Notwithstanding the foregoing, upon the occurrence of a Change in Control, the RSUs shall become fully vested at the time of the Change in Control, provided the Participant has been continuously providing services as an employee of the Company from the Grant Date until the time of the Change in Control. For purposes of this Agreement, “Vesting Date” shall be deemed to include the date upon which a Change in Control occurs.

(c) *Death and Disability*. Additionally, if the Participant's service as an employee of the Company is terminated on account of the Participant's death or Disability, the RSUs shall become fully vested upon termination of the Participant's service as an employee of the Company on account of the Participant's death or Disability. For purposes of his Agreement, “Vesting Date” shall be deemed to include the date of termination of the Participant’s service as an employee of the Company on account of the Participant’s death or Disability.

3. *Settlement of RSUs*.

(a) Except as otherwise required by applicable law or as set forth below or in the Plan, the Company shall cause one Share to be issued to the Participant for each RSU that vests upon an applicable Vesting Date, with such Shares to be delivered to the Participant within forty-five (45) days after the applicable Determination Date.

(b) Except as set forth in Section 4(e) below, in the event that the Company is unable to settle any vested RSUs in Shares within forty-five (45) days after the later of the Determination Date and the Vesting Date, the Company shall cause any such RSUs that vest to be settled in cash by the delivery to the Participant of a cash payment equal to the initial Award Value (or portion thereof) as soon as administratively practicable after the later of such Determination Date or Vesting Date.

4. *Non-Transferability of the RSUs; Securities Law Compliance.*

(a) *Transfer Restrictions*. The Participant shall not assign or transfer any RSUs other than by will or the laws of descent and distribution. No right or interest of the Participant or any transferee in the RSUs shall be subject to any lien or any obligation or liability of the Participant or any transferee.

(b) *Investment Intent.* The Participant represents and warrants to the Company that the Shares that the Participant may acquire in respect of the RSUs would be acquired only for investment and without any present intention to sell or distribute such Shares.

(c) *Securities Law Compliance*. The Participant acknowledges that neither the grant of these RSUs nor the delivery of Shares, if any, upon the vesting of any RSUs has been or will be registered under the Securities Act of 1933, as amended. Notwithstanding any other provision of this Agreement or the Plan, the Participant may not sell or otherwise transfer any Shares acquired in respect of the RSUs unless the sale of such Shares is registered under the Securities Act of 1933, as amended, or unless an exemption from such registration requirement exists and the Participant provides a prior opinion of counsel acceptable to the Company as to the existence of such exemption.

(d) *Legend.* The Participant understands and agrees that the certificate representing any Shares acquired in respect of the RSUs shall bear a restrictive legend as follows: “The shares represented by this certificate have not been registered under the Securities Act of 1933, as amended. The shares have been acquired for investment and may not be offered, sold or otherwise transferred in the absence of an effective registration statement with respect to the shares or an exemption from the registration requirement of said act that is then applicable to the shares, as to which a prior opinion of counsel acceptable to the issuer or transfer agent may be required.”

(e) *Delivery of Shares.* The Company may postpone the delivery of any Shares issuable to the Participant in respect of the RSUs for so long as the Company determines to be necessary or advisable to satisfy the following: (1) compliance of such Shares with any applicable securities law requirements; (2) compliance with any requests for representations; and (3) receipt of proof satisfactory to the Company that a person seeking such Shares on the Participant's behalf upon the Participant's Disability or upon the Participant's estate's behalf after the death of the Participant, is appropriately authorized. Notwithstanding any other provision of the Plan or any agreement entered into by the Company pursuant to the Plan, the Company shall not be obligated, and shall have no liability for failure, to issue or deliver any Shares under the Plan unless such issuance or delivery would comply with applicable state and federal securities laws, with such compliance determined by the Company in consultation with its legal counsel.

(f) *Stock Holding Requirements*. Notwithstanding any other provision of this Agreement, the Shares that may be acquired by the Participant in respect of the RSUs may not be sold, transferred or otherwise disposed of until the level of ownership provided in the Company’s Stock Ownership Guidelines is met, to the extent applicable to the Participant. All Shares acquired hereunder (“net” any Shares deducted for withholding) shall be subject to the terms and conditions of the Company’s Stock Ownership Guidelines, as they may be amended from time to time.

5. *Forfeiture of the RSUs.* RSUs that do not vest pursuant to Sections 2(a), (b) or (c) as of the date of termination of the Participant's service as an employee of the Company will be forfeited automatically at the close of business on that date (or immediately upon notice of termination for Cause). In no event may RSUs vest, in whole or in part, after forfeiture pursuant to this Section 5.

6. *Agreement to Terms of the Plan and this Agreement.* The Participant has received a copy of the Plan, has read and understands the terms of the Plan and this Agreement, and agrees to be bound by their terms and conditions. All decisions and interpretations made by the Company or the Committee with regard to any question arising under this Agreement will be binding and conclusive on the Company and the Participant and any other person who has any rights under this Agreement.

7. *Tax Consequences.* The Participant acknowledges (i) that there may be adverse tax consequences upon acquisition or disposition of the Shares or, if applicable, cash payment that may be received upon vesting of the RSUs and (ii) that the Participant should consult a tax adviser prior to such acquisition or disposition. The Participant is solely responsible for determining the tax consequences of the Restricted Stock Unit Award and for satisfying the Participant's tax obligations with respect to the Restricted Stock Unit Award (including, but not limited to, any income or excise tax as resulting from the application of Code Sections 409A or 4999 or related interest and penalties), and the Company and its Affiliates shall not be liable if this grant is subject to Code Sections 409A, 280G or 4999.

8. *Fractional Shares.* Fractional Shares shall not be issuable hereunder, and when any provision hereof may entitle the Participant to a fractional Share such fractional Share shall be disregarded.

9. *Change in Capital Structure.* The RSUs shall be adjusted in accordance with the terms and conditions of the Plan as the Committee determines is equitably required in the event the Company effects one or more stock dividends, stock splits, subdivisions or consolidations of shares or other similar changes in capitalization.

10. *Notice.* Any notice or other communication given pursuant to this Agreement, or in any way with respect to the RSUs, shall be in writing and shall be personally delivered or mailed by United States registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

If to the Company: MiMedx Group, Inc.
1775 West Oak Commons Ct. NE
Marietta, Georgia 30062
Attn: General Counsel

If to the Participant: _____
_____
_____

11. *Shareholder Rights.* Except as provided below, the Participant shall have no rights as a shareholder of the Company with respect to Shares underlying the RSUs unless and until Shares are delivered to the Participant in respect of such RSUs upon vesting. Notwithstanding the above, if dividends are paid on Shares represented by the RSUs that have not yet either vested or been forfeited:

(a) If such dividends are cash dividends, the Company shall accumulate amounts equivalent to the amount of such dividends and pay to the Participant such amount upon distribution of the

underlying Shares (or cash payment in respect of such Shares, if applicable) to the Participant in accordance with this Agreement; and

(b) If such dividends are Share dividends, the Company shall credit the Participant with a number of additional RSUs equal to the number of dividend Shares that would have been paid to the Participant if the Participant's RSUs had been Shares, with such additional RSUs being subject to the same terms and conditions as the RSUs to which such dividend credits relate (including with respect to vesting and settlement).

For the avoidance of doubt, if the Participant receives a cash payment in respect of vested RSUs pursuant to Section 3(b) above, the Participant shall have no rights as a shareholder of the Company with respect to the Shares that were previously underlying such vested RSUs.

12. *No Right to Continued Service.* Neither the Plan, the granting of the RSUs nor any other action taken pursuant to the Plan or this Agreement constitutes or is evidence of any agreement or understanding, expressed or implied, that the Company or any Affiliate shall retain the Participant as a service provider for any period of time or at any particular rate of compensation.

13. *Binding Effect.* Subject to the limitations stated above and in the Plan, this Agreement shall be binding upon and inure to the benefit of the legatees, distributees, and personal representatives of the Participant and the successors of the Company.

14. *Conflicts.* In the event of any conflict between the provisions of the Plan and the provisions of this Agreement, the provisions of the Plan shall govern. All references herein to the Plan shall mean the Plan as in effect on the date hereof.

15. *Counterparts.* This Agreement may be executed in a number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument.

16. *Miscellaneous.* The parties agree to execute such further instruments and take such further actions as may be necessary to carry out the intent of the Plan and this Agreement. This Agreement and the Plan shall constitute the entire agreement of the parties with respect to the subject matter hereof.

17. *Section 409A.* Notwithstanding any of the provisions of this Agreement, it is intended that the RSUs granted pursuant to this Agreement be exempt from Section 409A of the Code as short-term deferrals, pursuant to Treasury regulation §1.409A-1(b)(4), or otherwise comply with Section 409A of the Code. Notwithstanding the preceding, neither the Company nor any Affiliate shall be liable to the Participant or any other person if the Internal Revenue Service or any court or other authority have any jurisdiction over such matter determines for any reason that the RSUs are subject to taxes, penalties or interest as a result of failing to be exempt from, or comply with, Section 409A of the Code. For the avoidance of doubt, the provisions of this Agreement shall be construed and interpreted consistent with Article XXII of the Plan.

18. *Compensation Recoupment Policy*. Notwithstanding any other provision of this Agreement, the rights, payments and benefits with respect to the RSUs (including any amounts received by the Participant in connection with a sale of Shares received upon the vesting of RSUs) shall be subject to reduction, reimbursement, cancellation, forfeiture, recoupment or return by the Company, to the extent any reduction, reimbursement, cancellation, forfeiture, recoupment or return is required under applicable law or the Company's Compensation Recoupment Policy or any similar policy that the Company may adopt.

19. *Governing Law.* This Agreement shall be governed by the governing laws applicable to the Plan.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Company has caused this Agreement to be signed by a duly authorized officer, and the Participant has affixed the Participant's signature hereto.

COMPANY:

MIMEDX GROUP, INC.

By:_____
Name:_____
Title:_____

PARTICIPANT:

_____
[The Participant's Name]

Exhibit A

(performance criterion/criteria)

EXHIBIT 10.36

LOAN AGREEMENT

dated as of June 30, 2020

among

MIMEDX GROUP, INC.,
as Borrower,

and the other GUARANTORS from time to time party hereto,

the LENDERS from time to time party hereto,

HAYFIN SERVICES LLP,
as Administrative Agent,

and

HAYFIN SERVICES LLP,
as Collateral Agent

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LOAN AGREEMENT

LOAN AGREEMENT dated as of June 30, 2020 among MIMEDX GROUP, INC., a Florida corporation (the "Borrower"), the Subsidiaries of the Borrower that are Guarantors or become Guarantors hereunder in accordance with Section 8.10 hereof, the Lenders from time to time party hereto, HAYFIN SERVICES LLP, a Delaware limited liability company, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent") and as collateral agent for the Secured Parties (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent", and together with the Administrative Agent, each an "Agent" and collectively the "Agents").

Introductory Statement

WHEREAS, the Borrower has requested that (a) the Initial Term Loan Lenders extend Initial Term Loans to the Borrower on the Closing Date in an aggregate principal amount of $50,000,000 and (b) the DDTL Lenders extend DDTLs from time to time to the Borrower after the Closing Date but prior to the DDTL Commitment Expiration Date in an aggregate principal amount of up to $25,000,000, in each case, the proceeds of which the Borrower will use in accordance with Section 8.12; and

WHEREAS, the applicable Lenders desire to extend the applicable Loans to the Borrower, the Administrative Agent desires to act as administrative agent for the Lenders, and the Collateral Agent desires to act as collateral agent for the Secured Parties, in each case on and subject to the terms and conditions of this Loan Agreement.

NOW, THEREFORE, in consideration of the premises and the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, and intending to be legally bound, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Defined Terms. As used herein, the following terms have the meanings specified in this Section 1.01 unless the context otherwise requires:

"Account Control Agreement" means, with respect to a deposit account, a securities account or commodities account (other than an Excluded Deposit Account), an account control agreement in form and substance reasonably satisfactory to the Collateral Agent, executed and delivered by the Loan Party owning such account, the Collateral Agent, and the applicable depositary

bank, securities intermediary or commodities intermediary, as applicable, which account control agreement provides the Collateral Agent with, among other things, "control" (as defined in, and for purposes of, the UCC) over such account and the cash or investment property therein, as applicable.

"Accounts" or "accounts" means "Accounts", as such term is defined in the UCC as in effect on the date hereof.

"Acquisition" means the purchase or other acquisition by a Loan Party or Subsidiary thereof of all of the Capital Stock in, or all or substantially all of the property and assets of (or all or substantially all of the property and assets representing a business unit or business line of or customer base of) any Person that, upon the consummation thereof, will be wholly-owned (other than director's qualifying shares) directly or indirectly by a Loan Party (including, without limitation, as a result of a merger or consolidation or the purchase or other acquisition of all or a substantial portion of the property and assets of a Person).

"Acquisition Consideration" means the purchase consideration net of cash and Cash Equivalents of the acquired Person (solely to the extent such cash and Cash Equivalents become assets of the Loan Parties and Collateral hereunder and under the Security Documents) for a Permitted Acquisition, whether paid in cash or by exchange of properties or otherwise and whether payable at or prior to the consummation of a Permitted Acquisition or deferred for payment at any future time, whether or not any such future payment is subject to the occurrence of any contingency and includes any and all payments representing the purchase price and any assumption of Indebtedness, and including earn-outs and other agreements to make any payment the amount of which, or the terms of payment of which are, in any respect subject to or contingent upon the revenues, income, cash flow or profits (or the like), or some other economic performance metric, of any Person or business; provided that at any time after the consummation of such Permitted Acquisition all or any portion of such deferred payment or contingent obligation that has permanently expired and is not payable in accordance with the underlying documentation shall not be included in connection with any cap for purposes of determining future Permitted Acquisitions.

"Additional Incremental Term Loan" has the meaning given to such term in Section 2.08(c)(i).

"Additional Incremental Term Loan Lender" has the meaning given to such term in Section 2.08(c)(i).

"Additional Incremental Term Loan Maturity Date" has the meaning given to such term in Section 2.08(c)(i).

"Adjustment Date" means the date of delivery of financial statements pursuant to Section 8.01(b) or (c), as applicable, and corresponding Compliance Certificate required to be delivered pursuant to Section 8.01(d), as applicable.

"Administrative Agent" has the meaning set forth in the preamble to this Loan Agreement.

"Administrative Questionnaire" shall mean an Administrative Questionnaire (in which the Person completing such Administrative Questionnaire shall designate one or more credit contacts to whom all syndicate-level information (which may contain MNPI about the Loan Parties, their Subsidiaries and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable Requirements of Laws, including Federal and state securities laws) in the form supplied from time to time by the Administrative Agent.

"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affiliate" means, with respect to any Person, (i) any other Person that directly, or indirectly (through one or more intermediaries or otherwise), Controls or is Controlled by or is under common Control with such Person, and (ii) such Person's officers, directors and other Persons functioning in substantially similar roles. Notwithstanding anything herein to the contrary, neither Agent nor any Lender, nor any of their respective Affiliates, shall be deemed an Affiliate of any Loan Party solely by virtue of the transactions contemplated by this Loan Agreement and the other Loan Documents.

"Agents" and "Agent" each has the meaning set forth in the preamble to this Loan Agreement.

"Aggregate Incremental Amount" shall mean, at any time, the sum of the aggregate principal amount of all Incremental Term Loans (whether or not then outstanding) and, to the extent not yet terminated, unfunded Incremental Term Loan Commitments, in each case, incurred at or prior to such time.

"Alternative Interest Rate Election Event" has the meaning given to such term in Section 2.06(c).

"Anti-Terrorism Laws" has the meaning given to such term in Section 7.29.

"Applicable Laws" means, as to any Person, any Laws applicable to, or otherwise binding upon, such Person or any of its property, products, business, assets or operations, or to which such Person or any of its property, products, business, assets or operations is subject.

"Applicable Margin" means

(a) with respect to any Incremental Term Loan that was not incurred as an increase to the Initial Loans, the rate or rates per annum specified in the applicable Incremental Joinder Agreement;

(b) with respect to the Initial Loans, for any day, the rate per annum set forth below under the caption "Applicable Spread" based upon the Total Net Leverage Ratio as of the last day of the most recently ended fiscal quarter for which a Compliance Certificate have been delivered pursuant to Section 8.01(d); provided that, until the first Adjustment Date that occurs after December 31, 2020, the "Applicable Rate" shall be the rate per annum set forth below in Category 1:

Total Net Leverage Ratio	**Applicable Spread**
Category 1	
Greater than or equal to 2.00:1.00	6.75%
Category 2	
Less than 2.00:1.00 but greater than or equal to 1.00:1.00	6.50%
Category 3	
Less than 1.00:1.00	6.00%

Any increase or decrease in the Applicable Margin with respect to the Initial Loans resulting from a change in the Total Net Leverage Ratio shall become effective as of the first Business Day immediately following the date of delivery the applicable Compliance Certificate pursuant to Section 8.01(d) showing such increase or decrease, if any, following the completion of each applicable fiscal quarter; provided, however, that if the applicable Compliance Certificate is not delivered when due in accordance with Section 8.01(d) or an Event of Default has occurred and is continuing, then Category 1 shall apply in respect of the Initial Loans as of the date (x) after the date on which such Compliance Certificate was required to have been delivered pursuant to Section 8.01(d) or (y) such Event of Default has occurred, as applicable, and shall remain in effect until the date on which such Compliance Certificate is so delivered or such Event of Default is no longer continuing, as applicable.

In the event that any financial statement delivered on an Adjustment Date or any Compliance Certificate delivered pursuant to Section 8.01(d), as applicable, is inaccurate, and such inaccuracy, if corrected, would have led to the imposition of a higher Applicable Margin for any period than the Applicable Margin applied for that period, then (i) Borrower shall immediately deliver to

Administrative Agent a corrected financial statement and a corrected Compliance Certificate for that period (the "Corrected Financials Date"), (ii) the Applicable Margin shall be determined based on the corrected Compliance Certificate for that period, and (iii) Borrower shall immediately pay to Administrative Agent (for the account of the Lenders that hold the Commitments and Loans at the time such payment is received, regardless of whether those Lenders held the Commitments and Loans during the relevant period) the accrued additional interest owing as a result of such increased Applicable Margin for that period; provided, for the avoidance of doubt, such deficiency shall be due and payable as at such Corrected Financials Date and no Default or Event of Default under Section 10.01(a) shall be deemed to have occur with respect to such deficiency prior to such date (but if not so paid, shall constitute an Event of Default immediately thereafter). This paragraph shall not limit the rights of Administrative Agent or the Lenders with respect to Section 2.05(c) and Article X hereof, and shall survive the termination of this Loan Agreement until the payment in full in cash of the aggregate outstanding principal balance of the Loans.

"Approved Fund" means any Person (other than a natural person) that is or will be engaged in making, purchasing, holding or investing in one or more debt securities, bank loans, other commercial loans, or other similar extensions of credit in the Ordinary Course of Business, and which Person either: (a) is administered, managed, advised or underwritten by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers, manages, advises or underwrites a Lender; (b) purchases, holds or invests in, or was formed for the purpose of purchasing, holding or investing in, one or more debt securities, bank loans, other commercial loans, or other similar extensions of credit originated by (i) a Lender or (ii) an Affiliate of a Lender or (c) a Hayfin Party.

"Assignment and Acceptance" means an assignment and acceptance substantially in the form of Exhibit F or such other form as acceptable to the Administrative Agent.

"Assignment of Claims Act" means (i) Title 31, United States Code § 3727, and Title 41, United States Code § 15, in each case as revised or amended, and any rules or regulations issued pursuant thereto, and (ii) all other federal and state laws, rules and regulations governing the assignment of government contracts or claims against a Governmental Authority.

"Attributable Indebtedness" means, on any date, in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear as a liability on a balance sheet of such Person prepared as of such date in accordance with GAAP.

"Authorized Officer" means, with respect to any Person, the president, chief executive officer, chief financial officer (including interim chief financial officer), chief operating officer or secretary of such Person (or a manager, in the case of a Person that is a limited liability company), provided that, with respect to financial reporting and other financial matters (including

Compliance Certificates, Excess Cash Flow, and Solvency Certificates), "Authorized Officer" means the chief financial officer (including interim chief financial officer) of the applicable Loan Party or such other officer or similar Person performing such duties for such Loan Party.

"Available Amount" means, on any date of determination (each a "Reference Date"), an amount equal to, without duplication:

(a) Retained ECF Amount; *minus*

(b) the aggregate amount of Investments made in reliance on Section 9.05(s). Restricted Payments made in reliance on Section 9.06(h) and payments of Indebtedness that has been contractually subordinated in right of payment to the Obligations in reliance on Section 9.07(a)(ii) during the period from the Closing Date through and including such Reference Date.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

"Bail-In Legislation" means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law , regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bankruptcy Code" means Title 11 of the United States Code, as amended, modified, succeeded or replaced from time to time.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Board" means the Board of Governors of the Federal Reserve System of the United States, or any successor thereto.

"Board of Directors" has the meaning given to such term in Section 8.21.

"Borrower" has the meaning set forth in the preamble to this Loan Agreement.

"Borrowing" means a borrowing hereunder consisting of Loans made to or for the benefit of Borrower on the same day by Lenders pursuant to this Loan Agreement.

"Borrowing Notice" means a written notice given by the Borrower to Administrative Agent pursuant to Section 2.02, in the form of Exhibit H.

"Budget" has the meaning given to such term in Section 8.01(f).

"Business" means the business of developing, licensing, acquiring, manufacturing, commercializing and marketing regenerative biologics utilizing human placental allografts, and any business reasonably related, ancillary or incidental thereto.

"Business Day" means (a) any day that is not a Saturday, Sunday or other day on which commercial banks in the City of New York are required, authorized or otherwise permitted by law or other governmental actions to close, and (b) with respect to any notices or determinations in connection with any LIBOR Rate established hereunder, any day that is also a day for trading by and between banks in Dollar deposits in the London Interbank Eurodollar market.

"Capital Expenditures" shall mean, with respect to any Person, all expenditures by such Person which should be capitalized in accordance with GAAP and, without duplication, the amount of Capitalized Lease Obligations incurred by such Person.

"Capital Stock" means any and all shares, interests, participations, units or other equivalents (however designated) of capital stock of a corporation, membership interests in a limited liability company, partnership interests of a limited partnership, any and all equivalent ownership interests in a Person, and in each case any and all warrants, rights or options to purchase, and all conversion or exchange rights, voting rights, calls or rights of any character with respect to, any of the foregoing but excluding any debt securities convertible into such Capital Stock.

"Capitalized Lease Obligations" means, as applied to any Person, subject to Section 1.03, all obligations under Capitalized Leases of such Person or any of its Subsidiaries, in each case taken at the amount thereof accounted for as liabilities on the balance sheet (excluding the footnotes thereto) of such Person in accordance with GAAP.

"Capitalized Leases" means, as applied to any Person, subject to Section 1.03, all leases of property (real or personal) that have been or should be, in accordance with GAAP, classified as capitalized leases on the balance sheet of such Person or any of its Subsidiaries, on a consolidated basis.

"Cash Equivalents" means:

(a) any direct obligation of, or unconditional guaranty by, the United States of America (or any agency or political subdivision thereof, to the extent such obligations are supported by the full faith and credit of the United States of America) maturing not more than one year after the date of acquisition thereof;

(b) commercial paper maturing not more than one hundred eighty (180) days from the date of issue and issued by a corporation (other than an Affiliate of any Loan Party) organized under the laws of any state of the United States of America or of the District of Columbia and, at the time of acquisition thereof, rated A 1 or higher by S&P or P 1 or higher by Moody's;

(c) any Dollar denominated certificate of deposit, time deposit or bankers' acceptance, maturing not more than one year after its date of issuance, which is issued by a bank organized under the laws of the United States of America (or any state thereof) which has, at the time of acquisition of such certificate of deposit, time deposit or bankers' acceptance, as applicable, (i) a credit rating of A or higher from S&P or A-2 or higher from Moody's and (ii) a combined capital and surplus greater than $500,000,000;

(d) any repurchase agreement having a term of thirty (30) days or less entered into with any commercial banking institution satisfying, at the time of acquisition thereof, the criteria set forth in clause (c)(i) which (i) is secured by a fully perfected security interest in any obligation of the type described in clause (a), and (ii) has a market value at the time such repurchase agreement is entered into of not less than 100% of the repurchase obligation of such commercial banking institution thereunder;

(e) mutual funds with assets in excess of $5,000,000, substantially all of which are of the type described in clauses (a) through (d) of this definition; and

(f) other short term liquid investments approved in writing by the Administrative Agent.

"Cash Management Agreement" shall mean any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

"Cash Management Bank" shall mean (x) any Person that is a Lender or an Agent (or an Affiliate of a Lender or an Agent), (y) any person who was a Lender or an Agent (or any Affiliate of a Lender or an Agent) at the time it entered into a Cash Management Agreement, in each case, in its capacity as a party to such Cash Management Agreement, or (z) with the prior written consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed), each other Person with whom the Loan Party has entered into a Cash Management Agreement provided that if such Person is not a Lender or an Agent, by accepting the

benefits of this Loan Agreement, such Person shall be deemed to have (i) appointed the Collateral Agent as its agent under the applicable Loan Documents and (ii) agrees to be bound by the provisions of Sections 12.05(a), 12.14 and 12.25 as if it were a Lender.

"Casualty Event" means the damage, destruction or condemnation, as the case may be, of property of any Person or any of its Subsidiaries.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, et seq.), as amended, and all rules, regulations and binding standards issued thereunder.

"Change in Law" means the occurrence, after the Closing Date, of any of the following: (a) the adoption, change in or taking effect of any law, rule or regulation or in the administration, implementation, interpretation or application thereof by any Governmental Authority; or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, interpretations or directives thereunder or issued in connection therewith (whether or not having the force of Applicable Law) and (y) all requests, rules, regulations, guidelines, interpretations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities (whether or not having the force of law), in each case pursuant to Basel III, shall in each case be deemed to be a Change in Law regardless of the date enacted, adopted, issued, promulgated or implemented.

"Change of Control" means the occurrence of any of the following:

(a) any Person, "person" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act), shall at any time have acquired direct or indirect beneficial ownership of a percentage of the voting power of the outstanding Voting Stock of the Borrower that exceeds 35% thereof; or

(b) any sale of all or substantially all of the property or assets of the Borrower other than in a sale or transfer to another Loan Party.

"Class" when used in reference to (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Initial Loans or Incremental Term Loans of any series established as a separate "Class " pursuant to Section 2.08 (b) any Commitment, refers to whether such Commitment is an Initial Term Loan Commitment, DDTL Commitment or an Incremental Term Loan Commitment of any series established as a separate "Class" pursuant to Section 2.08 and (c) any Lender, refers to whether such Lender has a Loan or Commitment of a

particular Class. The Initial Term Loans and the DDTLs are a single Class for all purposes under this Loan Agreement.

"Closing Date" means the first date upon which all conditions precedent listed in Article V have been satisfied or waived pursuant to the terms thereof.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and all rules, regulations, standards and guidelines issued thereunder. Section references to the Code are to the Code as in effect at the date of this Loan Agreement, and any subsequent provisions of the Code amendatory thereof, supplemental thereto or substituted therefor.

"Collateral" means any assets of any Loan Party or other assets upon which the Collateral Agent and/or the Secured Parties has been granted a Lien in connection with this Loan Agreement, including pursuant to the Security Documents.

"Collateral Agent" has the meaning set forth in the preamble to this Loan Agreement.

"Collateral Assignee" has the meaning given to such term in Section 12.06(d).

"Collections" means all cash, checks, credit card slips or receipts, notes, instruments, and other items of payment (including insurance proceeds, proceeds of cash sales, rental proceeds, and tax refunds) of the Loan Parties.

"Commitment" means, the Initial Term Loan Commitment, the DDTL Commitment and any Incremental Term Loan Commitment.

"Competitor" has the meaning assigned to such term in the definition of "Disqualified Institution".

"Compliance Certificate" means a certificate duly completed and executed by an Authorized Officer of the Borrower substantially in the form of Exhibit D-1, together with such changes thereto or departures therefrom as the Administrative Agent may reasonably request (in connection with any operational or administrative function of the Administrative Agent or to reflect any amendment or modification of this Loan Agreement or any other Loan Document) or approve from time to time.

"Confidential Information" has the meaning given to such term in Section 12.18.

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Consolidated Adjusted EBITDA" means, for a specified period, an amount determined for the Consolidated Companies equal to, on a trailing twelve month basis (including, subject to the established Consolidated Adjusted EBITDA amounts provided below, any months that precede the Closing Date):

(a) Consolidated Net Income of the Consolidated Companies, plus

(b) the sum of the following amounts, without duplication, to the extent deducted (other than in respect of clauses (ix), (x) and (xiv)) in calculating such Consolidated Net Income:

(i) Consolidated Interest Expense during such measurement period,

(ii) Taxes paid and provisions for Taxes based on income, profits or capital of such Person and its subsidiaries, including, in each case, federal, state, provincial, local, foreign, unitary, franchise, excise, property, withholding and similar Taxes, including any penalties and interest,

(iii) any impairment charge or asset write-off charge and total depreciation expense,

(iv) total amortization expense, including amortization, impairment or write-off of intangibles,

(v) any charges, losses, reserves or expenses related to signing, retention, relocation, recruiting or completion bonuses or recruiting costs, severance costs, transition costs, curtailments or modifications to pension and post-employment, retirement or employee benefit plans (including any settlement of pension liabilities), and restructuring charges, expenses and reserves; provided that the amounts added to Consolidated Adjusted EBITDA pursuant to this clause (v) and clauses (b)(vi)(B), (b)(viii) and (b)(xiv) of the definition of Consolidated Adjusted EBITDA shall not, in the aggregate, exceed 20% of Consolidated Adjusted EBITDA for any relevant Test Period (calculated prior to any adjustments pursuant to such clauses),

(vi) any (A) extraordinary (as defined under GAAP prior to FASB Update No. 2015-01) expenses or charges and (B) any unusual or non-recurring expenses or charges; provided that the amounts added to Consolidated Adjusted EBITDA pursuant to this clause (vi)(B) and clauses (b)(v), (b)(viii) and (b)(xiv) of the definition of Consolidated Adjusted EBITDA shall not, in the aggregate, exceed 20% of Consolidated Adjusted EBITDA for any relevant Test Period (calculated prior to any adjustments pursuant to such clauses),

(vii) other non-cash charges and expenses reducing Consolidated Net Income (excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period) including, without limitation, non-cash compensation expense in respect of stock option and incentive plans, impairment charges and other write offs of intangible assets and goodwill,

(viii) non-capitalized costs in connection with financings, acquisitions, investments, dispositions, private or public offerings of equity securities or the establishment of joint ventures, in each case whether or not consummated; provided that the amounts added to Consolidated Adjusted EBITDA pursuant to this clause (viii) and clauses (b)(v), (b)(vi)(B) and (b)(xiv) of the definition of Consolidated Adjusted EBITDA shall not, in the aggregate, exceed 20% of Consolidated Adjusted EBITDA for any relevant Test Period (calculated prior to any adjustments pursuant to such clauses),

(ix) fees and expenses incurred in connection with the consummation of the Transactions and any refinancing, extension, waiver, forbearance, amendment, restatement, amendment and restatement, supplement or other modification of the Loan Documents (in each case, whether or not consummated); provided that amounts added back under this clause (ix) in respect of costs, fees and expenses arising in connection with the Transactions shall not exceed $5,000,000 in the aggregate for the relevant Test Period,

(x) the amount of any expense, charge or loss, in each case that is actually reimbursed or reasonably expected to be reimbursed within 365 days by third parties pursuant to indemnification or reimbursement provisions or similar agreements or insurance; provided that (x) if such amount is not so reimbursed or received (or if the amount reimbursed or received is less than the amount added back pursuant to this clause (xi)) by the Borrower or its Subsidiaries within such 365-day period applicable thereto, then such amount (or unreimbursed portion of such amount) shall be subtracted in subsequent periods to the extent applicable and (y) any such amount shall not be included in any subsequent period in which such amount is actually reimbursed or received,

(xi) any cost, expense or other charge (including any legal fees and expenses) associated with investigations by Governmental Authorities, any litigation or as a result of the Inaccurate Information (including in connection with the restatement of historical financial statements) or payment of any actual legal settlement, fine, judgment or order in respect of the foregoing,

(xii) cash receipts (or any netting arrangements resulting in reduced cash expenses) not included in Consolidated Adjusted EBITDA in any period solely to the extent

that the corresponding non-cash gains relating to such receipts were deducted in the calculation of Consolidated Adjusted EBITDA pursuant to paragraph (c)(i) below for any previous period and not added back,

(xiii) amounts of indemnities and expense reimbursement paid or accrued to directors and officers, in each case during such period, including payment for directors and officers insurance policies in an amount not to exceed $1,500,000 in the aggregate;

(xiv) the amount of net cost savings and operating expense reductions projected by the Borrower in good faith (calculated on a pro forma basis as though such items had been realized on the first day of such period) as a result of actual actions taken prior to the last day of the applicable Test Period in connection with any acquisition, investment, disposition, unit opening or closing or restructuring or cost savings initiative by the Borrower or any of its Subsidiaries, net of the amount of actual benefits realized during such period that are otherwise included in the calculation of Consolidated Adjusted EBITDA from such actions, and only to the extent that the same have been realized or are reasonably expected to be realized within twelve (12) months of the related acquisition, investment, disposition or restructuring or cost-savings initiative; provided that (A) an Authorized Officer of Borrower shall have provided a reasonably detailed statement or schedule of such cost savings and operating expense reductions and shall have certified to the Administrative Agent that (x) such cost savings are reasonably identifiable, reasonably attributable to the actions specified and reasonably anticipated to result from such actions and (y) such actions have been taken and are ongoing, and the benefits resulting therefrom are anticipated by Borrower to be realized within twelve (12) months of the end of such Test Period and (B) the amounts added to Consolidated Adjusted EBITDA pursuant to this clause (xiv) and clauses (b)(v), (b)(vi)(B) and (b)(viii) of the definition of Consolidated Adjusted EBITDA shall not, in the aggregate, exceed 20% of Consolidated Adjusted EBITDA for any relevant Test Period (calculated prior to any adjustments pursuant to such clauses),

(xv) any (A) non-cash costs incurred by the Consolidated Companies pursuant to any management equity or equity-based plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or stockholders agreement, and (B) cash costs in respect thereto, in the case of this clause (B), to the extent such costs or expenses are funded with net cash proceeds of an issuance of Capital Stock (but not Disqualified Capital Stock) of the Borrower, and

(xvi) accruals and reserves that are established or adjusted (A) within 12 months after the Closing Date and that are so required to be established or adjusted in accordance with GAAP or (B) after the closing of any acquisition that are so required as a result of such acquisition in accordance with GAAP, or changes as a result of the adoption

or modification of accounting policies, whether effected through a cumulative effect adjustment, restatement or a retroactive application; minus

(c) to the extent increasing Consolidated Net Income, the sum of, without duplication:

(i) amounts for other non-cash gains increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period); and

(ii) extraordinary, unusual or non-recurring gains received during the specified period.

Consolidated Adjusted EBITDA for each of the following periods set forth below shall be as set forth opposite such period, but in each case subject to approval by the Administrative Agent (in its reasonable discretion) of the manner in which such amounts were calculated:

Historical Consolidated Adjusted EBITDA figures:

Fiscal Quarter ended September 30, 2019	$7,500,000
Fiscal Quarter ended December 31, 2019	$17,100,000
Fiscal Quarter ended March 31, 2020	$3,100,000

"Consolidated Companies" means the Loan Parties and their Subsidiaries on a consolidated basis in accordance with GAAP.

"Consolidated Interest Expense" means, for the Consolidated Companies, the sum of all interest (net of interest income) in respect of Indebtedness (including, without limitation, the interest component of any payments in respect of Capitalized Lease Obligations) accrued or capitalized during such period (whether or not actually paid during such period) and any commitment fees in respect of such Indebtedness, including, without limitation, the Unused DDTL Commitment Fee.

"Consolidated Net Income" means, for any specified period, the consolidated net income (or deficit) of the Consolidated Companies, after deduction of all expenses, taxes, and other proper charges, determined in accordance with past practice and in accordance with GAAP, after eliminating therefrom all extraordinary nonrecurring items of income or loss, provided that there shall be excluded: (a) the income (or loss) of any Person in which any Person (other than any of

the Consolidated Companies) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid in cash to any of the Consolidated Companies by such Person during such specified period, (b) the income (or loss) of any Person accrued prior to the date it becomes a consolidated Subsidiary of any of the Consolidated Companies or is merged into or consolidated with any of the Consolidated Companies or such Person's assets are acquired by any of the Consolidated Companies, (c) the income of any consolidated Subsidiary of any of the Consolidated Companies to the extent that the declaration or payment of dividends or other distributions by that consolidated Subsidiary of that income is not at the time permitted by operation of the terms of any Contractual Obligation or Applicable Law applicable to that consolidated Subsidiary, except to the extent of the amount of dividends or other distributions actually paid in cash to any of the Consolidated Companies by such Person during such specified period, (d) any restoration to income of any contingency reserve, except to the extent that provision for such reserve was made out of income accrued during such period, (e) any gain attributable to the write-up of any asset and any loss attributable to the write-down of any asset; (f) any net gain from the collection of the proceeds of life insurance policies, (g) any net gain arising from the acquisition of any securities, or the extinguishment, under GAAP, of any Indebtedness, of any of the Consolidated Companies, (h) in the case of a successor to any consolidated Subsidiary of any of the Consolidated Companies by consolidation or merger or as a transferee of its assets, any earnings of such successor prior to such consolidation, merger or transfer of asset (unless such successor was a consolidated Subsidiary of any of the Consolidated Companies prior to such consolidation, merger or transfer), (i) any deferred credit representing the excess of equity in any consolidated Subsidiary of any of the Consolidated Companies at the date of acquisition of such consolidated Subsidiary over the cost to the Consolidated Companies of the investment in such Subsidiary, (j) the cumulative effect of any change in GAAP during such period, and (k) any noncash FASB ASC 815 income (or loss) related to hedging activities.

"Consolidated Working Capital" means, as of any date of determination, the excess of (a) the sum of all amounts (other than cash and current tax assets) that would, in conformity with GAAP, be set forth opposite the caption "total current assets" (or any like caption) on a consolidated balance sheet of the Consolidated Companies at such date over (b) the sum of all amounts that would, in conformity with GAAP, be set forth opposite the caption "total current liabilities" (or any like caption) on a consolidated balance sheet of the Consolidated Companies on such date, including deferred revenue but excluding, without duplication, (i) the current portion of any Indebtedness, (ii) all Indebtedness consisting of the Loans to the extent otherwise included therein, (iii) the current portion of interest and (iv) the current portion of current and deferred income Taxes.

"Contingent Liability" means, for any Person, any agreement, undertaking or arrangement by which such Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss)

the Indebtedness of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the Capital Stock of any other Person. The amount of any Contingent Liability shall (subject to any limitation set forth therein) be determined in accordance with GAAP.

"Contractual Obligation" means, as to any Person, any provision of any security issued by such Person, or any agreement, instrument, permit, license or other undertaking to which such Person is a party or by which such Person or any of its property is bound or subject.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise; provided that, for purposes of this definition, any Person which owns directly or indirectly ten percent (10%) or more of the Capital Stock having ordinary voting power for the election of directors or other members of the governing body of a Person, or ten percent (10%) or more of the Capital Stock of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person. The terms "Controlling" and "Controlled" have meanings correlative thereto.

"Copyright Security Agreements" means any copyright security agreement entered into on or after the Closing Date (as required by this Loan Agreement or any other Loan Document), in each case as amended, supplemented or otherwise modified, renewed or replaced from time to time.

"Covered Entity" means any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Customer" means and includes the account debtor with respect to any Account and/or the prospective purchaser of goods, services or both with respect to any contract or contract right, and/or any party who enters into or proposes to enter into any contract or other arrangement with a Person, pursuant to which such Person is to deliver any personal property or perform any services.

"DACA Compliance Date" means the earlier of (i) the first date a deposit account of any Loan Party is subject to an Account Control Agreement and (ii) thirty (30) days after the Closing Date.

"DDTL" has the meaning set forth in Section 2.01(b).

"DDTL Commitment" means, in the case of each DDTL Lender as of the date hereof, the amount set forth opposite such DDTL Lender's name on Schedule 1.01 under the heading "DDTL Commitment", as the same may be changed from time to time pursuant to the terms hereof.

"DDTL Commitment Expiration Date" means June 30, 2021

"DDTL Lender" means any Lender with DDTL Commitment or an outstanding DDTL.

"Default" means any event, act or condition that, with notice or lapse of time, or both, would constitute an Event of Default.

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Defaulting Lender" means, any Lender that (a) has failed to fund any portion of the Loans required to be funded by it hereunder within five () Business Days of the date required to be funded by it hereunder, (b) has otherwise failed to pay over to the Administrative Agent or any Lender any other amount required to be paid by it hereunder within five (5) Business Days of the date when due, (c) has notified the Borrower, the Administrative Agent or any Lender in writing that it does not intend to comply with its funding obligations hereunder, or generally under other agreements in which it commits to extend credit, or has made a public statement to that effect, (d) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower, in a manner reasonably satisfactory to the Administrative Agent or the Borrower, as applicable, that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (d) upon receipt of such written confirmation by the Administrative Agent and the Borrower) or (e) has, or has a direct or indirect parent company that has, (i) become the subject of an Insolvency Proceeding or a Bail-In Action, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide

such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (e) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to the Borrower and each Lender; provided that, for the avoidance of doubt, such a determination by the Administrative Agent shall not be required for a Lender to constitute a Defaulting Lender.

"Disposition" means, with respect to any Person, any sale, transfer, license, sub-license, lease, sale and leaseback, contribution or other conveyance (including by way of merger, condemnation, casualty event or division of a limited liability company) of any of such Person's or any of such Person's Subsidiaries' assets or properties (including Capital Stock of Subsidiaries, but excluding any Capital Stock of the Borrower) to any other Person in a single transaction or series of transactions. "Dispose" shall have a correlative meaning consistent with the foregoing.

"Disqualified Capital Stock" means any Capital Stock that, by its terms (or by the terms of any security or other Capital Stock into which it is convertible or for which it is exchangeable) or upon the happening of any event or condition, (a) matures or is mandatorily redeemable (other than solely for Qualified Capital Stock), pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof (other than solely for Qualified Capital Stock), in whole or in part, (c) provides for the scheduled payment of dividends in cash or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Capital Stock that would constitute Disqualified Capital Stock, in each case, prior to the date that is ninety-one (91) days after the Latest Maturity Date; provided, that (i) if such Capital Stock is issued pursuant to a plan for the benefit of employees of any Loan Party or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by a Loan Party in order to satisfy applicable statutory or regulatory obligations and (ii) only the portion of the Capital Stock meeting one of the foregoing clauses (a) through (d) prior to the date that is ninety-one (91) days after the Latest Maturity Date will be deemed to be Disqualified Capital Stock.

"Disqualified Institution" means, as of any date, competitors of the Borrower or any of its Subsidiaries that are in the same or a similar line of business and, in each case, identified in writing to the Administrative Agent from time to time prior to such date (each such entity, a "Competitor") and Affiliates of Competitors to the extent such affiliates are reasonably identifiable (on the basis of the similarity of such Affiliate's name to the name of an entity so identified in writing) or designated in writing by the Borrower from time to time prior to such date and to the extent such Affiliates are not bona fide debt funds or investment vehicles that are primarily engaged

in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business with appropriate information barriers in place; provided, that no such updates shall be deemed to retroactively disqualify any parties that have previously acquired an assignment or participation interest or any party for which the applicable "Trade Date" with respect to an assignment or participation interest has occurred in respect of the Loans in compliance with the provisions of this Loan Agreement from continuing to hold or vote such previously acquired assignments and participations or from closing an assignment or participation interest sale for which the applicable "Trade Date" has previously occurred on the terms set forth herein for Lenders that are not Disqualified Institutions; provided, that, and notwithstanding the foregoing, no Hayfin Party shall be considered a Disqualified Institution under this Loan Agreement.

"Dollars" and "$" means dollars in lawful currency of the United States of America.

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of the U.S., any state thereof or the District of Columbia.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Employee Benefit Plan" means any employee benefit plan, as defined in Section 3(3) of ERISA, which is contributed to by (or to which there is an obligation to contribute of) any Loan Party or any ERISA Affiliate.

"Environmental Claims" means any and all actions (including administrative, regulatory and judicial actions), suits, demands, demand letters, claims, liens, notices of noncompliance or violation, requests for information, warning letters, notices of deficiencies or investigations (other than internal reports prepared by the Loan Parties) in the ordinary course of such Person's business arising under or related to any alleged violation of or non-compliance with any Environmental Law or any permit issued, or any approval given, under any Environmental Law, including (i) any actual or threatened claims or assertions of liability by any Governmental

Authorities for enforcement, cleanup, removal, response, fines, penalties, remedial or other actions or damages pursuant to any applicable Environmental Law and (ii) any claims or assertions of liability by any third party seeking damages, contribution, indemnification, cost recovery, fines, penalties, compensation or injunctive relief resulting from the Release or threatened Release of Hazardous Materials or arising from any alleged violation of Environmental Law.

"Environmental Law" means any applicable federal, state, foreign, local or municipal statute, law (including the common law), rule, regulation, order, ordinance, code, decree, or other binding written requirement of any Governmental Authority now or hereafter in effect, in each case as amended, and any binding judicial interpretation thereof, including any binding judicial or administrative order, consent decree or judgment, relating to or imposing liability or standards of conduct concerning protection of the environment or natural resources, or the protection of human health or safety (from exposure to Hazardous Materials), or occupational health and safety (from exposure to Hazardous Materials), including public environmental notification requirements.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder. Section references to ERISA are to ERISA as in effect at the date of this Loan Agreement and any subsequent provisions of ERISA amendatory thereof, supplemental thereto or substituted therefor.

"ERISA Affiliate" means each person (as defined in Section 3(9) of ERISA) that, together with any Loan Party or any Subsidiary of any Loan Party, is, or within the last six (6) years was, treated as a "single employer" within the meaning of Section 4001(b) of ERISA, and for the purpose of Section 302 of ERISA and/or Section 412, 4971, 4977 and/or each "applicable section" under Section 414(t)(2) of the Code, within the meaning of Section 414(b), (c), (m) or (o) of the Code.

"ERISA Event" means any of the following: (i) a Reportable Event with respect to any Plan; (ii) any Plan is insolvent or in endangered or critical status within the meaning of Section 432 of the Code or Section 4241 or 4245 of ERISA or notice of any such insolvency has been given to any of the Loan Parties or any ERISA Affiliate; (iii) any Plan is in "at risk" status (as defined in Section 430 of the Code or Section 303 of ERISA); (iv) any Plan (other than a Multiemployer Plan) has failed to satisfy the minimum funding standard of Section 412 of the Code or Section 302 of ERISA (whether or not waived in accordance with Section 412(c) of the Code or Section 302(c) of ERISA), or any of the Loan Parties or any Subsidiary of any Loan Party has applied for or received a waiver of the minimum funding standard or an extension of any amortization period within the meaning of Section 412 of the Code or Section 302, 303 or 304 of ERISA with respect to any Plan; (v) any Loan Party or any ERISA Affiliate fails to make by its due date a required installment under Section 430(j) of the Code with respect to any Plan or to make any required contribution to a Multiemployer Plan when due; (vi) any of the Loan Parties, any of their respective Subsidiaries,

or, to the extent applicable to the Loan Parties or any of their respective Subsidiaries, any ERISA Affiliate incurs (or is reasonably expected to incur) any liability to or on account of a Plan pursuant to Section 409, 502(i), 502(l), 515, 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or Section 436(f), 4971, 4975 or 4980 of the Code or is notified in writing that it will incur any liability under any of the foregoing Sections with respect to any Plan; (vii) any proceeding is instituted (or is reasonably likely to be instituted) to terminate any Plan or to appoint a trustee to administer any Plan, or any written notice of any such proceeding is given to any of the Loan Parties or any ERISA Affiliate; (viii) the imposition on account of any Plan of any Lien under the Code or ERISA on the assets of any of the Loan Parties or any ERISA Affiliate or notification to any of the Loan Parties or any ERISA Affiliate that such a Lien will be imposed on the assets of any of the Loan Parties or any ERISA Affiliate; (ix) the occurrence of an event, circumstance, transaction, or failure that results in liability to the Loan Parties or any ERISA Affiliate under Title I of ERISA or a tax under any of Sections 4971 through 5000 of the Code; or (x) the complete or partial withdrawal of any of the Loan Parties or any ERISA Affiliate from a Multiemployer Plan that results in or is reasonably expect to result in the imposition of Withdrawal Liability or insolvency under Title IV of ERISA of any Multiemployer Plan."

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Eurodollar" when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the LIBOR Rate but does not include any Loan or Borrowing bearing interest at a rate determined by reference to the definition of "Prime Rate."

"Event of Default" has the meaning given to such term in Article X.

"Excess Cash Flow" means, for any fiscal year of the Consolidated Companies, an amount equal to:

(a) the sum, without duplication, of (i) Consolidated Adjusted EBITDA for such fiscal year without giving effect to clause (b)(xiv) thereof, (ii) the net decrease, if any, in Consolidated Working Capital of the Consolidated Companies during such fiscal year, (iii) the net cash gains during such fiscal year from the sale or disposition of assets of the Consolidated Companies outside of the ordinary course of business, to the extent not included in arriving at such Consolidated Adjusted EBITDA and to the extent not otherwise included as a mandatory prepayment and (iv) cash Extraordinary Receipts to the extent such items are not included in the calculation of Consolidated Adjusted EBITDA for such fiscal year; minus

(b) the sum of, without duplication;

(i) Consolidated Interest Expense paid in cash during such fiscal year,

(ii) all required payments of principal in respect of any Indebtedness during such fiscal year (other than mandatory prepayments of Loans pursuant to Section 4.02(a)(ix)), except to the extent financed with proceeds of Indebtedness or occurring in connection with a refinancing of all or any portion of such Indebtedness and only to the extent that the Indebtedness prepaid or repaid by its terms cannot be reborrowed or redrawn,

(iii) the aggregate principal amount of any voluntary payment permitted hereunder of term Indebtedness (other than any voluntary prepayment of the Loans, which shall be the subject of Section 4.02(a)(ix)(y)) and the amount of any voluntary payments of revolving Indebtedness to the extent accompanied by permanent reductions of the related revolving facility commitments in an amount equal to such prepayment, in each case to the extent not financed with proceeds of long-term Indebtedness or the issuance of Capital Stock,

(iv) Taxes paid in cash and to the extent based on income, profits or capital of such Person and its subsidiaries, including, in each case, federal, state, provincial, local, foreign, unitary, franchise, excise, property, withholding and similar Taxes, including any penalties and interest,

(v) any Capital Expenditures made during such fiscal year, excluding Capital Expenditures to the extent financed through the incurrence of Capital Lease Obligations, the issuance of Capital Stock, the incurrence of any long-term Indebtedness or the receipt of proceeds of insurance,

(vi) net increase, if any, in Consolidated Working Capital of the Consolidated Companies during such fiscal year,

(vii) any fees, costs, and expenses of the Borrower and its Subsidiaries related to this Agreement, the Transactions, associated with investigations by Governmental Authorities, any litigation or as a result of the Inaccurate Information (including in connection with the restatement of historical financial statements) or payment of any actual legal settlement, fine, judgment or order in respect of the foregoing and any financings, acquisitions, investments, dispositions, private or public offerings of equity securities or the establishment of joint ventures, in each case whether or not consummated, to the extent added back in determining Consolidated Adjusted EBITDA and paid in cash,

(viii) payments in respect of earn-outs in accordance with the terms hereof made in cash by the Loan Parties to the extent permitted pursuant to Section 9.01(n), except to the extent financed with the proceeds of long-term Indebtedness or issuances of Capital Stock,

(ix) non-cash charges, gains, credits, expenses, costs, adjustments or other amounts included in the calculation of Consolidated Net Income or Consolidated Adjusted EBITDA;

(x) payments of indemnities and expense reimbursement paid or accrued to directors and officers including payment for directors and officers insurance policies, in each case to the extent paid in cash and added-back to Consolidated Adjusted EBITDA during such fiscal year;

(xi) Restricted Payments made in cash in accordance with Section 9.06(f), to the extent paid in cash and added-back to Consolidated Adjusted EBITDA during such fiscal year,

(xii) out-of-pocket costs, fees, expenses and charges related to any Permitted Acquisitions, in each case, only to the extent added back in determining Consolidated Adjusted EBITDA and paid in cash,

(xiii) cash used to make Permitted Acquisitions and Investments in reliance on Section 9.05(g), except to the extent financed with the proceeds of long-term Indebtedness or issuances of Capital Stock,

(xiv) losses on the disposition of assets not in the ordinary course only to the extent added back in determining Consolidated Adjusted EBITDA and paid in cash,

(xv) amounts paid in cash during such year on account of items that were accounted for as non-cash reductions of Consolidated Net Income in determining Consolidated Net Income or as non-cash reductions of Consolidated Net Income in determining Consolidated Adjusted EBITDA in a prior years,

(xvi) any amounts added back in determining Consolidated Adjusted EBITDA representing reserves of any kind or losses;

(xvii) the amount of any extraordinary, unusual or non-recurring fees, expenses and charges to the extent added back in determining Consolidated Adjusted EBITDA pursuant to clause (b)(vi) thereof and paid in cash, and

(xviii) amounts paid in cash during such fiscal year to the extent added back in determining Consolidated Adjusted EBITDA pursuant to clause (b)(v) thereof.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Excluded Deposit Accounts" means a deposit account (i) which is used for the sole purpose of making payroll for the then current payroll period and withholding Tax payments related thereto and other employee wage and benefit payments and accrued and unpaid employee compensation (including salaries, wages, benefits and expense reimbursements), (ii) which is used for the sole purpose of paying Taxes, including withholding and sales Taxes, (iii) is a zero balance deposit account, (iv) constituting a custodian, trust, fiduciary or other escrow account established for the benefit of third parties in the Ordinary Course of Business in connection with transactions permitted hereunder or (v) other deposit accounts (other than those identified in clauses (i) through (iv)) which collectively have average daily balances for any fiscal month of less than $400,000 in the aggregate; provided, that no deposit account shall qualify as an Excluded Deposit Account under clause (v) of this definition if the inclusion thereof would result in the aggregate balances of all Excluded Deposit Accounts (other than those identified in clauses (i) through (iv)) exceeding, at any time, $600,000.

"Excluded Swap Obligation" shall mean, with respect to any Guarantor, any Swap Obligations if, and to the extent that, all or a portion of the Guaranty Obligations of such Subsidiary of, or the grant by such Guarantor of a security interest pursuant to the Security Documents to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guaranty Obligations of such Guarantor or the grant of such security interest would otherwise have become effective with respect to such related Swap Obligation but for such Guarantor's failure to constitute an "eligible contract participant" at such time. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guaranty Obligations or security interest is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof).

"Excluded Subsidiary" means:

(a) any Subsidiary that is prohibited or restricted by Applicable Law from entering into the Guaranty and Security Agreement or otherwise providing a guaranty of the Obligations, or if such guaranty would require governmental (including regulatory) consent, approval, license or authorization (except to the extent that such consent, approval, license or authorization has been obtained);

(b) any Subsidiary with respect to which entering into the Guaranty and Security Agreement or otherwise providing a guaranty of the Obligations would result in material adverse tax consequences as reasonably determined by the Borrower and the Administrative Agent; and

(c) any other Subsidiary with respect to which the Administrative Agent and the Borrower reasonably agree that the burden or cost of entering into the Guaranty and Security Agreement or otherwise providing a guaranty of the Obligations shall outweigh the benefits to be obtained by the Lenders therefrom.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 12.07(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 4.04, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 4.04(f), and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Executive Order" has the meaning given to such term in Section 7.29.

"Existing Credit Agreement" means that certain Loan Agreement, dated as of June 10, 2019 (as amended, restated, amended and restated, supplemented and/or otherwise modified on or prior to the date hereof), by and among, *inter alios*, the Borrower, the entities identified as "Guarantors" thereunder, the lenders from time to time party thereto and Blue Torch Finance LLC, as administrative agent and collateral agent for such lenders.

"Existing Facility" has the meaning given to such term in Section 2.08(c)(ii).

"Extraordinary Receipts" means any cash or other amounts or receipts received by, on behalf of or on account of any Loan Party or any Subsidiary of any Loan Party not in the Ordinary Course of Business constituting (a) proceeds of judgments, proceeds of settlements and other consideration of any kind received in connection with any cause of action, (b) indemnification payments received by any Loan Party to the extent not used or anticipated to be used to pay any

corresponding liability or reimburse such Loan Party for the payment of such liability, and (c) foreign, United States, state or local tax refunds.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Loan Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as determined by the Administrative Agent in a commercially reasonable manner, and if no such rate is so published, the Federal Funds Rate for such day shall be the average rate for such day on such transactions received by the Administrative Agent from three (3) federal funds brokers of recognized standing selected by it (but in no event less than 0.0%).

"Fee Letter" means that certain fee letter, dated as of the date hereof, among the Borrower, the Agents, and the Lenders on the date hereof, as amended, amended and restated, supplemented or otherwise modified, renewed or replaced from time to time.

"Fees" means all amounts payable pursuant to, or referred to in, Section 3.01 or in the Fee Letter.

"Foreign Lender" means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

"Funded Debt" means, as of any date of determination, all then outstanding Indebtedness of the Consolidated Companies of the type described in clauses (a), (b) (to the extent such Indebtedness is drawn and unreimbursed), (d) (to the extent such Indebtedness is (a) recorded as a liability in accordance with GAAP and (b) due before the Latest Maturity Date), (g) (to the extent such Disqualified Capital Stock (a) matures or is mandatorily redeemable (other than solely for Qualified Capital Stock), pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof (other than solely for Qualified Capital Stock), in whole or in part, (c) provides for the scheduled payment of dividends in cash or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Capital Stock that would constitute Disqualified Capital Stock, in each case, prior to the Latest Maturity Date), (h) (to the extent such Guaranty Obligation is with respect to any of the foregoing) and (i) of the definition of "Indebtedness".

"GAAP" means generally accepted accounting principles in the United States of America set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), including the FASB Accounting Standards Codification™, which are applicable to the circumstances as of the date of determination, subject to Section 1.03.

"Governmental Authority" means any federal, state or local government of the United States, any foreign country, any multinational authority, or any state, commonwealth, province, protectorate or political subdivision thereof, and any entity, body or authority exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, including the PBGC and other quasi-governmental entities established to perform such functions, and in each case any department or agency thereof.

"Guarantors" means (a) each Person that is a Subsidiary of the Borrower on the Closing Date and (b) each other Person that becomes a party to the Guaranty and Security Agreement or otherwise provides a guaranty for the payment and performance of the Obligations after the Closing Date pursuant to an agreement reasonably acceptable to the Collateral Agent pursuant to Section 8.10.

"Guaranty and Security Agreement" means a Guaranty and Security Agreement among each Loan Party and the Collateral Agent for the benefit of the Secured Parties, in the form of Exhibit C-1.

"Guaranty Obligations" means, as to any Person, any Contingent Liability of such Person or other obligation of such Person guaranteeing or intended to guarantee any Indebtedness of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent, (a) to purchase any such Indebtedness or any property constituting direct or indirect security therefor, (b) to advance or supply funds (i) for the purchase or payment of any such Indebtedness or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such Indebtedness of the ability of the primary obligor to make payment of such Indebtedness or (d) otherwise to assure or hold harmless the owner of such Indebtedness against loss in respect thereof; provided, that the term "Guaranty Obligations" shall not include endorsements of instruments for deposit or collection in the Ordinary Course of Business or customary and reasonable indemnity obligations in effect on the Closing Date, entered into in connection with any acquisition or disposition of assets permitted under this Loan Agreement (other

than with respect to Indebtedness). The amount of any Guaranty Obligation shall be determined in accordance with GAAP.

"Hazardous Materials" means (a) any petroleum or petroleum products, radioactive materials, friable asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing regulated levels of polychlorinated biphenyls, and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances", "hazardous waste", "hazardous materials", "extremely hazardous waste", "restricted hazardous waste", "toxic substances", "toxic pollutants", "contaminants" or "pollutants" or words of similar import under any applicable Environmental Law; and (c) any chemical, waste, material or substance which is regulated under any Environmental Law.

"Hayfin Initial Lenders" means [***]

"Hayfin Lender" means, on any date of determination, if such Person is a Lender on such date of determination, any Hayfin Party.

"Hayfin Party" means (a) any Hayfin Initial Lender, (b) any Affiliate of any Hayfin Initial Lender and (c) any other funds managed and/or advised by Hayfin Capital Management LLP and any of such funds Affiliates.

"Health Care Laws" means all laws of the United States with respect to regulatory matters primarily relating to patient healthcare, including, without limitation, such laws pertaining to: (i) any federal health care program (as such term is defined in 42 U.S.C. § 1320a-7b(f)), including those pertaining to providers of goods or services that are paid for by any federal health care program, including the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the Stark Law (42 U.S.C. § 1395nn), the civil False Claims Act (31 U.S.C. § 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), exclusion from participation in federal health care programs (42 U.S.C. § 1320a-7), civil monetary penalties with respect to federal health care programs (42 U.S.C. § 1320a-7a), Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), and the Public Health Service Act ("PHSA") (42 U.S.C. §§ 201 et seq.); (ii) the general federal anti-fraud statute related to healthcare benefit programs (18 U.S.C. §1347); (iii) the privacy and security of patient-identifying health care information, including, without limitation, the Health Insurance Portability and Accountability Act of 1996; (iv) the research, testing, production, manufacturing, transfer, distribution and sale of drugs, biologics, and medical devices, or other products subject to the jurisdiction of the U.S. Food and Drug Administration ("FDA") including, without limitation, the United States Food, Drug and Cosmetic Act (21 U.S.C. §§ 301 et seq.); (v) the hiring of employees or the acquisition of services or supplies from individuals or entities that have been excluded from government health care programs; and (vi) Permits required to be held by individuals and entities involved in the manufacture and delivery of health care items

and services; and with respect to the foregoing, all regulations promulgated thereunder, and equivalent applicable laws of other applicable Governmental Authorities, and each of clauses (i) through (vi) as may be amended from time to time.

"Hedge Bank" shall have the meaning assigned to such term in the definition of "Secured Parties."

"Hedging Agreement" means any rate protection agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging agreement.

"Hedging Obligations" means, with respect to any Person, the obligations of such Person under Hedging Agreements.

"Inaccurate Information" means any financial reporting or financial statements or projections or pro forma financial information (and any related disclosures) maintained or provided on or prior to the date hereof by or relating to Borrower which recognized revenue incorrectly as described in Borrower's press release dated June 7, 2018 and Borrower's Form 8-K filing dated June 7, 2018, including any such reporting as it may have impacted Borrower's balance sheet, consolidated statements of income and cash flows for such periods.

"Incremental Cap" means $50,000,000.

"Incremental Effective Date" has the meaning given to such term in Section 2.08(a).

"Incremental Facility" has the meaning given to such term in Section 2.08(a).

"Incremental Facility Request" has the meaning given to such term in Section 2.08(a).

"Incremental Joinder Agreement" has the meaning given to such term in Section 2.08(d).

"Incremental Term Loan" has the meaning given to such term in Section 2.08(a).

"Incremental Term Loan Commitment" has the meaning given to such term in Section 2.08(a).

"Incremental Term Loan Lender" has the meaning given to such term in Section 2.08(a).

"Indebtedness" means, as to any Person at a particular time, without duplication, the following:

(a) all indebtedness of such Person for borrowed money and all indebtedness of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments which interest charges are customarily paid or accrued;

(b) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) of all letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;

(c) net Hedging Obligations of such Person;

(d) all obligations of such Person from installment purchases of property, Persons, or services or representing the deferred purchase price for property or services (other than trade accounts payable in the Ordinary Course of Business) and other similar deferred purchase price obligations (including earn-outs or other contingent consideration for acquisitions or other Investments), in each case to the extent constituting liabilities under GAAP;

(e) obligations secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) a Lien on property owned or being purchased by such Person (including obligations arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness;

(g) all obligations of such Person in respect of Disqualified Capital Stock;

(h) all Guaranty Obligations of such Person in respect of any of the foregoing; and

(i) trade payables more than ninety (90) days past due.

Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, except to the extent such Person's liability for such Indebtedness is otherwise limited and only to the extent such Indebtedness would constitute Funded Debt. The amount of any net Hedging Obligations on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of Indebtedness of any Person for purposes of clause (e) above shall be deemed to be equal to the lesser of (x) the aggregate unpaid amount of

such Indebtedness and (y) the fair market value of the property encumbered thereby as determined by such Person in good faith.

"Indemnified Liabilities" has the meaning given to such term in Section 12.05.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

"Initial Loans" means the Initial Term Loans, each DDTL (if any) and any Incremental Term Loans incurred as an increase to the then in existence "Initial Loans" in accordance with Section 2.08.

"Initial Loans Maturity Date" means June 30, 2025.

"Initial Term Loan" has the meaning set forth in Section 2.01(a).

"Initial Term Loan Lender" means any Lender with an Initial Term Loan Commitment or an outstanding Initial Term Loan.

"Initial Term Loan Commitment" means, in the case of each Lender as of the date hereof, the amount set forth opposite such Lender's name on Schedule 1.01 under the header "Initial Term Loan Commitment", as the same may be changed from time to time pursuant to the terms hereof.

"Insolvency Proceeding" means, with respect to any Person (including, any Lender), such Person or such Person's direct or indirect parent company (a) becomes the subject of a bankruptcy or insolvency proceeding (including any proceeding under Title 11 of the United States Code), or regulatory restrictions, (b) has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it or has called a meeting of its creditors, (c) admits in writing its inability, or be generally unable, to pay its debts as they become due or ceases operations of its present business, (d) with respect to a Lender, such Lender is unable to perform hereunder due to the application of Applicable Law, or (e) in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment of a type described in clauses (a) or (b), provided that an Insolvency Proceeding shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person or such Person's direct or indirect parent company by a Governmental Authority or instrumentality thereof if, and only if, such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets

or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

"Intercompany Notes" has the meaning given to such term in Section 9.01(j).

"Interest Payment Date" means the last Business Day of each calendar quarter (or portion thereof), commencing on September 30, 2019; provided that if any Interest Payment Date occurs on a day that is not a Business Day, then such Interest Payment Date shall be deemed to occur on the next succeeding Business Day.

"Interest Period" means, with respect to any Loan, initially the period commencing on the Business Day such Loan is disbursed and ending on the date three (3) calendar months after such disbursement and thereafter each period of three (3) consecutive calendar months ending on the last date of such three calendar month period; provided that:

(a) if any Interest Period would otherwise end on a day which is not a Business Day, that Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month, in which event such Interest Period shall end on the immediately preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period for any Loan or any portion thereof shall extend beyond the last scheduled payment date therefor and if such Interest Period would otherwise extend beyond the Maturity Date applicable to such Loan, such Interest Period shall automatically be deemed to end (and be the Interest Period that ends) on the Maturity Date applicable to such Loan.

"Inventory" means any and all "goods" (as defined in the UCC) which shall at any time constitute "inventory" (as defined in the UCC) of any Loan Party, wherever located (including without limitation, goods in transit and goods in the possession of third parties), or which from time to time are held for sale, lease or consumption in any Loan Party's business, furnished under any contract of service or held as raw materials, work in process, finished inventory or supplies (including without limitation, packaging and/or shipping materials).

"Investment" means, relative to any Person, (a) any loan, advance or extension of credit made by such Person to any other Person, including the purchase by such first Person of any bonds, notes, debentures or other debt securities of any such other Person; (b) the incurrence of Contingent Liabilities in favor of any other Person; and (c) the acquisition of, or capital contribution

in respect of, any Capital Stock held by such Person in any other Person. The amount of any Investment at any time shall be the original principal or capital amount thereof less all returns of principal or equity or capital thereon received (in cash or in the same form as the Investment) on or before such time and shall, if made by the transfer or exchange of property other than cash, be deemed to have been made in an original principal or capital amount equal to the fair market value of such property at the time of such Investment.

"IP Rights" means "Intellectual Property" as defined in the Guaranty and Security Agreement.

"IRS" means the U.S. Internal Revenue Service.

"Key IP" means all IP Rights described on Schedule 1.02.

"Landlord Agreement" means, with respect to (i) 1775 West Oak Commons Ct. NE Marietta, GA 30062 and each other location owned by a third party and used by a Loan Party as a manufacturing facility or where original books and records, primary servers, or any other systems necessary to operate the business in the Ordinary Course of Business are located and (ii) each other location owned by a third party at which a Loan Party stores Collateral with an aggregate value of greater than $5,000,000, in each case, a landlord waiver, collateral access agreement or other acknowledgement agreement of the applicable landlord or lessor in possession of, having a Lien upon, or having rights or interests in Collateral located therein as may be reasonably requested by the Collateral Agent, in each case in form and substance reasonably satisfactory to the Collateral Agent and the Borrower.

"Latest Maturity Date" means, as of any date of determination, the latest maturity or expiration date applicable to any Loan or commitment hereunder as of such date.

"Law" means any law (including common law), statute, regulation, ordinance, rule, order, decree, judgment, consent decree, writ, injunction, settlement agreement or binding governmental requirement enacted, promulgated or imposed or entered into or agreed by any Governmental Authority or determination of an arbitrator.

"Lender" means each Person identified as a "Lender" on Schedule 1.01 and any Incremental Term Loan Lenders, their assignees pursuant to Section 12.06, and each other Person that has made or holds Loans, in each case other than any such Person that has ceased to be a party hereto pursuant to an Assignment and Acceptance.

"LIBOR Rate" means, for any Interest Period, a rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1.00%) equal to the greater of (i) Three Month London Inter-Bank Offered Rate for U.S. Dollar Deposits as set and published by ICE Benchmark Administration Limited (or its successor) and as obtained by the Administrative Agent through the applicable

Bloomberg, L.P. screen page (or, if unavailable, another service or publication selected by the Administrative Agent), at approximately 11:00 a.m. two (2) Business Days prior to the first day of such Interest Period and (ii) one and one-half percent (1.50%) per annum; provided, that if the rates referenced in the preceding clauses (i) and (ii) are not available, the rate per annum equal to the quotation rate offered to first class banks in the London interbank market for deposits (for delivery on the first day of the relevant period) in Dollars of amounts in same day funds comparable to the principal amount of the applicable Loans as determined by the Administrative Agent.

"Lien" means any statutory or other lien, security interest, mortgage, pledge, hypothecation, assignment for collateral purposes, encumbrance, option, purchase right, call right, easement, right-of-way, license, sub-license, restriction (including zoning restrictions), defect, exception or material irregularity in title or similar charge or encumbrance, including any agreement to give any of the foregoing, any conditional sale or other title retention agreement or any lease in the nature thereof.

"Limited Condition Acquisition" means any Permitted Acquisition by Borrower or one or more of its Subsidiaries permitted pursuant to this Loan Agreement whose consummation is not conditioned on the availability of, or on obtaining, third party financing; provided that in the event the consummation of any such Permitted Acquisition shall not have occurred on or prior to the date that is four months following the signing of the applicable Limited Condition Acquisition Agreement, such acquisition shall no longer constitute a Limited Condition Acquisition for any purpose hereunder.

"Limited Condition Acquisition Agreement" as defined in Section 1.12.

"Liquidity" means, as of any date of determination, the amount of Qualified Cash of the Consolidated Companies.

"Liquidity Compliance Certificate" means a certificate duly completed and executed by an Authorized Officer of the Borrower substantially in the form of Exhibit D-2, together with such changes thereto or departures therefrom as the Administrative Agent may reasonably request (in connection with any operational or administrative function of the Administrative Agent or to reflect any amendment or modification of this Loan Agreement or any other Loan Document) or approve from time to time.

"Loan Agreement" means this Loan Agreement, as amended, amended and restated, supplemented or otherwise modified, renewed or replaced from time to time.

"Loan Documents" means this Loan Agreement, the Notes, the Fee Letter, the Security Documents, the Perfection Certificates, any intercreditor or subordination agreements in favor of any Agent with respect to this Loan Agreement, and any other document, instrument,

certificate or agreement executed by any Loan Party, or by the Borrower on behalf of any Loan Party, and delivered to any Agent or Lender in connection with any of the foregoing or the Obligations.

"Loan Party" means the Borrower, each of the other Guarantors, and each other Person that becomes a Loan Party pursuant to the execution of joinder documents.

"Loans" means the Initial Term Loans, each DDTL (if any) and any Incremental Term Loan (if any).

"Make-Whole Amount**"** means shall mean, as of any time of determination with respect to any actual or required repayment, or prepayment or acceleration of the outstanding principal amount of the Loans, an amount, determined by the Administrative Agent, equal to the greater of (a) 5.00% of the outstanding principal amount of the Loans being repaid or prepaid or accelerated at such time of determination and (b) the excess of (i) the present value on the repayment, prepayment or acceleration date of the aggregate of (x) 102.00% of the principal amount to be repaid, prepaid or accelerated as if that amount would otherwise be repaid, prepaid or accelerated on the date that is twelve (12) months following the Closing Date and (y) the amount equal to the amount of all interest which would otherwise have accrued for the period from the date of such repayment, or prepayment or acceleration (or the date on which such repayment or prepayment was required to be made) to the date that is twelve (12) months following the Closing Date, computed using a discount rate equal to the Treasury Rate as at the date which is two Business Days prior to the date of repayment or prepayment plus 50 basis points, over (ii) the principal amount to be repaid or prepaid or accelerated.

"Margin Stock" means "margin stock" as such term is defined in Regulations T, U or X of the Board.

"Material Adverse Effect" means a material adverse effect or material adverse change on (a) (i) the financial condition, results of operations, assets, liabilities or properties of the Borrower, the other Loan Parties, and their respective Subsidiaries, taken as a whole, or (ii) validity or enforceability of this Loan Agreement, any of the other Loan Documents, any material provision hereof or thereof, or any material right or remedy of the Secured Parties hereunder or thereunder, or (b) the ability of the Borrower, any other Loan Party, or any of their respective Subsidiaries, taken as a whole, to perform any of their material obligations contained in this Loan Agreement or any of the other Loan Documents.

"Material Contracts" means and includes (i) any Contractual Obligation of any Loan Party or any Subsidiary of a Loan Party, the failure to comply with which, or the termination (without contemporaneous replacement) of which, could reasonably be expected to have a Material Adverse Effect and/or (ii) any Contractual Obligation of any Loan Party or any Subsidiary of a Loan Party

involving aggregate annual consideration payable to such Loan Party or Subsidiary in excess of $20,000,000.

"Material Indebtedness" means any Indebtedness of any Loan Party or Subsidiary of any Loan Party (other than the Obligations) having a principal or stated amount, individually or in the aggregate, in excess of $5,000,000.

"Maturity Date" means (i) with respect to the Initial Loans, the Initial Loans Maturity Date, and (ii) with respect to any Additional Incremental Term Loan, the applicable Additional Incremental Term Loan Maturity Date.

"Model" means that certain forecast model delivered to the Administrative Agent as the Excel file titled "Falcon Model 28 JUN 20" via the Borrower's virtual data room, folder 20.26

"Moody's" means Moody's Investors Service, Inc. or any successor by merger or consolidation to its business.

"Mortgage" means a mortgage or a deed of trust, deed to secure debt, trust deed or other security document entered into by any applicable Loan Party and the Collateral Agent for the benefit of the Secured Parties in respect of any Real Property owned by such Loan Party, in form and substance reasonably satisfactory to the Collateral Agent.

"Mortgaged Property" means each parcel of Real Property and the improvements thereto (if any) with respect to which a Mortgage is granted pursuant to Section 8.13(a).

"Multiemployer Plan" means any multiemployer plan, as defined in Section 4001(a)(3) of ERISA, which is contributed to by (or to which there is an obligation to contribute of) any Loan Party or any ERISA Affiliate, and each such plan for the five-year period immediately following the latest date on which any Loan Party or any ERISA Affiliate contributed to or had an obligation to contribute to such plan.

"Net Casualty Proceeds" means, with respect to any Casualty Event, the gross cash proceeds of any insurance proceeds or condemnation awards received by any Loan Party or any of its Subsidiaries in connection with such Casualty Event, net of all reasonable and customary collection expenses thereof (including, without limitation, any legal or other professional fees) (except with respect to any expenses paid to a Loan Party or an Affiliate thereof), but excluding any proceeds or awards required to be paid to a creditor (other than the Lenders) which holds a first priority Lien permitted by Section 9.02(c) or (d) on the property which is the subject of such Casualty Event, and less any Taxes payable by such Person on account of such insurance proceeds or condemnation award, actually paid, assessed or estimated by such Person (in good faith) to be payable within the next twelve (12) months in cash in connection with such Casualty Event, in each

case to the extent, but only to the extent, that the amounts are properly attributable to such transaction; provided, that if, after the expiration of such twelve-month period, the amount of such estimated or assessed Taxes, if any, exceeded the Taxes actually paid in cash in respect of proceeds from such Casualty Event, the aggregate amount of such excess shall constitute additional Net Casualty Proceeds under Section 4.02(a)(iii) and be applied to the prepayment of the Obligations pursuant to Section 4.02(b).

"Net Debt Proceeds" means, with respect to the sale or issuance by any Loan Party or any of its Subsidiaries of any Indebtedness, the excess of: (a) the gross cash proceeds received by the issuer of such Indebtedness from such sale or issuance, over (b) all reasonable and customary underwriting commissions and legal, investment banking, underwriting, brokerage, accounting and other professional fees, sales commissions and disbursements and all other reasonable fees, expenses and charges, in each case actually incurred in connection with such sale or issuance which have not been paid and are not payable to any Loan Party or an Affiliate thereof in connection therewith.

"Net Disposition Proceeds" means, with respect to any Disposition by any Loan Party or any of its Subsidiaries, the excess of: (a) the gross cash proceeds received by such Person from such Disposition, over (b) the sum of: (i) all reasonable and customary legal, investment banking, underwriting, brokerage and accounting and other professional fees, sales commissions and disbursements and all other reasonable fees, expenses and charges, in each case actually incurred in connection with such Disposition which have not been paid and are not payable to any Loan Party or Affiliate thereof in connection therewith, and (ii) all Taxes payable by such Person on account of proceeds from such Disposition, actually paid, assessed or estimated by such Person (in good faith) to be payable in cash within the next twelve (12) months in connection with such proceeds, in each case to the extent, but only to the extent, that the amounts are properly attributable to such transaction; provided, that if, after the expiration of the twelve-month period referred to in clause (b)(ii) above, the amount of estimated or assessed Taxes, if any, pursuant to clause (b)(ii) above exceeded the Taxes actually paid in cash in respect of proceeds from such Disposition, the aggregate amount of such excess shall constitute Net Disposition Proceeds under Section 4.02(a)(ii) and be applied to the prepayment of the Obligations pursuant to Section 4.02(b).

"Non-Consenting Lender" has the meaning given to such term in Section 12.07(b).

"Non-Defaulting Lender" means, at any time, each Lender that is not a Defaulting Lender at such time.

"Note" has the meaning assigned to such term in Section 2.09.

"Notice of Exclusive Control" means notice from the Collateral Agent issued after the occurrence and during the existence of an Event of Default to the depositary bank, securities intermediary, commodity intermediary or other financial institution party to an Account Control

Agreement that it will (a) cease to comply with instructions directing the disposition of funds in, cease to comply with entitlement orders with respect to financial assets in, and cease to apply any value distributed on account of the commodity contracts in, the account issued by the applicable Loan Party, and (b) comply only with instructions of the Collateral Agent directing the disposition of funds in, or entitlement orders with respect to financial assets in, or the application of value on account of the commodity contracts in, the account without the consent of any Loan Party.

"Obligations" means (a) with respect to the Borrower, all obligations (monetary or otherwise, whenever arising, and whether absolute or contingent, liquidated or unliquidated, due or to become due, or matured or unmatured) of the Borrower arising under this Loan Agreement, the Notes, the Fee Letter or any other Loan Document, including the principal of, and interest (including interest accruing after the commencement or during the pendency of any proceeding, action or case under the Bankruptcy Code or otherwise of the type described in Section 10.01(k), whether or not allowed in such proceeding, action or case) on, and the Prepayment Premium with respect to, the Loans, and all fees, expenses, costs, indemnities and other sums payable at any time under any Loan Document and (b) with respect to each Loan Party other than the Borrower, all obligations (monetary or otherwise, whenever arising, and whether absolute or contingent, liquidated or unliquidated, due or to become due, or matured or unmatured) of such Loan Party arising under this Loan Agreement or any other Loan Document.

"OFAC Sanctions" has the meaning given to such term in Section 7.30.

"Ordinary Course of Business" means, in respect of any transaction involving any Person, the ordinary course of such Person's business, as conducted by any such Person in accordance with past practice, if applicable, and undertaken by such Person in good faith and not for purposes of evading any covenant or restriction in any Loan Document.

"Organization Documents" means, (a) with respect to any corporation, its certificate or articles of incorporation and its bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction), (b) with respect to any limited liability company, its certificate or articles of formation or organization and its operating agreement, (c) with respect to any partnership, joint venture, trust or other form of business entity, its partnership, joint venture or other applicable agreement of formation or organization and, if applicable, any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity, and (d) with respect to any entity, any applicable stockholders agreement, shareholders agreement, voting agreement or other similar agreement.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 12.07(b)).

"Participant" has the meaning given to such term in Section 12.06(c)(i).

"Participant Register" has the meaning given to such term in Section 12.06(c)(iii).

"Patent Security Agreements" means any patent security agreement entered into on or after the Closing Date (as required by this Loan Agreement or any other Loan Document), in each case as amended, supplemented or otherwise modified, renewed or replaced from time to time.

"Patriot Act" has the meaning given to such term in Section 12.21.

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

"Perfection Certificate" means a Perfection Certificate in the form of Exhibit E, or otherwise in form and substance reasonably satisfactory to the Collateral Agent, delivered by each Loan Party to the Administrative Agent pursuant to Section 5.06(b).

"Perfection Requirements" means the filing of appropriate UCC financing statements with the office of the Secretary of State of the state of organization of each Loan Party and the filing of appropriate assignments or notices with the U.S. Patent and Trademark Office and the U.S. Copyright Office, in each case, in favor of the Collateral Agent for the benefit of the Secured Parties and the delivery to the Collateral Agent of any stock certificate or promissory note required to be delivered pursuant to the applicable Loan Documents, together with instruments of transfer executed in blank.

"Permits" means, with respect to any Person, any permit, approval, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any

other Contractual Obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Permitted Acquisition" means any acquisition by purchase or otherwise of all or substantially all of the business, assets or all of the Capital Stock (other than directors' qualifying shares) of any U.S. or Canadian Person or a business unit of a U.S. or Canadian Person, with Acquisition Consideration not in excess of $75,000,000 in the aggregate for all Permitted Acquisitions consummated following the date hereof (provided that, so long as the Borrower and its Subsidiaries are in compliance with Section 9.13 on a pro forma basis after giving effect to such acquisition, the foregoing cap will not apply to the extent such applicable Acquisition Consideration is paid with the contribution of proceeds of the purchase of, or in exchange for, Capital Stock of the Borrower (other than Disqualified Capital Stock) or capital contribution to the Borrower, in each case by the equityholders of the Borrower, and such contribution occurs substantially concurrently with such applicable Permitted Acquisition and such contribution is clearly identified, pursuant to a certificate executed and delivered by an Authorized Officer of the Borrower, to the Administrative Agent as a contribution to be used in connection with such applicable Permitted Acquisition), so long as:

(a) subject to Section 1.12, no Event of Default has occurred and is continuing at the time such acquisition is made and no Event of Default would result from the completion of such acquisition;

(b) subject to Section 1.12, on a pro forma basis after giving effect to such acquisition, the Total Net Leverage Ratio as of the most recently ended Test Period shall not be greater than the Total Net Leverage Ratio as of the last day of such Test Period; provided that if the aggregate Acquisition Consideration is more than $2,500,000, the Borrower shall deliver to the Administrative Agent a certificate from an Authorized Officer demonstrating in reasonable detail that compliance with this clause (b) is satisfied;

(c) the Loan Parties shall take all actions required pursuant to Sections 8.10, 8.11 and 8.15 with respect to any Person or assets subject to such acquisition in the time periods set forth in such sections; provided, that if such Person does not become a Loan Party or such assets do not become subject to the Lien granted to the Collateral Agent, the Acquisition Consideration paid in connection with such acquisition and all other such acquisitions following the date hereof described in this proviso shall not exceed $10,000,000 in the aggregate;

(d) the Person or Persons being acquired shall be in the same or a related line of business as the Borrower;

(e) such acquisition shall not be hostile;

(f) immediately after giving effect to the acquisition, the Borrower and its Subsidiaries shall be in compliance with Section 9.13(b);

(g) in the case of a target entity (or set of assets) being acquired whose Consolidated Adjusted EBITDA (calculated on a pro forma basis in a manner consistent with the definition of Consolidated EBITDA), represents at least five percent (5.0%) of total Consolidated Adjusted EBITDA (calculated on a pro forma basis prior to giving effect to such acquisition), in each case for the trailing twelve month period most recently ended for which financial statements have been delivered to Administrative Agent pursuant to Section 8.01(b) or (c) (whichever was most recently delivered to Administrative Agent) the Administrative Agent shall have received at least five (5) Business Days prior to the closing of such acquisition or such shorter period as Administrative Agent may reasonably accept of, to the extent readily available, (i) a description of the proposed acquisition and material and customary legal and business diligence reports, (ii) to the extent available, summary historical annual audited and quarterly unaudited financial statements (including a balance sheet, income statement and cash flows statement) of the target for the previous twelve (12) month period, and (iii) pro forma forecasted balance sheets, income statements, and cash flow statements of the Borrower and its Subsidiaries, all prepared on a basis consistent with the Borrower's historical financial statements, subject to adjustments to reflect projected consolidated operations following the acquisition, together with appropriate supporting details and a statement of underlying assumptions for the one year period following the date of the proposed acquisition, on a month by month basis;

(h) in the case of any acquisition with Acquisition Consideration in excess of $5,000,000, the Administrative Agent shall have received a quality of earnings report from a firm of nationally recognized standing or otherwise reasonably acceptable to Administrative Agent;

(i) the Administrative Agent shall have received drafts of the acquisition documents (followed promptly by final versions at least one (1) Business Day prior to (or such shorter period as agreed to by Administrative Agent) the consummation of such acquisition) at least five (5) Business Days prior to the closing of such acquisition or such shorter period as Administrative Agent may reasonably accept (with updates and executed copies thereof provided to Administrative Agent as soon as available).

"Permitted Liens" has the meaning given to such term in Section 9.02.

"Person" means any individual, corporation, limited liability company, partnership, limited partnership, joint venture, firm, association, trust, unincorporated organization, or other enterprise (whether or not legally formed) or any Governmental Authority.

"PIPE SPA" means that certain Securities Purchase Agreement, dated as of June 30, 2020, by and among the Borrower and the Investors (as such term is defined therein), as in effect on the date hereof.

"PIPE Transactions" means the transactions contemplated by the PIPE SPA, pursuant to which, among other things, the Investors are purchasing from the Borrower an aggregate amount of 100,000 shares of the Borrower's Series B Preferred Stock (as defined in the PIPE SPA) for an aggregate purchase price of $100,000,000.

"Plan" means any Multiemployer Plan or any "employee benefit plan," as defined in Section 3 of ERISA subject to Title IV of ERISA, Section 412 of the Code or Sections 302 or 303 of ERISA, sponsored, maintained or contributed to by any Loan Party or any ERISA Affiliate (or to which any Loan Party or any ERISA Affiliate has or could have an obligation to contribute or to make payments), and each such plan for the five-year period immediately following the latest date on which any Loan Party or any ERISA Affiliate maintained, contributed to or had an obligation to contribute to (or is deemed under Sections 4069 or 4212(c) of ERISA to have maintained or contributed to or to have had an obligation to contribute to, or otherwise to have liability with respect to) such plan.

"Plan of Reorganization" has the meaning given to such term in Section 12.06(e).

"Pledged Stock" has the meaning given to such term in the Guaranty and Security Agreement.

"Prepayment Percentage" shall mean (i) for any fiscal year for which the Total Net Leverage Ratio as of the last day of such fiscal year (as set forth in the applicable Compliance Certificate delivered pursuant to Section 8.01(d)) is greater than 1.00:1.00, 50%, (ii) for any fiscal year for which the Total Net Leverage Ratio as of the last day of such fiscal year (as set forth in the applicable Compliance Certificate delivered pursuant to Section 8.01(d)) is equal to or less than 1.00:1.00, but greater than or equal to 0.50:1.00, 25% and (iii) for any fiscal year for which the Total Net Leverage Ratio as of the last day of such fiscal year (as set forth in the applicable Compliance Certificate delivered pursuant to Section 8.01(d)) is less than 0.50:1.00, 0%.

"Prepayment Premium" means, as of the date of the occurrence of a Prepayment Premium Trigger Event, with respect to any Initial Loan:

(i) during the period from and after the Closing Date through and including the date that is the first anniversary of the Closing Date, an amount equal to the Make-Whole Amount;

(ii) during the period following the first anniversary of the Closing Date through and including the date that is the second anniversary of the Closing Date, an amount equal to two percent (2.0%) of the principal amount of the Initial Loans prepaid (or in the case of an Prepayment Premium Trigger Event occurring under clauses (b) or (c) of the definition thereof, deemed to be prepaid) on such date;

(iii) during the period following the second anniversary of the Closing Date through and including the date that is the third anniversary of the Closing Date, an amount equal to one percent (1.0%) of the principal amount of the Initial Loans prepaid (or in the case of an Prepayment Premium Trigger Event occurring under clauses (b) or (c) of the definition thereof, deemed to be prepaid) on such date; and

(iv) after the third anniversary of the Closing Date, zero (0.0%).

"Prepayment Premium Trigger Event" means:

(a) any prepayment by any Loan Party of all, or any part, of the principal balance of any Initial Loan voluntarily, including pursuant to Section 4.01, or mandatorily (other than any such prepayment pursuant to any of Section 4.02(a)(iii), Section 4.02(a)(ix) or, unless the relevant Disposition is with respect to all or substantially all of the assets of the Loan Parties and their Subsidiaries taken as a whole, Section 4.02(a)(ii)), whether in whole or in part, and whether before or after (i) the occurrence of an Event of Default, or (ii) the commencement of any Insolvency Proceeding involving any Loan Party or Subsidiary thereof, and notwithstanding any acceleration (for any reason) of the Obligations;

(b) the acceleration of the Obligations for any reason pursuant to Section 10.02, or as a result of the commencement of any proceeding under the Bankruptcy Code; or

(c) the satisfaction, release, payment, restructuring, reorganization, replacement, reinstatement, defeasance or compromise of any of the Obligations in any proceeding under the Bankruptcy Code, foreclosure (whether by power of judicial proceeding or otherwise) or deed in lieu of foreclosure, or the making of a distribution of any kind in any proceeding under the Bankruptcy Code to the Administrative Agent or the Lenders in full or partial satisfaction of the Obligations.

For purposes of the definition of the term Prepayment Premium, if a Prepayment Premium Trigger Event occurs under clause (b) or (c), solely for the purposes of determining the amount of Prepayment Premium that is due, the entire outstanding principal amount of the Initial Loans shall be deemed to have been prepaid on the date on which such Prepayment Premium Trigger Event occurs.

"Prime Rate" means a rate per annum equal to the highest of (a) the rate last quoted by *The Wall Street Journal* (or another national publication selected by the Administrative Agent) as the "Prime Rate" in the United States or, if *The Wall Street Journal* ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent), (b) the sum of one-half of one percent (0.50%) per annum and the Federal Funds Rate, and (c) two and one-half percent (2.50%) per annum.

"Projections" means all financial estimates, forecasts, models, projections, other forward-looking information, and underlying assumptions relating to any of the foregoing, concerning the Loan Parties and their respective Subsidiaries, that have been or are hereafter made available to the Administrative Agent or a Lender by or on behalf of a Loan Party.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"Qualified Capital Stock" means any Capital Stock that is not Disqualified Capital Stock.

"Qualified Cash" means, as of any date of determination, the unrestricted cash (excluding any cash subject to reinvestment) and Cash Equivalents of the Loan Parties which is subject to an Account Control Agreement; provided that, prior to delivery of the Account Control Agreements set forth in Section 8.22(a) during the specified time period, solely for purposes of determining Qualified Cash during such time period, the requirement in this definition for unrestricted cash and Cash Equivalents of the Loan Parties to be subject to an Account Control Agreement shall not apply.

"Qualified ECP Guarantor" means, in respect of any Swap Obligations, each Loan Party that has total assets exceeding $500,000 at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Real Property" means, with respect to any Person, all right, title and interest of such Person (including, without limitation, any leasehold estate) in and to a parcel of real property owned, leased or operated by such Person together with, in each case, all improvements and appurtenant

fixtures, equipment, personal property, easements and other property and rights incidental to the ownership, lease or operation thereof.

"Recipient" means (a) the Administrative Agent, (b) the Collateral Agent, and (c) any Lender, as applicable.

"Refinancing" means the repayment in full of all principal, accrued and unpaid interest, fees premiums, if any, and other amounts outstanding under the Existing Credit Agreement (other than contingent obligations not then due and payable and that by their terms survive the termination thereof), the termination of all commitments to extend credit under the Existing Credit Agreement and the termination or release, as applicable, of any guarantees and security interests to secure the obligations thereunder.

"Register" has the meaning given to such term in Section 12.06(b)(iv).

"Regulation T" means Regulation T of the Board as from time to time in effect, and any successor to all or a portion thereof establishing margin requirements.

"Regulation U" means Regulation U of the Board as from time to time in effect, and any successor to all or a portion thereof establishing margin requirements.

"Regulation X" means Regulation X of the Board as from time to time in effect, and any successor to all or a portion thereof establishing margin requirements.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the directors, officers, employees, agents, trustees, advisors of such Person and any Person that possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract or otherwise.

"Release" means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, depositing, disposing, emanating or migrating of Hazardous Materials in the environment, and in any event includes any "release" as such term is defined in CERCLA.

"Retained ECF Amount" means, on any Reference Date, an amount determined on a cumulative basis equal to the portion of Excess Cash Flow for each Fiscal Year ending on or after December 31, 2021 and prior to the Reference Date that was not required to be applied to prepay the Loans pursuant to Section 4.02(a)(ix) (prior to giving effect to clause (y) of such Section).

"Reportable Event" means an event described in Section 4043(c) of ERISA with respect to a Plan, other than an event for which the requirement to notify the PBGC of such event has been waived.

"Required Lenders" means, at any time, (a) the Lenders having Loans or unused Commitments representing more than fifty per cent (50%) of the sum of all Loans and unused Commitments outstanding at such time and (b) if the Hayfin Lenders, in the aggregate, hold more than twenty-five per cent (25%) of the sum of all Loans and unused Commitments outstanding at such time, each Hayfin Lender.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Restricted Payment" means, with respect to any Person, (a) the declaration or payment of any dividend on, or the making of any payment or distribution on account of, or setting apart assets for a sinking or other analogous fund for the purchase, redemption, defeasance, retirement or other acquisition of, any class of Capital Stock of such Person or any warrants or options to purchase any such Capital Stock, whether now or hereafter outstanding, or the making of any other distribution in respect thereof, either directly or indirectly, whether in cash or property, (b) any payment of a management fee or other fee of a similar nature by such Person to any holder of its Capital Stock or any other Affiliate thereof and (c) the payment or prepayment of principal of, or premium or interest on, any Indebtedness contractually subordinate to the Obligations unless such payment is permitted under the terms of the subordination agreement applicable thereto.

"S&P" means Standard & Poor's Ratings Services or any successor by merger or consolidation to its business.

"Sanctioned Country" has the meaning given to such term in Section 7.30.

"Sanctioned Person" has the meaning given to such term in Section 7.30.

"Sanctions" has the meaning given to such term in Section 7.30.

"SEC" means the Securities and Exchange Commission and any Governmental Authority succeeding to some or all of the functions thereof.

"Secured Cash Management Agreement" shall mean any Cash Management Agreement that is entered into by and between any Loan Party and any Cash Management Bank.

"Secured Hedging Agreement" shall mean any Hedging Agreement (a) that is entered into by and between any Loan Party and any Hedge Bank and (b) in the case of a Hedging Agreement not entered into with or provided or arranged by any Lender or Agent or an Affiliate of any Lender

or Agent, is expressly identified as being a "Secured Hedging Agreement" hereunder in a joint notice from such Loan Party and such Person delivered to the Administrative Agent reasonably promptly after the execution of such Hedging Agreement.

"Secured Obligations" shall mean (a) the Obligations and (b) all obligations of the Borrower and the other Loan Parties under each Secured Cash Management Agreement and Secured Hedging Agreement entered into with any counterparty that is a Secured Party, unless at the time such Secured Cash Management Agreement or Secured Hedging Agreement was entered into such Secured Cash Management Agreement or Secured Hedging Agreement was designated as not a Secured Obligation; provided that, notwithstanding anything to the contrary, (x) the Secured Obligations shall exclude any Excluded Swap Obligations, and (y) the Secured Obligations under clause (b) of this definition shall not exceed $10,000,000.

"Secured Parties" means, collectively, (a) the Lenders, (b) the Agents, (c) each Cash Management Bank, (d) each counterparty to a Hedging Agreement that is (x) a Lender, an Agent or an Arranger (or an Affiliate of a Lender or an Agent) and each other Person if, at the date of entering into such Hedging Agreement, such Person was a Lender or an Agent (or an Affiliate of a Lender or an Agent) or (y) each Person who has entered into a Hedging Agreement with a Credit Party if such Hedging Agreement was provided or arranged by the Arranger or an Affiliate of the Arranger, and any assignee of such Person or (z) each other Person with whom the Credit Party has entered into a Hedging Agreement; provided that if such Person is not a Lender or an Agent, by accepting the benefits of this Loan Agreement, such Person shall be deemed to have (i) appointed the Collateral Agent as its agent under the applicable Loan Documents and (ii) be deemed to be (and agrees to be) bound by the provisions of Sections 11.03, 12.03, 12.05 and 12.14 as if it were a Lender (a "Hedge Bank") (e) the beneficiaries of each indemnification obligation undertaken by any Loan Party under the Loan Documents, (f) any successors, endorsees, transferees and assigns of each of the foregoing, and (g) any other holder of any Secured Obligation (as defined in the Guaranty and Security Agreement).

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Security Documents" means, collectively, the Guaranty and Security Agreement, each Mortgage, each Landlord Agreement, each Account Control Agreement, the Patent Security Agreements, the Trademark Security Agreements, the Copyright Security Agreements, and each other instrument or document executed and delivered pursuant to Sections 8.10, 8.11, 8.13, 8.14, 8.15 or 8.20 or pursuant to any of the Security Documents to guarantee or secure any of the Obligations.

"Solvency Certificate" means a solvency certificate duly executed by an Authorized Officer of the Borrower and delivered to the Administrative Agent, substantially in the form of Exhibit G, or otherwise in form and substance satisfactory to the Administrative Agent.

"Solvent" means, with respect to the Borrower and Guarantors, at any date, that:

(a) the fair value of the assets (on a going concern basis) of the Borrower and the Guarantors on a consolidated basis taken as a whole, exceeds its and their respective debts and liabilities on a consolidated basis taken as a whole, subordinated, contingent or otherwise;

(b) the present fair saleable value of the property (on a going concern basis) of the Borrower and the Guarantors on a consolidated basis taken as a whole, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their respective debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured in the Ordinary Course of Business;

(c) each of the Borrower and the Guarantors on a consolidated basis taken as a whole, are able to pay their respective debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured in the Ordinary Course of Business; and

(d) each of the Borrower and the Guarantors on a consolidated basis taken as a whole, are not engaged in, and are not about to engage in, business contemplated as of the date hereof for which they have unreasonably small capital.

"Subsidiary" of any Person means and includes (a) any corporation more than fifty percent (50%) of whose Voting Stock having by the terms thereof power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person directly or indirectly through Subsidiaries and (b) any partnership, limited liability company, association, joint venture or other entity in which such Person directly or indirectly through one or more Subsidiaries has more than fifty percent (50%) of Capital Stock (measured by vote or value) at the time. Unless otherwise expressly provided, all references herein to a "Subsidiary" mean a direct or indirect Subsidiary of the Borrower.

"Swap Obligation" shall mean, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Swap Termination Value" means, in respect of any one or more Hedging Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedging Agreements, (a) for any date on or after the date such Hedging Agreements have

been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedging Agreements, as determined based upon one or more mid-market or other readily available quotations typically used for such mark-to-market valuation purpose and provided by any recognized independent dealer in such Hedging Agreements.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Test Period" means, for any determination under this Loan Agreement, the four consecutive fiscal quarters of the Consolidated Companies most recently ended as of the date of such determination and for which financial statements have been delivered on or prior to the date of such determination (or were required to be delivered) pursuant to Section 8.01(b).

"Total Credit Exposure" means, as of any date of determination, (a) with respect to each Lender, the outstanding principal amount of such Lender's Loans, and (b) with respect to all Lenders, the aggregate outstanding principal amount of all Loans.

"Total DDTL Commitment" means the sum of all DDTL Lenders' DDTL Commitments, which as of the date hereof is $25,000,000.

"Total Initial Term Loan Commitment" means the sum of all Initial Term Loan Lenders' Initial Term Loan Commitments, which as of the date hereof is $50,000,000.

"Total Net Leverage Ratio" means, as of any date of determination, the ratio of (i) Funded Debt, net of unrestricted cash and Cash Equivalents of the Borrower and its Subsidiaries in an aggregate amount not to exceed $10,000,000 (which cash and Cash Equivalents, as of such date, are deposited in an account subject to an Account Control Agreement), outstanding on the last day of the Test Period most recently ended to (ii) Consolidated Adjusted EBITDA for the Test Period then most recently ended.

"Trade Date" means, as to a particular assignment or participation of an interest hereunder to a Person, the date on which the applicable Lender enters into a binding agreement to sell and assign or participate all or a portion of its rights and obligations under this Loan Agreement to such Person.

"Trade Secrets" shall mean all trade secrets or other confidential and proprietary information, including confidential and proprietary customer lists, forms and types of financial, business, scientific, technical, economic, or engineering information or know-how, including confidential and proprietary patterns, plans, compilations, program devices, formulas, designs,

prototypes, methods, techniques, processes, materials, compositions, technologies, inventions, procedures, programs or codes, whether tangible or intangible.

"Trademark Security Agreements" means any trademark security agreement entered into on or after the Closing Date (as required by this Loan Agreement or any other Loan Document).

"Trading with the Enemy Act" has the meaning given to such term in Section 7.29.

"Transactions" means (i) the execution and delivery by each Loan Party of the Loan Documents to which it is a party and performance of its obligations thereunder, (ii) the Refinancing, (iii) the PIPE Transactions, and (iv) the disbursement of the Initial Term Loans hereunder on the Closing Date.

"U.S." and "United States" mean the United States of America.

"U.S. Person" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" has the meaning given to such term in Section 4.04(f).

"UCC" means the Uniform Commercial Code as from time to time in effect in the State of New York.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unasserted Contingent Obligations" has the meaning given to such term in the Guaranty and Security Agreement.

"Unused DDTL Commitment Fee" has the meaning given to such term in Section 3.01(b).

"Unfunded Current Liability" of any Plan means the amount, if any, by which the value of the accumulated plan benefits under the Plan, determined on a plan termination basis in

accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the fair market value of all plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions).

"Voting Stock" means, with respect to any Person, shares of such Person's Capital Stock having the right to vote for the election of directors (or Persons acting in a comparable capacity) of such Person under ordinary circumstances.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (b) the then outstanding principal amount of such Indebtedness; provided that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being modified, refinanced, refunded, renewed, replaced or extended, the effects of any prepayments made on such Indebtedness prior to the date of the applicable extension shall be disregarded.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Title IV of ERISA.

"Withholding Agent" means any Loan Party and the Administrative Agent.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write- down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

"Yield Differential" has the meaning given to such term in Section 2.08(c)(ii).

Section 1.02 Other Interpretive Provisions. With reference to this Loan Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words "herein", "hereto", "hereof" and "hereunder" and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(c) Article, Section, clause, Exhibit and Schedule references are to the Loan Document in which such reference appears.

(d) The terms "include", "includes" and "including" are by way of example and not limitation, and shall be deemed to be followed by the words "without limitation" whether or not they are in fact followed by such words.

(e) The term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(f) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding"; and the word "through" means "to and including".

(g) The Table of Contents and Article, Section and clause headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Loan Agreement or any other Loan Document.

(h) Notwithstanding anything to the contrary contained in this Loan Agreement, the Administrative Agent and the Hayfin Parties shall not be considered Affiliates of the Loan Parties.

Section 1.03 Accounting Terms and Principles. All accounting terms not specifically or completely defined herein shall be construed, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Loan Agreement (including Section 8.01) shall be prepared by an Authorized Officer, in conformity with GAAP, consistently applied, (in each case, except as otherwise specifically prescribed herein). No change in the accounting principles used in the preparation of any financial statement hereafter adopted by the Borrower or any of its Subsidiaries shall be given effect for purposes of measuring compliance with any provision of Article IX, including Section 9.13, or otherwise in this Loan Agreement in each case, unless the Borrower, the Administrative Agent and Required Lenders agree in writing to modify such provisions to reflect such changes and, unless such provisions are modified, all financial statements, Compliance Certificates and similar documents provided hereunder shall be provided together with a reconciliation between the calculations and amounts set forth therein before and after giving effect to such change. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to in Article IX shall be made, without giving effect to any election under Accounting Standards Codification 825-10 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Loan Party or any Subsidiary of any Loan Party at "fair value". A breach of a financial covenant contained in Article IX shall be deemed to have occurred as of the last day of any specified measurement period, regardless of when the financial statements reflecting such breach are delivered or required to be delivered to any Agent or any Lender. In addition, any lease treated as an operating lease on the date it is entered into shall continue to be treated as an operating lease during the term of this Loan Agreement notwithstanding a change in the treatment thereof to a Capitalized Lease in accordance with any change in GAAP. Notwithstanding anything to the contrary contained herein, all obligations of any Person that are or would have been treated as operating leases (including for avoidance of doubt, any network lease or any operating indefeasible right of use) for purposes of GAAP prior to the issuance by the Financial Accounting Standards Board on February 25, 2016 of an Accounting Standards Update (the "ASU") shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purpose of this Loan Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as Capital Lease Obligations in the financial statements to be delivered pursuant to Section 8.01.

Section 1.04 Rounding. Any financial ratios required to be maintained or complied with by any Loan Party pursuant to this Loan Agreement (or required to be satisfied in order for a specific action to be permitted under this Loan Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.05 References to Agreements, Laws, etc. Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including this Loan Agreement and each of the other Loan Documents) and other Contractual Obligations shall be deemed to include all subsequent amendments, restatements, amendment and restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, amendment and restatements, extensions, supplements and other modifications are permitted by any Loan Document, and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.06 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern Time (daylight saving or standard, as then applicable).

Section 1.07 Timing of Payment of Performance. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day.

Section 1.08 Corporate Terminology. All references to officers, shareholders, stock, shares, directors, boards of directors, corporate authority, articles of incorporation, bylaws or other matters relating to a corporation, herein or in any other Loan Document, with respect to a Person that is not a corporation, mean and are references to the comparable terms used with respect to such Person.

Section 1.09 Independence of Provisions. This Loan Agreement and the other Loan Documents may use different limitations, tests, "baskets", thresholds or other measurements to regulate the same or similar matters. All such limitations, tests, "baskets", thresholds and other measurements are cumulative, and each must be performed or complied with independently of all others.

Section 1.10 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): any reference to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person and any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

Section 1.01 [Reserved].

Section 1.01 Limited Condition Acquisition. In the case of determining compliance with (i) the Total Net Leverage Ratio (x) required pursuant to Section 2.08(b)(iv) in connection with a Borrowing of any Incremental Term Loan, (y) described in clause (b) of the definition of Permitted Acquisition or (z) required pursuant to Section 6.05 in connection with a Borrowing of any DDTL, (ii) the representations and warranties described in (x) Section 2.08(b)(ii) in connection with a Borrowing of any Incremental Term Loan or (y) Section 6.04 in connection with the Borrowing of any DDTL, (iii) the absence of any Default or Event of Default (other than a Default or Event of Default under Sections 10.01(a), (i) or (k)) described in (x) Section 2.08(b)(i) in connection with a Borrowing of Incremental Term Loan, (y) Section 6.02 in connection with a Borrowing of DDTL or (z) clause (a) of the definition of Permitted Acquisition and (iv) the absence of any Material Adverse Effect described in (x) Section 2.08(b)(iii) in connection with a Borrowing of Incremental Term Loan and (y) Section 6.08 in connection with a Borrowing of DDTL, in each case of clauses (i), (ii) and (iii), in connection with a Limited Condition Acquisition, the determination of whether the relevant condition is satisfied may be made, at the written election (to the Administrative Agent) of the Borrower, shall be determined as of the date a definitive acquisition agreement for such Limited Condition Acquisition is entered into, and calculated as if such Limited Condition Acquisition (and any other pending Limited Condition Acquisition) and other pro forma events in connection therewith (and in connection with any other pending Limited Condition Acquisition), including the incurrence of Indebtedness, were consummated on such date.

ARTICLE II

AMOUNT AND TERMS OF CREDIT FACILITIES

Section 2.01 Commitments and Loans.

(a) Initial Term Loans. Subject to and upon the terms and conditions set forth herein and in reliance upon the representation and warranties of the Loan Parties contained herein, each Initial Term Loan Lender agrees, severally and not jointly, to make in Dollars a loan or loans (each, an "Initial Term Loan") to the Borrower on the Closing Date in an amount equal to such Initial Term Loan Lender's Initial Term Loan Commitment. All such Initial Term Loans in the aggregate shall not exceed the Total Initial Term Loan Commitment. Such Initial Term Loans may be repaid or prepaid in accordance with the terms and conditions hereof, but once repaid or prepaid may not be re-borrowed.

(b) DDTLs. Subject to and upon the terms and conditions set forth herein and in reliance upon the representation and warranties of the Loan Parties contained herein, each DDTL Lender agrees, severally and not jointly, to make in Dollars a loan or loans (each, a "DDTL") from time to time after the Closing Date until the DDTL Commitment Expiration Date on not more than five (5) occasions, in an aggregate principal amount not to exceed its DDTL Commitment. All such DDTLs in the aggregate shall not exceed the Total DDTL Commitment. Such DDTLs may be repaid or prepaid in accordance with the terms and conditions hereof, but once repaid or prepaid may not be re-borrowed. The DDTLs and the Initial Term Loans shall be deemed to part of the same Class of Loans for all purposes under this Loan Agreement.

(c) Each Lender may, at its option, make any Loan in its entirety by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided, that (i) any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms hereof and (ii) in exercising such option, such Lender shall use reasonable efforts to minimize any increased costs to the Borrower resulting therefrom (which obligation of the Lender shall not require it to take, or refrain from taking, actions that it determines would result in increased costs for which it will not be compensated hereunder or that it determines would be otherwise disadvantageous to it, and in the event of any Lender request for costs for which compensation is provided under this Loan Agreement, the provisions of Section 2.06 shall apply).

(d) Each Loan shall be made as part of a Borrowing consisting of Loans of the same Class made by the applicable Lenders ratably in accordance with their respective Commitments of the applicable Class.

Section 2.02 Disbursement of Funds.

(a) Each Borrowing shall be made upon the Borrower's irrevocable written notice delivered to the Administrative Agent in the form of a Borrowing Notice, which notice must be received by the Administrative Agent prior to 9:00 a.m. (New York City time) on the day which is twelve (12) Business Days (or such shorter period, as the Administrative Agent may agree) prior to the requested Borrowing date.

(b) Each Borrowing Notice shall specify:

(i) the Class of such Borrowing;

(ii) the amount of the Borrowing, which, in the case of a Borrowing of a DDTL, shall be in compliance with clause (h) of this Section 2.02;

(iii) the requested Borrowing date, which shall be a Business Day;

(iv) the number and location of the account (which, for any Borrowing that occurs on or after the DACA Compliance Date, shall be an account subject to an Account Control Agreement) to which funds are to be disbursed; and

(v) the Interest Period applicable to such Loans.

(c) Upon receipt of such Borrowing Notice, the Administrative Agent shall promptly notify each applicable Lender of its *pro rata* portion of the Borrowing. Each applicable Lender will make available its *pro rata* portion of the applicable Loans to be made by it in the manner provided below by no later than 1:00 p.m. on the date of the Borrowing.

(d) Each applicable Lender shall make available to the Administrative Agent in immediately available funds, in Dollars, all amounts such Lender is required to fund to the Borrower, and, following receipt of all requested funds in an account designated by the Administrative Agent, the Administrative Agent will make available to the Borrower in immediately available funds, in Dollars, the aggregate of the amounts so made available, by remitting such aggregate amount to the account (which, for any Borrowing that occurs on or after the DACA Compliance Date, must be subject to an Account Control Agreement) specified in the applicable Borrowing Notice. The failure of any Lender to make available the amounts it is required to fund hereunder or to make a payment required to be made by it under any Loan Document shall not relieve any other Lender of its obligations under any Loan Document, but no Lender shall be responsible for the failure of any other Lender to make any payment required to be made by such other Lender under any Loan Document.

(e) Nothing in this Section 2.02 shall be deemed to relieve any Lender from its obligation to fulfill its commitments hereunder or to prejudice any rights that the Borrower may have against any Lender as a result of any default by such Lender hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to fulfill its commitments hereunder).

(f) Borrowings of more than one Class may be outstanding at the same time; provided, that there shall not at any time be more than a total of four (4) different Interest Periods in effect at any time (or such greater number of different Interest Periods as the Administrative Agent may agree from time to time).

(g) Notwithstanding any other provision of this Loan Agreement, the Borrower shall not, nor shall it be entitled to, request (x) any Borrowing if the initial Interest Period applicable thereto would end after the Maturity Date applicable to such Loans, (y) more than five (5) Borrowings of DDTLs during the life of this Loan Agreement and (z) a Borrowing of DDTLs on or after the DDTL Commitment Expiration Date.

(h) Each Borrowing in respect of DDTL Commitments shall comprise an aggregate principal amount of not less than $5,000,000.

Section 2.03 Repayment of Loans.

(a) [Reserved].

(b) The Borrower agrees to pay to the Administrative Agent (i), for the benefit of the Initial Lenders, on the Initial Loans Maturity Date, the principal amount of the Initial Loans then outstanding, together with all accrued interest thereon, any applicable Prepayment Premium and all fees, expenses payable under the terms of the Loan Documents and other Obligations accrued in respect thereof, and (ii) for the benefit of the applicable Additional Incremental Term Loan Lenders, on the applicable Additional Incremental Term Loan Maturity Date, the principal amount of the applicable Additional Incremental Term Loans, together with all accrued interest thereon, and all fees, expenses payable under the terms of the Loan Documents and other Obligations accrued in respect thereof.

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to the appropriate lending office of such Lender resulting from each Loan made by such lending office of such Lender from time to time, including the amounts of principal and interest payable and paid to such lending office of such Lender from time to time under this Loan Agreement.

(d) [Reserved].

(e) [Reserved].

(f) The Borrower hereby irrevocably authorizes each Lender to make (or cause to be made) appropriate notations on the grid attached to such Lender's Note(s) (or on any continuation of such grid), which notations, if made, shall be delivered to or otherwise available to the Borrower and shall be prima facie evidence (absent manifest error) of, among other things, the date of, the outstanding principal amount of, and the interest rate and Interest Period applicable to, the Loans evidenced thereby. Such notations shall, to the extent not inconsistent with notations made by Administrative Agent in the Register, be conclusive and binding on each Loan Party absent manifest error; provided, that the failure of any Lender to make any such notations shall not limit or otherwise affect any Obligations of any Loan Party. The Administrative Agent shall maintain the Register pursuant to Section 12.06(b)(iv).

(g) The entries made in the Register and accounts maintained pursuant to Section 2.03(c) and (f) shall, to the extent permitted by Applicable Law, be prima facie evidence (absent manifest error) of the existence and amounts of the obligations of the Borrower recorded therein; provided, that the failure of any Lender or Administrative Agent to maintain such account or such Register, as applicable, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) the Loans made to the Borrower by such Lender in accordance with the terms of this Loan Agreement. For avoidance of doubt, in the event of any inconsistency between the Register and any Lender's records under Section 2.03(c) and (f), the recordations in the Register shall govern.

Section 2.04 *Pro Rata* Borrowings. The Initial Term Loans under this Loan Agreement shall be made by the Initial Term Loan Lenders *pro rata* on the basis of their Initial Term Loan Commitments. Any DDTL under this Loan Agreement shall be made by the DDTL Lenders *pro rata* on the basis of their DDTL Commitments. Any Incremental Term Loans under this Loan Agreement shall be made by the applicable Incremental Term Loan Lenders *pro rata* on the basis of their applicable Incremental Term Loan Commitments. No Lender shall be responsible for any default by any other Lender in its obligation to make Loans hereunder, and each Lender shall be obligated to make the Loans, as applicable, provided to be made by it hereunder regardless of the failure of any other Lender to fulfill its commitments hereunder.

Section 2.05 Interest.

(a) Subject to Section 2.05(c) and Section 2.05(f), interest shall accrue during any Interest Period on the unpaid principal amount of each Loan from the date of the making thereof to but excluding the date of any repayment thereof, at a rate per annum equal to the LIBOR Rate for the applicable Interest Period in effect hereunder from time to time plus the Applicable Margin.

(b) Except as otherwise explicitly provided in this Loan Agreement, interest accrued on each Loan shall be payable in cash in arrears on the Interest Payment Dates applicable to such Loan. The applicable LIBOR Rate for each Interest Period or day within an Interest Period, as the case may be, shall be determined by the Administrative Agent (acting reasonably), and such determination shall be conclusive absent manifest error.

(c) From and after the occurrence and during the continuance of any Event of Default, the Borrower shall pay interest on the principal amount of all outstanding Loans and all other unpaid Obligations, to the extent permitted by Applicable Law, at the rate applicable to such Loans pursuant to Section 2.05(a) plus three percent (3.0%) per annum (and, in the case of Obligations other than Loans, at a rate of interest equal to the Prime Rate plus the Applicable Margin plus three percent (3.0%) per annum). All such additional interest shall be payable in cash on demand, and such increase shall apply (x) in the case of an Event of Default under Section 10.01(k), automatically upon the date of occurrence of such Event of Default, and (y) in the case of any other Event of Default, upon the written election of the Required Lenders, retroactively from the first date of occurrence of such Event of Default.

(d) All computations of interest hereunder shall be made in accordance with Section 4.06.

(e) [Reserved].

(f) In no event shall the interest rate or rates payable under this Loan Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Each of the Loan Parties, the Administrative Agent and the Lenders, in executing and delivering this Loan Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, however, that, anything contained herein to the contrary notwithstanding, if said rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, *ipso facto*, as of the date of this Loan Agreement, the Borrower is and shall be liable only for the payment of such maximum as allowed by applicable law, and payment received from the Borrower in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Loans and Obligations to the extent of such excess.

Section 2.06 Increased Costs, Illegality, etc.

(a) In the event that (x) in the case of clause (i) below, the Administrative Agent or (y) in the case of clauses (ii) and (iii) below, any Lender, in each case, shall have determined in good faith (which good faith determination shall, absent demonstrable error, be final and conclusive and binding upon all parties hereto):

(i) on any date for determining the LIBOR Rate for any Interest Period that (A) deposits in the principal amounts of the Loans are not generally available in the relevant market or (B) by reason of any changes arising after the Closing Date affecting the interbank Eurodollar market, adequate and fair means do not exist for ascertaining the applicable interest rate on the basis provided for in the definition of LIBOR Rate; or

(ii) at any time, after the later of the Closing Date and the date such Person became a Lender hereunder, that such Lender shall incur increased costs or reductions in the amounts received or receivable hereunder with respect to any Loan, including costs arising from Taxes (other than (x) Indemnified Taxes, (y) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (z) Connection Income Taxes) because of any change since the date hereof in any Applicable Law (or in the interpretation or administration thereof and including the introduction of any new Applicable Law), such as, for example, without limitation, a change in official reserve requirements; or

(iii) at any time, that the making or continuance of any Loan has become unlawful (including as a result of any Change in Law) by compliance by such Lender in good faith with any Applicable Law (or would conflict with any such Applicable Law), or has become impracticable as a result of a contingency occurring after the date hereof that materially and adversely affects the interbank Eurodollar market,

then, and in any such event, such Lender (or the Administrative Agent, in the case of clause (i) above) shall promptly give written notice to the Borrower and the Administrative Agent of such determination, and the Administrative Agent shall promptly notify each of the Lenders. Thereafter (A) in the case of clause (i) above, Loans shall no longer accrue interest with reference to the LIBOR Rate pursuant to Section 2.05(a) and, in lieu thereof, shall accrue interest under Section 2.05(a) at a rate per annum equal to the Prime Rate plus the Applicable Margin until such time as the Administrative Agent notifies the Borrower, the Collateral Agent and the Lenders that the circumstances giving rise to such notice by the Administrative Agent no longer exist (which notice the Administrative Agent agrees to give at such time when it becomes aware that such circumstances no longer exist), (B) in the case of clause (ii) above, the Borrower shall pay to such Lender, within seven (7) Business Days after receipt of written demand therefor, such additional amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender in its reasonable discretion shall determine) as shall be required to compensate such Lender for such increased costs or reductions in amounts receivable hereunder (it being agreed that a written notice as to the additional amounts owed to such Lender, showing in reasonable detail the basis for the calculation thereof, submitted to the Borrower by such Lender shall, absent clearly demonstrable error, be final and conclusive and binding upon all parties hereto) and (C) in the case of clause (iii) above, the Borrower shall take the actions specified by Applicable Law as promptly as possible and, in any event, within the time period required by Applicable Law.

(b) If, after the later of the date hereof and the date such entity becomes a Lender hereunder, the adoption of any Law, rule, guideline, request or directive (including, regardless of the date enacted, adopted or issued, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act, and all requests, rules, guidelines or directives thereunder or issued in

connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III), whether or not having the force of law, regarding capital adequacy, or any Change in Law occurs, or compliance by a Lender (or its lending office) or its parent with any request or directive made or adopted after such date regarding capital adequacy (whether or not having the force of law) of any such authority, association, central bank or comparable agency, in any such case, which has the effect of reducing the rate of return on such Lender's or its parent's capital or assets as a consequence of such Lender's commitments or obligations hereunder to a level below that which such Lender or its parent could have achieved but for such adoption, effectiveness, change or compliance (taking into consideration such Lender's or its parent's policies with respect to capital adequacy), then within seven (7) Business Days after receipt of written demand by such Lender (with a copy to the Administrative Agent), the Borrower shall pay to such Lender or its parent such additional amount or amounts as will compensate such Lender for such reduction; provided, however, that a Lender shall not be entitled to such compensation as a result of such Lender's compliance with, or pursuant to any request or directive to comply with, any such Applicable Law as in effect on the date hereof or the later date on which it becomes a Lender, as the case may be. Each Lender (on its own behalf), upon determining in good faith that any additional amounts will be payable pursuant to this Section 2.06(b), will, as promptly as practicable upon ascertaining knowledge thereof, give written notice thereof to the Borrower, which notice shall set forth in reasonable detail the basis of the calculation of such additional amounts. The failure or delay to give any such notice with respect to a particular event shall not release or diminish any of the Borrower's obligations to pay additional amounts pursuant to this Section 2.06(b) for amounts accrued or incurred prior to the date that such notice with respect to such event is actually given, unless such notice is given more than 180 days (or such longer period based on any retroactive effect as described in Section 2.06(a)) after Lender has knowledge of any such event.

(c) If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that either (i) the circumstances set forth in subparagraph (a) of this Section 2.06 have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in subparagraph (a) of this Section 2.06 have not arisen but the supervisor for the administrator of the LIBOR Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBOR Rate shall no longer be used for determining interest rates for loans (in the case of either such clause (i) or (ii), an "Alternative Interest Rate Election Event"), the Administrative Agent and the Borrower shall endeavor to establish an alternate rate of interest to the LIBOR Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for leveraged syndicated loans in the United States at such time, and shall enter into an amendment to this Loan Agreement to reflect such alternate rate of interest and such other related changes to this Loan Agreement as may be applicable. Notwithstanding anything to the contrary in Section 12.01, such amendment shall become effective without any further action or consent of any other party to this Loan Agreement so long as the Administrative Agent shall not have received, within five (5) Business Days after the date notice of such alternate rate of interest is provided to the Lenders, a written notice from Required Lenders stating that they object to such amendment. To the extent an alternate rate of interest is adopted as contemplated hereby, the approved rate shall be applied in a manner consistent with prevailing market convention; provided that, to the extent such prevailing market convention is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent and the Borrower. Notwithstanding anything herein to the contrary, if such alternate rate of interest as determined in this subparagraph (c) is determined to be less than 1.5%, such rate shall be deemed to be 1.5% for the purposes of this Loan Agreement.

Section 2.07 Compensation. If (a) any payment of principal of a Loan is made by the Borrower to or for the account of a Lender other than on the last day of the Interest Period for such Loan as a result of a payment pursuant to Sections 2.03, 4.01 or 4.02, as a result of acceleration of the maturity of the Loans pursuant to Article X or for any other reason, or (b) any prepayment of principal of a Loan is not made as a result of a withdrawn notice of prepayment pursuant to Sections 4.01 or 4.02, the Borrower shall, within seven (7) Business Days after receipt of a written request by such Lender (with a copy of such request provided to the Administrative Agent and which request shall set forth in reasonable detail the basis for requesting such amount), pay to the Administrative Agent for the account of such Lender any amounts required to compensate such Lender for any additional losses, costs or expenses that such Lender may reasonably incur as a result of such payment or failure to prepay, including any loss, cost or expense (excluding loss of anticipated profits) actually incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund or maintain such Loan.

Section 2.08 Incremental Term Loans.

(a) Subject to the terms and conditions set forth herein, the Borrower may, from time to time after the earlier to occur of (x) the termination of all DDTL Commitments and (y) the DDTL Commitment Expiration Date, by written notice to the Administrative Agent (each, an "Incremental Facility Request"), request to add one or more additional tranches of incremental term loan facilities and/or increase the principal amount of the Loans of any existing Class (each, an "Incremental Term Loan Commitment" and the term loans thereunder, an "Incremental Term Loan"; each Incremental Term Loan Commitment is sometimes referred to herein individually as an "Incremental Facility" and collectively as the "Incremental Facilities"); provided, that the Aggregate Incremental Amount shall not exceed the Incremental Cap. Any Incremental Term Loan Commitment may be provided by, subject to Section 2.08(c)(v), (A) any existing Lender or any Affiliate of any Lender and/or (B) any other Person other than any natural person, any Loan Party or to any Affiliate of any Loan Party, or any Person that is a Disqualified Institution (any such Person that provides an Incremental Term Loan Commitment in accordance with this Section 2.08, including, without limitation, clause (c)(v) hereof, an "Incremental Term Loan Lender"). No Lender shall be obligated to provide any Incremental Facility, and the determination to provide such commitments shall be within the sole and absolute discretion of such Lender. Such Incremental Facility Request shall set forth (i) the amount of the Incremental Term Loan Commitment being requested, (ii) the date (an "Incremental Effective Date") on which such Incremental Facility is requested to become effective (which, unless otherwise agreed by Administrative Agent, shall not be less than ten (10) Business Days nor more than sixty (60) days after the date of such notice), and (iii) the Borrower's proposed potential lenders thereof.

(b) Each Incremental Facility and each Incremental Term Loan Lender's obligation to fund the Incremental Term Loans thereunder shall become effective as of the Incremental Effective Date of such Incremental Facility so long as, after giving effect to such Incremental Facility, the Incremental Term Loans to be made thereunder (assuming that the entire amount of such Incremental Facility is funded), and the application of the proceeds therefrom:

(i) subject to Section 1.12, no Default or Event of Default shall exist immediately prior to or after giving effect to such Incremental Facility and the funding of the Incremental Term Loans thereunder;

(ii) subject to Section 1.12, the representations and warranties of the Loan Parties set forth in this Loan Agreement and each other Loan Document, shall be true and correct in all material respects on and as of the Incremental Effective Date (except to the extent that any such representation or warranty is expressly stated to have been made as of an earlier date, in which case, such representation or warranty shall be true and correct in all material respects as of such earlier date); provided that, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates;

(iii) subject to Section 1.12, no event, change or condition shall have occurred since December 31, 2019 that has had or could reasonably be expected to have a Material Adverse Effect;

(iv) subject to Section 1.12, as of the last day of the most recently completed Test Period, the Total Net Leverage Ratio recomputed on a pro forma basis for such Incremental Term Loans shall not exceed 3.50:1.00;

(v) the proceeds of such Incremental Term Loan shall be used in accordance with Section 8.12;

(vi) on the Incremental Effective Date of such Incremental Facility, after giving effect thereto, Hayfin Lenders collectively hold not less than 50.1% of the aggregate outstanding principal amount of the Loans (including such Incremental Term Loan (which, for purposes of this clause (vi), shall be deemed fully funded on such Incremental Effective Date); and

(vii) the Administrative Agent shall have received:

(A) the Incremental Facility Request that sets forth the requested amount and proposed terms of the requested Incremental Facility and the Incremental Effective Date;

(B) a certificate of a Responsible Officer certifying as to the foregoing clauses (i), (ii), (iii), (iv) and (v);

(C) a Solvency Certificate substantially in the form of Exhibit G duly executed by the chief financial officer of the Borrower confirming the Solvency of the Borrower and of each of the other Loan Parties and their Subsidiaries, taken as a whole, after giving effect to Borrowing of such Incremental Term Loans and the application of the proceeds thereof;

(D) legal opinions with respect to customary matters, board resolutions, Notes (to the extent requested by the applicable Incremental Term Loan Lenders) and other customary closing certificates reasonably requested by the Administrative Agent, in each case consistent with those delivered on the Closing Date;

(E) guaranty and Lien reaffirmations as may be reasonably be requested by the Collateral Agent; and

(F) from each proposed Incremental Term Loan Lender that is not (immediately prior to the effectiveness of the Incremental Facility) a Lender, an Administrative Questionnaire and such other documents, information and forms (including, without limitation, tax forms) as the Administrative Agent may request from such proposed Incremental Term Loan Lender.

(c) Terms.

(i) The final maturity date of any Incremental Term Loan that is a separate Class from the Initial Loans (a "Additional Incremental Term Loan"; any Lender that holds an Additional Incremental Term Loan, a "Additional Incremental Term Loan Lender") shall be no earlier than the Initial Loan Maturity Date and the Weighted Average Life to Maturity of any such Incremental Term Loan shall not be shorter than the Weighted Average Life to Maturity of any then-existing Class of the Initial Loans (prior to any extension thereto). Such pricing and maturity date with respect to any Additional Incremental Term Loan shall be set forth in the applicable Incremental Joinder Agreement (any such maturity date, a "Additional Incremental Term Loan Maturity Date").

(ii) The interest rate (including margin and floors) applicable to any Incremental Term Loans will be determined by the Borrower and the Lenders providing such Incremental Term Loans. If the initial all-in yield (including interest rate margins, any interest rate floors, original issue discount and upfront fees (based on the lesser of a four-year average life to maturity or the remaining life to maturity), but excluding arrangement, structuring and underwriting fees with respect to such Incremental Term Loan) applicable to any Incremental Term Loan exceeds by more than 0.50% per annum the corresponding all-in yield (determined on the same basis) applicable to the then outstanding Initial Term Loans, the DDTLs, or any outstanding prior Incremental Term Loan to the extent consisting of Initial Loans (each, an "Existing Facility" and the amount of such excess above 0.50% being referred to herein as the "Yield Differential"), then the Applicable Margin with respect to each Existing Facility, as the case may be, shall automatically be increased by the Yield Differential, effective upon the making of such Incremental Term Loan (it being agreed that to the extent the all-in-yield with respect to such Incremental Term Loan is greater than the all-in-yield of an Existing Facility solely as a result of a higher LIBOR floor, then the increased interest rate applicable to an Existing Facility shall be effected solely by increasing the LIBOR floor applicable thereto.

(iii) Except with respect to pricing and final maturity as set forth in this clause (c), each Incremental Term Loan shall be on the same terms as the Initial Term Loans (including, without limitation, with respect to any mandatory prepayments).

(iv) Any Incremental Term Loans may be repaid or prepaid in accordance with the terms and conditions hereof, but once repaid or prepaid may not be re-borrowed.

(v) Each Hayfin Lender shall be afforded a right of first refusal to provide its *pro rata share* (calculated on the basis solely of the then outstanding Loans and unused Commitments of all Hayfin Lenders) of any Incremental Facility; provided, that, upon written notice to the Administrative Agent and the Borrower prior to the closing of the applicable Incremental Facility, the Hayfin Lenders may agree to allocate all or some of such Incremental Facility in a non-pro rata manner amongst all or some of the Hayfin Lenders or other Hayfin Parties. In the event that the Hayfin Lenders (or other Hayfin Parties) decline to commit, or fail to commit within fifteen (15) Business Days of the Borrower's written request to the Hayfin Lenders, to provide the entire requested amount of any Incremental Facility, the Borrower may, with the prior written consent of the Administrative Agent (not to be unreasonably withheld, conditioned or delayed), seek one or more new Persons (except any natural person, any Loan Party or to any Affiliate of any Loan Party, or any Person that is a Disqualified Institution) to be added as Incremental Term Loan Lenders for purposes of providing the portion of such Incremental Term Loan Commitment in such Incremental Facility not so provided by the Hayfin Lenders (or other Hayfin Parties). Notwithstanding anything to the contrary contained in this Section 2.08, for purposes of this clause (c)(v), the Hayfin Lenders shall be afforded a period of at least fifteen (15) consecutive Business Days to consider the final terms, economics, conditions and documentation of any proposed Incremental Facility proposed by the Borrower and determine whether to participate (or select another Hayfin Party to participate) in such Incremental Facility.

(d) Required Amendments. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Facility, this Loan Agreement shall be amended to the extent (but only to the extent) necessary to reflect the existence of such Incremental Facility and the Incremental Term Loans evidenced thereby, and any joinder agreement or amendment by Borrower, each existing Lender providing the Incremental Term Loan Commitment under such Incremental Facility and the other Incremental Term Loan Lender under such Incremental Facility (each an "Incremental Joinder Agreement"), may, without the consent of any other Lenders, effect such amendments to this Loan Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of Administrative Agent and Borrower, to effect the provisions of this Section 2.08(d) (including any amendments that are not adverse to the interests of any Lender (solely in its capacity as a Lender hereunder) that are made to effectuate changes necessary to enable any Incremental Term Loans that are intended to be of the same Class as the Initial Loans to be of the same Class as such Initial Loans (or any Incremental Term Loans that are intended to be of the same Class as previous Incremental Term Loans (incurred as a separate Class from the Initial Loans) to be of the same Class as such previous Incremental Term Loans). For the avoidance of doubt, this Section 2.08(d) shall supersede any provisions in Section 12.01 to the contrary. From and after each Incremental Effective Date, the Incremental Term Loans and Incremental Term Loan Commitments established pursuant to this Section 2.08 shall constitute Loans and Commitments under, and shall be entitled to all the benefits afforded by, this Loan Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from the guarantees and security interests created by the applicable Security Documents. The Loan Parties shall take any actions reasonably required by Administrative Agent or the Collateral Agent to ensure and/or demonstrate that the Liens and security interests granted by the applicable Security Documents continue to be perfected under the UCC or otherwise after giving effect to the establishment of any such new Loans and Commitments, including compliance with Section 8.15.

Section 2.09 Notes. To the extent requested by any Lender, the Borrower shall execute and deliver (x) to the extent requested by such Lender prior to the Closing Date, on the Closing Date and (y) to the extent requested by such Lender after the Closing Date, promptly (and in any case, within five (5) Business Days of such request), one or more notes (as requested by such Lender) payable to such Lender which in the aggregate equal the amount of such Lender's Loans made payable to such Lender in substantially the form of Exhibit A-1 (each, a "Note", and collectively, the "Notes").

Section 2.10 Termination of Commitments.

(a) The Initial Term Loan Commitments of each Initial Term Loan Lender shall automatically terminate upon the making of such Initial Term Loan Lender's Initial Term Loans pursuant to Section 2.01(a) on the Closing Date.

(b) Upon the effectiveness of any Borrowing of DDTL, the DDTL Commitments of each DDTL Lender shall be automatically reduced by the aggregate principal amount of DDTL made by such DDTL Lender pursuant to such Borrowing. Any outstanding DDTL Commitments of each DDTL Lender shall automatically terminate on the DDTL Commitment Expiration Date.

(c) Any Incremental Term Loan Commitments of any Class shall automatically terminate upon the making of the Incremental Term Loans of such Class pursuant to Section 2.08(a).

ARTICLE III

FEES, PREMIUMS AND COMMITMENT TERMINATIONS

Section 3.01 Fees.

(a) Fee Letter. The Borrower agrees to pay to the Administrative Agent and each Lender, as applicable, all of the fees in the amounts and at the times set forth in the Fee Letter.

(b) DDTL Commitment Fee.

(i) The Borrower shall pay to the Administrative Agent a fee (the "Unused DDTL Commitment Fee"), for the account of each DDTL Lender, in an amount per annum equal to:

(A) The average daily balance of the DDTL Commitment of such DDTL Lender during each fiscal quarter or portion thereof from the date hereof to the DDTL Commitment Expiration Date;

(B) multiplied by one percent (1.00%).

(ii) The total Unused DDTL Commitment Fee paid by Borrower will be equal to the sum of all of the Unused DDTL Commitment Fees due to the DDTL Lenders. Such fee shall be payable quarterly in arrears on the first day of each fiscal quarter commencing with the fiscal quarter ending on September 30, 2020 and on the DDTL Commitment Expiration Date.

(iii) The Unused DDTL Commitment Fee provided in this Section 3.01(b) shall accrue at all times from and after date hereof through the DDTL Commitment Expiration Date.

Section 3.02 Prepayment Premiums. Upon the occurrence of a Prepayment Premium Trigger Event, the Borrower shall pay to the Administrative Agent, for the account of the Lenders holding the Loans being prepaid (or deemed prepaid), the Prepayment Premium. Notwithstanding anything to the contrary in this Loan Agreement or any other Loan Document, it is understood and agreed that if the Obligations are accelerated as a result of the occurrence and continuance of any Event of Default (including by operation of law or otherwise), the Prepayment Premium, if any, determined as of the date of acceleration, will also be due and payable and will be treated and deemed as though the Loans were prepaid as of such date and shall constitute part of the Obligations for all purposes herein. Any Prepayment Premium payable pursuant to this Section 3.02 shall be presumed to be equal to the liquidated damages sustained by the Lenders as the result of the occurrence of the Prepayment Premium Trigger Event, and the Borrower and Guarantors agree that it is reasonable under the circumstances currently existing. The Prepayment Premium, if any, shall also be payable in the event the Obligations (and/or this Loan Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means. THE BORROWER AND GUARANTORS EXPRESSLY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING PREPAYMENT PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION. The Borrower and Guarantors expressly agree that (a) the Prepayment Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel, (b) the Prepayment Premium shall be payable notwithstanding the then prevailing market rates at the time payment is

made, (c) there has been a course of conduct between Lenders and the Loan Parties giving specific consideration in this transaction for such agreement to pay the Prepayment Premium, (d) the Loan Parties shall be estopped hereafter from claiming differently than as agreed to in this Section 3.02, (e) their agreement to pay the Prepayment Premium is a material inducement to the Lenders to provide the Commitments and make the Loans, and (f) the Prepayment Premium represents a good faith, reasonable estimate and calculation of the lost profits or damages of the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Lenders or profits lost by the Lenders as a result of any Prepayment Premium Trigger Event.

ARTICLE IV

PAYMENTS

Section 4.01 Voluntary Prepayments.

(a) The Borrower shall have the right to prepay Loans in whole or in part from time to time on the following terms and conditions:

(i) as a specifically negotiated requirement, additional consideration for providing the Loans, and an important economic provision upon which the Agents and the Lenders are relying, the Borrower shall deliver to the Administrative Agent written notice of the Borrower's intent to make such prepayment and the amount of such prepayment, by 3:00 p.m. no less than five (5) Business Days prior to the date of such prepayment, specifying the date on which such prepayment is to be made;

(ii) a notice delivered pursuant to Section 4.01(a)(i) shall be irrevocable, shall obligate the Borrower to prepay the amount specified in such notice on the date specified therein together with accrued interest thereon and the applicable Prepayment Premium, if any, all of which shall become due and payable on the prepayment date set forth in such notice; provided that notwithstanding the foregoing any such voluntary prepayment occurring as a result of a Change of Control, a refinancing of the Obligations or another material transaction specified in the relevant notice may be conditional upon the closing of any such transaction;

(iii) each partial prepayment of any Loans shall be in a multiple of $50,000 and in an aggregate principal amount of at least $250,000;

(iv) each prepayment of Loans pursuant to this Section 4.01 on any day other than the last day of the applicable Interest Period shall be subject to compliance by the Borrower with the applicable provisions of Section 2.07; and

(v) on the date of prepayment of any Loan pursuant to this Section 4.01, the Borrower shall pay to the Administrative Agent, for the benefit of the Lenders, the applicable Prepayment Premium, if any.

(b) Each prepayment pursuant to this Section 4.01 shall be applied *pro rata* to the Loans (and *pro rata* among and within each Class of Loans) based on the outstanding principal amounts thereof.

(c) Notwithstanding anything in Section 4.01(a) to the contrary, if any Lenders decline all or any portion of any mandatory payment in accordance with Section 4.05, any voluntary prepayment of the applicable Loans that occurs within three (3) Business Days of the date that the applicable Lenders decline such mandatory prepayment in an amount equal to such declined proceeds, shall: (i) be excluded from the notice and minimum amount requirements of Sections 4.01(a)(i) and 4.01(a)(iii), and (ii) be applied to reduce the Loans and the Prepayment Premium that would have been applicable to such amount if accepted as a mandatory prepayment under Section 4.02(a).

Section 4.02 Mandatory Prepayments.

(a) The Borrower shall prepay the Loans in accordance with the following:

(i) Concurrently with the incurrence of any Indebtedness by any Loan Party or any of its Subsidiaries (other than Indebtedness permitted under Section 9.01), the Borrower shall (x) prepay the Loans in an amount equal to one hundred percent (100%) of the applicable Net Debt Proceeds, to be applied as set forth in Section 4.02(b) and (y) pay the applicable Prepayment Premium, if any. Nothing in this Section 4.02(a)(i) shall be construed to permit or waive any Default or Event of Default arising from any incurrence of Indebtedness not permitted under the terms of this Loan Agreement.

(ii) Within five (5) Business Days of the receipt by any Loan Party or any of its Subsidiaries of any proceeds from any Disposition under Section 9.04(a) or (b) in excess of $1,500,000, the Borrower shall prepay the Loans in an amount equal to one hundred percent (100%) of the Net Disposition Proceeds from such Disposition, to be applied as set forth in Section 4.02(b), and, solely to the extent such Disposition is with respect to all or substantially all of the assets of the Loan Parties and their Subsidiaries taken as a whole, the Borrower shall pay the applicable Prepayment Premium, if any; provided, however, that the Borrower may, at its option by written notice to the Administrative Agent on or prior to the date of the Disposition giving rise to such Net Disposition Proceeds, within one hundred eighty (180) days after such event, reinvest or commit to reinvest such Net Disposition Proceeds in fixed assets to be used in the business of the Borrower and its Subsidiaries so long as (A) [reserved], (B) no Default or Event of Default has occurred and is continuing, and the Borrower certifies in writing to the Administrative Agent that no Default or Event of Default has occurred and is continuing, (C) such Net Disposition Proceeds are held in an account subject to an Account Control Agreement while awaiting reinvestment and (D) the Borrower shall be in compliance with Section 9.13(b) on a pro forma basis after giving effect to such reinvestment; provided further, that, if such Net Disposition Proceeds are committed to be reinvested within such one hundred eighty (180) period, such Net Disposition Proceeds shall actually be reinvested within an additional one hundred twenty (120) day period. Nothing in this Section 4.02(a)(ii) shall be construed to permit or waive any Default or Event of Default arising from any Disposition not permitted under the terms of this Loan Agreement.

(iii) Within five (5) Business Days of the receipt by any Loan Party or any of its Subsidiaries of any proceeds from any Casualty Event in excess of $1,000,000, the Borrower shall prepay the Loans in an amount equal to one hundred percent (100%) of such Net Casualty Proceeds, to be applied as set forth in Section 4.02(b); provided, however, that the Borrower may, at its option by written notice to the Administrative Agent no later than one hundred eighty (180) days following the occurrence of the Casualty Event resulting in such Net Casualty Proceeds, apply such Net Casualty Proceeds to the rebuilding or replacement of such damaged, destroyed or condemned assets or property or reinvested in fixed assets to be used in the business of the Borrower and its Subsidiaries so long as such Net Casualty Proceeds are in fact used or are committed to be used to rebuild or replace the damaged, destroyed or condemned assets or property within such one hundred eighty (180) days following the receipt of such Net Casualty Proceeds, with the amount of Net Casualty Proceeds not so used after such period to be applied as set forth in Section 4.02(b); so long as (A) no Default or Event of Default has occurred and is continuing, and the Borrower certifies in writing to the Administrative Agent that no Default or Event of Default has occurred and is continuing, (B) such Net Casualty Proceeds are held in an account subject to an Account Control Agreement while awaiting reinvestment and (C) the Borrower shall be in compliance with Section 9.13(b) on a pro forma basis after giving effect to such reinvestment; provided further, that, if such Net Casualty Proceeds are committed to be reinvested within such one hundred eighty (180) day period, such Net Casualty Proceeds shall be actually reinvested within an additional one hundred twenty (120) days. Nothing in this Section 4.02(a)(iii) shall be construed to permit or waive any Default or Event of Default arising, directly or indirectly, from any Casualty Event. It is understood and agreed the Prepayment Premium is not due and payable for payments under this clause (iii).

(iv) [reserved].

(v) [reserved].

(vi) [reserved].

(vii) Notwithstanding anything to the contrary herein, immediately upon any acceleration of any Obligations pursuant to Section 10.02, (whether before, during or after the commencement of any proceeding under the Bankruptcy Code involving the Borrower or any other Loan Party), the Borrower shall immediately repay all the Loans, together with the applicable Prepayment Premium, unless only a portion of the Loans is so accelerated (in which case the portion so accelerated shall be so repaid together with the applicable Prepayment Premium). The parties hereto acknowledge and agree that the Prepayment Premium referred to in this Section 4.02(a)(vii) (i) is additional consideration for providing the Loans, (ii) constitutes reasonable liquidated damages to compensate the Lenders for (and is a proportionate quantification of) the actual loss of the anticipated stream of interest payments upon an early prepayment of the Loans (such damages being otherwise impossible to ascertain or even estimate for various reasons, including, without limitation, because such damages would depend on, among other things, (x) when the Loans might otherwise be repaid and (y) future changes in interest rates which are not readily ascertainable on the Closing Date), and (iii) is not a penalty to punish the Borrower for its early prepayment of the Loans or for the occurrence of any Event of Default.

(viii) Concurrently with any Change of Control, the Borrower shall repay all of the Loans, together with the applicable Prepayment Premium, if any, and all other outstanding Obligations.

(ix) Within five (5) Business Days after the date that the annual consolidated financial statements of the Borrower and its Subsidiaries are required to be delivered pursuant to Section 8.01(c) after the end of each fiscal year ending after the Closing Date, beginning with the fiscal year ending December 31, 2021, the Borrower will prepay the Loans, to be applied as set forth in Section 4.02(b), in an amount equal to (x) the Prepayment Percentage of Excess Cash Flow, if any, for such fiscal year *minus* (y) other than to the extent made from Net Debt Proceeds from any long-term Indebtedness, the principal amount of Loans voluntarily prepaid in accordance with Section 4.01 during such fiscal year.

(b) Application of Payments. Voluntary prepayments shall be applied as set forth in Section 4.01(b) and, except as set forth in Section 4.02(c), each payment and prepayment of Loans required by Section 2.03(a) or Section 4.02(a), and any other amount that the Administrative Agent receives from any Person as a result of a provision in any Loan Document requiring that such amount be paid to the Administrative Agent, one hundred percent (100%) of such amount shall be applied *pro rata* to the Loans (and *pro rata* among and within each Class of Loans) based on the outstanding principal amounts thereof until the Loans are paid in full, and finally to any other outstanding Obligations until paid in full; provided, that the Borrower shall pay all amounts, if any, required to be paid pursuant to Section 2.07 with respect to each prepayment of Loans made on any date other than the last day of the applicable Interest Period. Each such prepayment shall be accompanied by all accrued interest on the Loans so prepaid, through the date of such prepayment, and, to the extent applicable (and whether before, during or after acceleration of the Loans and/or the occurrence of any Event of Default and/or the commencement of any proceeding under the Bankruptcy Code involving the Borrower or any other Loan Party), the Prepayment Premium.

(c) Application of Collateral Proceeds. Notwithstanding anything to the contrary in Section 4.01 or this Section 4.02, (x) all proceeds of Collateral received by the Administrative Agent, a Lender or any other Person pursuant to the exercise of rights or remedies against the Collateral, (y) all payments received by Administrative Agent or any Lender upon and after the acceleration of any of the Obligations and (z) all payments received by Administrative Agent or any Lender following written notice to the Borrower and Administrative Agent by the Required Lenders during the existence of an Event of Default to impose the waterfall set forth in this Section 4.02(c), shall be applied as follows:

(i) first, to pay any and all costs, fees, and expenses of, and any indemnity payments then due to, the Agents under the Loan Documents, until paid in full;

(ii) second, ratably to pay any costs, fees, and expenses of, and any indemnity payments then due to, any of the Lenders under the Loan Documents, until paid in full;

(iii) third, ratably to the Lenders to pay interest due in respect of the outstanding Loans until paid in full;

(iv) fourth, ratably to the Lenders to pay the outstanding principal balance of the Loans on a *pro rata* basis until the Loans are paid in full;

(v) fifth, ratably to the Lenders to pay any Prepayment Premium payable pursuant to this Loan Agreement, and any other applicable premiums in respect of the Loans;

(vi) sixth, to pay any other Secured Obligations, ratably to the Persons entitled thereto and any breakage, termination or other payments under Hedging Agreements constituting Secured Obligations and any interest accrued thereon, and any payments under Secured Cash Management Agreements constituting Secured Obligations; and

(vii) seventh, to the Borrower or such other Person entitled thereto under Applicable Law.

For the avoidance of doubt, notwithstanding any other provision of any Loan Document, no amount received directly or indirectly from any Loan Party that is not a Qualified ECP Guarantor shall be applied directly or indirectly by the Administrative Agent or otherwise to the payment of any Obligations arising under Secured Cash Management Agreements and Secured Hedging Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation from the applicable Cash Management Bank or Hedge Bank, as the case may be, as may be reasonably necessary to determine the amount of the Secured Obligations owed thereunder. Each Cash Management Bank or Hedge Bank not a party to this Loan Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article X hereof for itself and its Affiliates as if a "Lender" party hereto and be deemed to be (and agrees to be) subject to the provisions in Sections 12.14, 12.18 and 13.04 as a party hereto.

Section 4.03 Payment of Obligations; Method and Place of Payment.

(a) The obligations of each Loan Party hereunder and under each other Loan Document are not subject to counterclaim, set-off, rights of rescission, or any other defense of any kind whatsoever (other than defense of payment). Subject to Section 4.04, and except as otherwise specifically provided herein, all payments under any Loan Document shall be made by the Borrower, without counterclaim, set-off, rights of rescission, or deduction of any kind, to the Administrative Agent for the ratable account of the Secured Parties entitled thereto, not later than 1:00 p.m. on the date when due and shall be made in immediately available funds in Dollars to the Administrative Agent. The Administrative Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal or interest or Fees ratably to the Secured Parties entitled thereto.

(b) For purposes of computing interest or fees, any payments under this Loan Agreement that are made later than 1:00 p.m. on any Business Day may in the Administrative Agent's discretion be deemed to have been made on the next succeeding Business Day. Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest shall continue to accrue during such extension at the applicable rate in effect immediately prior to such extension.

(c) Pursuant to Section 4.03(a), the Borrower shall make each payment under any Loan Document by wire transfer to such U.S. account as the Administrative Agent may identify in a written notice to the Borrower from time to time.

Section 4.04 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or

withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 4.04) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Indemnification by the Loan Parties. The Loan Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 4.04) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.06(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this Section 4.04(d).

(e) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 4.04, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 4.04(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the relevant Lender's reasonable judgment such completion, execution or submission would subject

such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Loan Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Loan Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(w) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (1) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or, in the case of an entity, IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (2) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or, in the case of an entity, IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(x) executed copies of IRS Form W-8ECI;

(y) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (1) a certificate to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (2) executed copies of IRS Form W-8BEN or, in the case of an entity, IRS Form W-8BEN-E; or

(z) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or, in the case of an entity, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate, IRS Form W-9 and/or other certification documents from each beneficial owner, as applicable; provided, that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Loan Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at

such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Loan Agreement.

Each Lender agrees that, if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 4.04 (including by the payment of additional amounts pursuant to this Section 4.04), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 4.04 shall survive the resignation or replacement of either or both of the Agents or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 4.05 Right to Decline Payments. Borrower shall provide prior written notice of any prepayment under Section 4.02 to the Administrative Agent by 3:00 p.m. at least three (3) Business Days prior to such proposed prepayment date. Any Lender in its sole discretion may decline, in whole or in part, any payment in respect of a mandatory prepayment under Section 4.02(a) without prejudice to each Lender's rights hereunder to accept or decline any future mandatory prepayment on behalf of the Lenders. If a Lender chooses to decline, in whole or in part, payment in respect of a mandatory prepayment, (i) the Lender shall promptly notify the Administrative Agent in writing by 3:00 p.m. two (2) Business Days prior to the prepayment date of its election to do so (it being understood that any Lender which does not notify the Administrative Agent of its election to exercise such option in respect of any payment in respect of a mandatory prepayment shall be deemed as of such date not to exercise such option), and (ii) the amount of such declined payment shall be offered ratably to the non-declining Lenders, who shall provide written notice not later than by 3:00 p.m. one (1) Business Day prior to the prepayment date of its acceptance of any declined payment in respect of a mandatory prepayment (it being understood that any Lender who does not notify the Administrative Agent of its election to exercise such option shall be deemed as of such date not to exercise such option), and (iii) if such other Lenders decline the additional repayment amount offered pursuant to clause (ii) above, such declined amounts may be retained by the Loan Parties.

Section 4.06 Computations of Interest and Fees. All interest and fees shall be computed on the basis of the actual number of days occurring during the period for which such interest or fee is payable over a year comprised of 360 days; provided, that for any Loan bearing interest with reference to the Prime Rate, a year shall be comprised of 365 or 366 days, as the case may be. Payments due on a day that is not a Business Day shall (except as otherwise required by) be made on the next succeeding Business Day and such extension of time shall be included in computing interest and fees in connection with that payment.

Section 4.07 Debt. The Borrower agrees that the Initial Term Loans shall be funded on the Closing Date net of original issue discount in the amount of the "Upfront Fee" set forth in, and as defined under, the Fee Letter. For the avoidance of doubt, all calculation of interest and fees in respect of the Initial Term Loans shall be calculated on the basis of their full stated principal amount. The Borrower and the Lenders agree that: (i) the Loans are intended as debt for U.S. federal income tax purposes and will be treated as such by the parties; (ii) [reserved]; (iii) such debt instrument is not governed by the rules set out in Treasury Regulations Section 1.1275-4; and (iv) they will adhere to this Loan Agreement for U.S. federal income tax purposes and not take any action or file any tax return, report or declaration inconsistent herewith. The inclusion of this Section 4.07 is not an admission by any Lender that it is subject to United States taxation.

ARTICLE V

CONDITIONS PRECEDENT TO THE INITIAL TERM LOANS

The obligation of the Initial Term Loan Lenders to fund the Initial Term Loans under this Loan Agreement is subject to the satisfaction (or waiver by the Administrative Agent) of the following conditions precedent on or before the Closing Date:

Section 5.01 Loan Documents. The Administrative Agent shall have received copies (which shall be originals or in electronic format; provided, that, in the case of electronic copies, upon the request (on or after the Closing Date) of the Administrative Agent or, in the case of any Note, any applicable Lender, the applicable Loan Parties shall deliver original copies (it being understood, for the avoidance of doubt, that delivery of such original copies shall not be a condition precedent to the funding of the Initial Term Loans)) of the following documents, duly executed and delivered by an Authorized Officer of each applicable Loan Party and each other relevant party thereto:

(a) this Loan Agreement;

(b) the Notes, in accordance with Section 2.09;

(c) the Guaranty and Security Agreement, substantially in the form attached hereto as Exhibit C-1;

(d) such Patent Security Agreements, Trademark Security Agreements and Copyright Security Agreements, each substantially in the form attached hereto as Exhibit C-2, C-3 and C-4, respectively, as are required to perfect, or convenient to the perfection of, the Liens granted to the Collateral Agent in the IP Rights registered or applied-for in the United States Patent and Trademark Office or the United States Copyright Office described on Schedule 7.14; and

(e) the Fee Letter

Section 5.02 Lien and Other Searches; Filings.

(a) The Collateral Agent shall have received the results of a search of the UCC filings (or equivalent filings), tax Liens, judgment Liens, bankruptcies and litigations made with respect to each Loan Party, together with copies of the financing statements and other filings (or similar documents) disclosed by such searches, and accompanied by evidence that the Liens indicated in all such financing statements and other filings (or similar document) either are Permitted Liens or have been released or will be released on the Closing Date concurrently with the funding of the Loans hereunder.

(b) The Collateral Agent shall have received the results of searches of ownership of IP Rights registered or applied-for in the United States Patent and Trademark Office and the United States Copyright Office.

(c) The Collateral Agent shall have received evidence in form and substance satisfactory to the Collateral Agent that appropriate UCC (or equivalent) financing statements have been provided for filing in such office or offices as may be necessary to perfect and evidence the Collateral Agent's Liens in and to the Collateral.

Section 5.03 Stock Pledges. All Capital Stock of each of the Borrower's Subsidiaries shall have been pledged pursuant to the Guaranty and Security Agreement, and the Collateral Agent shall have received all certificates (if any) representing such Capital Stock accompanied by instruments of transfer and undated stock powers executed in blank.

Section 5.04 Legal Opinions. The Administrative Agent shall have received on the Closing Date executed legal opinions of (i) Sidley Austin LLP, counsel to the Loan Parties, (ii) Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., as Florida counsel to the Loan Parties, and Alston & Bird LLP, as Georgia counsel to the Loan Parties, which legal opinions shall be addressed to the Administrative Agent, the Collateral Agent and the Lenders and shall be in form and substance reasonably satisfactory to the Administrative Agent.

Section 5.05 Secretary's Certificates. The Administrative Agent shall have received a certificate for each Loan Party, dated the Closing Date, duly executed and delivered by such Loan Party's secretary or assistant secretary, managing member, general partner, or other appropriate person reasonably acceptable to the Administrative Agent, as applicable, certifying:

(a) that attached thereto is a copy of such Person's Organization Documents as of the Closing Date, including all amendments, modifications and supplements thereto, further certified, in the case of certificate or articles of incorporation or organization or articles of association or other similar constituting document, as of a recent date by the Secretary of State of the state of organization of such Person;

(b) that attached thereto are resolutions, that have not been amended, supplemented, rescinded or modified, of each such Person's board of directors (or other managing body, in the case of a Person that is not a corporation) then in full force and effect expressly and specifically authorizing, to the extent relevant, all aspects of the Loan Documents applicable to such Person and the execution, delivery and performance of each Loan Document, in each case to be executed by such Person; and

(c) as to the incumbency and specimen signatures of its Authorized Officers and any other of its officers, managing member or general partner, as applicable, authorized to act with respect to each Loan Document to be executed by such Person, and a list of all officers and directors of the Loan Parties.

Section 5.06 Other Documents and Certificates. The Administrative Agent shall have received copies of the following documents and certificates (which shall be originals or in electronic format), each of which shall be dated the Closing Date and duly executed by an Authorized Officer of each applicable Loan Party, in form and substance reasonably satisfactory to the Administrative Agent:

(a) a certificate of an Authorized Officer of the Borrower, certifying as to:

(i) the satisfaction of the conditions set forth in Section 5.18; and

(ii) that both before and after giving effect to Transactions, and the making of the Initial Term Loans on the Closing Date, no Default or Event of Default has occurred;

(b) a Perfection Certificate by, and in respect of, each Loan Party;

(c) certificates of good standing with respect to each Loan Party, each dated as of a recent date prior to the Closing Date, such certificates to be issued by the appropriate officer or official body of the jurisdiction of organization of such Loan Party, each of which certificates shall indicate that such Loan Party is in good standing in the applicable jurisdiction; and

(d) a calculation or other written statement describing in detail the proposed use of the proceeds of the Loans, including all transaction fees, costs and expenses incurred and estimated as of the Closing Date in connection with this Loan Agreement and the Transactions, whether or not actually paid in cash on the Closing Date.

Section 5.07 Solvency. The Administrative Agent shall have received a Solvency Certificate in the form of Exhibit G duly executed by the chief financial officer of the Borrower confirming the Solvency of the Borrower and of each of the other Loan Parties and their Subsidiaries, taken as a whole, after giving effect to the Transactions.

Section 5.08 Borrowing Notice. The Administrative Agent shall have received a timely Borrowing Notice in accordance with Section 2.02(a).

Section 5.09 Refinancing. Prior to or substantially concurrently with the funding of Initial Term Loans hereunder, the Refinancing shall have been consummated and the Administrative Agent shall have received, in form and substance satisfactory to the Administrative Agent, payoff letter and other lien release documentation for the Existing Credit Agreement which confirms the Refinancing.

Section 5.10 Financial and Other Information. The Administrative Agent shall have received a certificate in form and substance satisfactory to it, dated the Closing Date and duly executed by the chief financial officer of the Borrower, attaching the following documents and reports (each in form and substance reasonably satisfactory to the Administrative Agent) and certifying that such documents and reports (other than any forecasts or Projections) are true and complete in all material respects as of the Closing Date and that all forecasts and Projections were prepared by the Loan Parties in good faith based upon reasonable assumptions at the time delivered (it being understood that forecasts and Projections are subject to uncertainties and contingencies, many of which are beyond the Loan Parties' control, and no assurance can be given that any forecast or Projection will be realized and that actual results may differ and such differences may be material):

(a) the Model; and

(b) calculations in form and substance reasonably satisfactory to the Administrative Agent demonstrating to the Administrative Agent's reasonable satisfaction that (A) the Total Net Leverage Ratio for the twelve-month period ending on the last day of the most recently completed twelve-month period ended not more than forty-five (45) days prior to the Closing Date does not exceed 5.00:1.00 and (B) Liquidity as of the Closing Date is at least $10,000,000, in each case, on a pro forma basis after giving effect to the execution and delivery of this Loan Agreement, the incurrence of the Indebtedness hereunder, and the consummation of the other Transactions including the payment of all fees expenses related to the foregoing and calculated in a manner reasonably satisfactory to Administrative Agent.

Section 5.11 Insurance. The Collateral Agent shall have received certificates of insurance naming the Agents, the Lenders and the other Secured Parties as additional insureds and naming the Collateral Agent on behalf of the Secured Parties as loss payee (or in the case of real property, lender's loss payee), in each case with regard to the insurance required by Section 8.03, in form and substance reasonably satisfactory to the Collateral Agent.

Section 5.01 PIPE Transaction. The PIPE Transaction shall have been consummated in full, in accordance with the terms and conditions of the PIPE SPA, prior to or substantially concurrently with the funding of the Initial Term Loans and such consummation shall have occurred on or before July 7, 2020.

Section 5.02 Fees and Expenses. The Administrative Agent and each Lender shall have received, for its own respective account, (a) all fees and expenses due and payable on the Closing Date to such Person under the Fee Letter and (b) the reasonable fees, costs and expenses due and payable to such Person pursuant to Sections 3.01 and 12.05 (including the reasonable and documented fees, disbursements and other charges of counsel) due as of the Closing Date (in each case, to the extent invoiced one (1) Business Day prior to the Closing Date).

Section 5.03 Patriot Act Compliance and Reference Checks. (a) The Administrative Agent shall have received, at least two (2) Business Days prior to the Closing Date, all documentation and other information with respect to the Loan Parties required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act, that has been reasonably requested in writing by the Administrative Agent at least five (5) Business Days prior to the Closing Date and (b) to the extent any Loan Party qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least two (2) Business Days prior to the Closing Date, any Lender that has requested, in a written notice to the Company at least five (5) Business Days prior to the Closing Date, a Beneficial Ownership Certification in relation to such Loan Party, shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Loan Agreement, the condition set forth in this sub clause (ii) shall be deemed to be satisfied).

Section 5.04 [Reserved].

Section 5.05 Subsidiaries. As of the Closing Date, the Loan Parties and each of their respective Subsidiaries shall have no Subsidiaries other than as set forth on Schedule 7.36.

Section 5.06 No Default. Both before and after giving effect to Transactions and the making of the Initial Term Loans on the Closing Date, no Default or Event of Default shall have occurred and be continuing.

Section 5.07 Representations and Warranties. The representations and warranties of the Loan Parties set forth in this Loan Document and each other Loan Document, shall be true and correct in all material respects on and as of the Closing Date (except to the extent that any such representation or warranty is expressly stated to have been made as of an earlier date, in which case, such representation or warranty shall be true and correct in all material respects as of such earlier date); provided that, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

Section 5.08 No Injunctions. No injunction, writ, restraining order, or other order of any nature (other than an injunction, writ, restraining order, or other order resulting from the actions of a Lender for purposes of avoiding its Commitments hereunder, as determined by a final non-appealable judgment from a court of competent jurisdiction) restricting or prohibiting, directly or indirectly, the Transactions shall have been issued and remain in force against the Loan Parties, any Agent or any Lender.

ARTICLE VI

CONDITIONS PRECEDENT TO THE DDTLS

The obligation of the DDTL Lenders to fund any DDTL under this Loan Agreement after the Closing Date is subject to the satisfaction (or waiver by (x) each DDTL Lender with an unfunded DDTL Commitment and (y) the Required Lenders) of the following conditions precedent on or before date of each such Borrowing of DDTL:

Section 6.01 [Reserved].

Section 6.02 No Defaults. Subject to Section 1.12, both before and after giving effect to the making of such DDTL on the proposed Borrowing date, no Default or Event of Default shall have occurred and be continuing.

Section 6.03 Solvency. The Administrative Agent shall have received a Solvency Certificate substantially in the form of Exhibit G duly executed by the chief financial officer of the Borrower confirming the Solvency of the Borrower and of each of the other Loan Parties and their Subsidiaries, taken as a whole, after giving effect to such Borrowing of DDTL and the application of the proceeds thereof.

Section 6.04 Representations and Warranties. Subject to Section 1.12, the representations and warranties of the Loan Parties set forth in this Loan Document and each other Loan Document, shall be true and correct in all material respects on and as of the date of such Borrowing of DDTL (except to the extent that any such representation or warranty is expressly stated to have been made as of an earlier date, in which case, such representation or warranty shall be true and correct in all material respects as of such earlier date); provided that, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

Section 6.05 Total Net Leverage Ratio. Subject to Section 1.12, as of the last day of the most recently completed Test Period, the Total Net Leverage Ratio recomputed on a pro forma basis for the Borrowing of such DDTL shall not exceed 3.50:1.00.

Section 6.06 Borrowing Notice. The Administrative Agent shall have received a Borrowing Notice for such Borrowing of DDTL in accordance with Section 2.02.

Section 6.07 Maximum Number of DDTL Borrowings. Immediately prior to such Borrowing of DDTL, there shall not have been more than five (5) previous Borrowings of DDTLs.

Section 6.08 No MAE. Subject to Section 1.12, no event, change or condition shall have occurred since December 31, 2019 that has had or could reasonably be expected to have a Material Adverse Effect (it being understood and agreed, for the avoidance of doubt, that this Section 6.08 shall not be satisfied if a Material Adverse Effect shall have resulted from any litigation, investigation or other matter described on Schedule 7.08).

The delivery of a Borrowing Notice by the Borrower in respect of any DDTL and the acceptance by the Borrower of the proceeds of any DDTL shall each be deemed to constitute, as of the date thereof, a representation and warranty by the Borrower as to the matters specified in Sections 6.02, 6.04, 6.05, 6.07 and 6.08.

ARTICLE VII

REPRESENTATIONS AND WARRANTIES

To induce the Agents and the Lenders to enter into this Loan Agreement and the Lenders to make the Loans and Commitments hereunder, each of the Loan Parties, jointly and severally, represents and warrants to the Agents and the Lenders as follows:

Section 7.01 Status. Each Loan Party (a)(i) is a duly organized or formed and validly existing corporation or other registered entity, (ii) in good standing under the laws of the jurisdiction of its organization and (iii) has the corporate or other organizational power and authority to own its property and assets and to transact its business as presently conducted and (b) is duly qualified and authorized to do business, and is in good standing, in all jurisdictions where it does business or owns assets, except in the case of clause (a)(iii) and (b) where the failure to be so qualified could not reasonably be expected to result in a Material Adverse Effect.

Section 7.02 Power and Authority; Execution and Delivery. Each Loan Party has the corporate or other organizational power and authority to execute, deliver and carry out the terms and provisions of the Loan Documents to which it is a party (including, in the case of the Borrower, such power and authority to borrow the Loans as contemplated herein, in the case of the Guarantors, to guaranty the Obligations as contemplated by the Guaranty and Security Agreement, and in the case of all Loan Parties, to grant the Liens contemplated by this Loan Agreement and the other Security Documents) and has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party. Each Loan Party has duly executed and delivered the Loan Documents to which it is a party. No Loan Party has executed or delivered any Loan Documents in the state of Florida or Tennessee.

Section 7.03 Enforceability. This Loan Agreement and the other Loan Documents to which each Loan Party is a party constitutes the legal, valid and binding obligation of such Loan Party, enforceable against each such Loan Party in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, moratorium, reorganization and other similar laws relating to or affecting creditors' rights generally.

Section 7.04 No Violation. The execution, delivery and performance by the Loan Parties of this Loan Agreement and the other Loan Documents to which it is a party, the compliance with the terms and provisions hereof and thereof, and the consummation of the Transactions and the other transactions contemplated hereby, do not and will not (a) conflict with, contravene or violate any provision of any Applicable Law, (b) violate any order or decree of, or require any authorization, consent, approval, exemption or other action by or notice to, any Governmental Authority, (c) conflict with, result in a breach of any of the terms, covenants, conditions or provisions of, constitute a default under, otherwise result in the termination of or a termination right under, (i) any material indenture, note, loan agreement, lease agreement, mortgage, deed of trust or other financing or security agreement or (ii) any Material Contract, (d) result in the creation or imposition of (or the obligation to create or impose) any Lien upon any of the property or assets of any Loan Party (other than Liens created under the Loan Documents or Permitted Liens), or (e) violate any provision of the Organization Document or any material Permit of any Loan Party (in the case of clauses (a), (b) and (c), to the extent that such conflict, breach, contravention, payment or violation could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect).

Section 7.05 Approvals, Consents, etc. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or other Person, and no consent or approval under any contract or instrument (other than (a) those that have been duly obtained or made and which are in full force and effect or, if not obtained or made, individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect, (b) the filing of UCC financing statements, (c) filings in the United States Patent and Trademark Office and the United States Copyright Office, (d) any Hart-Scott-Rodino filing, if any, and (e) the filings or other actions necessary to perfect Liens under the Loan Documents) is required for the consummation of the Transactions or the due execution, delivery or performance by any Loan Party of any Loan Document to which it is a party, or for the due execution, delivery or performance of the Loan Documents, in each case by any of the Loan Parties party thereto. There is no judgment, order, injunction or other restraint issued or filed with respect to the transactions contemplated by the Loan Documents, the consummation of the Transactions, the making of any Loan or the performance by any Loan Party of its Obligations under the Loan Documents.

Section 7.06 Use of Proceeds; Regulations T, U and X. The Borrower will use the proceeds of the Loans solely for the purposes set forth in, as permitted by, and in accordance with Section 8.12 and Section 9.18. No Loan Party is engaged in the business of extending credit for the purpose of purchasing or carrying "margin stock" or "margin securities" within the meanings of Regulations T, U or X, and no proceeds of any Loan will be used to purchase or carry any margin stock or margin security or otherwise for a purpose which violates or would be inconsistent with Regulations T, U or Regulation X.

Section 7.07 Investment Company Act; etc. No Loan Party is, or after giving effect to the Transactions and the other transactions contemplated under the Loan Documents will be, an "investment company" within the meaning of the Investment Company Act of 1940.

Section 7.08 Litigation, Labor Controversies, etc. There is no pending or, to the knowledge of any Loan Party, threatened in writing, litigation, action, proceeding or labor controversy (including without limitation, strikes, lockouts or slowdowns) against or involving any of the Loan Parties or any of their respective Subsidiaries (i) which purports to affect the legality, validity or enforceability of any Loan Document or any of the Transactions, (ii) which seeks specific performance or injunctive relief, or (iii), except as disclosed on Schedule 7.08, which would reasonably be expected to have a Material Adverse Effect. There are no collective bargaining or similar agreements entered into by, between or applicable to any Loan Party or any of its Subsidiaries and any union, labor organization or other bargaining agent in respect of the employees of any Loan Party or any of its Subsidiaries. Schedule 7.08 sets forth the insurance policies of the Borrower and its Subsidiaries applicable to the matters described in this Section 7.08.

Section 7.09 Capitalization; Subsidiaries.

(a) The "Capitalization and Subsidiaries Schedule" attached hereto as Schedule 7.09 sets forth all issued and outstanding Capital Stock of each Loan Party (other than the Borrower), including the number of authorized, issued and outstanding shares or other units of Capital Stock of each Loan Party (other than the Borrower) and the holders of such Capital Stock, all on and as of the Closing Date. Each outstanding share or unit of Capital Stock of each Loan Party (other than the Borrower) have been duly authorized, validly issued, are fully paid and non-assessable and have not been issued in violation of any preemptive or similar rights created by applicable Law, any Loan Party's (other than the Borrower) Organization Documents or by any agreement to which such Loan Party is a party or by which it is bound, and have been issued in compliance with applicable federal and state securities or "blue sky" Laws. All issued and outstanding Capital Stock of each Loan Party (other than the Borrower) is free and clear of all Liens (except for the benefit of the Secured Parties and Permitted Liens). Except as set forth on Schedule 7.09, no Loan Party (other than the Borrower) has outstanding any Capital Stock convertible or exchangeable for any shares of its Capital Stock or any rights or options to subscribe for or to purchase its Capital Stock convertible into or exchangeable for its Capital Stock. Except as set forth on Schedule 7.09, no Loan Party is subject to any obligation (contingent or otherwise) to repurchase or acquire or retire any of its Capital Stock, other than stock repurchases otherwise permitted hereunder and other than any such obligations set forth in the Certificate of Amendment filed by the Borrower in connection with the PIPE Transactions. None of the Loan Parties has violated any applicable federal or state securities Laws in connection with the offer, sale or issuance of any of its Capital Stock.

(b) As of the Closing Date, none of the Loan Parties has any Subsidiaries other than the Subsidiaries listed on Schedule 7.09. Schedule 7.09 describes the direct and indirect ownership interest of each of the Loan Parties in each Subsidiary as of the Closing Date.

Section 7.10 Accuracy of Information.

(a) All written factual information and data furnished by any Loan Party, any of their respective Affiliates or any of their respective representatives to any Agent or any Lender prior to the Closing Date for purposes of or in connection with this Loan Agreement or any of the Transactions (other than (i) the Inaccurate Information and other information or data derived therefrom and (ii) financial estimates, forecast, models and Projections, other forward looking information and underlying assumptions relating to any of the foregoing and information of an industry specific on general economic nature), taken as a whole, is, and all such written factual information and data hereafter furnished in writing by any Loan Party, any of their respective Affiliates or any of their respective representatives to any Agent or any Lender will (taken as a whole) be, true, correct and complete in all material respects on the date as of which such information or data is furnished, and none of such factual information and data at the time furnished by any Loan Party, any of their respective Affiliates or any of their respective representatives to any Agent or any Lender prior to the Closing Date for purposes of or in connection with this Loan Agreement or any of the Transactions contains (taken as a whole) any untrue statement of a material fact or omits to state any material fact necessary to make such information and data, taken as a whole, not materially misleading, in each case, at the time such information and data was furnished in light of the circumstances under which such information or data was furnished; provided that, to the extent any such information or data was based upon or constitutes a forecast or Projections (or other forward-looking information), the Loan Parties represent only that such forecast or Projections was prepared by the Loan Parties in good faith based upon assumptions believed to be reasonable by the Loan Parties at the time furnished, it being understood that forecasts and Projections (or other forward-looking information) are subject to uncertainties and contingencies, many of which are beyond the Loan Parties' control, and no assurance can be given that any forecast or Projections (or other forward-looking information) will be realized and that actual results may differ and such differences may be material.

(b) The Budget, Model and other pro forma financial information provided to the Administrative Agent on or prior to the Closing Date were prepared in good faith based upon assumptions believed to be reasonable by the Loan Parties at the time made, it being recognized by the Administrative Agent and the Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such Projections may differ from the projected results and such differences may be material.

(c) The financial statements most recently provided pursuant to Section 8.01(b) or (c), as applicable, present fairly, in all material respects, the financial position and results of operations and cash flows of the Loan Parties and their Subsidiaries on a consolidated basis as of such dates and for such periods in accordance with GAAP, subject, in the case of financial statements provided pursuant to Section 8.01(c), to the absence of footnotes and normal year-end adjustments.

Section 7.11 Beneficial Ownership Certification. As of the Closing Date, to the best knowledge of each Borrower, the information included in each Beneficial Ownership Certification provided on or prior to the Closing Date to any Lender in connection with this Loan Agreement is true and correct in all respects.

Section 7.12 Tax Returns and Payments. Each Loan Party has filed all applicable federal, state and local income Tax returns, and all other material Tax returns, domestic and foreign, required to be filed by them, and has paid all Taxes and assessments payable by them that have become due (whether or not reflected on a Tax return) other than those not yet delinquent or contested in good faith by appropriate proceedings in accordance with Section 9.02(i) and with respect to which the applicable Loan Party has maintained adequate reserves, which reserves shall be in conformity with GAAP, consistently applied. Each Loan Party and its Subsidiaries has paid, or has provided adequate reserves for the payment of, all applicable federal, state, local and foreign income Taxes applicable for all prior fiscal years and for the current fiscal year, which reserves shall be in conformity with GAAP, consistently applied. No Lien in respect of Taxes has been filed, and, except as set forth on Schedule 7.12, no claim is being asserted, with respect to any such Tax, fee, or other charge in any case in excess of $100,000.

Section 7.13 Compliance with ERISA. Each Employee Benefit Plan (and each related trust, insurance contract or fund), and with respect to each Employee Benefit Plan, each of the Loan Parties, is in compliance with its terms and with ERISA, the Code and all Applicable Laws, except for instances of noncompliance which, individually or in the aggregate, have not or could not reasonably be expected to result in a Material Adverse Effect. No ERISA Event has occurred or is reasonably expected to occur, which, individually or in the aggregate, has resulted or could reasonably be expected to result in a Material Adverse Effect. Each Employee Benefit Plan (and each related trust, if any) that is intended to qualify under Section 401(a) of the Code has received a favorable determination, advisory or opinion letter from the IRS, including for all required amendments, regarding its

qualification thereunder that considers the law changes incorporated in the Employee Benefit Plan sponsor's most recently expired remedial amendment cycle determined under the provisions of Rev. Proc. 2007-44 (or any successor thereto). No action, suit, proceeding, hearing, audit or investigation with respect to the administration, operation or the investment of assets of any Employee Benefit Plan (other than routine claims for benefits) is pending, or to the knowledge of any Loan Party, expected or threatened, and anticipated to result in a Material Adverse Effect. No Plan has an Unfunded Current Liability that has resulted or could reasonably be expected to result in a Material Adverse Effect. No employee welfare benefit plan within the meaning of §3(1) or §3(2)(B) of ERISA of any Loan Party or any of their respective Subsidiaries provides benefit coverage subsequent to termination of employment except as required by Title I, Part 6 of ERISA or applicable state insurance laws or except which would not result in unfunded benefit obligations that could reasonably be expected to have a Material Adverse Effect. No Withdrawal Liability has been, or is reasonably expected to be, incurred for any Multiemployer Plan by any Loan Party or any of their respective Subsidiaries or ERISA Affiliates.

Section 7.14 Intellectual Property; Licenses, etc. Each Loan Party and each Subsidiary of each Loan Party owns, licenses or otherwise possesses the right to use, all of the IP Rights material to such Loan Party's business (including all Key IP) as currently conducted. The conduct and operations of the businesses of each Loan Party and each of its Subsidiaries as currently conducted does not, to the knowledge of any Loan Party, infringe, misappropriate, dilute, or otherwise violate any IP Rights owned by any other Person. Except as set forth on Schedule 7.14(a) or Schedule 7.08, there is no material claim or litigation pending or, to the knowledge of any Loan Party, threatened in writing against any Loan Party or any of its Subsidiaries, (i) challenging any right, title or interest of any Loan Party or any of its Subsidiaries in any IP Rights of such Loan Party or Subsidiary, (ii) contesting the use of any IP Rights owned by such Loan Party or Subsidiary, (iii) contesting the validity or enforceability of such IP Rights, or (iv) alleging infringement, misappropriation, dilution, or other violation by a Loan Party or any of its Subsidiaries of any IP Rights owned by any other Person. Schedule 7.14(d) sets forth a complete and accurate list of (A) all IP Rights registered or pending registration with the United States Patent and Trademark Office, the United States Copyright Office or any foreign equivalent of either thereof and owned by each Loan Party and each of its Subsidiaries as of the Closing Date and (B) all material license agreements or similar arrangements pursuant to which any Loan Party or any of its Subsidiaries (1) receives rights to IP Rights of another Person (excluding any "shrink wrap" licenses and third-party software licenses generally available to the public at a cost of less than $50,000) or (2) grants rights to IP Rights to another Person. As of the Closing Date, none of the material IP Rights (it being understood and agreed that the Key IP is material) owned by any Loan Party or any of its Subsidiaries is subject to any material licensing agreement or similar arrangement except as set forth on Schedule 7.14(d). Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, for the past two (2) years, each Loan Party and, to such Loan Party's knowledge, any Person acting for or on such Loan Party's behalf have complied with (i) all applicable Laws relating to information that identifies, could be used to identify or is otherwise associated with an individual person or device ("Personal Information"). To the knowledge of each Loan Party, there have been no material breaches, security incidents, misuse of or unauthorized access to or disclosure of any Personal Information in the possession or control of such Loan Party or collected, used or processed by such Loan Party.

Section 7.15 Ownership of Properties; Title; Real Property; Leases. No Loan Party owns any interest in Real Property on the Closing Date. Schedule 7.15 lists all of the material Real Property leased by any of the Loan Parties or their respective Subsidiaries as of the Closing Date and each other location leased from or otherwise owned by a third party at which a Loan Party stores any material Collateral as of the Closing Date, indicating the identity of the lessor and the location of the material Real Property or material Collateral. Each Loan Party (x) in the case of material owned personal property, owns good and valid title to such personal property, and (y) in the case of material leased Real Property or personal property, has valid and enforceable (except as may be limited by bankruptcy, insolvency, moratorium, fraudulent conveyance or other laws applicable to creditors' rights generally and by generally applicable equitable principles) leasehold interests in such leased property, in each case, free and clear of all Liens except for Permitted Liens.

Section 7.16 Environmental Matters. Except as would not be expected, individually or in the aggregate, to have a Material Adverse Effect:

(a) the Loan Parties, each of their respective Subsidiaries, and each of their respective businesses, operations and Real Property (i) are in compliance with all Environmental Laws in all jurisdictions in which the Loan Parties or such Subsidiary, as the case may be, are currently doing business, and (ii) have obtained and are in compliance with all permits required under Environmental Laws. None of the Loan Parties or any of their respective Subsidiaries has become subject to any pending or, to the knowledge of such Loan Party, threatened in writing, Environmental Claim;

(b) none of the Loan Parties or any of their respective Subsidiaries or, to the knowledge of any Loan Party, any other Person, has used, managed, handled, generated, treated, stored, transported, Released or disposed of Hazardous Materials in, on, at, under, to or from any currently or formerly owned or leased Real Property or facility relating to its business in a manner that requires or is reasonably expected to require corrective, investigative, monitoring, remedial or cleanup actions under any Environmental Law;

(c) to the knowledge of the Loan Parties, there are no actions, activities, circumstances, facts, conditions, events or incidents, including the presence of any Hazardous Materials, which would be reasonably be expected to form the basis of any Environmental Claim against any Loan Party or any of their respective Subsidiaries; and

(d) the Loan Parties have delivered or otherwise made available for inspection to the Administrative Agent copies and results of all reports, data, investigations, audits, assessments (including Phase I environmental site assessments and Phase II environmental site assessments), studies in the custody or possession of the Loan Parties or any of their Subsidiaries pertaining to: (i) any Environmental Claims involving any Loan Party or any of their Subsidiaries; (ii) any Hazardous Materials in, on, beneath or adjacent to any property currently or formerly owned, operated or leased by any Loan Party or any of their Subsidiaries; or (iii) any Loan Party's or any of their Subsidiaries' compliance with applicable Environmental Laws.

Section 7.17 Solvency. On the Closing Date after giving effect to the Transactions and the other transactions related thereto, the Loan Parties on a consolidated basis are, Solvent.

Section 7.18 [Reserved].

Section 7.19 Security Documents; Perfection.

(a) Subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium, capital impairment, recognition of judgments, recognition of choice of law, enforcement of judgments or other similar laws or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law, (ii) the Perfection Requirements and (iii) the provisions of this Loan Agreement and the other relevant Loan Documents, the Guaranty and Security Agreement is effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable first-priority security interest (subject only to Permitted Liens which, pursuant to the terms of this Loan Agreement, are permitted to have priority over Collateral Agent's Liens thereon) in the Collateral described therein and proceeds thereof. The recordation of (x) the grant of security interest in Patents and (y) the grant of security interest in Trademarks in the respective form attached to the Security Agreement, in each case in the United States Patent and Trademark Office, together with filings on Form UCC-1, made pursuant to the applicable intellectual property security agreements in the form attached to the Guaranty and Security Agreement as Annex II thereto, will create, as may be perfected by such filings and recordation, a first-priority perfected security interest in the Trademarks and Patents covered by such applicable intellectual property security agreement, and the recordation of the grant of security interest in Copyrights, made pursuant to the applicable intellectual property security agreements in the form attached to the Guaranty and Security Agreement as Annex II thereto, with the United States Copyright Office, together with filings on Form UCC-1, will create, as may be perfected by such filings and recordation, a first-priority perfected security interest in the Copyrights covered by such intellectual property security agreement.

(b) In the case of the Pledged Stock described in the Guaranty and Security Agreement, when stock certificates representing such Pledged Stock are delivered to the Collateral Agent; in the case of deposit accounts and securities accounts, when Account Control Agreements are executed and delivered by the Loan Parties owning such accounts, the Collateral Agent and the applicable depository bank or securities intermediary; and in the case of the other Collateral described in the Guaranty and Security Agreement, when financing statements and other filings specified on Schedule 7.19 in appropriate form are filed in the offices specified on Schedule 7.19, the Lien granted under the Guaranty and Security Agreement shall constitute a fully perfected (to the extent perfection is required under the Loan Documents) Lien on, and first-priority security interest (subject only to Permitted Liens which, pursuant to the terms of this Loan Agreement, are permitted to have priority over Collateral Agent's Liens thereon) in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof (to the extent such proceeds can be perfected by a filing), as security for the Obligations.

Section 7.20 Compliance with Laws and Permits; Authorizations. Except as set forth on Schedule 7.08 or Schedule 7.35, each Loan Party and each of its Subsidiaries (a) is in compliance with all Applicable Laws and Permits and (b) has all requisite governmental licenses, Permits, authorizations, consents and approvals to operate its business as currently conducted, except in the case of clauses (a) and (b), such instances in which (x) such requirement of Applicable Laws, Permits, government licenses, authorizations or approvals are being contested in good faith by appropriate proceedings diligently conducted or (y) the failure to have or comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 7.21 [Reserved].

Section 7.22 Contractual or Other Restrictions. Other than the Loan Documents, no Loan Party or any of its Subsidiaries is a party to any agreement or arrangement or subject to any Applicable Law that (a) limits its ability to pay dividends to, or otherwise make Investments in or other payments to, any Loan Party, (b) limits its ability to grant Liens in favor of the Collateral Agent or (c) otherwise limits its ability to perform the terms of the Loan Documents.

Section 7.23 No Brokers. Except as set forth on Schedule 7.23, there is no broker's or finder's fee or commission will be payable with respect hereto or any of the transactions contemplated hereby.

Section 7.24 Insurance. The properties of each Loan Party are insured with reputable insurance companies that the Loan Parties reasonably believe to be financially sound and that are not Affiliates of any Loan Party against loss and damage in such amounts, with such deductibles and covering such risks, as are customarily carried by Persons of comparable size and of established reputation engaged in the same or similar businesses and owning similar properties in the general locations where such Loan Party operates, in each case as described on Schedule 7.24. As of the Closing Date, all premiums with respect thereto that are due and payable have been duly paid and no Loan Party has received or is aware of any notice of any material violation or cancellation thereof and each Loan Party has complied in all material respects with the requirements of each such policy.

Section 7.25 Evidence of Other Indebtedness. Schedule 7.25 is a complete and correct list of each credit agreement, loan agreement, promissory note, indenture, purchase agreement, guaranty, letter of credit or other arrangement providing for or otherwise relating to any Indebtedness or any extension of credit (or commitment for any extension of credit) to any Loan Party outstanding on the Closing Date which will remain outstanding after the Closing Date (other than this Loan Agreement and the other Loan Documents). The aggregate principal or face amount outstanding or that may become outstanding under each such arrangement as of the Closing Date is correctly described in Schedule 7.25.

Section 7.26 Deposit Accounts, Securities Accounts and Commodity Accounts. Schedule 7.26 lists all of the deposit accounts, securities accounts and commodity accounts of each Loan Party as of the Closing Date, including, with respect to each depository bank, securities intermediary or commodity intermediary at which such accounts are maintained by such Loan Party, (a) the name and location of such Person (b) the account numbers of the deposit accounts, securities accounts and commodity accounts maintained with such Person and (c) whether each such account constitutes an Excluded Deposit Account (and a description of the reasoning for such account qualifying as an Excluded Deposit Account).

Section 7.27 Principal Business. As of the Closing Date and at all times thereafter each Loan Party is engaged solely in the Business.

Section 7.28 Absence of any Undisclosed Liabilities. Other than the Obligations and other liabilities permitted by the terms of this Loan Agreement, there are no material liabilities of any Loan Party of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, and there is no existing condition, situation or set of circumstances which could reasonably be expected to result in any such liabilities, other than those liabilities disclosed in writing to the Administrative Agent prior to the Closing Date and identified as a disclosure under this Section 7.28.

Section 7.29 Anti-Terrorism Laws; the Patriot Act. To the knowledge of each Loan Party, each Loan Party is in compliance with, and no Loan Party is in violation of, any Applicable Law concerning or relating to terrorism or money laundering ("Anti-Terrorism Laws"), including the Patriot Act, the Trading with the Enemy Act of the United States of America (50 U.S.C. App. §§1 *et seq.*), as amended (the "Trading with the Enemy Act"), the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended), and Executive Order No. 13224 on Terrorism Financing, effective September 24, 2001 (the "Executive Order"). No Loan Party or other agents acting or benefiting in any capacity in connection with the Loans is (i) a Person that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order, (ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the Annex to, or is

otherwise subject to the provisions of, the Executive Order, (iii) a Person with whom any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (iv) a Person who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order, (v) an "enemy" or an "ally of the enemy" within the meaning of Section 2 of the Trading with the Enemy Act, or (vi) a Person that is named as a "specially designated national and blocked person" on the most current list published by the United States Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list. No Loan Party or other agents acting or benefiting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in the preceding sentence, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in any property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Anti-Terrorism Laws.

Section 7.30 Economic Sanctions/OFAC. No Loan Party or any director, officer, or employee of any Loan Party, and to the knowledge of any Loan Party no Affiliate, agent, representative, or other Person acting for or on behalf of any Loan Party, is, or is owned 50% or more by one or more Persons that are, (i) the subject of any economic or financial sanctions or trade embargoes imposed, administered or enforced by any relevant Governmental Authority ("Sanctions"), including without limitation those administered by the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC Sanctions"), the United Nations Security Council, the European Union, or Her Majesty's Treasury of the United Kingdom, or (ii) located, organized or conducting business in a country, region or territory that is the subject of broad Sanctions (at the time of this Loan Agreement, Crimea, Cuba, Iran, North Korea and Syria, each, a "Sanctioned Country") (any such Person referred to in clause (i) or (ii), a "Sanctioned Person").

Section 7.31 Foreign Corrupt Practices Act. No Loan Party or any director, officer, or employee of any Loan Party, and to the knowledge of any Loan Party no Affiliate, agent, representative, or other Person acting for or on behalf of any Loan Party, has taken any action in violation of Applicable Law in furtherance of an offer, payment, promise to pay or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any "government official" (including any officer or employee of a government or a government-owned, government-controlled or other quasi-governmental entity or of a public international organization, or any Person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) to influence official action or secure an improper advantage, and each Loan Party has conducted its businesses in compliance with the Foreign Corrupt Practices Act (15 U.S.C. § 78dd-1 *et seq.*) and other applicable anti-corruption laws.

Section 7.32 Material Contracts; Customer Contracts; No Hedging Contracts.

(a) As of the Closing Date, Schedule 7.32 sets forth all Material Contracts, and each such Material Contract is in full force and effect and no defaults or breaches currently exist thereunder.

(b) As of the Closing Date, to the knowledge (in management's reasonable judgment after due inquiry) of the Loan Parties, there is no pending or threatened termination of or adverse amendment or modification to any Material Contract that could reasonably be expected to result in a material reduction of the Consolidated Adjusted EBITDA of the Loan Parties.

(c) As of the Closing Date, there are no Hedging Agreements or similar agreements entered into by, between or applicable to any Loan Party or any of its Subsidiaries.

Section 7.33 Affiliate Transactions. Except as set forth on Schedule 7.33, no Loan Party is a party to any contracts or agreements with any of its Affiliates on terms and conditions which are less favorable to such Loan Party than would be usual and customary in similar contracts or agreements between Persons not affiliated with each other.

Section 7.34 Collective Bargaining Agreements. Schedule 7.34 is a complete and correct list and description (including dates of termination) as of the Closing Date of all collective bargaining or similar agreements between or applicable to any Loan Party or any of its Subsidiaries and any union, labor organization or other bargaining agent in respect of the employees of any Loan Party or any of its Subsidiaries.

Section 7.35 Health Care Regulatory Matters.

(a) Except or otherwise disclosed on Schedule 7.08 or Schedule 7.35 as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each Loan Party is, and for the past five (5) years has been in compliance with all Health Care Laws applicable to the Loan Party's business or by which any property, business product or other asset of the Loan Party is bound or affected.

(b) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or otherwise disclosed on Schedule 7.08 or Schedule 7.35, no Loan Party is a party to any corporate integrity agreements, monitoring agreements, consent decrees, settlement orders with governmental entities, or similar agreements with or imposed by any Governmental Authority.

(c) No Loan Party, nor its current officers or employees, nor to the knowledge of any Loan Party , all agents acting on its behalf, has been convicted of any crime or, to any Loan Party's knowledge, engaged in any conduct, that could result in a material debarment or exclusion under 21 U.S.C. § 335a, 42 U.S.C. § 1320a-7, or any similar state or foreign law, rule or regulation that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. As of the date hereof, except as otherwise disclosed on Schedule 7.08 or Schedule 7.35, no claims, actions, proceedings or investigations that would reasonably be expected to result in such a material debarment or exclusion are, to the Loan Party's knowledge, pending or threatened against any Loan Party or its officers or employees, or any agents acting on its behalf.

(d) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or otherwise disclosed on Schedule 7.08 or Schedule 7.35: (i) each Loan Party possesses and is operating in compliance with Permits issued by, and have made all declarations and filings with, the appropriate Governmental Authorities reasonably necessary to conduct its business, including without limitation all those that may be required by FDA or any other Governmental Authority engaged in the regulation of pharmaceuticals, medical devices, biologics, cosmetics or biohazardous materials; (ii) all such Permits are valid and in full force and effect; (iii) all applications, notifications, submissions, information, claims, reports and statistics, and other data and conclusions derived therefrom, utilized as the basis for or submitted in connection with any and all requests for a Permit, when submitted to the Governmental Authority were true, complete and correct in all material respects as of the date of submission and any necessary or required updates, changes, corrections or modification to such applications, submissions, information and data have been submitted to the Governmental Authority; and (iv) there is no Governmental Authority action pending or, to any Loan Party's knowledge, threatened which could reasonably be expected to limit, revoke, suspend or materially modify any Permit.

(e) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or otherwise disclosed on Schedule 7.08 or Schedule 7.35, for the past five (5) years, no Loan Party has received from the FDA or any other Governmental Authority any inspection reports, notices of adverse findings, warning or untitled letters, or other correspondence concerning any drugs, biologics or medical devices manufactured or sold by or on behalf of a Loan Party ("Loan Party Products") in which any Governmental Authority alleges or asserts a failure to comply with applicable Health Care Laws, or that such products may not be safe, effective or approvable.

(f) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, or as otherwise disclosed on Schedule 7.08 or Schedule 7.35, for the past five (5) years, no Loan Party has had any product or manufacturing site (whether owned by the Loan Party or that of a contract manufacturer for Loan Party Products) subject to a Governmental Authority (including FDA) shutdown or import or export prohibition.

(g) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, or as otherwise disclosed on Schedule 7.08 or Schedule 7.35, for the past five (5) years, no Loan Party has had (i) any recalls, field notifications, field corrections, market withdrawals or replacements, warnings, "dear provider" letters, investigator notices, safety alerts or other notice of action relating to an alleged lack of safety, efficacy, or regulatory compliance of the Loan Party Products issued by the Loan Parties ("Safety Notices") or (ii) to the Loan Parties' knowledge, any material complaints with respect to the Loan Party Products that are currently unresolved. Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, to the Loan Parties' knowledge, there are no facts that would be reasonably likely to result in (A) a Safety Notice with respect to the Loan Party Products; or (B) a termination or suspension of marketing or testing of any of the Loan Party Products.

(h) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, or as otherwise disclosed on Schedule 7.08 or Schedule 7.35, for the past five (5) years, no Loan Party, nor, to the knowledge of any Loan Party, any employee or agent of any Loan Party, has made an untrue statement of a material fact or fraudulent statement to any Governmental Authority, failed to disclose a material fact that must be disclosed to any Governmental Authority, or committed an act, made a statement or failed to make a statement that, at the time such statement, disclosure or failure to disclose occurred, could reasonably be expected to constitute a violation of any Health Care Law.

(i) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, or as otherwise disclosed on Schedule 7.08 or Schedule 7.35, for the past five (5) years, no Loan Party and, to the knowledge of any Loan Party, no employee or agent of any Loan Party, directly or indirectly, has (i) offered or paid or solicited or received any remuneration, in cash or in kind, or made any financial arrangements, in violation of any Health Care Law; (ii) given or agreed to give any gift or gratuitous payment of any kind, nature or description (whether in money, property or services) in violation of any Health Care Law; (iii) made or agreed to make any contribution, payment or gift of funds or property to, or for the private use of, any governmental official, employee or agent where either the contribution, payment or gift or the purpose of such contribution, payment or gift is or was illegal under any Health Care Law having jurisdiction over such payment, contribution or gift; (iv) established or maintained any unrecorded fund or asset for any purpose or made any misleading, false or artificial entries on any of its books or records for any reason, in violation of any Health Care Law; or (v) made, or agreed to make any payment to any person with the intention or understanding that any part of such payment would be in violation of any Health Care Law.

ARTICLE VIII

AFFIRMATIVE COVENANTS

The Loan Parties hereby covenant and agree with the Lenders and the Administrative Agent to each of the following so long as any Obligations hereunder (other than Unasserted Contingent Obligations) or any Commitments hereunder remain outstanding:

Section 8.01 Financial Information, Reports, Certificates and Other Information. The Loan Parties shall furnish to the Administrative Agent, for distribution to each Lender, copies of the following financial statements, reports, notices and information:

(a) Monthly Liquidity Reports. As soon as available and in any event within ten (10) days after the end of each fiscal month, a Liquidity Compliance Certificate executed by an Authorized Officer of the Borrower together with any supporting information requested by the Administrative Agent (acting reasonably) with respect to the calculation of Liquidity for such fiscal month.

(b) Quarterly Financial Statements. As soon as available and in any event within forty-five (45) days after the end of each fiscal quarter of the Borrower, (i) unaudited (x) consolidated balance sheets of the Borrower and its Subsidiaries as of the end of such fiscal quarter, and (y) consolidated statements of income and cash flow of the Borrower and its Subsidiaries for such fiscal quarter, in each case and for the period commencing at the end of the previous fiscal year of the Borrower and ending with the end of such fiscal quarter, including (in the case of each of clause (x) and clause (y) (if applicable)) in comparative form (both in Dollar and percentage terms) the figures for the corresponding fiscal quarter in, and year-to-date portion of, the immediately preceding fiscal year of the Borrower, (ii) a statement of Consolidated Adjusted EBITDA (x) for the year-to-date portion of such fiscal year of the Borrower ending concurrently with such fiscal quarter, including in comparative form (both in Dollar and percentage terms) Consolidated Adjusted EBITDA for the same year-to-date period in the immediately preceding fiscal year of the Borrower and (y) for the Test Period ending concurrently with such fiscal quarter, including, in comparative form (both in Dollar and percentage terms) Consolidated Adjusted EBITDA for such Test Period against the then-current Budget, and for the Test Period immediately preceding such reported period and (iii) a management discussion and analysis (with reasonable detail and specificity) of the results of operations for the fiscal periods reported, including, in comparative form the figures for the corresponding fiscal quarter in, and year-to-date portion of, the immediately preceding fiscal

year of the Borrower, and period commencing at the end of the previous fiscal year of the Borrower and ending with the end of such fiscal quarter.

(c) Annual Financial Statements. As soon as available and in any event within three (3) days after the earlier of (x) the date the Borrower is required to file or (y) the date the Borrower has filed its Form 10-K under the Exchange Act (but in no event later than ninety (90) days after the end of each fiscal year of the Borrower), (a) copies of the consolidated balance sheets of the Borrower and its Subsidiaries for such fiscal year, and the related consolidated statements of income and cash flows of the Borrower and its Subsidiaries for such fiscal year, and, to the extent available, setting forth in comparative form (both in Dollar and percentage terms) the figures for the immediately preceding fiscal year and against the then-current Budget for such fiscal year, such consolidated statements audited and certified without "going concern" or other qualification, exception or assumption and without qualification or assumption as to the scope of such audit as conducted in accordance with GAAP (except for any such qualification pertaining to the maturity of the Loans occurring within twelve (12) months of the relevant audit), by an independent public accounting firm of nationally recognized standing reasonably acceptable to the Administrative Agent (with any nationally recognized accounting firm being acceptable), together with a management discussion and analysis (with reasonable detail and specificity) of the results of operations for the fiscal periods reported and (b) a statement of Consolidated Adjusted EBITDA for such fiscal year, including in comparative form (both in Dollar and percentage terms) Consolidated Adjusted EBITDA for such fiscal year against the then-current income statement set forth in the Budget and for the same year-to-date period in the immediately preceding fiscal year.

(d) Compliance Certificates. Concurrently with the delivery of the financial information pursuant to clauses (b) and (c) above, a Compliance Certificate executed by an Authorized Officer of the Borrower (i) certifying that such financial information presents fairly in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in conformity with GAAP, consistently applied, in each case at the respective dates of such information and for the respective periods covered thereby, subject in the case of unaudited financial information, to changes resulting from normal year-end audit adjustments and to the absence of footnotes (provided that such certification shall not be required with respect to financial information delivered pursuant to clause (c) above), (ii) showing compliance with the covenants set forth in Section 9.13 if applicable, and stating that no Default or Event of Default has occurred and is continuing (or, if a Default or an Event of Default has occurred, specifying the details of such Default or Event of Default and the actions taken or to be taken with respect thereto), (iii) specifying any change in the identity of the Subsidiaries as at the end of such fiscal year or period, as the case may be, from the Subsidiaries listed on Schedule 7.09, or from the most recently delivered Compliance Certificate, as applicable, (iv) including (x) an updated Schedule 7.15 and Schedule 7.26 of this Loan Agreement (if applicable) and (y) a written supplement substantially in the form of Schedules 1 through 4, as applicable, to the Guaranty and Security Agreement with respect to any additional assets and property acquired by any Loan Party after the date hereof if required to update the perfection of Collateral Agents Lien with respect to such assets, all in reasonable detail and (v) with respect to a Compliance Certificate delivered in connection with clause (c) above, (x) if available, detailing any changes to the locations listed on Schedule 5 to the Guaranty and Security Agreement in respect of any Inventory or Equipment (as defined in the Guaranty and Security Agreement) (other than (a) Inventory or Equipment in transit in the Ordinary Course of Business and (b) Inventory and Equipment with a fair market value of less than $5,000,000 (in the aggregate for all Loan Parties) which may be located at other locations within the United States) and books and records concerning the Collateral and (y) including, and certifying to, a calculation (in reasonable detail) of the amount of Loans required to be prepaid pursuant to Section 4.02(a)(ix) for such fiscal year, if any, and the Available Amount as of the end of such fiscal year.

(e) [Reserved].

(f) Budget. On or prior to sixty (60) days after the end of each calendar year, final forecasted financial projections for the Borrower and its Subsidiaries for the then upcoming fiscal year (on a month-by-month basis), a final projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the following fiscal year, the related consolidated statements of projected cash flow, projected changes in financial position and projected income and a description of the underlying assumptions applicable thereto and, in each case, prepared by management of the Loan Parties in good faith based upon reasonable assumptions, consistent in scope with the financial statements provided pursuant to Section 8.01(c) and setting forth the principal assumptions on which such projections are based (each such projections and the projections delivered as of the Closing Date pursuant to Section 5.10(b), being referred to as a "Budget").

(g) Defaults; Beneficial Ownership. As soon as possible and in any event within five (5) Business Days after an Authorized Officer of any Loan Party or any of their respective Subsidiaries obtains knowledge thereof, (i) written notice from an Authorized Officer of the Borrower of the occurrence of any event that constitutes a Default or an Event of Default, which notice shall specify the nature thereof, the period of existence thereof, and what action the applicable Loan Parties have taken and propose to take with respect thereto and (ii) any change in the information provided in the Beneficial Ownership Certification delivered to such Lender that would result in a change to the list of beneficial owners identified in such certification.

(h) Notices. Written notice (x) with respect to the creation or acquisition of any Subsidiary of the Borrower at least five (5) Business Days after such creation or acquisition and (y) promptly upon becoming aware of (and in no event later than five (5) Business Days after an Authorized Officer of any Loan Party becomes aware of) (in each case, or such longer period as may be reasonably agreed by the Administrative Agent) each the following, and copies of all notices and related documents and correspondence with respect to:

(i) the filing or commencement of each (x) criminal litigation, investigation or proceeding affecting any Loan Party or any Subsidiary thereof and (y) non-criminal litigation, investigation or proceeding affecting any Loan Party or any Subsidiary thereof (A) in which injunctive or similar relief is sought, (B) which could reasonably be expected to have a Material Adverse Effect or (C) in which the relief sought is an injunction or other stay of the performance of this Loan Agreement or any other Loan Document;

(ii) each pending or, to the knowledge of an Authorized Officer of a Loan Party, threatened in writing labor dispute, strike, walkout, or union organizing activity with respect to any employees of a Loan Party that would reasonably be expected to have a Material Adverse Effect;

(iii) after the same are publicly available, all annual, regular, periodic and special reports, proxy statements and registration statements filed with the SEC;

(iv) the discharge, withdrawal or resignation by a Loan Party's independent accountants;

(v) any fine, judgment, order, court approved settlement or other settlement (of any litigation) for the payment of money in excess of $5,000,000, affecting any Loan Party or any Subsidiary thereof;

(vi) [reserved];

(vii) all notices submitted or delivered to a Loan Party or any Subsidiary of a Loan Party by a regulatory agency when such notice could reasonably have a Material Adverse Effect; and

(viii) any other development by or relating to a Loan Party or any Subsidiary of a Loan Party that results in, or could reasonably be expected to result in, a Material Adverse Effect;

(i) Material Contracts. As soon as possible and in any event within five (5) Business Days after any Loan Party obtains knowledge of the occurrence of a breach or default or notice of termination by any party under, a statement of an Authorized Officer of the Borrower setting forth details of such breach or default or notice of termination and the actions taken or to be taken with respect thereto.

(j) [Reserved].

(k) [Reserved].

(l) [Reserved].

(m) Insurance Report. Upon written request by the Administrative Agent, a current report of a reputable insurance broker with respect to insurance policies maintained by the Loan Parties.

(n) [Reserved].

(o) Other Information. Promptly, such other information (financial or otherwise) as any Agent on its own behalf or on behalf of any Lender may reasonably request in writing from time to time, including, without limitation, (x) such further schedules, documents and/or information regarding the Collateral as any Agent may on its own behalf or on behalf of any Lender may reasonably require and (y) any investigation or filed litigation involving any Loan Parties or their Subsidiaries. Notwithstanding anything to the contrary in this Section 8.01(n), none of the Loan Parties shall be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that is subject to attorney-client privilege or constitutes attorney work product.

(p) It is acknowledged and agreed that statements, reports, notices and other documents required to be delivered pursuant to Sections 8.01(b), 8.01(c) and 8.01(h)(iii) (to the extent any such statements, reports, notices and other documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such documents are (i) posted on the Loan Parties' behalf on an Internet or intranet website, if any, to which each Lender and the Agents have access (whether a commercial, third-party website or whether sponsored by any Agent); or (ii) available on the SEC's website on the Internet at www.sec.gov.

Section 8.02 Books, Records and Inspections. The Loan Parties shall, and shall cause each of their respective Subsidiaries to, maintain proper books of record and account, in which entries that are complete, true and correct in all material respects shall be made of all material financial transactions and matters involving the assets and business of the Loan Parties or such Subsidiary, in each case, which shall be in conformity with GAAP, consistently applied. The Loan Parties shall, and shall cause each of their respective Subsidiaries to, permit the Administrative Agent and its representatives and independent contractors, upon reasonable advance notice to the Loan Parties, to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Loan Parties and at reasonable times during normal business hours; provided that unless an Event of Default has occurred and is continuing, the Administrative Agent shall not conduct and the Loan Parties shall not be required to reimburse the Administrative Agent for, more than one (1) such inspections in any calendar year. Any information obtained by the Administrative Agent pursuant to this Section 8.02 may be shared with the Collateral Agent or any Lender upon such Person's request. The Administrative Agent shall give the Loan Parties the opportunity to participate in any discussions with the Loan Parties' independent public accountants. Notwithstanding anything to the contrary in this Section 8.02, none of the Loan Parties will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that is subject to attorney-client or similar privilege or constitutes attorney work product.

Section 8.03 Maintenance of Insurance. The Loan Parties shall, and shall cause each of their respective Subsidiaries to, maintain in full force and effect at all times (including by paying all applicable premiums), with insurance companies reputable and that the Loan Parties reasonably believe to be financially sound at the time the relevant coverage is placed or renewed, insurance in at least such amounts and against at least such risks (and with such risk retentions) as reasonably determined by the Loan Parties in the exercise of reasonable business judgment, and in any case insuring against casualty and general liability insurance. The Loan Parties shall furnish to the Collateral Agent for further delivery to the Lenders, upon written request from the Collateral Agent, information presented in reasonable detail as to all such insurance so carried, and in any case including, without limitation, (i) endorsements to (x) all "All Risk" policies (including, without limitation, business interruption policies to the extent maintained by any Loan Party from time to time) naming the Collateral Agent, on behalf of the Secured Parties, as loss payee, and (y) all general liability policies naming the Agents, the Lenders and the other Secured Parties as additional insureds, and (ii) legends providing that no cancellation, material reduction in amount or material change in insurance coverage thereof shall be effective until at least thirty (30) days (ten (10) days with respect to failing to pay premiums) after receipt by the Collateral Agent of written notice thereof.

Section 8.04 Payment of Taxes and Liabilities. Each Loan Party shall pay and discharge, and shall cause each of its Subsidiaries to pay and discharge, all federal, state and local income and other material Taxes, assessments, governmental charges, levies imposed upon it or upon its income or profits, or upon any properties belonging to it, prior to the date on which penalties attach thereto, all lawful claims respecting the foregoing that, if unpaid, could reasonably be expected to become a Lien upon any properties of the Loan Parties or any of their respective Subsidiaries and all other liabilities and obligations of such Loan Party and its Subsidiaries; provided, that no Loan Party or any of its Subsidiaries shall be required to pay any such Tax, assessment, charge, levy or claim that is being contested in good faith and by proper proceedings in accordance with Section 9.02(i) and as to which such Loan Party has maintained adequate reserves with respect thereto in conformity with GAAP consistently applied.

Section 8.05 Maintenance of Existence; Compliance with Laws, etc. Each Loan Party shall, and shall cause its Subsidiaries to, (a) except in a transaction permitted by Section 9.03, preserve and maintain in full force and effect its legal existence except, in the case of any Subsidiary that is not a Loan Party, where failure to do so would not reasonably be expected to result in a Material Adverse Effect, (b) preserve and maintain its good standing under the laws of its state or jurisdiction of incorporation, organization or formation; and preserve and maintain its good standing under the laws of each other state or jurisdiction where such Person is qualified, or is required to be so qualified, to do business as a foreign entity, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect, (c) comply in all material respects with all Applicable Laws, rules, regulations and orders material to the Business, (d) do or cause to be done all things reasonably necessary to preserve, renew and keep in full force and effect the rights, licenses, permits, privileges, franchises, and IP Rights unless the failure to preserve, renew and keep in full force and effect such rights, licenses, permits, privileges, franchises or IP Rights neither affects any Key IP nor could not reasonably be expected to have a Material Adverse Effect, and (e) comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, in each case under this Section 8.05 except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 8.06 Environmental Compliance.

(a) Each Loan Party shall, and shall cause its Subsidiaries to, use and operate all of its and their businesses, facilities and properties in compliance with all Environmental Laws, including (i) keeping all necessary permits, approvals, certificates, licenses and other authorizations relating to environmental matters in effect and remaining in material compliance therewith, (ii) using, handling, managing, generating, treating, storing, transporting and disposing of all Hazardous Materials in material compliance with all applicable Environmental Laws, and (iii) keeping its and their property free of any Lien imposed by any Environmental Law, except in each case where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) The Borrower shall promptly give notice to the Administrative Agent upon any Loan Party or Subsidiary thereof becoming aware of (i) any material violation by any Loan Party or any of its Subsidiaries of any Environmental Law, (ii) any Environmental Claim against any Loan Party under any Environmental Law, including without limitation a written request for information or a written notice of violation or potential environmental liability from any foreign, federal, state or local environmental agency or board or any other Governmental Authority or Person, or (iii) the discovery of a Release or threat of a Release in, at, on, under, to or from any of the Real Property of any Loan Party or any facility or assets therein in excess of reportable or allowable standards or levels under any Environmental Law, or under circumstances, or in a manner or amount which could reasonably be expected to require responsive, corrective, investigative, remedial, monitoring, cleanup or other corrective action under any Environmental Law, which in each case could reasonably be expected to have a Material Adverse Effect.

(c) In the event of a (i) material violation of any Environmental Law, or (ii) the Release of any Hazardous Material in, at, on, under, to or from any Real Property of any Loan Party in amounts which require reporting, corrective measures, investigative, remedial, monitoring, cleanup or other action under any Environmental Law, which in each case is reasonably likely to subject any Loan Party to material liability under any Environmental Law, each Loan Party and its respective Subsidiaries, upon discovery thereof, shall take all steps required by Environmental Laws to correct such violation or address such Release and shall keep the Administrative Agent informed on a regular basis of their actions and the results of such actions, including providing to the Administrative Agent copies of material submissions to any Governmental Authority and relating to such correction of such violation and the address of such release.

Section 8.07 ERISA.

(a) As soon as possible and, in any event, within ten (10) Business Days after any Loan Party or any ERISA Affiliate knows or has reason to know of the occurrence or expected occurrence of any ERISA Event that is reasonably expected to result in material liability to any Loan Party or any ERISA Affiliate, the Borrower shall deliver to the Agents and each Lender a certificate of an Authorized Officer of the Borrower setting forth the full details as to such occurrence and the action, if any, that such Loan Party or such ERISA Affiliate has taken and is required or proposes to take, together with any notices (required, proposed or otherwise) given to or filed with or by such Loan Party, such ERISA Affiliate, the PBGC, a Plan participant (other than notices relating to an individual participant's benefits) or the Plan administrator with respect thereto; and

(b) Promptly following any reasonable request therefor, copies of any documents described in Section 101(k) of ERISA that any Loan Party or any ERISA Affiliate may request with respect to any Multiemployer Plan and any notices described in Section 101(l) of ERISA that any Loan Party or any ERISA Affiliate may request with respect to any Multiemployer Plan; provided, that if any Loan Party or any ERISA Affiliate has not requested such documents or notices from the administrator or sponsor of the applicable Plan, the applicable Loan Party or the ERISA Affiliate(s) shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof.

Section 8.08 Maintenance of Properties. Each Loan Party shall, and shall cause its Subsidiaries to, (i) maintain, preserve, protect and keep its Real Property, properties and assets in good repair, working order and condition (ordinary wear and tear and casualty and condemnation excepted, and subject to dispositions permitted pursuant to Section 9.04), (ii) make necessary repairs, renewals and replacements thereof, (iii) maintain and renew as necessary all material leases, licenses, permits and other clearances necessary to use and occupy such properties and assets, in each case so that the business carried on by such Person may be properly conducted in all material respects at all times consistent with the manner in which business is conducted as of the Closing Date or such changes thereto as reasonably determined by the Loan Parties in their good faith business judgment from time to time, and (iv) continue to conduct at all times its business consistent with the manner in which business is conducted as of the Closing Date or such changes thereto as reasonably determined by the Loan Parties in their good faith business judgment from time to time, except in each case, to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 8.09 [Reserved].

Section 8.10 Additional Collateral, Guarantors and Grantors. The Loan Parties shall, upon the formation (including by division), purchase or acquisition thereof, promptly (and in any event no later than fifteen (15) days (or such longer date as may be reasonably agreed by the Administrative Agent) after the formation, purchase or acquisition, as applicable, thereof cause any direct or indirect Subsidiary formed or otherwise purchased or acquired after the Closing Date (other than an Excluded Subsidiary) to (i) execute a supplement to the Guaranty and Security Agreement in the form of Annex I to the Guaranty and Security Agreement or otherwise in form and substance satisfactory to the Collateral Agent, (ii) execute a joinder to this Loan Agreement, whereby such Subsidiary becomes a Loan Party hereunder, (iii) obtain all consents and approvals required to be obtained by it in connection with the execution and delivery of the aforementioned joinder and the Security Documents and the performance of its obligations hereunder and thereunder and the granting by it of the Liens thereunder, and (iv) cause its assets to be subject to a first priority perfected Lien (subject only to Permitted Liens) in favor of the Collateral Agent for the benefit of the Secured Parties and take such actions as shall be necessary or reasonably requested by the Collateral Agent to grant and perfect or record such first priority Lien. Not later than fifteen (15) days (or such longer date as may be reasonably agreed by the Administrative Agent) after the acquisition by any Loan Party of any asset that is required to be provided as Collateral pursuant to this Loan Agreement or any Security Document, which asset would not automatically be subject to the Collateral Agent's first priority perfected Lien pursuant to pre-existing Security Documents, the applicable Loan Party shall cause such asset to be subject to a first priority perfected Lien (subject only to Permitted Liens that, pursuant to the terms of this Loan Agreement, are permitted to have priority over the Collateral Agent's Liens thereon) in favor of the Collateral Agent for the benefit of the Secured Parties and take such actions as shall be necessary or reasonably requested by the Collateral Agent to grant and perfect or record such first priority Lien.

Section 8.11 Pledges of Additional Stock and Indebtedness.

The Loan Parties shall promptly grant (and in any event no later than fifteen (15) days (or such longer date as may be reasonably agreed by the Administrative Agent) after the formation, purchase or acquisition, as applicable, thereof) a perfected (established by "control" (as defined in, and for purposes of, the UCC)), first priority security interest pledge to the Collateral Agent for the benefit of the Secured Parties, over (i) all the Capital Stock of each Subsidiary formed or otherwise purchased or acquired after the Closing Date, (ii) all promissory notes evidencing Indebtedness of any Loan Party or Subsidiary of any Loan Party that is owing to any other Loan Party in excess of $100,000, and (iii) all other evidences of Indebtedness in excess of $500,000 received by the Loan Parties.

Section 8.12 Use of Proceeds.

The proceeds of Loans shall be used only (x) for working capital and general corporate purposes, (including, without limitation, the funding of forecasted growth, compliance and Capital Expenditures initiatives), (y) to consummate the Refinancing and (z) to pay the transaction fees, costs and expenses incurred directly in connection with this Loan Agreement and the Transactions.

Section 8.13 Mortgages; Landlord Agreements.

(a) If any Loan Party acquires a fee simple interest in Real Property with a fair market value in excess of $2,000,000 after the Closing Date, the Borrower shall promptly notify the Agents and the Lenders thereof in writing. With respect to all Loan Parties' fee simple interests in Real Property with a fair market value in excess of $2,000,000, the Loan Parties shall take, and cause the other Loan Parties to take, such actions as shall be reasonably necessary or reasonably requested by the Collateral Agent to grant and/or perfect such Liens consistent with the applicable requirements of the Security Documents, including actions described in Section 8.15, all at the sole cost and expense of the Borrower. Each Mortgage delivered to the Collateral Agent hereunder shall be accompanied by (i) a policy or policies (or unconditional binding commitment thereof) of title insurance issued by a nationally recognized title insurance company insuring the Lien of each Mortgage as a valid Lien (with the priority described therein) on the Mortgaged Property described therein, free of any other Liens except for Permitted Liens as expressly set forth in Section 9.02, together with such customary endorsements and reinsurance as the Collateral Agent may reasonably request, and (ii) if requested by the Collateral Agent, an opinion of local counsel to the applicable Loan Parties with respect to the Mortgage and the Liens granted thereunder, in form and substance reasonably satisfactory to the Collateral Agent.

(b) The Loan Parties shall use commercially reasonable efforts to cause each location described the definition of "Landlord Agreement" to become subject to a Landlord Agreement within ninety (90) days from the Closing Date (or such later date as may be agreed by the Administrative Agent) with respect to any applicable leased property as of the Closing Date, or, with respect to any applicable leased property that becomes subject to clauses (i) or (ii) of the definition of "Landlord Agreement" on any date after the Closing Date.

Section 8.14 Accounts; Control Agreements.

(a) The Loan Parties shall cause each deposit account, securities account and commodity account (other than any Excluded Deposit Account) to be subject to an Account Control Agreement, and shall cause all Collections to be deposited in a deposit account listed on Schedule 7.26 that is subject to an Account Control Agreement (other than Collections that are deposited in any Excluded Deposit Account); provided, however, that, (i) so long as no Event of Default has occurred and is continuing, the Loan Parties may open new deposit accounts, new securities accounts and new commodity accounts so long as, within twenty (20) days after opening each such account (or such later date as may be agreed by the Administrative Agent), (x) the Loan Parties shall have delivered to the Agents an amended Schedule 7.26 including such account and (y) the Loan Parties shall have delivered to the Collateral Agent an Account Control Agreement with respect to such account (other than any Excluded Deposit Account) (but, with respect to any such accounts opened after the Closing Date, shall not deposit or transfer funds into such account prior to the execution and delivery of such Account Control Agreement) and (ii) the Loan Parties shall have until the date that is sixty (60) days (or such later date as agreed by the Administrative Agent) following the Closing Date to comply with the provisions of this Section 8.14(a) with regard to (x) deposit accounts, securities accounts and commodity accounts in existence on the Closing Date (and listed on Schedule 7.26 on the Closing Date) and (y) the requirement to deposit Collections in a deposit account that is subject to an Account Control Agreement (other than Collections that are deposited in any Excluded Deposit Account).

(b) If, notwithstanding the provisions of this Section 8.14, after the occurrence and during the continuance of an Event of Default and following delivery of a Notice of Exclusive Control, a Loan Party receives or otherwise has dominion over or control of any Collections or other amounts, such Loan Party shall hold such Collections and amounts in trust for the Collateral Agent and shall not commingle such Collections with any other funds of any Loan Party or other Person or deposit such Collections in any account other than those accounts set forth on Schedule 7.26 (unless otherwise instructed by the Collateral Agent).

Section 8.15 Further Assurances.

(a) The Loan Parties shall execute any and all further documents, financing statements, agreements and instruments, and shall take all such further actions, which may be required under any Applicable Law or which either Agent may reasonably request, in order to grant, preserve, protect, perfect and evidence the validity and priority of the security interests created or intended to be created by the Guaranty and Security Agreement or any other Security Document (including, without limitation, the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents, and assisting the Collateral Agent in completing all documentation relating to the Assignment of Claims Act, if applicable), all at the sole and reasonable cost and expense of the Borrower. Notwithstanding anything to the contrary in this Loan Agreement or in the Loan Documents, neither Borrower nor any other Loan Party shall have any obligation to perfect Liens in any patents, trademarks, copyrights or other IP Rights created, registered or applied-for in any jurisdiction other than the United States, other than to the extent that the Administrative Agent and the Borrower reasonably agree, that the burden or cost of perfecting such Lien in such jurisdiction is reasonable and does not outweigh the benefits to be obtained by the Lenders therefrom.

(b) Notwithstanding anything herein to the contrary, it is understood and agreed that:

(i) if the Collateral Agent determines in its sole discretion that the cost of creating or perfecting any Lien on any property is excessive in relation to the practical benefits afforded to the Lenders thereby, then such property may be excluded from the Collateral for all purposes of the Loan Documents;

(ii) no action shall be required to perfect any Lien with respect to (A) any vehicle or other asset subject to a certificate of title, and any retention of title, extended retention of title rights, or similar rights, or (B) letter of credit rights, in each case, except to the extent that a security interest therein is perfected by filing a UCC financing statement (which shall be the only required perfection action);

(iii) no Loan Party shall be required to perfect a security interest in any asset to the extent perfection of a security interest in such asset would be prohibited under any Applicable Law;

(iv) any joinder or supplement to any Security Document or any other Loan Document executed by any Subsidiary that is required to become a Loan Party pursuant to Section 8.15(a) above may, with the consent of the Administrative Agent (not to be unreasonably withheld, conditioned or delayed), include such schedules (or updates to schedules) as may be necessary to qualify any representation or warranty with respect to such Subsidiary set forth in any Loan Document to the extent necessary to ensure that such representation or warranty is true and correct in all material respects to the extent required thereby or by the terms of any other Loan Document; and

(v) to the extent that the Administrative Agent and the Borrower reasonably agree that the burden or cost shall outweigh the benefits to be obtained by the Lenders therefrom, no actions in any non-U.S. jurisdiction or required by the laws of any non-U.S. jurisdiction shall be required in order to create any security interests in any assets or to perfect or make enforceable such security interests (including any IP Rights registered in any non-U.S. jurisdiction) (it being understood that there shall in no event be any security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction (other than Canada (including, without limitation, any province thereof)) or any requirement to make any filings in any foreign jurisdiction (other than Canada (including, without limitation, any province thereof)) including with respect to foreign Intellectual Property (other than Canadian Intellectual Property)).

Section 8.16 Lender Calls. Each Loan Party shall, and shall cause each of its Subsidiaries to, upon the request of the Administrative Agent, participate in a meeting of the Lenders, once per fiscal quarter, and when an Event of Default under Section 10.01(k) shall have occurred and be continuing, as frequently as may be required by the Administrative Agent, in each case to be held via teleconference, at a time selected by the Administrative Agent and reasonably acceptable to the Required Lenders and the Borrower. The purpose of this meeting shall be to present the Loan Parties' previous fiscal quarter's financial results and other matters to be mutually agreed.

Section 8.17 Changes in Legal Form, etc.

Each Loan Party shall provide at least 10 days' prior written notice to the Administrative Agent of the following:

(a) a change of its legal form;

(b) a change of its jurisdiction of organization;

(c) a change of its name as it appears in official filings in its jurisdiction of organization; and

(d) a change of the location of its registered office, chief executive office or sole place of business from that referred in the Perfection Certificate.

Section 8.18 Contractual Obligations. Each Loan Party shall, and shall cause each of its Subsidiaries to, pay, discharge and perform as the same shall become due and payable or required to be performed, all their respective material obligations and liabilities, including:

(a) all lawful claims which, if unpaid, would by law become a Lien (other than a Permitted Lien) upon its property and assets unless the same are being contested in good faith by appropriate proceedings diligently prosecuted which stay the imposition or enforcement of any Lien and for which adequate reserves are being maintained by such Person, which reserves shall be in conformity with GAAP, consistently applied; and

(b) the performance of all material obligations under any Material Contracts.

Section 8.19 Compliance with Health Care Laws.

(a) Except, in each case, as would not, individually or in the aggregate be expected to have a Material Adverse Effect or otherwise disclosed on Schedule 7.08 or Schedule 7.35, the Loan Parties shall: (i) comply in all material respects with all Health Care Laws applicable to it, its assets, business or operations, respectively; (ii) maintain all Permits required to be maintained for the ownership of its respective assets and operation of its respective businesses; and (iii) timely file, or cause to be filed, all required health care filings in accordance with applicable Health Care Laws.

(a) Except as to matters otherwise disclosed on Schedule 7.08 or Schedule 7.35, or developments in scheduled matters subsequent to the date of this Loan Agreement, the Loan Parties shall notify the Administrative Agent within five (5) Business Days (or such longer date as may be reasonably agreed by the Administrative Agent) after the Loan Party has actual knowledge of any of the following facts, events or circumstances, and as permitted by applicable Laws, shall provide to the Administrative Agent as promptly as practicable following Administrative Agent's request therefor, such additional information as Administrative Agent shall reasonably request regarding such disclosure in each case which, if adversely determined, would be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect:

(i) to the extent any of the following would be reasonably expected, individually or in the aggregate, to have a Material Adverse Effect, that a Loan Party has received written notice of any civil or criminal investigation or audit, or proceeding pending or to the knowledge of any Loan Party, threatened in writing, by any federal, state or local Governmental Authority relating to any actual or alleged material violation of any Health Care Laws or that alleges systemic, deliberate, widespread or material false or fraudulent claims submission by any Loan Party; and

(ii) copies of any written recommendation from any Governmental Authority that a Loan Party should have any of its Permits suspended, revoked, or limited in any way, if such suspension, revocation or limitation would be reasonably likely, individually or in the aggregate, to have a Material Adverse Effect.

(b) the Loan Parties shall notify the Administrative Agent within five (5) Business Days (or such longer date as may be reasonably agreed by the Administrative Agent) after any Loan Party receives any written recommendation from any Governmental Authority that a Loan Party or any of its respective officers or employees should be suspended, debarred, or excluded in accordance with 21 U.S.C. § 335a, 42 U.S.C. § 1320a-7, or similar provision of Law.

Section 8.20 Security Interests; Perfection, etc. Each Loan Party shall, and shall cause each Subsidiary to, take all necessary actions to ensure that each of the Guaranty and Security Agreement, Mortgages (if any), Patent Security Agreements, the Trademark Security Agreements and the Copyright Security Agreements is effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable first priority (subject only to Permitted Liens which, pursuant to the terms of this Loan Agreement, are permitted to have priority over Collateral Agent's Liens thereon) perfected security interest in the Collateral described therein and proceeds thereof.

Section 8.21 Foreign Corrupt Practices Act Policies. The Borrower shall promptly institute and maintain policies and procedures designed to promote and achieve compliance with the Foreign Corrupt Practices Act and other applicable anti-bribery or anti-corruption laws by the Borrower, its Subsidiaries, joint venture partners, and directors, officers, employees, and agents or other Persons acting on behalf of the Borrower.

Section 8.22 Post-Closing Obligations.

(a) Within thirty (30) days after the Closing Date (or such later date as agreed by the Collateral Agent), the Loan Parties shall deliver to the Collateral Agent the Account Control Agreements for each deposit account and securities account of a Loan Party as of the Closing Date (other than Excluded Deposit Accounts).

(b) Within thirty (30) days after the Closing Date (or such later date agreed by the Collateral Agent), the Loan Parties shall deliver to the Collateral Agent the endorsements (containing or accompanied by a copy of the policy or binder in respect thereof) required by Section 8.03.

ARTICLE IX

NEGATIVE COVENANTS

The Loan Parties hereby covenant and agree with the Lenders and the Administrative Agent to each of the following so long as any Obligations hereunder (other than Unasserted Contingent Obligations) or any Commitments hereunder remain outstanding:

Section 9.01 Limitation on Indebtedness. Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee, suffer to exist or otherwise become directly or indirectly liable, contingently or otherwise with respect to any Indebtedness, except for:

(a) Indebtedness in respect of the Obligations;

(b) Indebtedness (other than revolving credit facilities or commitments therefore) of a Person, that becomes a Subsidiary of the Borrower pursuant to a Permitted Acquisition, assumed at the time of such Permitted Acquisition; provided, that (i) such Indebtedness was not incurred in connection with, or in anticipation or contemplation of, such Permitted Acquisition and (ii) the aggregate principal amount of all Indebtedness permitted by this Section 9.01(b) shall not at any time outstanding exceed $10,000,000;

(c) Indebtedness existing as of the Closing Date which is identified with particularity (including amount) in Schedule 7.25 and which is not otherwise permitted by this Section 9.01;

(d) Indebtedness in respect of performance, surety or appeal bonds provided in the Ordinary Course of Business, but excluding (in each case) Indebtedness incurred through the borrowing of money or Contingent Liabilities in respect thereof;

(e) Indebtedness (i) evidencing the deferred purchase price of newly acquired property or incurred to finance the acquisition of equipment of such Loan Party and its Subsidiaries (pursuant to purchase money mortgages or otherwise, whether owed to the seller or a third party) used in the Ordinary Course of Business of such Loan Party and its Subsidiaries; provided, that such Indebtedness is incurred within one hundred twenty (120) days of the acquisition of such property, and (ii) consisting of Capitalized Lease Obligations, in an aggregate amount for clause (i) and (ii), not to exceed $5,000,000 at any time outstanding;

(f) Guaranty Obligations of a Loan Party in respect of Indebtedness of a Loan Party otherwise permitted hereunder, and Guaranty Obligations of a Subsidiary of a Loan Party in respect of Indebtedness of a Loan Party or any Subsidiary of a Loan Party otherwise permitted hereunder;

(g) Indebtedness in an aggregate amount not to exceed $2,500,000 at any time outstanding consisting of promissory notes issued by the Borrower or any Subsidiary to any stockholder of the Borrower or to future, present or former directors, officers, members of management, employees or consultants of the Borrower, the Borrower or any of its Subsidiaries or their respective estates, executors, administrators, heirs, family members, legatees, distributees, spouses or former spouses, domestic partners or former domestic partners to finance the purchase or redemption of Capital Stock of the Borrower permitted by Section 9.06;

(h) non-recourse Indebtedness incurred by the Borrower or any of its Subsidiaries to finance the payment of insurance premiums of such Person;

(i) Indebtedness (i) owed to any Person providing worker's compensation, health, disability or other employee benefits or property, casualty or liability insurance to the Borrower or any of its Subsidiaries incurred in connection with such Person providing such benefits or insurance pursuant to customary reimbursement or indemnification obligations to such Person and (ii) appeal or similar bonds, or bonds with respect to worker's compensation claims;

(j) unsecured Indebtedness consisting of intercompany loans and advances made by or among any Loan Parties; provided that: (x) in the case of any Indebtedness of any Subsidiary that is not a Loan Party owing to any Loan Party, solely to the extent the related Investment shall be permitted under Section 9.05; (y) any Indebtedness of any Loan Party to any Subsidiary that is not a Loan Party shall be documented in the form of one or more notes (collectively, the "Intercompany Notes") to evidence all such intercompany Indebtedness owing at any time by such non-Loan Party to such other Loan Party, which Intercompany Notes shall be in form and substance satisfactory to the Administrative Agent and shall be pledged and delivered to the Collateral Agent for the benefit of the Secured Parties pursuant to the Guaranty and Security Agreement as additional collateral security for the Obligations; and (z) the obligations of each Subsidiary that is not a Loan Party under all Intercompany Notes shall be subordinated in right of payment to the Obligations hereunder in a manner satisfactory to the Administrative Agent;

(k) non-recourse Indebtedness incurred in the Ordinary Course of Business by the Borrower or any of its Subsidiaries to finance the payment of insurance premiums of such Person, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance premiums;

(l) Indebtedness owed in the Ordinary Course of Business to any Person providing worker's compensation, health, disability or other employee benefits or property, casualty or liability insurance to the Borrower or any of

its Subsidiaries incurred in connection with such Person providing such benefits or insurance pursuant to customary reimbursement or indemnification obligations to such Person;

(m) to the extent constituting Indebtedness, contingent obligations arising under indemnity agreements to title insurance companies to cause such title insurers to issue title insurance policies in the Ordinary Course of Business with respect to the real property of the Borrower or any other Loan Party;

(n) to the extent constituting Indebtedness, customary indemnification and purchase price adjustments or similar obligations (including earn-outs) incurred or assumed in connection with Investments and Dispositions otherwise permitted hereunder; provided, that any Indebtedness permitted pursuant to this clause (n) shall not consist of, or be evidenced by, promissory notes or other instruments or agreements evidencing debt for borrowed money;

(o) to the extent constituting Indebtedness, unfunded pension fund and other employee benefit plan obligations and liabilities to the extent they are permitted to remain unfunded under Applicable Law;

(p) to the extent constituting Indebtedness, deferred compensation or similar arrangements payable to future, present or former directors, officers, employees, members of management or consultants of the Borrower and its Subsidiaries in an aggregate amount not to exceed $3,000,000 outstanding at any one time;

(q) Indebtedness in respect of repurchase agreements constituting Cash Equivalents;

(r) cash management obligations and Indebtedness incurred by the Borrower or any Subsidiary in respect of netting services, overdraft protections, commercial credit cards, stored value cards, purchasing cards and treasury management services, automated clearing-house arrangements, employee credit card programs, controlled disbursement, ACH transactions, return items, interstate deposit network services, dealer incentive, supplier finance or similar programs, Society for Worldwide Interbank Financial Telecommunication transfers, cash pooling and operational foreign exchange management and similar arrangements, in each case entered into in the Ordinary Course of Business in connection with cash management, including among the Borrower and its Subsidiaries, and deposit accounts;

(s) unsecured Indebtedness in respect of obligations of the Borrower or any Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms in the Ordinary Course of Business and not in connection with the borrowing of money;

(t) to the extent constituting Indebtedness, Guarantees in the Ordinary Course of Business of the obligations of suppliers, customers, franchisees and licensees of the Borrower and its Subsidiaries;

(u) customer deposits and advance payments received in the Ordinary Course of Business from customers for goods and services purchased in the Ordinary Course of Business;

(v) Indebtedness arising in connection with Hedging Agreements entered into in the Ordinary Course of Business (and not for speculative purposes) (a) to hedge or mitigate risks to which the Borrower or any Subsidiary has actual or potential exposure (other than those in respect of Capital Stock of the Borrower or any of its Subsidiaries), including to hedge or mitigate foreign currency and commodity price risks and (b) to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability of the Borrower or any Subsidiary; and

(w) other Indebtedness not to exceed $5,000,000 in the aggregate principal amount at any time outstanding; provided that any Liens securing such Indebtedness shall rank junior in priority to the Liens securing the Secured Obligations;

(x) other Indebtedness not to exceed $10,000,000 in the aggregate at any time outstanding; provided that such Indebtedness (x) shall rank junior in priority to the Liens securing the Obligations pursuant to an intercreditor agreement in form and substance reasonably satisfactory to the Administrative Agent, (y) shall, at the time such Indebtedness is incurred, have a scheduled maturity date that is at least ninety-one (91) days following the Latest Maturity Date and (z) shall not require (and the applicable Loan Party or Subsidiary of such Loan Party shall not make) payments of principal thereon prior to a date that is, at the time such Indebtedness in incurred, at least ninety-one (91) days following the Latest Maturity Date; and

(y) Indebtedness pursuant to the Existing Credit Agreement; provided that the Refinancing occurs with the proceeds of Loans and/or the PIPE Transactions on or prior to the Closing Date.

For the avoidance of doubt, Indebtedness incurred pursuant to the foregoing clause (w) or (x) shall not be utilized to increase the Incremental Cap.

Section 9.02 Limitation on Liens. Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or suffer to exist any Lien upon any property or assets of any kind (real or personal, tangible or intangible) of any such Person (including its Capital Stock), whether now owned or hereafter acquired, except for the following Liens (collectively, "Permitted Liens"):

(a) Liens securing payment of the Secured Obligations;

(b) (i) Liens securing pension obligations that arise in the Ordinary Course of Business and (ii) pledges and deposits made in the Ordinary Course of Business (A) in connection with workers' compensation, health, disability or other employee benefits, unemployment insurance and other social security laws or regulations (excluding Liens arising under ERISA), property, casualty or liability insurance or premiums related thereto or self-insurance obligations or (B) to secure letters of credit, bank guarantees or similar instruments posted to support payment of items set forth in the foregoing clause (i); provided that such letters of credit, bank guarantees or instruments are issued in compliance with Section 9.01;

(c) Liens existing as of the Closing Date and listed on Schedule 9.02, securing Indebtedness permitted under Section 9.01(c); provided, that no such Lien shall encumber any additional property not encumbered as of the Closing Date;

(d) Liens securing Indebtedness of the type permitted under Section 9.01(e); provided, that (i) such Lien is granted within one hundred twenty (120) days after such Indebtedness is incurred, and (ii) such Lien secures only the assets that are the subject of the Indebtedness referred to in Section 9.01(e) (other than the proceeds or products thereof and after-acquired property subjected to a Lien pursuant to the terms existing at the time of such acquisition);

(e) Liens arising by operation of law in favor of carriers, warehousemen, mechanics, materialmen and landlords incurred in the Ordinary Course of Business for amounts not yet overdue or being diligently contested in good faith by appropriate proceedings and for which adequate reserves shall have been established on its books, which reserves shall be in conformity with GAAP, consistently applied;

(f) Liens incurred or deposits made in the Ordinary Course of Business in connection with worker's compensation, unemployment insurance or other forms of governmental insurance or benefits, or to secure performance of tenders, statutory obligations, bids, leases or other similar obligations (other than for borrowed money) entered into in the Ordinary Course of Business or to secure obligations on surety, appeal or performance bonds;

(g) judgment Liens with respect to which execution has been stayed or the payment of which is covered in full by insurance maintained with responsible insurance companies, or which judgment Liens do not result in an Event of Default under Section 10.01(i);

(h) recorded or unrecorded easements, rights-of-way, covenants, conditions, restrictions, licenses, reservations, zoning restrictions, and other charges, encumbrances, defects, imperfections or irregularities in title of any kind and other similar encumbrances that do not interfere in any material respect with the value or current use of the property to which such Lien is attached, all Liens, encumbrances and other matters disclosed in any title policy with respect to Real Property issued as of the Closing Date, and any other title and survey exceptions reasonably approved by Administrative Agent;

(i) Liens for Taxes, assessments or other governmental charges or levies not yet due and payable, or that are being diligently contested in good faith by appropriate proceedings where the execution or enforcement of such Lien has been stayed and for which adequate reserves shall have been established on its books, which reserves shall be in conformity with GAAP, consistently applied;

(j) Liens arising in the Ordinary Course of Business by virtue of any contractual, statutory or common law provision relating to banker's Liens, rights of set-off or similar rights and remedies covering deposit or securities accounts (including funds or other assets credited thereto) or other funds maintained with a depository institution or securities intermediary, provided the applicable provisions of Section 8.14 have been complied with in respect of such deposit or securities accounts;

(k) leases, licenses, subleases or sublicenses (other than with respect to licenses or sublicenses of any technology or other IP Rights made on an exclusive basis) (i) existing on the date hereof, (ii) entered into by any such Loan Party or Subsidiary in the Ordinary Course of Business and not interfering in any material respect with the business of the Loan Parties and in their respective Subsidiaries, or (iii) between or among the Loan Parties (or between or among any Subsidiaries that are not Loan Parties);

(l) any interest or title of a lessor, licensor, sublessor or sublicensor under any lease, license or sublease entered into by any such Loan Party or Subsidiary (i) prior to the date hereof, or (ii) in the Ordinary Course of Business, in each case, covering only the assets so leased, subleased, licensed or sublicensed;

(m) Liens of sellers of goods to such Person arising under Article II of the UCC or similar provisions of Applicable Law in the Ordinary Course of Business, covering only the goods sold or securing only the unpaid purchase price of such goods and related expenses to the extent such Indebtedness is permitted hereunder;

(n) Liens on insurance policies and the proceeds thereof securing the financing of premiums with respect thereto, to the extent permitted under Section 9.01(h);

(o) precautionary Uniform Commercial Code filings made by a lessor pursuant to an operating lease of a Loan Party entered into in the Ordinary Course of Business;

(p) Liens securing the performance of, or granted in lieu of, contracts with trade creditors, contracts (other than in respect of debt for borrowed money), leases, bids, statutory obligations, customs, surety, stay, appeal and performance bonds, performance and completion guarantees and other obligations of a like nature (including those to secure health, safety and environmental obligations), in each case, incurred in the Ordinary Course of Business or consistent with industry practice and deposits securing letters of credit, bank guarantees or similar instruments posted to support payment of the items set forth in this clause (p); provided that such letters of credit, bank guarantees or similar instruments are issued in compliance with Section 9.01;

(q) Liens (i) of a collection bank arising under Section 4–208 of the UCC or other similar provisions of Applicable Laws on items in the course of collection, (ii) in favor of a banking institution arising as a matter of law encumbering deposits or other funds maintained with financial institutions (including the right of set–off), (iii) arising in connection with pooled deposit or sweep accounts, cash netting, deposit accounts or similar arrangements of the Borrower or its Subsidiaries and consisting of the right to apply the funds held therein to satisfy overdraft or similar obligations incurred in the Ordinary Course of

Business of such Person, (iv) encumbering reasonable customary initial deposits and margin deposits and (v) granted in the Ordinary Course of Business by the Borrower or its Subsidiaries to any bank with whom it maintains accounts to the extent required by the relevant bank's (or custodian's or trustee's, as applicable) standard terms and conditions, in each case, which are within the general parameters customary in the banking industry;

(r) Liens (i) in favor of customs and revenue authorities arising as a matter of law in the Ordinary Course of Business to secure payment of customs duties that (a) are not overdue by more than thirty (30) days or, if more than thirty (30) days overdue, are being contested in a manner consistent with Section 8.04 or (b) with respect to which the failure to make payment could not reasonably be expected to have a Material Adverse Effect and (ii) on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or such other goods in the Ordinary Course of Business;

(s) Liens in respect of an agreement to dispose of any asset or any Subsidiary, to the extent such disposal is permitted by Section 6.04 and such Liens apply only to the assets or the Subsidiary to be disposed of;

(t) other Liens with respect to which the aggregate amount of the obligations secured thereby does not exceed $10,000,000 at any time outstanding; provided, that if such Lien secures Funded Debt, such Lien shall only secure Indebtedness incurred pursuant to, and subject to the terms of, Sections 9.01(w) or (x); and

(u) Liens, existing solely on or prior to the Closing Date, securing Indebtedness incurred pursuant to Section 9.01(y).

;provided, that, and notwithstanding anything to the contrary in this Section 9.02, no Loan Party nor any of its Subsidiaries, may directly or indirectly, create, incur, assume or suffer to exist any Lien (other than the Liens securing the Secured Obligations, Liens between or among Loan Parties and Liens permitted by Sections 9.02(g) and 9.02(i)) upon any Key IP.

Section 9.03 Consolidation, Merger, etc. Each Loan Party will not, and will not permit any of its Subsidiaries to, liquidate or dissolve, consolidate with, or merge into or with, any other Person, or purchase or otherwise acquire all or substantially all of the assets of any Person; provided, however, that (a) any Loan Party or Subsidiary of any Loan Party may liquidate or dissolve voluntarily into, and may merge with and into, the Borrower, so long as the Borrower is the surviving entity, (b) any Guarantor may liquidate or dissolve voluntarily into, and may merge with and into, any other Guarantor, (c) any Subsidiary of a Loan Party that is not itself a Loan Party may liquidate or dissolve voluntarily into, and may merge with and into, any Loan Party (so long as the surviving entity is such Loan Party) or any non-Loan Party Subsidiary, (d) the assets or Capital Stock of any Loan Party or Subsidiary of any Loan Party may be purchased or otherwise acquired by the Borrower, (e) the assets or Capital Stock of any Guarantor may be purchased or otherwise acquired by any Loan Party, (f) the assets or Capital Stock of any Subsidiary that is not a Loan Party may be purchased or otherwise acquired by any Loan Party or any non-Loan Party, (g) the Capital Stock of the Borrower may be purchased by any Person so long as no Change of Control results therefrom, (h) any Person may merge into or amalgamate with the Borrower in an Investment permitted by Section 9.05 in which such Borrower is the surviving or continuing Person, (i) any Person may merge or amalgamate with a Subsidiary in an Investment permitted by Section 9.05 in which the surviving or continuing entity is a Loan Party (or the surviving or continuing Person assumes the Obligations of such non-surviving Loan Party in a manner reasonably acceptable to the Administrative Agent) and (j) in connection with the Disposition of a Subsidiary (other than a Borrower) or its assets permitted by Section 9.04, such Subsidiary may merge or amalgamate with or into any other Person.

Section 9.04 Dispositions. Each Loan Party will not, and will not permit any of its Subsidiaries to, make a Disposition of such Loan Party's or such other Person's assets (including Accounts and Capital Stock of Subsidiaries) to any Person in one transaction or a series of transactions, unless such Disposition:

(a) is of obsolete, worn out or surplus property or property not used or useful in such Person's business at the time of such Disposition;

(b) is for fair market value and the following conditions are met:

(i) the aggregate fair market value of Dispositions made in reliance on this clause (b) during any fiscal year does not exceed $10,000,000;

(ii) immediately prior to and immediately after giving effect to such Disposition, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(iii) the Borrower applies any Net Disposition Proceeds arising therefrom pursuant to Section 4.02(a)(ii); and

(iv) no less than seventy-five percent (75%) of the consideration received for such sale, transfer, lease, contribution or conveyance is received in cash;

(c) is a sale of Inventory in the Ordinary Course of Business;

(d) is the leasing, as lessor, of real or personal property not used or useful in such Person's business and is otherwise in the Ordinary Course of Business;

(e) is a sale or disposition of equipment or other assets, to the extent that such equipment is exchanged for credit against the purchase price of similar replacement equipment or assets or the proceeds of such Dispositions are reasonably promptly applied to the purchase price of similar replacement equipment, all in the Ordinary Course of Business and in accordance with Section 4.02(a)(ii);

(f) is an abandonment, allowing to lapse, failure to renew, or other Disposition of any IP Rights that are not material to the conduct of the business of any Loan Party or any Subsidiary of such Loan Party or are otherwise not economically practicable to maintain (it being understood, for the avoidance of doubt, that any IP Rights denoted with a "*" in Schedule 5 of the Perfection Certificate and Schedule 7.14(d) of the Loan Agreement are not material and are not economically practicable to maintain);

(g) is otherwise permitted by Section 9.02, 9.03 or 9.05;

(h) is by any Loan Party or Subsidiary thereof to any Loan Party;

(i) is by any Subsidiary that is not a Loan Party to any Loan Party or any other Subsidiary that is not a Loan Party; or

(j) are leases, subleases, licenses or sublicenses of property (and, with respect to technology or IP Rights, solely on a non-exclusive basis) in the Ordinary Course of Business

;provided, that, and notwithstanding anything to the contrary in this Section 9.04, no Loan Party nor any of its Subsidiaries, may Dispose of any Key IP other than (i) by any Loan Party or any Subsidiary thereof to any Loan Party and (ii) the Liens permitted by Sections 9.02(a), 9.02(g) and 9.02(i).

Section 9.05 Investments. Each Loan Party will not, and will not permit any of its Subsidiaries to, purchase, make, incur, assume or permit to exist any Investment in any other Person, except:

(a) Investments existing on the Closing Date and listed on Schedule 9.05;

(b) Investments in cash and Cash Equivalents;

(c) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the Ordinary Course of Business;

(d) Investments by way of contributions to capital or purchases of Capital Stock by any Loan Party in any of its Subsidiaries that are Loan Parties;

(e) Investments constituting (i) Accounts arising, (ii) trade debt granted, or (iii) deposits made, in connection with the purchase price of goods or services, in each case in the Ordinary Course of Business;

(f) Investments consisting of any deferred portion of the sales price received by any Loan Party in connection with any Disposition permitted under Section 9.04;

(g) other Investments in an aggregate principal amount at any time not to exceed $20,000,000;

(h) intercompany Indebtedness advanced by any Loan Party to any other Loan Party to the extent permitted pursuant to Section 9.01(j);

(i) the maintenance of deposit accounts in the Ordinary Course of Business, so long as the applicable provisions of Section 8.14 have been complied with in respect of each such deposit account;

(j) Guaranty Obligations constituting Indebtedness permitted by Section 9.01;

(k) Investments consisting of Liens and Dispositions permitted under Sections 9.02 and 9.04, respectively;

(l) advances of payroll payments to employees in the Ordinary Course of Business;

(m) Guarantees by (i) the Borrower of leases of its Subsidiaries or (ii) by any Subsidiary of the Borrower of leases of the Borrower, in each case, solely to the extent not constituting Indebtedness;

(n) endorsements of negotiable instruments and documents in the Ordinary Course of Business;

(o) Investments (i) constituting deposits, prepayments and/or other credits to suppliers, (ii) made in connection with obtaining, maintaining or renewing client and customer contracts and/or (iii) in the form of advances made to distributors, suppliers, licensors and licensees, in each case, in the Ordinary Course of Business;

(p) Investments constituting Permitted Acquisitions;

(q) Investments made with (i) Capital Stock of the Borrower (other than Disqualified Capital Stock) or (ii) net cash proceeds of the purchase of, or in exchange for, Capital Stock of the Borrower (other than Disqualified Capital Stock or net cash proceeds of the PIPE Transactions) or cash capital contribution to the Borrower, in each case under this clause (ii) by equityholders of the Borrower; provided, that (1) such purchase, exchange or contribution occurs substantially concurrently with the consummation of such Investment and (2) such purchase, exchange or contribution is clearly identified pursuant to a certificate executed and delivered by an Authorized Officer of the Borrower to the Administrative Agent as a purchase, exchange or contribution to be used in connection with such Investment);

(r) loans and advances to officers, directors and employees of any Loan Party for reasonable and customary business related travel expenses, entertainment expenses, moving expenses and similar expenses, in each case incurred in the Ordinary Course of Business, in an aggregate principal amount at any time not to exceed $1,000,000; and

(s) other Investments by any Loan Party in an aggregate amount not to exceed the Available Amount as of the applicable date of such Investment; provided that each of the following conditions are satisfied at the time such Investment is consummated:

(i) no Default or Event of Default shall have occurred and be continuing or would result therefrom; and

(ii) after giving effect to such Investment, on a pro forma basis, as of the most recently completed Test Period, the Borrower shall be in compliance with the applicable Total Net Leverage Ratio set forth in Section 9.13(a);

;provided, that, and notwithstanding anything to the contrary in this Section 9.05, no Loan Party nor any of its Subsidiaries, may make any Investment that involves the assignment, contribution, transfer, license, sub-license or other Disposition of any Key IP to any Person other than a Loan Party.

Section 9.06 Restricted Payments. Each Loan Party will not, and will not permit any of its Subsidiaries to, make any Restricted Payment, other than:

(a) Restricted Payments by any Subsidiary of the Borrower to (i) the Borrower or (ii) such Subsidiary's direct parent company so long as such parent company is a Loan Party and a direct or indirect wholly-owned Subsidiary of the Borrower;

(b) repurchases by the Borrower of its Capital Stock upon the exercise of stock options, warrants or other equity derivatives or settlement of convertible securities if such Capital Stock represents a portion of the exercise price of such options, warrants or other equity derivatives or the settlement price of such convertible securities and no cash is actually expended by the Borrower;

(c) cash payments by the Borrower in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock in the Borrower;

(d) Restricted Payments by any Loan Party or any Subsidiary of any Loan Party to pay dividends with respect to its Capital Stock payable solely in additional shares of Capital Stock (other than Disqualified Capital Stock);

(e) to the extent constituting Restricted Payments, consummation by the Borrower and its Subsidiaries into transactions expressly permitted by Section 9.04;

(f) repurchases of Capital Stock under equity incentive plans approved by the Borrower's board of directors to occur upon the exercise of stock options or warrants or similar equity incentive awards; provided, that (i) no Event of Default exists or would result immediately after giving effect to such payment, (ii) the amount paid in respect of such repurchases does not exceed $5,000,000 in the aggregate in any fiscal year;

(g) Restricted Payments by any Subsidiaries of the Borrower that are not Loan Parties to other Subsidiaries of the Borrower that are not Loan Parties; and

(h) other Restricted Payments by any Loan Party in an aggregate amount not to exceed the Available Amount as of the date of such Restricted Payment; provided that each of the following conditions are satisfied on such date:

(i) no Default or Event of Default shall have occurred and be continuing or would result therefrom; and

(ii) after giving effect to such Restricted Payment, on a pro forma basis, as of the most recently completed Test Period, the Total Net Leverage Ratio shall not be greater than 3.50 to 1.00;

;provided, that, and notwithstanding anything to the contrary in this Section 9.06, no Loan Party nor any of its Subsidiaries, may make any Restricted Payment that involves the assignment, contribution, transfer, license, sub-license or other Disposition of any Key IP to any Person other than a Loan Party.

Section 9.07 Payments and of Indebtedness; Cancellation of Indebtedness.

(a) Each Loan Party will not, and will not permit any of its Subsidiaries to, make any payment on account of Indebtedness that has been contractually subordinated in right of payment to the Obligations, if such payment is not permitted at such time under the subordination terms and conditions applicable thereto; provided that any Loan Party and any Subsidiary thereof may also make any such payment solely:

(i) with (x) shares of Capital Stock of the Borrower (other than Disqualified Capital Stock) or (y) net cash proceeds of the purchase of, or in exchange for, Capital Stock of the Borrower (other than Disqualified Capital Stock or net cash proceeds of the PIPE Transactions) or cash capital contribution to the Borrower, in each case under this clause (y) by equityholders of the Borrower; provided, that (1) such purchase, exchange or contribution occurs substantially concurrently with the consummation of such payment and (2) such purchase, exchange or contribution is clearly identified pursuant to a certificate executed and delivered by an Authorized Officer of the Borrower to the Administrative Agent as a purchase, exchange or contribution to be used in connection with such payment); and

(ii) in an aggregate amount not to exceed the Available Amount as of the date of such Restricted Payment; provided that each of the following conditions are satisfied on such date:

(A) no Default or Event of Default shall have occurred and be continuing or would result therefrom; and

(iii) after giving effect to such Restricted Payment, on a pro forma basis, as of the most recently completed Test Period, the Total Net Leverage Ratio shall not be greater than 3.50 to 1.00.

Section 9.08 Modification of Certain Agreements. Each Loan Party will not, and will not permit any of its Subsidiaries to, amend, supplement, waive, otherwise modify, or forbear from exercising any rights with respect to the terms or provisions of, or consent to any amendment, supplement, waiver, other modification or forbearance from exercising any rights with respect to the terms or provisions of: (a) any Material Contract or any Organization Document, in each case, other than any amendment, supplement, waiver, modification or forbearance that is not materially adverse to a Secured Party or the Loan Parties; (b) any document, agreement or instrument evidencing or governing any Indebtedness that has been subordinated to the Obligations in right of payment or any Liens that have been subordinated in priority to the Liens of the Collateral Agent, unless such amendment, supplement, waiver, other modification or forbearance is expressly permitted under the terms of the subordination agreement applicable thereto or (c) in any material respect, any contract, license, sublicense or agreement related to any Key IP.

Section 9.09 Sale and Leaseback. Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into any agreement or arrangement providing for the sale or transfer by it of any property (now owned or hereafter acquired) to a Person and the subsequent lease or rental of such property or other similar property from such Person.

Section 9.10 Transactions with Affiliates. Except as set forth on Schedule 9.10, each Loan Party will not, and will not permit any of its Subsidiaries to, enter into or cause or permit to exist any arrangement, transaction or contract (including for the purchase, lease or exchange of property or the rendering of services) with any Affiliate involving aggregate payments or consideration in excess of $1,000,000 (each, an "Affiliate Transaction") except: (a) on terms and conditions, taken as a whole, no less favorable to such Loan Party or such Subsidiary than such Person could obtain in an arm's-length transaction with a Person that is not an Affiliate; (b) any transaction expressly permitted under this Loan Agreement (including Indebtedness permitted under Section 9.01(j)); (c) so long as it has been approved by the Borrower's or its applicable Subsidiary's board of directors or other governing body to the extent required in accordance with Applicable Law, (i) reasonable and customary compensation and indemnifications of non-officer directors of the Loan Parties and their respective Subsidiaries and (ii) the payment of reasonable and customary compensation, severance and indemnification arrangements and benefit plans for officers and employees of the Loan Parties and their respective Subsidiaries in the Ordinary Course of Business and (d) any arrangement, transaction and contract with or among any other Loan Party in the Ordinary Course of Business.

Section 9.11 Restrictive Agreements, etc. Each Loan Party will not, and will not permit any of its Subsidiaries to, enter into any agreement prohibiting or conflicting with any right granted hereunder with respect to:

(a) the creation or assumption of any Lien upon its properties, revenues or assets, whether now owned or hereafter acquired, in each case, to secure the Obligations (other than Permitted Liens and documentation related thereto); or

(b) the ability of such Person to make any payments, directly or indirectly, to the Borrower, including by way of dividends, advances, repayments of loans, reimbursements of management and other intercompany charges, expenses and accruals or other returns on investments;

provided, however, the foregoing prohibitions shall not apply to restrictions that: (i) are set forth in an agreement governing any secured Indebtedness permitted by Section 9.01 as to the transfer of assets financed with the proceeds of such Indebtedness if such restrictions apply only to the property or assets securing such Indebtedness, (ii) arise under customary provisions restricting assignments, subletting or other transfers (including the granting of any Lien) contained in leases, subleases, licenses, sublicenses, joint venture agreements and other agreements entered into in the Ordinary Course of Business; (iii) that are or were created by virtue of any Lien granted upon, transfer of, agreement to transfer or grant of, any option or right with respect to any assets or Capital Stock not otherwise prohibited under this Loan Agreement; (iv) are set forth in any agreement for any Disposition of any Subsidiary (or all or substantially all of the assets thereof) that restricts the payment of dividends or other distributions or the making of cash loans or advances by such Subsidiary pending such Disposition solely to the extent it relates only to property being sold in such Disposition; (v) are binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary, so long as such restrictions were not entered into solely in contemplation of such Person becoming a Subsidiary; (vi) are customary restrictions in leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate solely to the assets subject thereto; (vii) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Subsidiary; (viii) are on cash, other deposits or net worth or similar restrictions imposed by any Person under any contract entered into in the Ordinary Course of Business or for whose benefit such cash, other deposits or net worth or similar restrictions exist and to the extent limited solely to such assets; (ix) arise under or as a result of applicable Law or the terms of any license, authorization, concession or permit provided by a Governmental Authority; (x) relating to any asset (or all of the assets) of or the Capital Stock of the Borrower or any Subsidiary which is imposed pursuant to an agreement entered into in connection with any Disposition of such asset (or assets) or all or a portion of the Capital Stock of the relevant Person that is permitted or not restricted by this Loan Agreement (provided that any such agreement with respect to the Borrower shall result in a Change of Control); (xi) set forth in any agreement relating to any Permitted Lien that limits the right of the Borrower or any Subsidiary to Dispose of or encumber the assets subject thereto so long as no such agreement prohibits any Loan Party from creating or granting a Lien on any of its properties or assets to secure the Obligations; and (xii) are amendments, modifications, restatements, refinancings or renewals of the agreements, contracts or instruments referred to in subclauses (i) through (xi) of this proviso; provided that such amendments, modifications, restatements, refinancings or renewals are not materially more restrictive with respect to such encumbrances and restrictions than those contained in such predecessor agreements, contracts or instruments.

Section 9.12 Changes in Business and Fiscal Year. Each Loan Party will not, and will not permit any of its Subsidiaries to:

(a) engage in any business activity other than the Business;

(b) modify or change its fiscal year to end other than on December 31 of each year; or

(c) modify or change its method of accounting in any material respect except as may be required to conform to GAAP.

Section 9.13 Financial Covenants.

(a) Maximum Total Net Leverage Ratio. The Loan Parties will not permit the Total Net Leverage Ratio, as of the last day of each fiscal quarter (i) ending June 30, 2020, September 30, 2020 and December 31, 2020, to be greater than 5.00 to 1.00, (ii) ending March 31, 2021 and June 30, 2021, to be greater than 4.50 to 1.00 and (iii) ending September 30, 2021 and on the last day of each fiscal quarter ending thereafter, to be greater than 4.00 to 1.00.

(b) Minimum Liquidity. The Loan Parties will not permit Liquidity of the Borrower and its Subsidiaries at any time to be less than $10,000,000.

Section 9.14 [Reserved].

Section 9.15 [Reserved].

Section 9.16 Economic Sanctions/OFAC. The Borrower shall not (i) use, permit the Borrower or any of its Subsidiaries to use, or permit any of its or any of their respective directors, officers, employees, representatives or agents to use, any proceeds of any Loans, directly or knowingly indirectly, or (ii) lend, contribute or otherwise make available any proceeds of any Loans, directly or knowingly indirectly, to any Person: (x) to fund, finance or facilitate any activity, business or transaction of or with any Sanctioned Person or in any Sanctioned Country if such activity, business or transaction would result in, or in the good faith and reasonable opinion of the Borrower would reasonably be expected to result in, a violation of any Sanctions (including OFAC Sanctions) applicable to a Loan Party, a Subsidiary of a Loan Party, or a Secured Party; or (y) in any manner that would result in a violation of any Sanctions (including OFAC Sanctions) applicable to a Loan Party, a Subsidiary of a Loan Party, or a Secured Party.

Section 9.01 Anti-Terrorism Laws; Foreign Corrupt Practices Act. (15 U.S.C. § 78dd-1). The Loan Parties shall not fail in any material respects to comply with (x) any Anti-Terrorism Law or other Law referred to in Section 7.29 or (y) the Foreign Corrupt Practices Act or other applicable anti-corruption laws. The Borrower shall not, directly or indirectly, use the Loan proceeds, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, directly or indirectly, in whole or in part, to fund or facilitate any activities or business in violation of any Anti-Terrorism Law or other Law referred to in Section 7.29 or the Foreign Corrupt Practices Act or other applicable anti-corruption laws.

Section 9.02 Use of Proceeds. No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries, to use any portion of the Loan proceeds, directly or indirectly, to purchase or carry Margin Stock or repay or otherwise refinance Indebtedness of any Loan Party or others incurred to purchase or carry Margin Stock, or otherwise in any manner which is in contravention of any Law or in violation of this Loan Agreement.

ARTICLE X

EVENTS OF DEFAULT

Section 10.01 Listing of Events of Default. Each of the following events or occurrences described in this Section 10.01 shall constitute an "Event of Default":

(a) Non-Payment of Obligations. The Borrower shall default in the payment of:

(i) any principal of any Loan when such amount is due; provided that no Event of Default under this clause (a) shall result from a Lender declining a payment in writing in accordance with Section 4.05; or

(ii) any interest on any Loan and such default shall continue unremedied for a period of five (5) Business Days after such amount is due; or

(iii) any fee described in Article III or any other monetary Obligation, and such default shall continue unremedied for a period of five (5) Business Days after such amount is due.

(b) Breach of Representation or Warranty. Any representation or warranty made or deemed to be made by any Loan Party in any Loan Document (including any certificate delivered pursuant to Article V or Article VI) is or shall be incorrect in any material respect on or as of the date when made or deemed to have been made (or, in the case of any representation or warranty that is already qualified in the text thereof as to "materiality", "Material Adverse Effect", or similar language, is or shall be incorrect in any respect on or as of the date when made or deemed to have been made).

(c) Non-Performance of Certain Covenants and Obligations. Any Loan Party shall default in the due performance or observance of any of its obligations under Section 8.01(f)-(n), Section 8.02, Section 8.12, Section 8.14, Section 8.16, Section 8.17, Section 8.19, Section 8.22 or Article IX, or any Loan Party shall default in the due performance or observance of its obligations under any covenant applicable to it under the Guaranty and Security Agreement.

(d) Non-Performance of Section 8.01. Any Loan Party shall default in the due performance and observance of Section 8.01(a), (b), (c) or (d), and such default shall continue unremedied for a period of two (2) Business Days; provided that the grace period in this Section 10.01(d) shall be available no more than three (3) times in each fiscal year, and the Borrower and its Subsidiaries shall provide the Administrative Agent with notice of any actual or expected delay of any deliverables subject to Section 8.01(a), (b), (c) or (d) on or prior to the applicable date such deliverables are required to be delivered pursuant to such Section 8.01;

(e) Non-Performance of Other Covenants and Obligations. Any Loan Party shall default in the due performance and observance of any obligation contained in any Loan Document executed by it (other than as specified in Sections 10.01(a) through (c)), and such default shall continue unremedied for a period of thirty (30) Business Days after earlier of (1) receipt by the Borrower of notice from the Administrative Agent of such default and (2) actual knowledge of the Borrower or any other Loan Party of such default.

(f) Suspension, Debarment or Exclusion. (x) Any Loan Party is suspended, debarred, or excluded in accordance with 21 U.S.C. § 335a, 42 U.S.C. § 1320a-7, or similar provision of Law, or (y) any officer or employee of any Loan Party is suspended, debarred, or excluded in accordance with 21 U.S.C. § 335a, 42 U.S.C. § 1320a-7, or similar provision of Law and, solely in the case of this sub-clause (y), such suspension, debarment or exclusion would reasonably be expected to have a Material Adverse Effect.

(g) Default on Other Indebtedness. (i) A Loan Party or Subsidiary thereof shall default in the payment of any amount when due (subject to any applicable grace period), whether by acceleration or otherwise, of any principal or stated amount of, or interest or fees on any Material Indebtedness, or a Loan Party or Subsidiary thereof shall default in the performance or observance of any covenant, obligation or condition with respect any Material Indebtedness and the effect of such default is to accelerate the maturity of such Material Indebtedness or to permit the holder or holders of such Material Indebtedness, or any trustee or agent for such holders, to cause or declare any such Material Indebtedness to become immediately due and payable, or to require any such Material Indebtedness to be or prepaid, redeemed, purchased or defeased, or to require an offer to purchase or defease any such Material Indebtedness to be made, prior to its expressed maturity, or (ii) any Material Indebtedness shall otherwise be required to be prepaid, redeemed, purchased or defeased, or require an offer to purchase or defease such Material Indebtedness to be made, prior to its expressed maturity; provided, that this clause (g) shall not apply to (x) secured Indebtedness permitted under this Loan Agreement that becomes due as a result of the Disposition (including as a result of a casualty or condemnation event) of the property or assets securing such Indebtedness, to the extent such Indebtedness is promptly repaid in full with the proceeds thereof, and (y) guarantees of Indebtedness that are satisfied promptly upon demand; provided further that this clause (g) shall not apply if the relevant circumstance or event has been remedied or waived by the holders of such Material Indebtedness prior to any exercise of remedies pursuant to Section 10.02.

(h) Criminal Conviction. Any Loan Party or Subsidiary thereof is convicted of a federal crime.

(i) Judgments. Any final judgment, order, court approved settlement or other settlement (of any litigation) for the payment of money individually or in the aggregate in excess of $5,000,000 (exclusive of any amounts fully covered (x) by third-party indemnification as to which the indemnitor has been notified of such indemnification obligation and acknowledged its responsibility to cover such judgement, order, court-approved settlement or other settlement or (y) by insurance (less any applicable deductible) and as to which the insurer has acknowledged its responsibility to cover such judgment, order, court-approved settlement or other settlement) shall be rendered against any Loan Party or any Subsidiary of any Loan Party and such judgment, order, court approved settlement or other settlement shall not have been paid, vacated or discharged or effectively stayed or bonded pending appeal within thirty (30) days after the entry thereof or enforcement proceedings shall have been commenced by any creditor upon such judgment, order or court-approved settlement, and such enforcement proceedings have not been effectively stayed, vacated or bonded.

(j) ERISA. Any of the following events shall occur:

(i) one or more ERISA Events that, together with all other such events or conditions, if any, could reasonably be expected to result in the imposition of a liability or obligation on any Loan Party or any ERISA Affiliate in excess of $2,500,000; or

(ii) a contribution failure occurs with respect to any Plan sufficient to give rise to a Lien under Sections 303(k) or 4068 of ERISA or Section 430(k) of the Code.

(k) Bankruptcy, Insolvency, etc. Any Loan Party or any Subsidiary of any Loan Party shall:

(i) become insolvent or generally fail to pay, or admit in writing its inability or unwillingness generally to pay, its debts as they become due;

(ii) apply for, consent to, or acquiesce in the appointment of a trustee, receiver, sequestrator or other custodian for any substantial part of the assets or other property of any such Person, or make a general assignment for the benefit of creditors;

(iii) in the absence of such application, consent or acquiesce to or permit or suffer to exist, the appointment of a trustee, receiver, sequestrator or other custodian for a substantial part of the property of any thereof, and such trustee, receiver, sequestrator or other custodian shall not be discharged within sixty (60) days; provided, that each Loan Party hereby expressly authorizes each Secured Party to appear in any court conducting any relevant proceeding during such 60-day period to preserve, protect and defend such Secured Party's rights under the Loan Documents;

(iv) permit or suffer to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding or action under the Bankruptcy Code or any other bankruptcy or insolvency law or any dissolution, winding up or liquidation proceeding in respect thereof, and, if any such case or proceeding is not commenced by such Person, such case or proceeding shall be consented to or acquiesced to by such Person or shall result in the entry of an order for relief or shall remain undismissed for sixty (60) days; provided, that each Loan Party hereby expressly authorizes each Secured Party to appear in any court conducting any such case or proceeding during such 60-day period to preserve, protect and defend such Secured Party's rights under the Loan Documents; or

(v) take any action authorizing, or in furtherance of, any of the foregoing.

(l) Impairment of Security, etc. Any Loan Document or any Lien with respect to more than $1,000,000 of the Collateral granted under any Loan Document shall, in whole or in part, terminate, cease to be effective or cease to be the legally valid, binding and enforceable obligation of any Loan Party party thereto (other than as the result of the action or inaction of the Administrative Agent), or any Loan Party shall, directly or indirectly, contest, deny or limit in any manner such effectiveness, validity, binding nature or enforceability; or, except as expressly permitted under any Loan Document, any Lien

with respect to more than $1,000,000 of the Collateral securing any Obligation shall, in whole or in part, cease to be a valid and perfected Lien (other than as the result of the action or inaction of the Administrative Agent, the Collateral Agent or the Lenders), or shall become subordinated to any Lien not securing any Obligation, or any Loan Party or any Affiliate of any Loan Party shall assert that any Lien securing any Obligation shall, in whole or in part, ceases to be a valid or perfected Lien.

(m) Change of Control. The occurrence of a Change of Control.

(n) Restraint of Operations; Loss of Assets. If any Loan Party or any Subsidiary of a Loan Party is enjoined, restrained or in any way prevented by court order or other Governmental Authority from continuing to conduct all or any material part of its business affairs, or if any material portion of any Loan Party's or any Loan Party's Subsidiary's assets is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes into the possession of any third Person and the same is not discharged before the earlier of forty-five (45) days after the date it first arises or five (5) days prior to the date on which such property or asset is subject to forfeiture by such Loan Party or the applicable Subsidiary; in each case, which would reasonably be expected to result in a Material Adverse Effect.

(o) Invalidity of Subordination Provisions. The subordination provisions of any agreement or instrument governing any Indebtedness required to be subordinated to the Obligations pursuant to the terms hereof shall for any reason be revoked or invalidated, or otherwise cease to be in full force and effect, or any Loan Party shall contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations, for any reason shall not have the priority contemplated by this Loan Agreement or such subordination provisions.

Section 10.02 Remedies Upon Event of Default.

(a) If any Event of Default under Section 10.01(k) shall occur for any reason, whether voluntary or involuntary, all of the outstanding principal amount of the Loans and other Obligations shall automatically be due and payable together with the Prepayment Premium (payable pursuant to Section 3.02 and Section 4.02(a)(vii)) applicable to the date such Event of Default occurs, and any Commitments shall be terminated, in each case, without further notice, demand or presentment. The parties hereto acknowledge and agree that the Prepayment Premium referred to in this Section 10.02(a) (i) is additional consideration for providing the Loans, (ii) constitutes reasonable liquidated damages to compensate the Lenders for (and is a proportionate quantification of) the actual loss of the anticipated stream of interest payments upon an acceleration of the Loans (such damages being otherwise impossible to ascertain or even estimate for various reasons, including, without limitation, because such damages would depend on, among other things, (x) when the Loans might otherwise be repaid and (y) future changes in interest rates which are not readily ascertainable on the date hereof or the Closing Date), and (iii) is not a penalty to punish the Borrower for its early prepayment of the Loans or for the occurrence of any Event of Default or acceleration.

(b) If any Event of Default (other than any Event of Default under Section 10.01(k)) shall occur for any reason, whether voluntary or involuntary, and be continuing, the Administrative Agent may with the consent of, and shall upon the direction of, the Required Lenders, by notice to the Borrower take any or all of the following actions: (y) declare all or any portion of the outstanding principal amount of the Loans and other Obligations to be due and payable together with the Prepayment Premium (payable pursuant to Section 3.02 and Section 4.02(a)(vii)) applicable to the date such Event of Default occurs, and any commitments shall be terminated, whereupon the full unpaid amount of such Loans, Prepayment Premium and other Obligations that shall be so declared due and payable shall be and become immediately due and payable, in each case, without further notice, demand or presentment and (z) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Laws. The parties hereto acknowledge and agree that the Prepayment Premium referred to in this Section 10.02(b) (i) is additional consideration for providing the Loans, (ii) constitutes reasonable liquidated damages to compensate the Lenders for (and is a proportionate quantification of) the actual loss of the anticipated stream of interest payments upon an acceleration of the Loans (such damages being otherwise impossible to ascertain or even estimate for various reasons, including, without limitation, because such damages would depend on, among other things, (x) when the Loans might otherwise be repaid and (y) future changes in interest rates which are not readily ascertainable on the date hereof or the Closing Date), and (iii) is not a penalty to punish the Borrower for its early prepayment of the Loans or for the occurrence of any Event of Default or acceleration.

(c) Upon the occurrence and during the continuance of an Event of Default, Agents may enter, and is hereby given a right, then exercisable in Agents' discretion, to occupy, any of Borrower's premises or other premises without legal process and without incurring liability to Borrower therefor, and Agents may thereupon, or at any time thereafter, in their discretion without notice or demand, take the Collateral and remove the same to such place (on any premises of the Borrower or any other premises) as Agents may deem advisable and Agents may require Borrower to make the Collateral available to Agents at a convenient place. With or without having the Collateral at the time or place of sale, Agents may sell the Collateral, or any part thereof, at public or private sale, at any time or place, in one or more sales, at such price or prices, and upon such terms, either for cash, credit or future delivery, as Agents may elect. Except as to that part of the Collateral which is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Agents shall give Borrower reasonable notification of such sale or sales, it being agreed that in all events written notice mailed to Borrower at least ten (10) days prior to such sale or sales is reasonable notification. At any public sale Agents or any Lender may bid (and credit bid) for and become the purchaser, and Agents, any Lender or any other purchaser at any such sale thereafter shall hold the Collateral sold absolutely free from any claim or right of whatsoever kind, including any equity of redemption and all such claims, rights and equities are hereby expressly waived and released by the Borrower. In connection with the exercise of the foregoing remedies (and only exercisable upon the occurrence and during the continuance of an Event of Default), including the sale of Inventory, subject to Permitted Liens, the terms of licenses to any Loan Party with respect to IP Rights licensed to such Loan Party, and to the extent such Loan Party is able to grant a license or sublicense in the underlying license, Agents are granted a perpetual (during the continuance of an Event of Default) irrevocable (during the continuance of an Event of Default), non-exclusive license (without any payment of royalties to any Loan Party) and permission to use all of such Loan Party's (x) IP Rights which are used or useful in connection with Inventory for the purpose of marketing, advertising for sale and selling or otherwise disposing of such Inventory, subject, in the case of trademarks and service marks, to the maintenance of standards of quality reasonably comparable to those maintained by such Loan Party as of the date Agents commenced their exercise of such remedies and (y) equipment for the purpose of completing the manufacture of unfinished goods. The cash proceeds realized from the sale of any Collateral shall be applied to the Obligations in the order set forth in Section 4.02(c) hereof. Noncash proceeds will only be applied to the Obligations as they are converted into cash. If any deficiency shall arise, Borrower shall remain liable to Agents and Lenders therefor.

(d) To the extent that applicable law imposes duties on any Agent to exercise remedies in a commercially reasonable manner, Borrower acknowledges and agrees that it is not commercially unreasonable for any Agent (i) to fail to incur expenses reasonably deemed significant by such Agent to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against Customers or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (iv) to exercise collection remedies against Customers and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other Persons, whether or not in the same business as the Borrower, for expressions of interest in acquiring all or any portion of such Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure such Agent against risks of loss, collection or disposition of Collateral or to provide to Agents a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by such Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist such Agent in the collection or disposition of any of the Collateral. Borrower acknowledges that the purpose of this Section 10.02(d) is to provide non-exhaustive indications of what actions or omissions by the Agents would not be commercially unreasonable in the Agents' exercise of remedies against the Collateral and that other actions or omissions by any Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 10.02(d). Without limitation upon the foregoing, nothing contained in this Section 10.02(d) shall be construed to grant any rights to Borrower or to impose any duties on any Agent that would not have been granted or imposed by this Loan Agreement or by Applicable Law in the absence of this Section 10.02(d).

(e) Upon the occurrence and during the continuance of an Event of Default, subject to the prior rights, if any, of holders of Permitted Liens, the Agents shall have the right to take possession of the Collateral and the Collateral in

whatever physical form contained, including: labels, stationery, documents, instruments and advertising materials. If any Agent exercises this right to take possession of the Collateral, Borrower shall, upon demand, assemble it in the best manner reasonably possible and make it available to such Agent at a place reasonably convenient to such Agent. In addition, with respect to all Collateral, the Agents and Lenders shall be entitled to all of the rights and remedies set forth herein and further provided by the Uniform Commercial Code or other applicable law. Upon the occurrence and during the continuance of an Event of Default, Borrower shall at the request of any Agent, and each Agent may, at its option, instruct all suppliers, carriers, forwarders, warehousers or others receiving or holding cash, checks, Inventory, documents or instruments in which such Agent holds a security interest to deliver same to such Agent and/or subject to such Agent's orders and if they shall come into a Borrower's possession, they, and each of them, shall be held by the Borrower in trust as Agents' trustee, and Borrower will immediately deliver them to such Agent in their original form together with any necessary endorsement.

(f) All Prepayment Premium referred to in Sections 10.02(a) and (b) above shall be payable upon an acceleration of any Obligations, whether before, during or after the commencement of any proceeding under the Bankruptcy Code involving the Borrower or any other Loan Party.

(g) The Lenders and the Agents shall have all other rights and remedies available at law or in equity or pursuant to this Loan Agreement or any other Loan Document.

ARTICLE XI

THE AGENTS

Section 11.01 Appointments.

(a) Each Lender and each other Secured Party hereby appoints HAYFIN SERVICES LLP as its Administrative Agent under and for purposes of each Loan Document, and hereby authorizes the Administrative Agent to act on behalf of such Secured Party under each Loan Document and, in the absence of other written instructions from the Lenders pursuant to the terms of the Loan Documents received from time to time by the Administrative Agent, to exercise such powers hereunder and thereunder as are specifically delegated to or required of the Administrative Agent by the terms hereof and thereof, together with such powers as may be incidental thereto.

(b) Each Lender and each other Secured Party hereby appoints HAYFIN SERVICES LLP, a Delaware limited liability company, as its Collateral Agent under and for purposes of each Loan Document, and hereby authorizes the Collateral Agent to act on behalf of such Secured Party under each Loan Document and, in the absence of other written instructions from the Lenders pursuant to the terms of the Loan Documents received from time to time by the Collateral Agent, to exercise such powers hereunder and thereunder as are specifically delegated to or required of the Collateral Agent by the terms hereof and thereof, together with such powers as may be incidental thereto.

(c) Each Lender and each other Secured Party hereby directs the Agents to execute and deliver the Loan Documents (including any intercreditor agreements and subordination agreements contemplated hereby and, in each case, any amendments, supplements and other modifications thereto not prohibited by the terms of the Loan Agreement) on behalf of such Secured Party, in all cases in such form as the applicable Agent shall determine. Upon execution and delivery of the Loan Documents by an Agent, each Secured Party shall be bound by the terms and conditions thereof. Without limiting the foregoing, the Administrative Agent is hereby expressly authorized to execute and deliver any and all such documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the terms and conditions of this Loan Agreement and the other Loan Documents. For purposes of determining compliance with, and satisfaction of, the conditions specified in Article V and Article VI, each Lender that has signed this Loan Agreement (or an Assignment and Acceptance, as applicable) shall be deemed to have consented to, approved, accepted and be satisfied with, each document or other matter required thereunder to be consented to, approved by or otherwise satisfactory or acceptable to such Lender unless the Administrative Agent shall have received written notice from such Lender prior to the Closing Date specifying such Lender's objection thereto.

(d) Each Lender and each other Secured Party hereby irrevocably designates and appoints each Agent as the agent of such Lender. Notwithstanding any provision to the contrary elsewhere in this Loan Agreement, (i) each Agent is acting solely on behalf of the Secured Parties and with duties that are entirely administrative in nature, notwithstanding the use of the terms "Administrative Agent," "Collateral Agent," "Agent," and "agent," which terms are used for title purposes only, and (ii) no Agent shall have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender or other Secured Party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Loan Agreement or any other Loan Document or otherwise exist against any Agent. Anything contained in any of the Loan Documents to the contrary notwithstanding, each Loan Party, the Administrative Agent, the Collateral Agent and each Secured Party hereby agree that (i) no Secured Party (other than the Agents) shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty and Security Agreement or any other Security Documents, it being understood and agreed that all powers, rights and remedies hereunder or thereunder may be exercised solely by the Agents, on behalf of the Secured Parties, in accordance with the terms hereof or thereof (including, without limitation, acting at the direction of the Required Lenders), as applicable, and (ii) in the event of a foreclosure by any of the Agents on any of the Collateral pursuant to a public or private sale or other disposition, any Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and each Agent as agent for and representative of the Secured Parties (but not any Lender or Lenders in its or their respective individual capacities), shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations (including Obligations owed to any other Secured Party) as a credit on account of the purchase price for any Collateral payable by such Agent at such sale or other disposition, the Lenders hereby agreeing that they may not exercise any right to credit bid at any public or private foreclosure sale or other disposition of Collateral unless instructed to do so by the applicable Agent in writing.

Section 11.02 Delegation of Duties. Each Agent may execute any of its duties under this Loan Agreement and the other Loan Documents by or through agents or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. No Agent shall be responsible for the negligence or misconduct of any agents or attorneys in fact selected by it with reasonable care.

Section 11.03 Exculpatory Provisions. Neither an Agent nor any of their respective officers, directors, employees, agents, attorneys in fact or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Loan Agreement or any other Loan Document (including that any Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Bankruptcy Code or any other bankruptcy or insolvency laws or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of the Bankruptcy Code or any other bankruptcy or insolvency law), except to the extent that any of the foregoing are found by a final, non-appealable order of a court of competent jurisdiction to have resulted from its or such Person's (as applicable) own gross negligence or willful misconduct, or (b) responsible in any manner to any of the Lenders or any other Secured Party for any recitals, statements, representations or warranties made or deemed made by or on behalf of any Loan Party or any officer thereof in this Loan Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agents under or in connection with, this Loan Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Loan Agreement or any other Loan Document or for any failure of any Loan Party or other Person to perform its obligations hereunder or thereunder. The Agents shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Loan Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party.

Section 11.04 Reliance by Agents. Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, telex or teletype message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including counsel to the Loan Parties), independent accountants and other experts selected by such Agent. The Agents may deem and treat the payee of any note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Agents. Each Agent shall be fully justified in failing or refusing to take any action under this Loan Agreement or any other Loan Document unless it shall first receive such advice or concurrence of Required Lenders (or, if so specified by this Loan Agreement, all or other requisite Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Agents shall in

all cases be fully protected in acting, or in refraining from acting, under this Loan Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or, if so specified by this Loan Agreement, all Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans and all other Secured Parties.

Section 11.05 Notice of Default. No Administrative Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless the Administrative Agent has received written notice from a Lender or the Borrower referring to this Loan Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default". The Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Collateral Agent has received notice from a Lender or the Borrower referring to this Loan Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default". In the event that an Agent receives such a notice, such Agent shall give notice thereof to the other Agent and the Lenders. Each Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Loan Agreement, all Lenders or any other instructing group of Lenders specified by this Loan Agreement); provided, that unless and until the applicable Agent shall have received such directions, such Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as such Agent shall deem advisable in the best interests of the Secured Parties.

Section 11.06 Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that neither the Agents nor any of their respective officers, directors, employees, agents, attorneys in fact or Affiliates have made any representations or warranties to such Lender and that no act by any Agent hereafter taken, including any review of the affairs of a Loan Party or any Affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by any Agent to any Secured Party. Each Lender represents to the Agents that such Lender has, independently and without reliance upon any Agent or any other Lender or any other Secured Party, and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Affiliates and made its own decision to enter into this Loan Agreement and make its Loans hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent or any other Lender or any other Secured Party, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Loan Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by any Agent hereunder, the Agents shall not have any duty or responsibility to provide any Lender or any other Secured Party with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any Affiliate of a Loan Party that may come into the possession of such Agent or any of its officers, directors, employees, agents, attorneys in fact or Affiliates.

Section 11.07 Indemnification by Lenders. The Lenders agree to indemnify each Agent in its capacity as such (to the extent not reimbursed by the Loan Parties and without limiting the obligation of the Loan Parties to do so), ratably according to their respective Total Credit Exposure in effect on the date on which indemnification is sought under this Section 11.07 (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such Total Credit Exposure immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by, or asserted against, such Agent in any way relating to or arising out of, the Commitments, this Loan Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent under or in connection with any of the foregoing; provided, that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final, non-appealable order of a court of competent jurisdiction to have resulted from such Agent's gross negligence or willful misconduct. The agreements in this Section 11.07 shall survive the payment of the Loans and all other amounts payable hereunder.

Section 11.08 Agents in their Individual Capacities. Each Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with any Loan Party, and any Affiliate of any Loan Party, all as though such Agent were not an Agent. With respect to its Loans made or renewed by it, each Agent shall have the same rights and powers under this Loan Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an

Agent, and the terms "Lender", "Lenders", "Secured Party" and "Secured Parties" shall include each Agent in its individual capacity.

Section 11.09 Successor Agents. Either Agent may resign as Agent upon thirty (30) days' written notice to the Lenders, the other Agent and the Borrower; provided that either Agent may resign as an Agent immediately upon written notice to the Lenders, the other Agent and the Borrower if a Default or Event of Default has occurred and is continuing. If either Agent shall resign as such Agent in its applicable capacity under this Loan Agreement and the other Loan Documents, then Required Lenders shall appoint from among the Lenders a successor agent, which successor agent shall (unless an Event of Default shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld, delayed, conditioned or burdened), whereupon such successor agent shall succeed to the rights, powers and duties of such Agent in its applicable capacity, and the term "Administrative Agent" or "Collateral Agent", as applicable, shall thereafter mean such successor agent effective upon such appointment and approval, and the former Agent's rights, powers and duties as Agent in its applicable capacity shall be terminated, without any other or further act or deed on the part of such former Agent or any of the other parties to this Loan Agreement or any holders of the Loans. If no successor agent has accepted appointment as such Agent in its applicable capacity by the date upon which such retiring Agent's notice of resignation is effective in accordance with the first sentence of this Section 11.09, such retiring Agent's resignation shall nevertheless become effective on the applicable date and the Lenders shall assume and perform all of the duties of such Agent hereunder until such time, if any, as Required Lenders appoint a successor agent as provided for above. After any retiring Agent's resignation as the Administrative Agent or the Collateral Agent, as applicable, the provisions of this Article XI shall inure to its benefit as to any actions taken or omitted to be taken by it while it was an Agent under this Loan Agreement and the other Loan Documents.

Section 11.10 Agents Generally. Except as expressly set forth in this Loan Agreement or any other Loan Document, no Agent shall have any duties or responsibilities hereunder in its capacity as such.

Section 11.11 Restrictions on Actions by Secured Parties; Sharing of Payments.

(a) Each of the Lenders agrees that it shall not, without the express written consent of the Collateral Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of the Collateral Agent, set off against the Obligations, any amounts owing by such Lender to any Loan Party or any of their respective Subsidiaries or any deposit accounts of any Loan Party or any of their respective Subsidiaries now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by the Collateral Agent or the Collateral Agent otherwise consents in writing, take or cause to be taken any action, including the commencement of any legal or equitable proceedings, judicial or otherwise, to enforce any Loan Document or any right or remedy against any Loan Party or to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral. The provisions of this Section 11.11(a) are for the sole benefit of the Secured Parties and shall not afford any right to, or constitute a defense available to, any Loan Party or other Person.

(b) Subject to Section 12.09(b), if at any time or times any Lender receives (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from the Administrative Agent pursuant to the terms of this Loan Agreement, or (ii) payments from the Administrative Agent in excess of such Lender's *pro rata* share of all such distributions by the Agents, then in each such case such Lender promptly shall (A) turn the same over to the Collateral Agent, in kind, and with such endorsements as may be required to negotiate the same to the Collateral Agent, or in immediately available funds, as applicable, for the account of all of the applicable Lenders and for application to the Obligations in accordance with the applicable provisions of this Loan Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other applicable Lenders so that such excess payment received shall be applied ratably as among the applicable Lenders in accordance with their *pro rata* shares; provided, that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

Section 11.12 Agency for Perfection. The Collateral Agent hereby appoints each other Secured Party as its agent and bailee and as sub-agent for the other Secured Parties (and each Secured Party hereby accepts such appointment) for the purpose of perfecting all Liens with respect to the Collateral, including with respect to assets which, in accordance with Article 8 or Article 9, as applicable, of the Uniform Commercial Code of any applicable state can be perfected by possession or control.

Should any Secured Party obtain possession or control of any such Collateral, such Secured Party shall notify the Collateral Agent thereof and, promptly upon the Collateral Agent's request therefor, shall deliver possession or control of such Collateral to the Collateral Agent and take such other actions as agent or sub-agent in accordance with the Collateral Agent's instructions to the extent, and only to the extent, so authorized or directed by the Collateral Agent.

Section 11.13 Credit Bid. Each Loan Party, each Lender and the Collateral Agent each hereby irrevocably authorizes the Administrative Agent or its designee, based upon the written instruction of Required Lenders, to bid and purchase for an amount approved by Required Lenders (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted (i) by any Agent under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC, (ii) under the provisions of the Bankruptcy Code, including Sections 363, 365 and 1129 of the Bankruptcy Code, or (iii) by any Agent (whether by judicial action or otherwise, including a foreclosure sale) in accordance with Applicable Law (any such sale described clauses (i), (ii) or (iii), a "Collateral Sale"), and in connection with any Collateral Sale, the Administrative Agent or its designee may (with the consent of Required Lenders) accept non-cash consideration, including debt and equity securities issued by such acquisition vehicle under the direction or control of any Agent and the Administrative Agent may (with the consent of Required Lenders) offset all or any portion of the Obligations against the purchase price for such Collateral.

Section 11.14 One Lender Sufficient. This Loan Agreement shall be and shall remain in full force and effect, and all agency provisions shall be and shall remain effective, notwithstanding the fact that from time to time (including on the date hereof and on the Closing Date) there may be only one Lender hereunder and the fact that such Lender may be the same Person that is serving as the Administrative Agent or the Collateral Agent hereunder.

ARTICLE XII

MISCELLANEOUS

Section 12.01 Amendments and Waivers.

(a) Neither this Loan Agreement nor any other Loan Document other than the Fee Letter (which may be amended, restated, amended and restated, supplemented or modified in accordance with the terms therein), nor any terms hereof or thereof, may be amended, restated, amended and restated, supplemented or modified except in accordance with the provisions of this Section 12.01.

(b) The Required Lenders may (with a copy to the Administrative Agent), or with the consent of the Required Lenders, the Administrative Agent may, from time to time, (a) enter into with the relevant Loan Party or Loan Parties written amendments, restatements, amendments and restatements, supplements or other modifications hereto and to the other Loan Documents (other than the Fee Letter) and (b) waive, on such terms and conditions as the Required Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of this Loan Agreement or the other Loan Documents (other than the Fee Letter) or any Default or Event of Default and its consequences; provided, however, that no such amendment, supplement, other modification or waiver shall:

(i) without the prior written consent of each Lender directly and adversely affected thereby:

(A) reduce or forgive any portion of any Loan, or extend the final expiration date of any Lender's Commitment, or extend the Maturity Date of any Loan, or reduce the stated interest rate on any Loan; provided that only the consent of the Required Lenders shall be necessary to waive any obligation of the Borrower to pay interest at the "default rate" or amend Section 2.05(d),

(B) reduce or forgive any portion, or extend the date for the payment, of any interest or fee payable hereunder (other than as a result of waiving the applicability of any post-default increase in interest rates and other than as a result of a waiver or amendment of any mandatory prepayment of Loans or any waiver, amendment, supplement or modification of Section 4.02 (which, in each case, shall not constitute an extension, forgiveness or postponement of any date for payment of principal, interest or fees and may be made with the consent of the Required Lenders only)),

(C) [reserved], or

(D) amend, modify or waive any provision of this Section 12.01, or amend or otherwise modify the term "Required Lenders";

(ii) consent to the assignment or transfer by any Loan Party of its rights and obligations under any Loan Document to which it is a party (except as permitted pursuant to Section 9.03), without the prior written consent of each Lender;

(iii) increase the aggregate amount of any Commitment of any Lender without the prior written consent of such Lender;

(iv) amend, modify or waive any provision of Article XI without the prior written consent of then-current Collateral Agent and the Administrative Agent; or

(v) without the prior written consent of each Lender, release all or substantially all of the Guarantors under the Guaranty and Security Agreement (except as expressly permitted by the Guaranty and Security Agreement), or release all or substantially all of the Collateral under the Guaranty and Security Agreement and the Mortgages (except as expressly permitted thereby and by Section 12.20).

(c) Notwithstanding anything in Section 12.01(b) to the contrary, (1) the Administrative Agent and the Loan Parties, without the consent of any Lenders or any other Loan Parties, may amend, modify or supplement this Loan Agreement or any other Loan Document (i) solely to correct mistakes or typographical errors or cure ambiguities, inconsistencies or omissions herein or therein, so long as (x) such amendment, modification or supplement does not materially

and adversely affect the rights of any Lender or (y) the Lenders shall have received at least five (5) Business Days' prior written notice thereof and the Administrative Agent shall not have received, within five (5) Business Days following the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment, modification or supplement and (ii) to effect the granting, perfection, protection, expansion or enhancement of any security interest of the Secured Parties in any Collateral or additional property to become Collateral for the benefit of the Secured Parties or as required by local law to give effect to or protect any such security interests in any property or so that the security interests therein comply with the Loan Documents or Applicable Law or in each case otherwise enhance the rights or benefits of any Agent or any Lender under any Loan Document and (2) solely with the consent of the Hayfin Lenders (or, if there are no Hayfin Lenders at such time, the Administrative Agent) and the Borrower (but without the consent of the Required Lenders or any other Lender) any agreement may waive, amend or modify Section 2.08(b)(vi) or (c)(v) or any of the component definitions used therein.

Section 12.02 Notices and Other Communications.

(a) Subject to Section 12.02(c) below, all notices and other communications provided for in, or otherwise given under or in connection with, this Loan Agreement or any other Loan Document, shall be in writing and shall be delivered either by hand, by overnight courier service, by certified or registered mail, by telefacsimile or by email (in portable document format ("pdf") or tagged image file format ("TIFF")) as follows:

(i) if to any Loan Party, to it at:

MIMEDX GROUP, INC.
1775 West Oak Commons Ct. NE
Marietta, GA 30062
Attention: Peter M Carlson
Email: pcarlson@mimedx.com

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

Sidley Austin LLP
787 Seventh Avenue
New York, NY 10019
Attention: Ram Burshtine
Facsimile No.: (212) 839-5599
Email: rburshtine@sidley.com

(ii) if the Administrative Agent or the Collateral Agent, to it at:

HAYFIN SERVICES LLP

One Eagle Place, London, SW1Y 6AF
United Kingdom
Attention: Loanops / Legal, Andrew Merrill & Barrett Polan
Telephone: +44 0207 074 2900
Facsimile: +44 0207 692 4641
Email: gc@hayfin.com, loanops@hayfin.com, Andrew.Merrill@hayfin.com, & Barrett.Polan@hayfin.com

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

Weil, Gotshal & Manges LLP

767 Fifth Avenue

New York, NY 10153

Attention: Damian Ridealgh

Facsimile No.: (212) 310-8007

Email: Damian.ridealgh@weil.com

(iii) if to any Lender, to it at its address, facsimile number or email address set forth either on the signature pages hereto or its Assignment and Acceptance or in its Administrative Questionnaire, as applicable.

(b) Any party hereto may change its address, facsimile number or email address for notices and other communications hereunder by notice delivered to all of the other parties hereto in accordance with Section 12.02(a) above; provided, that, for purposes of delivery to the Lenders, or from any Lender, such notice may be provided to the Administrative Agent for distribution to the other applicable parties.

(c) All notices and other communications given to any party hereto in accordance with the provisions of this Loan Agreement shall be deemed to have been given (i) in the case of notices and other communications delivered by hand or overnight courier service, upon

actual receipt thereof, (ii) in the case of notices and other communications delivered by certified or registered mail, upon the earlier of actual delivery and the third Business Day after the date deposited in the U.S. mail with postage prepaid and properly addressed, (iii) in the case of notices and other communications delivered by telefacsimile, upon receipt by the sender of an acknowledgment or transmission report generated by the machine from which the telefacsimile was sent indicating that the telefacsimile was sent in its entirety to the recipient's telefacsimile number and (iv) in the case of notices and other communications delivered by email, upon receipt by the sender of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, a return email or other written acknowledgement); provided, however, that in each case, if a notice or other communication would be deemed to have been given in accordance with the foregoing at any time other than during the recipient's normal business hours on a Business Day for such recipient, such notice or other communication shall be deemed given on the next succeeding Business Day for such recipient.

(d) Each Loan Party and each Secured Party acknowledges and agrees that the use of electronic transmission in general, and email in particular, is not necessarily secure and that there are risks associated with the use thereof, including risks of interception, disclosure and abuse, and each indicates it assumes and accepts such risks by hereby authorizing the use of electronic transmission.

(e) The Agents and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of any Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof.

(f) Each Loan Party acknowledges, understands and agrees that: (a) some or all of the Lenders from time to time borrow funds from one or more lenders pursuant to loan agreements with notice provisions that are strictly enforced by such lenders; (b) the provisions in this Loan Agreement and the other Loan Documents requiring delivery of notices and governing delivery of such notices (i) are of the essence of this Loan Agreement and such other Loan Documents, and without such provisions the Lenders would not enter into this Loan Agreement, (ii) require technical compliance in all respects, not just notice in fact, whether or not there is any prejudice to a Lender or any other Person, and (iii) will not be waived, amended or adjusted in any way in the absence of reasons deemed compelling by the Lenders in their sole and absolute discretion (compelling reasons shall not include the desire of a Loan Party to save money), which discretion shall be subject to no standard of reasonableness or review and shall be evidenced only by a formal written instrument (and not by an email or series of emails); and (c) no Loan Party will request any such waiver, amendment or adjustment, and each Loan Party shall instead strictly comply with

every technical requirement of the notice provisions in this Loan Agreement and the other Loan Documents without complaint.

Section 12.03 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of any Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Section 12.04 Survival of Representations and Warranties. All representations and warranties made hereunder and in the other Loan Documents shall survive the execution and delivery of this Loan Agreement and the making of the Loans hereunder.

Section 12.05 Payment of Expenses and Taxes; Indemnification. The Borrower and each other Loan Party agrees: (a) to pay or reimburse each Agent and each Lender for all their reasonable and documented out-of-pocket costs, fees and expenses incurred in connection with the development, negotiation, preparation, execution, delivery and administration of, and any amendment, supplement, or other modification to, and any waiver of any provision of, and any consent under, this Loan Agreement and the other Loan Documents and any other documents prepared in connection herewith or therewith, and the consummation and administration of the transactions contemplated hereby and thereby, including without limitation such costs, fees and expenses related to due diligence, appraisal costs, lien searches and filing fees and such costs, fees and expenses in relation to any payoff letter or other termination agreement and associated lien releases, and including the reasonable fees, disbursements and other charges of one primary external counsel to the Agents and the Lenders taken as a whole, including reasonably necessary special counsel and local counsel in each applicable jurisdiction, and external tax professionals, accounting professionals, and other consultants and advisors, in all cases whether or not the Closing Date occurs and whether or not the transactions contemplated hereby are consummated; (b) to pay or reimburse each Agent and each Lender for all of their documented out-of-pocket costs, fees and expenses incurred thereby and by their Affiliates in connection with the enforcement or preservation of any rights under this Loan Agreement, the other Loan Documents and any other documents prepared in connection herewith or therewith, in connection with any workout, restructuring or negotiations in respect thereof, in connection with any action to protect, collect, sell, liquidate or dispose of any Collateral, and in connection with any litigation, arbitration or other contest, dispute, suit, or proceeding relating to any of the foregoing, including in each case the fees, disbursements and other charges of one external counsel to the Agents and the Lenders taken as a whole (and, if reasonably necessary, (x) one local counsel in each relevant jurisdiction and (y) any special counsel), external tax professionals, accounting professionals, and other consultants and advisors of the Agents and the Lenders taken as a whole; (c) to pay, indemnify, and hold harmless each Agent and each Lender from any and all Other Taxes, if any, that may be payable or determined to be payable in connection with the execution and delivery of, or consummation or administration of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Loan Agreement, the other Loan Documents and any such other documents; (d) to pay or reimburse each Agent and each Lender for all reasonable fees, costs and expenses incurred in exercising their rights under Section 8.02 and Section 8.16 and to pay and reimburse each Lender for all reasonable fees and expenses incurred in exercising its rights under Section 8.17; and (e) to pay, indemnify and hold harmless each Agent, each Lender, each other Secured Party, and the respective Related Parties of each of them, from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, and reasonable and documented out-of-pocket costs, expenses and disbursements of any kind or nature whatsoever, including reasonable and documented fees, disbursements and other charges of one primary external counsel, with respect to the negotiation, execution, delivery, enforcement, performance and administration of this Loan Agreement, the other Loan Documents and any such other documents, including any of the foregoing relating to any Environmental Claim that relates to any Loan Party or any property owned or leased by any Loan Party, the violation of, noncompliance with or liability under, any Environmental Law by any Loan Party or any property owned or leased by any Loan Party or any actual or alleged presence of Hazardous Materials on any property owned or leased by any Loan Party or resulting from any Loan Party in connection with the operations of any Loan Party, Subsidiary of any Loan Party or any of their Real Property (all the foregoing in this clause (e), collectively, the "Indemnified Liabilities"); provided, however, that the Loan Parties shall have no obligation under this clause (e) to either Agent, any Lender, any other Secured Party, or any Related Party of any of them, for Indemnified Liabilities arising from (A) gross negligence or willful misconduct of the party to be indemnified, as determined by a final, non-appealable order of a court of competent jurisdiction or (B) any claim resulting from one party to be indemnified against any other party to be indemnified and that does not involve an act or omission of Borrower, any Guarantor or any of their respective Subsidiaries or Affiliates or (C) a material breach of any obligations under any Loan Document by such indemnified party, as determined by a final, non-appealable order of a court of competent jurisdiction. The agreements in this Section 12.05 shall survive repayment of the Loans and all other amounts payable hereunder and the termination of this Loan Agreement. To the fullest extent permitted by Applicable Law, no Loan Party shall assert, and each Loan

Party hereby waives, any claim against any Agent, any Lender, any other Secured Party, and the Related Parties of each of them, on any theory of liability, for any general or consequential damages, or direct or indirect damages, in each case of any kind, and in each case whether special, reliance, punitive, compensatory, benefit of the bargain, "cover", expectancy, exemplary, incidental, "lost profits", or similar or other damages (including, but not limited to, damages resulting from loss of profits, revenue or business opportunity, business impact or anticipated savings) or multiples of damages, other than direct, foreseeable, actual out-of-pocket damages, arising out of, in connection with, or as a result of, this Loan Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Lender, no Agent, no other Secured Party, and no Related Party of any of them shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Loan Agreement or the other Loan Documents or the transactions contemplated hereby or thereby, in the absence of the willful misconduct or gross negligence of such Person as determined by a final, non-appealable order of a court of competent jurisdiction.

Section 12.06 Successors and Assigns; Participations and Assignments.

(a) This Loan Agreement shall inure to the benefit of the respective successors and permitted assigns of the parties hereto and of the Related Parties and other indemnified Persons hereunder and their respective successors and permitted assigns, and the obligations and liabilities assumed in this Loan Agreement by the parties hereto shall be binding upon their respective successors and permitted assignees, except that (i) except as permitted under Section 9.03, no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender, and any attempted assignment or transfer by any Loan Party without such consent shall be null and void, and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 12.06, and any attempted assignment or transfer by any Lender not in accordance with this Section 12.06 shall be null and void. Nothing in this Loan Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section 12.06) and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents, the Lenders and the other Secured Parties) any legal or equitable right, remedy or claim under or by reason of this Loan Agreement. Notwithstanding anything to the contrary herein, (a) any Lender shall be permitted to pledge or grant a security interest in all or any portion of such Lender's rights hereunder including, but not limited to, any Loans (without the consent of, or notice to or any other action by, any other party hereto) to secure the obligations of such Lender or any of its Affiliates to any Person providing any loan, letter of credit or other extension of credit to or for the account of such Lender or any of its Affiliates and (b) the Agents shall be permitted to pledge or grant a security interest in all or any portion of their respective rights hereunder or under the other Loan Documents, including, but not limited to, rights to payment (without the consent of, or notice to or any other action by, any other party hereto), to secure the obligations of such Agent or any of its Affiliates to any Person providing any loan, letter of credit or other extension of credit to or for the account of such Agent or any of its Affiliates.

(b) (i) Subject to the conditions set forth in Section 12.06(b)(ii) below, any Lender may assign to one or more assignees (other than to any natural person, any Loan Party or to any Affiliate of any Loan Party, or any Person that is a Disqualified Institution) all or a portion of its rights and obligations under this Loan Agreement (including all or a portion of its Commitments and the Loans at the time owing to it) with the prior written consent of:

(A) the Borrower, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that (1) no consent of the Borrower shall be required for an assignment to a Lender, to an Affiliate of a Lender, to an Approved Fund or, if a Default or Event of Default has occurred and is continuing, to any other assignee and (2) the Borrower shall be deemed to have consented to any such assignment (and shall not be a party to or be required to sign any Assignment and Acceptance related thereto) unless it objects thereto by written notice delivered to the Administrative Agent within ten (10) Business Days after having received notice thereof; and

(B) the Administrative Agent, which consent shall not be unreasonably withheld, conditioned, delayed or burdened; provided, that no consent of the Administrative Agent shall be required for an assignment to a Lender, to an Affiliate of a Lender, or to an Approved Fund.

(ii) Assignments by Lenders shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, or an assignment of the entire remaining amount of the assigning Lender's Commitments or Loans, the amount of the (i) Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is recorded in the Register by the Administrative Agent) shall not be less than $500,000, unless each of the Borrower and the Administrative Agent otherwise consent, which consent, in each case, shall not be unreasonably withheld, delayed, conditioned or burdened; provided, however, that no such consent of the Borrower shall be required if a Default or Event of Default has occurred and is continuing; and provided, further, that contemporaneous assignments to a single assignee made by affiliated Lenders or related Approved Funds, and contemporaneous assignments by a single assignor to affiliated Lenders or related Approved Funds, shall in each case be aggregated for purposes of meeting the minimum assignment amount requirements stated above;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Loan Agreement as to the Loans or Commitments so assigned; provided, that this paragraph shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect its Commitments or Loans;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of $3,500, a completed Administrative Questionnaire and all required "know your customer" documentation, documentation and information related to anti-money laundering rules and regulations, including the USA Patriot Act, the Beneficial Ownership Regulation and Anti-Terrorism Laws, including an IRS Form W-9 and all applicable tax forms; provided, that only one such fee shall be payable in connection with simultaneous assignments to two or more Approved Funds;

(D) no assignments may be made to any natural person, any Loan Party, any Subsidiary of any Loan Party, or any Affiliate of any of the foregoing Persons, and any such assignment shall be null and void *ab initio*; and

(E) absent the written consent of the Borrower (which consent may be given or withheld at the Borrower's sole discretion), no assignment or participation may be made to any Person that was a Disqualified Institution as of the applicable Trade Date (and any such attempted assignment or participation without the Borrower's consent shall be null and void). With respect to any assignee that becomes a Disqualified Institution after the Trade Date applicable to its assignment, (i) such assignee shall not retroactively be disqualified from having become a Lender pursuant to such assignment and (ii) such assignee will become a Disqualified Institution in accordance with the definition thereof notwithstanding the consummation of such assignment and the execution by the Borrower of an Assignment and Acceptance with respect to such assignee. Notwithstanding the foregoing, any assignment to an assignee that is a Disqualified Institution shall not be void, but the provisions of Section 12.06(e) shall apply

(iii) Subject to acceptance and recording thereof pursuant to Section 12.06(b)(v), from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Loan Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Loan Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Loan Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.06, 2.07, 4.04 and 12.05 to the extent of any amounts owed to such Lender under any of such provisions). Any assignment or transfer by a Lender of rights or obligations under this Loan Agreement that does not comply with this Section 12.06 shall be treated for purposes

of this Loan Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 12.06(c).

(iv) The Administrative Agent, acting solely as an agent of the Borrower for tax purposes and solely with respect the actions described in this Section 12.06(b)(iv), shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The Borrower hereby agrees that the Administrative Agent and its Related Parties shall be indemnified in accordance with this Loan Agreement in connection with servicing in such capacity. The Register shall contain the name and address of each Lender and the lending office through which each Lender acts under this Loan Agreement. The entries in the Register shall be conclusive absent manifest error, and the Loan Parties, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Loan Agreement, notwithstanding notice to the contrary. The Register, as in effect at the close of business on the preceding Business Day, shall be available for inspection by the Borrower and any Lender at any reasonable time and from time to time on any Business Day upon reasonable prior written notice; provided, that no Lender shall, in such capacity, have access to or be otherwise permitted to review any information in the Register other than information with respect to such Lender unless otherwise agreed by the Administrative Agent in its sole discretion. This Section 12.06(b)(iv) shall be construed such that the Loans are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code.

(v) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee (other than any natural person, any Loan Party, any Affiliate of any Loan Party or any Person that on such date of receipt is a Disqualified Institution), any written consent to such assignment required by Section 12.06(b)(i), receipt by the Administrative Agent of the processing and recordation fee of $3,500, all requested "know your customer" documents, to the extent requested by the Administrative Agent a duly completed Administrative Questionnaire and all other information and documents requested by the Administrative Agent in accordance with Section 12.06(b)(ii)(C), the Administrative Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment shall be effective for purposes of this Loan Agreement unless and until it has been recorded in the Register as provided in this paragraph.

(vi) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable *pro rata* share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent and each Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full *pro rata* share of all Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Loan Agreement until such compliance occurs.

(vii) The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution.

(c) (i) Any Lender may, without the consent of the Borrower or the Agents, sell participations to one or more banks or other entities other than to any natural person, any Loan Party or to any Affiliate of any Loan Party, or any Person

that is a Disqualified Institution) (each, a "Participant") in all or a portion of such Lender's rights and obligations under this Loan Agreement (including all or a portion of its Commitments and the Loans owing to it); provided, that (A) such Lender's obligations under this Loan Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (C) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Loan Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Loan Agreement and to approve any amendment, modification or waiver of any provision of this Loan Agreement or any other Loan Document; provided, that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in Sections 12.01(b)(i), 12.01(b)(ii), 12.01(b)(iii) or 12.01(b)(iv). Subject to Section 12.06(c)(ii), the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.06, 2.07 and 4.04 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 12.06(b). To the extent permitted by Applicable Law, each Participant also shall be entitled to the benefits of Section 12.09(b) as if it were a Lender; provided, that such Participant agrees to be subject to Section 12.09(a) as if it were a Lender.

(i) A Participant shall not be entitled to receive any greater payment under Sections 2.06, 2.07 or 4.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. The Borrower agrees that each Participant shall be entitled to the benefits of Section 4.04 so long as the documentation required by Section 4.04(f) is delivered by the participant to the participating Lender.

(ii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain at one of its offices in the United States a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in such Lender's Loans or other obligations under the Loan Documents (the "Participant Register"). The entries in each Participant Register shall be conclusive absent manifest error, and the applicable Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Loan Agreement notwithstanding any notice to the contrary. No Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The Administrative Agent shall have no responsibility for maintaining any Participant Register, and any notices or other documents required to be delivered by the Loan Parties shall be deemed to be delivered to a Participant upon actual delivery to the Lender that sold the participation to such Participant.

(iii) With respect to any participant that becomes a Disqualified Institution after the Trade Date applicable to its participation, such participant shall not retroactively be disqualified from having become a participant pursuant to the applicable participation agreement. Notwithstanding the foregoing, any participation to a participant that becomes an Disqualified Institution shall be subject to the provisions of Section 12.06(e) below

(d) Nothing herein is intended to prevent, impair, limit or otherwise restrict the ability of a Lender to collaterally assign or pledge all or any portion of its interests in the Loans and the other rights and benefits under the Loan Documents to an unaffiliated third party lender of such Lender (each such Person, a "Collateral Assignee"); provided that unless and until the Borrower receives notification from a Collateral Assignee of such assignment directing payments to be made to such Collateral Assignee, any payment made by the Borrower for the benefit of such Lender in accordance with the terms of the Loan Documents shall satisfy the Borrower's obligations thereunder to the extent of such payment. Any such Collateral Assignee, upon foreclosure of its security interests in the Loans pursuant to the terms of such assignment and in accordance with Applicable Law, shall succeed to all the interests of or shall be deemed to be a Lender, with all the rights and benefits afforded thereby, and such transfer shall not be deemed to be a transfer for purposes of and otherwise subject to the provisions of this Section 12.06. Notwithstanding the foregoing, each Lender shall remain responsible for all obligations and liabilities arising hereunder or under any other Loan Document, and, except as otherwise expressly set forth in any applicable pledge or

assignment, nothing herein is intended or shall be construed to impose any obligations upon or constitute an assumption by a Collateral Assignee thereof.

(e) If any assignment is made to any Disqualified Institution without the Borrower's prior consent, or if any Lender becomes a Disqualified Institution after the Trade Date of the applicable assignment to such Lender, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) terminate the Commitment of such Disqualified Institution and repay all obligations of the Borrower owing to such Disqualified Institution in connection with such Commitment and/or (B) require such Disqualified Institution to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in this Section 12.06), all of its interest, rights and obligations under this Loan Agreement and the other Loan Documents to a Person (other than to any natural person, any Loan Party or to any Affiliate of any Loan Party, or any Person that is a Disqualified Institution) that shall assume such obligations at a purchase price equal to the principal amount thereof plus accrued interest, accrued fees and all other amounts payable to such Disqualified Institution hereunder and under the other Loan Documents; provided that (i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 12.06(b)(ii)(C) above and (ii) such assignment does not conflict with applicable laws.

(f) Notwithstanding anything to the contrary contained in this Loan Agreement, (i) Disqualified Institutions that are either Lenders or participants of Lenders will not (A) have any inspection rights or the right to receive information, reports or other materials provided to Lenders by the Borrower, the other Loan Parties, the Administrative Agent or any other Lender, (B) attend or participate in meetings attended by the Lenders and the Administrative Agent or (C) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (ii)(A) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Loan Agreement or any other Loan Document, each Disqualified Institution (whether a direct Lender or a participant) will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Institutions consented to such matter, and (B) for purposes of voting on any plan of reorganization or plan of liquidation pursuant to Bankruptcy Code or any other debtor relief laws ("Plan of Reorganization"), each Disqualified Institution (whether a direct Lender or a participant) hereby agrees (1) not to vote on such Plan of Reorganization, (2) if such Disqualified Institution does vote on such Plan of Reorganization notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be "designated" pursuant to Section 1126(e) of the Bankruptcy Code, and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Plan of Reorganization in accordance with Section 1126(c) of the Bankruptcy Code and (3) not to contest any request by any party for a determination by the Bankruptcy Court effectuating the foregoing clause (2).

Section 12.07 Mitigation Obligations and Replacements of Lenders under Certain Circumstances.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 2.06, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 4.04 then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.06 or 4.04, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) The Administrative Agent, at the Borrower's sole cost and expense, shall be permitted to replace any Lender or any Participant that (i) requests reimbursement for amounts owing pursuant to Section 2.06, Section 4.04 or Section 12.07(a) if such Lender has declined or is unable to designate a different lending office in accordance with Section 12.07(a), (ii) is affected in the manner described in Section 2.06(a)(iii) and as a result thereof any of the actions described in such Section 2.06(a)(iii) is required to be taken or (iii) is a Defaulting Lender; provided, that (A) such replacement does not conflict with any Applicable Law, (B) no Event of Default shall have occurred and be continuing at the time of such replacement, (C) all Loans and other amounts (including any applicable Prepayment Premium and fees, but excluding any disputed amounts) owing to such replaced Lender pursuant to this Loan Agreement shall be paid or purchased at par, (D) the replacement bank or institution (if not

already a Lender), and the terms and conditions of such replacement, shall be reasonably satisfactory to the Administrative Agent, and the withholding of consent by the Administrative Agent to any Loan Party, any Subsidiary of any Loan Party or any Affiliate of any Loan Party becoming a replacement Lender shall be deemed to be reasonable and not unreasonable, (E) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 12.06 (except that such replaced Lender shall not be obligated to pay any processing and recordation fee required pursuant thereto), (F) any such replacement shall not be deemed to be a waiver of any rights that the Borrower, any Agent or any other Lender shall have against the replaced Lender, and (G) in the case of any such assignment resulting from a claim for compensation under Section 2.06 or payments required to be made pursuant to Section 4.04, such assignment will result in a reduction in such compensation or payments thereafter. A Lender shall not be required to make any such assignment or delegation if prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

(c) If any Lender (a "Non-Consenting Lender") has failed to consent to a proposed amendment, waiver, discharge or termination, which pursuant to the terms of Section 12.01 requires the consent of all Lenders or all of the Lenders affected thereby and with respect to which the Required Lenders shall have granted their consent, then, provided that no Event of Default then exists, the Borrower shall have the right (unless such Non-Consenting Lender grants such consent), at their own cost and expense, to replace such Non-Consenting Lender by requiring such Non-Consenting Lender to assign its Loans and Commitments to one or more assignees reasonably acceptable to the Administrative Agent, provided, that: (i) all Obligations of the Borrower owing to such Non-Consenting Lender being replaced shall be paid in full to such Non-Consenting Lender concurrently with such assignment, including any Prepayment Premium, and (ii) the replacement Lender shall purchase the foregoing by paying to such Non-Consenting Lender a price equal to the principal amount thereof plus accrued and unpaid interest thereon. In connection with any such assignment, the Borrower, the Agents, such Non-Consenting Lender and the replacement Lender shall otherwise comply with Section 12.06 (except that such Non-Consenting Lender shall not be obligated to pay any processing and recordation fee required pursuant thereto).

Section 12.08 [Reserved].

Section 12.09 Adjustments; Set-Off.

(a) If any Lender at any time receives any payment of all or part of its Loans, interest thereon or Prepayment Premium in respect thereof, or receives any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 10.01(k), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of such other Lender's Loans, interest thereon or Prepayment Premium in respect thereof, such recipient Lender shall purchase for cash from the other Lenders a participating interest in such portion of each such other Lender's Loans, or shall provide such other Lenders with the benefits of any such collateral, or the proceeds thereof, as shall be necessary to cause such recipient Lender to share the excess payment or benefits of such collateral or proceeds ratably with each of the other Lenders; provided, however, that if all or any portion of such excess payment or benefits is thereafter recovered from such recipient Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest. The foregoing provisions of this Section 12.09 shall not apply to payments made and applied in accordance with the terms of this Loan Agreement and the other Loan Documents.

(b) Upon the occurrence and during the continuance of an Event of Default, to the extent consented to by the Administrative Agent, in addition to any rights and remedies of the Lenders provided by law, each Lender shall have the right, without prior notice to the Borrower or any other Loan Party, any such notice being expressly waived by the Loan Parties to the extent permitted by Applicable Law, upon any amount becoming due and payable by the Borrower hereunder (whether at the stated maturity, by acceleration or otherwise), to set-off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final, but excluding any Excluded Deposit Accounts), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or agency thereof to or for the credit or the account of the Borrower, as the case may be. Each Lender agrees promptly to notify the Borrower and the Agents after any such set-off and application made by such Lender; provided, that the failure to give such notice shall not affect the validity of such set-off and application.

Section 12.10 Effectiveness of Facsimile Documents and Signatures. Loan Documents may be transmitted and signed and delivered by facsimile or other electronic means. The effectiveness of any such documents and signatures shall have the same force and effect as manually signed originals and shall be binding on all Loan Parties, the Agents and the Lenders.

Section 12.11 Counterparts. Any number of counterparts of this Loan Agreement and the other Loan Documents, including facsimiles and other electronic copies (including .pdf), may be executed by the parties hereto. Each such counterpart shall be, and shall be deemed to be, an original instrument, but all such counterparts taken together shall constitute one and the same agreement.

Section 12.12 Severability. All provisions of this Loan Agreement are severable, and the unenforceability or invalidity of any of the provisions of this Loan Agreement shall not affect the validity or enforceability of the remaining provisions of this Loan Agreement. Should any part of this Loan Agreement be held invalid or unenforceable in any jurisdiction, the invalid or unenforceable portion or portions shall be removed (and no more) only in that jurisdiction, and the remainder shall be enforced as fully as possible (removing the minimum amount possible) in that jurisdiction. In lieu of such invalid or unenforceable provision, the parties hereto will negotiate in good faith to add as a part of this Loan Agreement a legal, valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

Section 12.13 Integration. This Loan Agreement and the other Loan Documents contain the entire agreement of the parties with respect to the subject matter hereof and thereof and supersede all prior negotiations, agreements and understandings with respect thereto, both written and oral. This Loan Agreement may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten or oral agreements between the parties. By executing and delivering this Loan Agreement, each Loan Party hereby fully and irrevocably releases and agrees not to assert in any manner any and all claims which such Loan Party may have at law or in equity in relation to all prior written and oral discussions and understandings relating to this Loan Agreement, the other Loan Documents, the subject matter hereof and thereof, and the Transactions. When this Loan Agreement or any other Loan Document refers to a party's "sole discretion", such phrase means that party's sole and absolute discretion as to process and result, which shall be final for all purposes hereunder, to be exercised

(to the fullest extent the law permits) for any reason, subject to no standard of reasonableness or review and part of no claim before any court, arbitrator or other tribunal or forum or otherwise.

Section 12.14 GOVERNING LAW. THIS LOAN AGREEMENT, THE OTHER LOAN DOCUMENTS (EXCEPT AS MAY OTHERWISE BE PROVIDED THEREIN), AND THE VALIDITY, INTERPRETATION, CONSTRUCTION, AND PERFORMANCE HEREOF AND THEREOF SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND ANY CLAIM BY ANY PARTY HERETO AGAINST ANY OTHER PARTY HERETO (INCLUDING ANY CLAIMS SOUNDING IN CONTRACT OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) SHALL BE DETERMINED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK FOR CONTRACTS MADE AND TO BE PERFORMED WHOLLY WITHIN THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS REQUIRING APPLICATION OF THE LAW OF ANY OTHER JURISDICTION.

Section 12.15 Waiver of Certain Rights. Each Loan Party irrevocably and unconditionally waives, to the maximum extent not prohibited by Applicable Law, all rights of rescission, setoff, counterclaims, and other defenses in connection with the repayment of the Obligations.

Section 12.16 Acknowledgments. Each Loan Party hereby acknowledges that:

(a) it has been advised by counsel of its choice in the negotiation, execution and delivery of this Loan Agreement and the other Loan Documents, such counsel has reviewed this Loan Agreement and the other Loan Documents, this Loan Agreement and the other Loan Documents (including, without limitation, Section 12.14, Section 12.15 and Article XIII hereof) are the result of such advice and review, and neither this Loan Agreement nor any other Loan Document shall be construed against an Agent or any Lender merely because of such Agent's or such Lender's involvement in the preparation of any such document;

(b) neither any Agent nor any Lender has any fiduciary relationship with or duty to any Loan Party arising out of or in connection with this Loan Agreement or any of the other Loan Documents, and the relationship between any Agent and any Lender, on one hand, and each Loan Party, on the other hand, in connection herewith or therewith is solely that of debtor and creditor;

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Agents and the Lenders or among the Loan Parties and the Agents and the Lenders; and

(d) this Loan Agreement does not give rise now or in the future to an agency or partnership relationship between any Loan Party on the one hand and any Agent, any Lender or any of their respective Affiliates on the other hand.

Section 12.17 [Reserved].

Section 12.18 Confidentiality. Each Agent and each Lender shall hold all non-public information relating to any Loan Party or any Subsidiary of any Loan Party obtained pursuant to the requirements of this Loan Agreement ("Confidential Information") confidential in accordance with its customary procedure for handling confidential information of this nature and, in the case of a Lender that is a bank, in accordance with safe and sound banking practices; provided, however, that in any event any Agent or Lender may disclose Confidential Information:

(a) as such Person reasonably believes is required by Law (including, without limitation, SEC rules and regulations) (in which case, such Person agrees to inform the Borrower promptly thereof prior to such disclosure, unless such Person is prohibited by Applicable Law from so informing the Borrower, or except in connection with any request as part of any audit or regulatory examination);

(b) pursuant to legal process or as is otherwise required or requested by any court, securities exchange, or any other judicial, governmental, supervisory or regulatory board or agency, or representative thereof (including, without

limitation, the SEC) (in which case, such Person agrees to inform the Borrower promptly thereof prior to such disclosure, unless such Person is prohibited by Applicable Law from so informing the Borrower, or except in connection with any request as part of any audit or regulatory examination);

(c) in connection with, and following, the enforcement of any rights or exercise of any remedies by any Agent or Lender under this Loan Agreement or any other Loan Document, or any action or proceeding relating to this Loan Agreement or any other Loan Document;

(d) to the extent necessary or customary for inclusion in league table measurements;

(e) to such Agent's or Lender's Affiliates, and to such Agent's, Lender's and Affiliates' directors, officers, employees, agents, attorneys, consultants, accountants and other professional advisors, auditors, and financing sources, in each case, on a "need to know" basis solely in connection with the Transactions (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential) and the Administrative Agent, the Collateral Agent and the Lenders shall be responsible for the compliance with this paragraph by its Related Parties; and

(f) in connection with:

(i) the establishment of any special purpose funding vehicle with respect to the Loans,

(ii) any prospective assignment of, or participation in, its rights and obligations pursuant to Section 12.06, to prospective assignees or Participants, as applicable, provided that such prospective assignees or Participants agree to treat such information as confidential substantially in accordance with the terms of this Section 12.18 as if such prospective assignees or Participants were Agents or Lenders hereunder; and

(iii) any actual or proposed credit facility for loans, letters of credit or other extensions of credit to or for the account of such Agent or Lender or any of its Affiliates, to any Person providing or proposing to provide such loan, letter of credit or other extension of credit or any agent, trustee or representative of such Person;

(g) to any rating agency; and

(h) to any other Person with the consent of the Borrower.

Notwithstanding the foregoing, (A) each of the Agents, the Lenders and any Affiliate thereof is hereby expressly permitted by the Loan Parties to refer to any Loan Party and any of their respective Subsidiaries in connection with any promotion or marketing undertaken by such Agent, Lender or Affiliate and, for such purpose, with Borrower's consent in connection with any public marketing, such Agent, Lender or Affiliate may utilize any trade name, trademark, logo or other distinctive symbol associated with such Loan Party or such Subsidiary or any of their businesses in a reasonably customary manner and (B) no Agent or Lender shall have any obligation to keep information confidential if such information: (i) is or becomes public or known to participants in the Borrower's industry from a source other than an Agent, a Lender or an Agent's or a Lender's directors, officers, employees, agents, attorneys, accountants or other professional advisors or auditors; (ii) is, was or becomes known on a non-confidential basis to or discovered by an Agent, Lenders or any of their legal or financial advisors independently from communications by or on behalf of any Loan Party, provided that the source of such information was not actually known by the disclosing Agent, Lender or advisor to be bound by a confidentiality agreement with (or subject to any other contractual, legal or fiduciary obligation of confidentiality to) the relevant Loan Party; or (iii) is independently developed by an Agent or a Lender without use of such confidential information.

Section 12.19 Press Releases, etc. Each Loan Party will not, and will not permit any of its Affiliates or its or its Affiliates' respective officers, directors, shareholders or employees to, directly or indirectly, (i) publish or permit to be published any press release or other similar public disclosure or announcements (including any marketing materials) regarding this Loan Agreement or the other Loan Documents or the transactions contemplated thereby (other than, for the avoidance of doubt, the PIPE Transactions), without the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld, or (ii) publish or permit to be published any Agent's or Lender's name or logo, or otherwise refer to any Agent or Lender or any of its Affiliates, in connection with this Loan Agreement or the other Loan Documents or the transactions contemplated thereby (other than, for the avoidance of doubt, the PIPE Transactions), without the prior written consent of such Agent or Lender, as applicable.

Section 12.20 Releases of Guaranties and Liens.

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Collateral Agent is hereby irrevocably authorized by each Secured Party (without requirement of notice to or consent of any Secured Party except as expressly required by Section 12.01), at the request of the Borrower, to release the following:

(i) any Subsidiary of Borrower from its guaranty of any Obligation if all of the Capital Stock of such Subsidiary owned by any Loan Party are sold or transferred to a non-Loan Party in a transaction permitted under the Loan Documents (including pursuant to a waiver or consent in accordance with this Loan Agreement), to the extent that, after giving effect to such transaction, such Subsidiary would not be required to guaranty any Obligations pursuant to terms of this Loan Agreement or any other Loan Document; and

(ii) any Lien held by the Collateral Agent for the benefit of the Secured Parties against (x) any Collateral that is sold, transferred, conveyed or otherwise disposed of by a Loan Party to a non-Loan Party in a transaction

permitted by the Loan Documents (including pursuant to a valid waiver or consent in accordance with this Loan Agreement), to the extent all Liens required to be granted in such Collateral pursuant to terms of this Loan Agreement or any other Loan Document after giving effect to such transaction have been granted and (ii) all of the Collateral and all Loan Parties at such time as the Loans and the other Obligations (other than Unasserted Contingent Obligations) shall have been paid in full and all Commitments have been terminated (the "Redemption"); *provided*, that, to the extent requested by the any Agent, the Loan Parties shall provide a liability release from such Loan Parties in form and substance acceptable to such Agent.

(b) Upon request by the Collateral Agent at any time, (x) the Required Lenders will confirm in writing the Collateral Agent's authority to release its interest in particular types or items of property, or to release any guarantee obligations pursuant to this Section 12.20 or Section 8.14 of the Guaranty and Security Agreement and (y) the Borrower shall execute and deliver a certificate of an Authorized Officer certifying that the applicable underlying transaction is permitted under the Loan Documents. In each case as specified in this Section 12.20 or Section 8.14 of the Guaranty and Security Agreement, the Collateral Agent will (and each Lender irrevocably authorizes the Collateral Agent to), at the Borrower's sole cost and expense, execute and deliver to the applicable Loan Party such documents and filings as such Loan Party may reasonably request to evidence a Redemption (including, without limitation, any pay-off letter, lien terminations and other applicable documents and deliverables) and the release of such item of Collateral or guarantee obligation from the assignment and security interest granted under the Security Documents, in each case in accordance with the terms of the Loan Documents and this Section 12.20 or Section 8.14 of the Guaranty and Security Agreement.

Section 12.21 USA Patriot Act. Each Lender hereby notifies each Loan Party that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act") and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the Patriot Act and the Beneficial Ownership Regulation. Each Loan Party agrees to provide all such information to the Lenders upon request by any Agent at any time, whether with respect to any Person who is a Loan Party on the date hereof, on the Closing Date or who becomes a Loan Party thereafter.

Section 12.22 No Fiduciary Duty. Each Loan Party, on behalf of itself and its Subsidiaries, agrees that in connection with all aspects of the transactions contemplated hereby and any communications in connection therewith, the Loan Parties, their respective Subsidiaries and Affiliates, on the one hand, and the Agents, the Lenders, the other Secured Parties, and all of their respective Affiliates, on the other hand, will have a business relationship that does not create, by implication or otherwise, any fiduciary duty on the part of the Agents the Lenders or their respective Affiliates, and no such duty will be deemed to have arisen in connection with any such transactions or communications.

Section 12.23 Reliance on Certificates. Notwithstanding anything to the contrary herein, the Secured Parties shall be entitled to rely and act upon any certificate, notice or other document delivered by or on behalf of any Person purporting to be an Authorized Officer of a Loan Party, and shall have no duty to inquire as to the actual incumbency or authority of such Person.

Section 12.24 No Waiver. A Secured Party's failure to insist at any time upon strict compliance with this Loan Agreement or with any of the terms of this Loan Agreement or any continued course of such conduct on its part will not constitute or be considered a waiver by such Secured Party of any of its rights or privileges. A waiver or consent, express or implied, of or to any breach or default by any party in the performance by that party of its obligations with respect to this Loan Agreement is not a waiver or consent of or to any other breach or default in the performance by that party of the same or any other obligations of that party.

Section 12.25 The Borrower as the Loan Parties' Representative. Each Loan Party (other than the Borrower) hereby irrevocably appoints the Borrower as the borrowing agent and attorney-in-fact for all Loan Parties, which appointment is coupled with an interest and shall remain in full force and effect unless and until the Administrative Agent (i) in its sole discretion shall have consented in writing to the revocation of such appointment and (ii) received prior written notice signed by the Loan Parties that such appointment has been revoked and that another Loan Party has been appointed. Each Loan Party hereby irrevocably appoints and authorizes the Borrower (a) to provide the Agents and the Lenders with all notices with respect to all Loans and other extensions of credit obtained for the benefit of the Borrower and all other notices and instructions under this Loan Agreement and the other Loan Documents, (b) amend, supplement or otherwise modify any term or condition of this Loan Agreement and the other Loan Documents in accordance with Section 12.01(b) without any requirement that such Loan Party also sign any documents or instruments to effectuate any such amendment, supplement or waiver, and (c) to take such action as the Borrower deems appropriate on such Loan Party's behalf to exercise such powers as are reasonably incidental thereto to carry out the purposes of this Loan Agreement and the other Loan Documents. Each Loan Party acknowledges that the handling of this Loan Agreement, the other Loan Documents and the Collateral in a combined fashion, as more fully set forth herein and in the other Loan Documents, is done solely as an accommodation to the Loan Parties in order to utilize the collective borrowing powers of the Loan Parties in the most efficient and economical manner and at their request, and that no Agent or Lender shall incur liability to any Loan Party as a result thereof. Each Loan Party expects to derive substantial benefit, directly or indirectly, from the handling of this Loan Agreement, the other Loan Documents and the Collateral in a combined fashion because the successful operation of each Loan Party is dependent on the continued successful performance of the integrated group. To induce the Agents and Lenders to do so, and in consideration thereof, each Loan Party hereby jointly and severally agrees to indemnify each Agent and each Lender against, and hold each Agent and each Lender harmless from, any and all liability, expense, loss or claim of damage or injury made against any Agent or Lender by any Loan Party or by any third party whosoever, arising from or incurred by reason of (x) the handling of this Loan Agreement, the other Loan Documents and the Collateral as provided herein, or (y) an Agent or a Lender relying on any instructions of the Borrower, except that the Loan Parties will have no liability to any Agent or Lender pursuant to this Section 12.25 with respect to any liability that has been finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of such Agent or such Lender, as applicable.

Section 12.26 Funding Losses.

The Borrower agrees to reimburse each Lender and to hold each Lender harmless from any actual and documented loss or expense (but excluding lost profits) which such Lender may sustain or incur as a direct consequence of:

(a) the failure of the Borrower to make any payment or mandatory prepayment of principal of any LIBOR Rate Loan as and when due hereunder (including payments made after any acceleration thereof);

(b) the failure of the Borrower to borrow a Loan after the Borrower has given (or is deemed to have given) a Borrowing Notice;

(c) the failure of the Borrower to make any prepayment after the Borrower has given a notice in accordance with Section 4.01(a)(i); or

(d) the prepayment (including pursuant to Section 4.02) of a LIBOR Rate Loan on a day which is not the last day of the Interest Period with respect thereto;

including any such loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain its LIBOR Rate Loans hereunder or from fees payable to terminate the deposits from which such funds were obtained. Solely for purposes of calculating amounts payable by the Borrower to the Lenders under this Section 12.26 and under Section 2.06(a)(ii): each LIBOR Rate Loan that is made by a Lender (and each related reserve, special deposit or similar requirement) shall be conclusively deemed to have been funded at the LIBOR Rate used in determining the interest rate for such LIBOR Rate Loan by a matching deposit or other borrowing in the interbank Eurodollar market for a comparable amount and for a comparable period, whether or not such LIBOR Rate Loan is in fact so funded. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 12.26 shall be delivered to the Borrower and shall be conclusive absent

manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

Section 12.27 Acknowledgement and Consent to Bail-in of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Loan Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any the applicable Resolution Authority.

Section 12.28 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under the Guaranty and Security Agreement in respect of Swap Obligations under any Secured Hedging Agreement (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 12.28 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 12.28, or otherwise under the Guaranty and Security Agreement, voidable under applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 12.28 shall remain in full force and effect until the guarantees in respect of Swap Obligations under each Secured Hedging Agreement have been discharged, or otherwise released or terminated in accordance with the terms of this Loan Agreement. Each Qualified ECP Guarantor intends that this Section 12.28 constitute, and this Section 12.28 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

Section 12.29 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedging Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit

Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States.

(b) In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States.

(c) Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

ARTICLE XIII

JURISDICTION; VENUE, SERVICE OF PROCESS; JURY TRIAL WAIVER

Section 13.01 JURISDICTION. EACH LOAN PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF ANY NEW YORK STATE COURT OR FEDERAL COURT OF THE UNITED STATES OF AMERICA SITTING IN THE BOROUGH OF MANHATTAN IN THE STATE OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE LOANS, THIS LOAN AGREEMENT, THE NOTES, OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH STATE OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTWITHSTANDING ANYTHING TO THE CONTRARY, NOTHING IN THIS LOAN AGREEMENT SHALL AFFECT ANY RIGHT THAT THE AGENTS AND LENDERS MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THE LOANS, THIS LOAN AGREEMENT, THE NOTES, OR ANY OTHER LOAN DOCUMENT AGAINST THE LOAN PARTIES OR THEIR PROPERTIES IN THE COURTS OF ANY JURISDICTION.

Section 13.02 VENUE. EACH LOAN PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE LOANS, THIS LOAN AGREEMENT, THE NOTES, OR ANY OTHER LOAN DOCUMENT IN ANY STATE OR FEDERAL COURT SITTING IN THE BOROUGH OF MANHATTAN IN THE STATE OF NEW YORK. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

Section 13.03 SERVICE OF PROCESS. EACH PARTY TO THIS LOAN AGREEMENT IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER AND AT THE ADDRESSES PROVIDED FOR NOTICES IN SECTION 12.02 BY MAIL. NOTHING IN THIS LOAN AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS LOAN AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

Section 13.04 JURY TRIAL WAIVER. EACH LOAN PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (I) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THE LOANS, THIS LOAN AGREEMENT, THE NOTES OR ANY OTHER LOAN DOCUMENT, OR (II) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THE LOANS, THIS LOAN AGREEMENT, THE NOTES OR ANY OTHER LOAN DOCUMENT, AND AGREES THAT ANY SUCH ACTION OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH LOAN PARTY ACKNOWLEDGES THAT IT HAD THE OPPORTUNITY TO REVIEW THIS JURY TRIAL WAIVER WITH ITS

LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS RIGHT TO A JURY TRIAL. THIS SECTION 13.04 IS A MATERIAL INDUCEMENT FOR THE AGENTS AND THE LENDERS GRANTING ANY FINANCIAL ACCOMMODATIONS TO THE LOAN PARTIES.

Section 13.05 JUDICIAL FORECLOSURE AND OTHER ACTIONS. NO PROVISION OF, NOR THE EXERCISE OF ANY RIGHTS UNDER, SECTION 13.01 OR SECTION 13.02 SHALL LIMIT THE RIGHT OF ANY AGENT OR ANY OTHER SECURED PARTY TO (I) FORECLOSE AGAINST ANY REAL OR PERSONAL PROPERTY COLLATERAL THROUGH JUDICIAL FORECLOSURE, BY THE EXERCISE OF A POWER OF SALE UNDER A DEED OF TRUST, MORTGAGE OR OTHER SECURITY AGREEMENT OR INSTRUMENT, PURSUANT TO APPLICABLE PROVISIONS OF THE UCC, OR OTHERWISE PURSUANT TO APPLICABLE LAW, (II) EXERCISE SELF-HELP REMEDIES INCLUDING BUT NOT LIMITED TO SET-OFF AND REPOSSESSION, OR (III) REQUEST AND OBTAIN FROM A COURT HAVING JURISDICTION, ANY PROVISIONAL OR ANCILLARY REMEDIES AND RELIEF INCLUDING BUT NOT LIMITED TO INJUNCTIVE OR MANDATORY RELIEF OR THE APPOINTMENT OF A RECEIVER.

Section 13.06 Termination. Notwithstanding anything to the contrary contained herein, if (x) the Closing Date has not occurred on or prior July 7, 2020 and (y) no Obligations are outstanding on July 8, 2020, this Loan Agreement, the Commitments hereunder and all other Loan Documents shall automatically terminate on July 8, 2020 (other than those provisions herein which by their express terms survive termination).

[*signatures begin on next page*]

IN WITNESS WHEREOF, each of the parties hereto has duly executed and delivered this Loan Agreement as of the date first above written.

THE BORROWER:

MIMEDX GROUP, INC.

By: /s/ Peter M. Carlson
Name: Peter M. Carlson
Title: Chief Financial Officer

GUARANTORS:

MIMEDX TISSUE SERVICES, LLC

By: /s/ Timothy R. Wright
Name: Timothy R. Wright
Title: Chief Executive Officer

MIMEDX PROCESSING SERVICES, LLC

By: /s/ Timothy R. Wright
Name: Timothy R. Wright
Title: Chief Executive Officer

ADMINISTRATIVE AGENT AND COLLATERAL AGENT:

HAYFIN SERVICES LLP,

By: /s/ Erica Hughes
Name: Erica Hughes
Title: Authorized Signatory for Hayfin Capital Management LLP in its capacity as corporate member of Hayfin Services LLP

LENDER:

[●],
as a Lender

By:_____

Name:

Title:

SCHEDULE 1.01

INITIAL TERM LOAN COMMITMENTS AND DDTL COMMITMENTS

Lenders	Initial Term Loan Commitment	Pro Rata Portion of Initial Term Loan Commitment	DDTL Commitment	Pro Rata Portion of DDTL Commitment
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
Total	**$50,000,000.00**	**100.00%**	**$25,000,000.00**	**100.00%**

EXHIBIT A

FORM OF NOTE

$[ ] [ ], 20[ ]

FOR VALUE RECEIVED, the undersigned, MIMEDX GROUP, INC., a Florida corporation (the "Borrower"), hereby unconditionally promises to pay to [_____], a [_____] [_____], or its successors or assigns (the "Holder"), in lawful money of the United States and in immediately available funds, the principal amount of [_____] AND 00/100 DOLLARS ($[_____].00), or, if less, the aggregate unpaid principal amount of the [Loan][Initial Loan][Incremental Term Loan] of the Holder outstanding under the Loan Agreement (each as defined below) and evidenced by this Note. All capitalized terms used but not otherwise defined in this Note (as amended, amended and restated, supplemented or otherwise modified, renewed or replaced from time to time, this "Note") have the meanings given to them in the Loan Agreement (hereinafter defined).

The Borrower shall repay the principal amount of this Note and interest due thereon at the applicable per annum interest rate or default rate specified in the Loan Agreement and, if applicable, with the applicable Prepayment Premium, at the times and places specified in, and otherwise in accordance with, the terms of the Loan Agreement.

The Holder is authorized to endorse on the schedules annexed hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof, (a) the date and amount of the [Loan][Initial Loan][Incremental Term Loan], (b) the date and amount of each payment or prepayment of principal with respect thereto, and (c) the interest rate and Interest Period applicable to the [Loan][Initial Loan][Incremental Term Loan]. Each such endorsement shall constitute *prima facie* evidence (absent manifest error) of the existence and amounts of the obligations hereunder and the accuracy of the information so endorsed, provided that the failure to make any such endorsement, or any error in any such endorsement, shall not affect the obligations of the Borrower in respect of the [Loan][Initial Loan][Incremental Term Loan].

This Note is one of the "Notes" referred to in the Loan Agreement, dated as of June 30, 2020, among the Borrower, the Subsidiaries of Borrower that are Guarantors or become Guarantors thereunder pursuant to Section 8.10 thereof, the Lenders from time to time party thereto, and Hayfin Services LLP, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent") and as collateral agent for the Secured Parties (in such capacity, together with its successors and permitted assigns in such capacity, the "Collateral Agent", and together with the Administrative Agent, each an "Agent" and collectively the "Agents") (as amended, amended and restated, supplemented and/or otherwise modified from time to time, the "Loan Agreement").

This Note is subject to, and should be construed in accordance with, the provisions of the Loan Agreement, is subject to optional and mandatory prepayment in whole or in part as provided in the Loan Agreement, may be accelerated prior to maturity upon the terms set forth in the Loan Agreement, and is entitled to the benefits of, and is guaranteed and secured pursuant to, the Guaranty and Security Agreement and the other Security Documents.

All payments of principal and interest under or otherwise in respect of this Note shall be made without counterclaim, set-off, rights of rescission, or any other defense of any kind whatsoever. All parties now and hereafter liable with respect to this Note, whether as maker, principal, surety, guarantor, endorser or otherwise, hereby waive, to the fullest extent permitted by applicable law, presentment, demand, protest, notice of dishonor and all other demands, protests and notices of any kind.

This Note may be transferred pursuant to and in accordance with the registration and other provisions of Section 12.06 of the Loan Agreement ("Successors and Assigns; Participations and Assignments").

No failure or delay by the Holder in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. Neither this Note nor any provision hereof may be waived, amended, modified or supplemented, nor shall any departure herefrom or therefrom be consented to, except pursuant to a written agreement entered into between the Borrower and the Holder in the manner provided in Section 12.01 of the Loan Agreement ("Amendments and Waivers").

THIS NOTE AND THE VALIDITY, INTERPRETATION, CONSTRUCTION, AND PERFORMANCE HEREOF SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND ANY CLAIM HEREUNDER (INCLUDING ANY CLAIMS SOUNDING IN CONTRACT OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST- JUDGMENT INTEREST) SHALL BE DETERMINED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK FOR CONTRACTS MADE AND TO BE PERFORMED WHOLLY WITHIN THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS REQUIRING APPLICATION OF THE LAW OF ANY OTHER JURISDICTION.

THE BORROWER HEREBY IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (I) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS NOTE, OR (II) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS NOTE. THE BORROWER FURTHER AGREES THAT THE TERMS AND PROVISIONS OF ARTICLE XIII OF THE LOAN AGREEMENT ("JURISDICTION; VENUE, SERVICE OF PROCESS; JURY TRIAL WAIVER") ARE HEREBY INCORPORATED HEREIN BY REFERENCE, AND SHALL APPLY TO THIS NOTE *MUTATIS MUTANDIS* AS IF FULLY SET FORTH HEREIN.

* * *

IN WITNESS WHEREOF, the Borrower has duly executed and delivered this Note as of the date first above written.

MIMEDX GROUP, INC., a Florida corporation

By __
Name:
Title:

Schedule A to Note

[LOAN][INITIAL LOAN][INCREMENTAL TERM LOAN] AND REPAYMENTS OF [LOAN][INITIAL LOAN] [INCREMENTAL TERM LOAN]

Date	Amount of [Loan][Initial Loan][Incremental Term Loan]	Date and Amount of Principal of [Loan][Initial Loan][Incremental Term Loan] Repaid	Unpaid Principal Balance of [Loan][Initial Loan] [Incremental Term Loan]	Applicable Interest Rate and Interest Period	Notation Made By

EXHIBIT B

[Reserved.]

EXHIBIT C-1

FORM OF GUARANTY AND SECURITY AGREEMENT

[See Attached.]

EXHIBIT C-2

FORM OF CLOSING DATE PATENT SECURITY AGREEMENT

[See Attached.]

EXHIBIT C-3

FORM OF CLOSING DATE TRADEMARK SECURITY AGREEMENT

[See Attached.]

EXHIBIT C-4

FORM OF CLOSING DATE COPYRIGHT SECURITY AGREEMENT

[See Attached.]

EXHIBIT D-1

FORM OF COMPLIANCE CERTIFICATE [1]

[__], 20[__]

This compliance certificate (this "Certificate") is delivered pursuant to Section 8.01(d) of the Loan Agreement (as amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the "Loan Agreement"), dated as of June 30, 2020 among MIMEDX GROUP, INC., a Florida company (the "Borrower"), the Subsidiaries of the Borrower that are Guarantors or become Guarantors thereunder pursuant to Section 8.10 thereof, the Lenders from time to time party thereto, and Hayfin Services LLP, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent") and Collateral Agent (together with Administrative Agent, each an "Agent" and collectively the "Agents"). Unless otherwise defined herein, capitalized terms used herein and in the attachments hereto shall have the meanings provided in the Loan Agreement.

The Borrower hereby certifies, on behalf its Subsidiaries, that (i) the financial information delivered with this Certificate in accordance with subsection [8.01(b)] [8.01(c)] of the Loan Agreement presents fairly in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in conformity with GAAP, consistently applied, in each case at the respective dates of such information and for the respective periods covered thereby, subject in the case of unaudited financial information, to changes resulting from normal year-end audit adjustments and to the absence of footnotes and (ii) as of the date hereof [no Default or Event of Default had occurred and is continuing] [a Default/an Event of Default has occurred and set forth on Attachment 6 are the details specifying such Default or Event of Default and the actions taken or to be taken with respect thereto]. The Borrower hereby further certifies, on behalf of the Loan Parties, that as of [_____] [___], 20[___] (the "Computation Date"):

(1) [The Total Net Leverage Ratio on the last day of the Test Period ending on the Computation Date was [_____] to 1.00, as computed in a true, complete and accurate manner on Attachment 1 hereto. The Maximum Total Net Leverage Ratio for such period must be less than or equal to [5.00][4.50][4.00] to 1.00 pursuant to Section 9.13(a) of the Loan Agreement.] [2]

(2) [reserved.]

(3) Attachment 3 hereto contains changes as of the Computation Date, if any, in the identity of the Subsidiaries from those listed on Schedule 7.09 of the Loan Agreement, or from the most recently delivered Compliance Certificate, as applicable.

(4) Attachment 4 hereto contains (i) an updated Schedule 7.15 and Schedule 7.26 of the Loan Agreement (if applicable), and (ii) a written supplement substantially in the form of Schedules 1 through 4, as applicable, to the Guaranty and Security Agreement

[1] Concurrently with the delivery of the Compliance Certificate for annual financial statements, Borrower is to deliver an updated Perfection Certificate pursuant to Section 5.3 of the Guaranty and Security Agreement.

[2] To be included with quarterly financial statements delivered under Section 8.01(b) of the Loan Agreement.

with respect to any additional assets and property acquired by any Loan Party after the Closing Date or the previous Computation Date (as the case may be), all in reasonable detail.

(5) [Attachment 5 hereto contains details specifying any changes to the locations listed on Schedule 5 to the Guaranty and Security Agreement in respect of any Inventory or Equipment (as defined in the Guaranty and Security Agreement) (other than (a) Inventory or Equipment in transit in the Ordinary Course of Business and (b) Inventory and Equipment with a fair market value of less than $5,000,000 (in the aggregate for all Loan Parties) which may be located at other locations within the United States) and books and records concerning the Collateral.] [3]

(6) [Attachment 6 hereto contains details specifying any Default or Event of Default that has occurred and is continuing and the action taken or to be taken with respect thereto.] [4]

(7) [Attachment 7 hereto contains a true, correct and accurate calculation of the (x) amount of Loans required to be prepaid pursuant to Section 4.02(a)(ix) for such Test Period ended on the Computation Date, if any, and (y) the Available Amount as of the Computation Date.] [5]

To the extent there is any inconsistency between the language in the Attachments and the language in the Loan Agreement, the language in the Loan Agreement controls.

[Remainder of page intentionally left blank]

[3] To be included with annual financial statements delivered under Section 8.01(c) of the Loan Agreement to the extent there are any such changes.

[4] This attachment is only to be used if a Default or Event of Default is occurring or continuing during the time that the Compliance Certificate is completed.

[5] To be included with annual financial statements delivered under Section 8.01(c) of the Loan Agreement to the extent there are any such changes.

The foregoing information is true, complete and correct in all respects as of the Computation Date.

[_____]

By: __
Name:
Title:

Attachment 1
(to _/_/_
Compliance Certificate)

MAXIMUM TOTAL NET LEVERAGE RATIO

For The Test Period Ending On The Computation Date
(with respect to the Consolidated Companies)

1. Funded Debt

(a) all Indebtedness of the Consolidated Companies for borrowed money and all Indebtedness of the Consolidated Companies evidenced by bonds, debentures, notes, loan agreements or other similar instruments which interest charges are customarily paid or accrued; $__

(b) to the extent such Indebtedness is drawn and unreimbursed, the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) of all letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of the Consolidated Companies; $__

(c) [reserved];

(d) to the extent such Indebtedness is due before the Latest Maturity Date, all obligations of the Consolidated Companies from installment purchases of property, Persons, or services or representing the deferred purchase price for property or services (other than trade accounts payable in the Ordinary Course of Business) and other similar deferred purchase price obligations (including earn-outs or other contingent consideration for acquisitions or other Investments), in each case, to the extent constituting liabilities under GAAP; $__

(e) [reserved];

(f) [reserved];

(g) all obligations of the Consolidated Companies in respect of Disqualified Capital Stock, to the extent such Disqualified Capital Stock (i) matures or is mandatorily redeemable (other than solely for Qualified Capital Stock), pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Qualified Capital Stock), in whole or in part, (iii) provides for the scheduled payment of dividends in cash or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other Capital Stock that would constitute Disqualified Capital Stock, in each case, prior to the Latest Maturity Date; $__

(h) all Guaranty Obligations of the Consolidated Companies in respect of any of the foregoing; and $__

(i) trade payables more than ninety (90) days past due. $__

2. Sum of Items 1(a) – 1(i) above $__

3. Consolidated Adjusted EBITDA

(a) Consolidated Net Income of the Consolidated Companies plus: $__

(b) the sum of the following amounts, without duplication, to the extent deducted (other than in respect of items 3(b)(ix), 3(b)(x) and 3(b)(xiv)) in calculating such Consolidated Net Income: $__

(i) Consolidated Interest Expense during such Test Period, $__

(ii) Taxes paid and provisions for Taxes based on income, profits or capital of such Person and its subsidiaries, including, in each case, federal, state, provincial, local, foreign, unitary, franchise, excise, property, withholding and similar Taxes, including any penalties and interest, $__

(iii) any impairment charge or asset write-off charge and total depreciation expense, $__

(iv) total amortization expense, including amortization, impairment or write-off of intangibles, $__

(v) any charges, losses, reserves or expenses related to signing, retention, relocation, recruiting or completion bonuses or recruiting costs, severance costs, transition costs, curtailments or modifications to pension and post-employment, retirement or employee benefit plans (including any settlement of pension liabilities), and restructuring charges, expenses and reserves; provided that the amounts added to Consolidated Adjusted EBITDA pursuant to this item 3(b)(v) and items 3(b)(vi)(B), 3(b)(viii) and 3(b)(xiv) shall not, in the aggregate, exceed 20% of Consolidated Adjusted EBITDA for any relevant Test Period (calculated prior to any adjustments pursuant to such items),

(vi) any (A) extraordinary (as defined under GAAP prior to FASB Update No. 2015-01) expenses or charges and (B) any unusual or non-recurring expenses or charges; provided that the amounts added to Consolidated Adjusted EBITDA pursuant to this item 3(b)(vi)(B) and items 3(b)(v), 3(b)(viii) and 3(b)(xiv) shall not, in the aggregate, exceed 20% of Consolidated Adjusted EBITDA for any relevant Test Period (calculated prior to any adjustments pursuant to such items), $__

(vii) other non-cash charges and expenses reducing Consolidated Net Income (excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period) including, without limitation, non-cash compensation expense in respect of stock option and incentive plans, impairment charges and other write offs of intangible assets and goodwill, $__

(viii) non-capitalized costs in connection with financings, acquisitions, investments, dispositions, private or public offerings of equity securities or the establishment of joint ventures, in each case whether or not consummated; provided that the amounts added to Consolidated Adjusted EBITDA pursuant to this item 3(b)(viii) and items 3(b)(v), 3(b)(vi)(B) and 3(b)(xiv) shall not, in the aggregate, exceed 20% of Consolidated Adjusted EBITDA for any relevant Test Period (calculated prior to any adjustments pursuant to such items), $__

(ix) fees and expenses incurred in connection with the consummation of the Transactions and any refinancing, extension, waiver, forbearance, amendment, restatement, amendment and restatement, supplement or other modification of the Loan Documents (in each case, whether or not consummated); provided that amounts added back under this item 3(b)(ix) in respect of costs, fees and expenses arising in connection with the Transactions shall not exceed $5,000,000 in the aggregate for the relevant Test Period, $__

(x) the amount of any expense, charge or loss, in each case that is actually reimbursed or reasonably expected to be reimbursed within 365 days by third parties pursuant to indemnification or reimbursement provisions or similar agreements or insurance; provided that (x) if such amount is not so reimbursed or received (or if the amount reimbursed or received is less than the amount added back pursuant to this item 3(b)(xi)) by the Borrower or its Subsidiaries within such 365-day period applicable thereto, then such amount (or unreimbursed portion of such amount) shall be subtracted in subsequent periods to the extent applicable and (y) any such amount shall not be included in any subsequent period in which such amount is actually reimbursed or received, $__

(xi) any cost, expense or other charge (including any legal fees and expenses) associated with investigations by Governmental Authorities, any litigation or as a result of the Inaccurate Information (including in connection with the restatement of historical financial statements) or payment of any actual legal settlement, fine, judgment or order in respect of the foregoing, $__

(xii) cash receipts (or any netting arrangements resulting in reduced cash expenses) not included in Consolidated Adjusted EBITDA in any period solely to the extent that the corresponding non-cash gains relating to such receipts were deducted in the calculation of Consolidated Adjusted EBITDA pursuant to item 3(c)(i) below for any previous period and not added back, $__

(xiii) amounts of indemnities and expense reimbursement paid or accrued to directors and officers, in each case during such period, including payment for directors and officers insurance policies in an amount not to exceed $1,500,000 in the aggregate, $__

(xiv) the amount of net cost savings and operating expense reductions projected by the Borrower in good faith (calculated on a pro forma basis as though such items had been realized on the first day of such period) as a result of actual actions taken prior to the last day of the applicable Test Period in connection with any acquisition, investment, disposition, unit opening or closing or restructuring or cost savings initiative by the Borrower or any of its Subsidiaries, net of the amount of actual benefits realized during such period that are otherwise included in the calculation of Consolidated Adjusted EBITDA from such actions, and only to the extent that the same have been realized or are reasonably expected to be realized within twelve (12) months of the related acquisition, investment, disposition or restructuring or cost-savings initiative; provided that (A) an Authorized Officer of Borrower shall have provided a reasonably detailed statement or schedule of such cost savings and operating expense reductions and shall have certified to the Administrative Agent that (x) such cost savings are reasonably identifiable, reasonably attributable to the actions specified and reasonably anticipated to result from such actions and (y) such actions have been taken and are ongoing, and the benefits resulting therefrom are anticipated by Borrower to be realized within twelve (12) months of the end of such Test Period and (B) the amounts added to Consolidated Adjusted EBITDA pursuant to this item 3(b)(xiv) and items 3(b)(v), 3(b)(vi)(B) and 3(b)(viii) shall not, in the aggregate, exceed 20% of Consolidated Adjusted EBITDA for any relevant Test Period (calculated prior to any adjustments pursuant to such items), $__

(xv) any (A) non-cash costs incurred by the Consolidated Companies pursuant to any management equity or equity-based plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or stockholders agreement, and (B) cash costs in respect thereto, in the case of this clause (B), to the extent such costs or expenses are funded with net cash proceeds of an issuance of Capital Stock (but not Disqualified Capital Stock) of the Borrower, and $__

(xvi) accruals and reserves that are established or adjusted (A) within 12 months after the Closing Date and that are so required to be established or adjusted in accordance with GAAP or (B) after the closing of any acquisition that are so required as a result of such acquisition in accordance with GAAP, or changes as a result of the adoption or modification of accounting policies, whether effected through a cumulative effect adjustment, restatement or a retroactive application; minus $__

(c) to the extent increasing Consolidated Net Income, the sum of, without duplication:

(i) amounts for other non-cash gains increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period); and ($__)

(ii) extraordinary, unusual or non-recurring gains received during the specified period. ($__)

4. Consolidated Adjusted EBITDA *equals* Item 3(a) *plus* Item 3(b) *minus* Item 3(c) $__

5. The amount of unrestricted cash and Cash Equivalents of the Borrower and its Subsidiaries deposited in an account subject to an Account Control Agreement $__

6. Total Net Leverage Ratio *equals (x)* Item 2 above minus Item 5 above (y) divided by Item 4 above [ ]:1.00

[ ]:1.00 [ ]:1.00[6]

In Compliance? [Yes][No]

[6] Note that for the fiscal quarters ending (x) June 30, 2020, September 30, 2020 and December 31, 2020, the Total Net Leverage Ratio shall not be greater 5.00 to 1.00, (y) March 31, 2021 and June 30, 2021 the Total Net Leverage

Consolidated Adjusted EBITDA for each of the following periods set forth below shall be as set forth opposite such period, but in each case subject to approval by the Administrative Agent (in its reasonable discretion) of the manner in which such amounts were calculated:

Historical Consolidated Adjusted EBITDA figures:

Fiscal Quarter ended September 30, 2019	$7,500,000
Fiscal Quarter ended December 31, 2019	$17,100,000
Fiscal Quarter ended March 31, 2020	$3,100,000

Ratio shall not be greater than 4.50:1.00, and (z) for the fiscal quarter ending September 30, 2021 and each fiscal quarter thereafter, the Total Net Leverage Ratio shall not be greater than 4.00:1.00.

Attachment 2
(to _/_/_
Compliance Certificate)

[Reserved]

[Attachment 3
(to _/_/_
Compliance Certificate)

CHANGES IN IDENTITY OF THE SUBSIDIARIES]

[Attachment 4
(to _/_/_
Compliance Certificate)

UPDATES/SUPPLEMENTS TO CERTAIN SCHEDULES]

(i) [Attached is an updated [Schedule 7.15] [and] [Schedule 7.26] of the Loan Agreement; and]

(ii) [Attached is a written supplement substantially in the form of Schedules 1 through 4, as applicable, to the Guaranty and Security Agreement with respect to any additional assets and property acquired by any Loan Party after the Closing Date or the previous Computation Date (as the case may be), all in reasonable detail.]

[Attachment 5
(to _/_/_
Compliance Certificate)

CHANGES TO LOCATIONS OF INVENTORY OR EQUIPMENT AND BOOKS AND RECORDS CONCERNING COLLATERAL] [7]

[7] This attachment is only to be used if a change to locations listed on Schedule 5 of the Guaranty and Security Agreement as further described on the first page of this Compliance Certificate has occurred.

[Attachment 6
(to _/_/_
Compliance Certificate)

DETAILS SPECIFYING DEFAULT OR EVENT OF DEFAULT
AND THE ACTION TAKEN OR TO BE TAKEN WITH RESPECT THERETO] [8]

[8] This attachment is only to be used if a Default or Event of Default is occurring or continuing during the time that the Compliance Certificate is completed.

Attachment 7
(to _/_/_
Compliance Certificate)

Prepayment of Loans and Available Amount

For The Test Period Ending On The Computation Date
(with respect to the Consolidated Companies)

1. Excess Cash Flow

(a) the sum, without duplication, of:

(i) Consolidated Adjusted EBITDA from Item 4 in Attachment 1 calculated without giving effect to item 3(b)(xiv) in Attachment 1, $__

(ii) the net decrease, if any, in Consolidated Working Capital of the Consolidated Companies during such Test Period, $__

(iii) the net cash gains during such Test Period from the sale or disposition of assets of the Consolidated Companies outside of the ordinary course of business, to the extent not included in arriving at such Consolidated Adjusted EBITDA and to the extent not otherwise included as a mandatory prepayment, and $__

(iv) cash Extraordinary Receipts to the extent such items are not included in the calculation of Consolidated Adjusted EBITDA for such Test Period; $__

(b) the sum of, without duplication:

(i) Consolidated Interest Expense paid in cash during such Test Period, ($)

(ii) all required payments of principal in respect of any Indebtedness during such Test Period (other than mandatory prepayments of Loans pursuant to Section 4.02(a)(ix) of the Loan Agreement), except to the extent financed with proceeds of Indebtedness or occurring in connection with a refinancing of all or any portion of such Indebtedness and only to the extent that the Indebtedness prepaid or repaid by its terms cannot be reborrowed or redrawn, ($)

(iii) the aggregate principal amount of any voluntary payment permitted hereunder of term Indebtedness (other than any voluntary prepayment of the Loans, which shall be the subject of Section 4.02(a)(ix)(y) of the Loan Agreement) and the amount of any voluntary payments of revolving Indebtedness to the extent accompanied by permanent reductions of the related revolving facility commitments in an amount equal to such prepayment, in each case to the extent not financed with proceeds of long-term Indebtedness or the issuance of Capital Stock,	($)
(iv) Taxes paid in cash and to the extent based on income, profits or capital of such Person and its subsidiaries, including, in each case, federal, state, provincial, local, foreign, unitary, franchise, excise, property, withholding and similar Taxes, including any penalties and interest,	($)
(v) any Capital Expenditures made during such Test Period, excluding Capital Expenditures to the extent financed through the incurrence of Capital Lease Obligations, the issuance of Capital Stock, the incurrence of any long-term Indebtedness or the receipt of proceeds of insurance,	($)
(vi) net increase, if any, in Consolidated Working Capital of the Consolidated Companies during such Test Period,	($)
(vii) any fees, costs, and expenses of the Borrower and its Subsidiaries related to the Loan Agreement, the Transactions, associated with investigations by Governmental Authorities, any litigation or as a result of the Inaccurate Information (including in connection with the restatement of historical financial statements) or payment of any actual legal settlement, fine, judgment or order in respect of the foregoing and any financings, acquisitions, investments, dispositions, private or public offerings of equity securities or the establishment of joint ventures, in each case whether or not consummated, to the extent added back in determining Consolidated Adjusted EBITDA and paid in cash,	($)
(viii) payments in respect of earn-outs in accordance with the terms hereof made in cash by the Loan Parties to the extent permitted pursuant to Section 9.01(n) of the Loan Agreement, except to the extent financed with the proceeds of long-term Indebtedness or issuances of Capital Stock,	($)

(ix) non-cash charges, gains, credits, expenses, costs, adjustments or other amounts included in the calculation of Consolidated Net Income or Consolidated Adjusted EBITDA;	($)
(x) payments of indemnities and expense reimbursement paid or accrued to directors and officers including payment for directors and officers insurance policies, in each case to the extent paid in cash and added-back to Consolidated Adjusted EBITDA during such Test Period;	($)
(xi) Restricted Payments made in cash in accordance with Section 9.06(f) of the Loan Agreement, to the extent paid in cash and added-back to Consolidated Adjusted EBITDA during such Test Period,	($)
(xii) out-of-pocket costs, fees, expenses and charges related to any Permitted Acquisitions, in each case, only to the extent added back in determining Consolidated Adjusted EBITDA and paid in cash,	($)
(xiii) cash used to make Permitted Acquisitions and Investments in reliance on Section 9.05(g) of the Loan Agreement, except to the extent financed with the proceeds of long-term Indebtedness or issuances of Capital Stock,	($)
(xiv) losses on the disposition of assets not in the ordinary course only to the extent added back in determining Consolidated Adjusted EBITDA and paid in cash,	($)
(xv) amounts paid in cash during such Test Period on account of items that were accounted for as non-cash reductions of Consolidated Net Income in determining Consolidated Net Income or as non-cash reductions of Consolidated Net Income in determining Consolidated Adjusted EBITDA in a prior Test Period,	($)
(xvi) any amounts added back in determining Consolidated Adjusted EBITDA representing reserves of any kind or losses,	($)
(xvii) the amount of any extraordinary, unusual or non-recurring fees, expenses and charges to the extent added back in determining Consolidated Adjusted EBITDA pursuant to item 3(b)(vi) in Attachment 1 and paid in cash, and	($)
(xviii) amounts paid in cash during such Test Period to the extent added back in determining Consolidated Adjusted EBITDA pursuant to item 3(b)(v) in Attachment 1.	($)

2. **Excess Cash Flow *equals* (x) the sum, without duplication, of Items (a)(i) to (a)(iv) above, *minus* (y) the sum of, without duplication, of Items (b)(i) through (b)(xviii) above** $__

3. **Amount Required to be prepaid for such Test Period pursuant to Section 4.02(a)(ix) of the Loan Agreement *equals* Item 2 *multiplied* by [50][25][0]% [9]** $__

4. **Retained ECF Amount for such Test Period *equals* Item 2, *minus* Item 3** $__

5. **[The Sum of] Retained ECF Amount for the Test Period[s] ended [December 31, 2021][, December 31, 2022][, December 31, 2023][and December 31, 2024].** $__

6. **The aggregate amount of Investments made in reliance on Section 9.05(s) of the Loan Agreement, Restricted Payments made in reliance on Section 9.06(h) of the Loan Agreement and payments of Indebtedness that has been contractually subordinated in right of payment to the Obligations in reliance on Section 9.07(a)(ii) of the Loan Agreement during the period from the Closing Date through and including the last day of the Test Period.** $__

7. **Available Amount as of the last day of such Test Period *equals* (x) Item 5, *minus* Item 6**

[9] By reference to the Total Net Leverage Ratio in Item 6 of Attachment 1 for such Test Period. For any fiscal year for which the Total Net Leverage Ratio as of the last day of such fiscal year is greater than 1.00:1.00, 50%, (ii) for any fiscal year for which the Total Net Leverage Ratio as of the last day of such fiscal year is equal to or less than 1.00:1.00, but greater than or equal to 0.50:1.00, 25% and (iii) for any fiscal year for which the Total Net Leverage Ratio as of the last day of such fiscal year is less than 0.50:1.00, 0%.

EXHIBIT D-2

FORM OF LIQUIDITY COMPLIANCE CERTIFICATE

[__], 20[__]

This compliance certificate (this "Certificate") is delivered pursuant to Section 8.01(a) of the Loan Agreement (as amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the "Loan Agreement"), dated as of June 30, 2020 among MIMEDX GROUP, INC., a Florida company (the "Borrower"), the Subsidiaries of the Borrower that are Guarantors or become Guarantors thereunder pursuant to Section 8.10 thereof, the Lenders from time to time party thereto, and Hayfin Services LLP, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent") and Collateral Agent (together with Administrative Agent, each an "Agent" and collectively the "Agents"). Unless otherwise defined herein, capitalized terms used herein and in the attachments hereto shall have the meanings provided in the Loan Agreement.

The Borrower hereby certifies that as of the date hereof Liquidity of the Borrower and its Subsidiaries has not been at any time since [the Closing Date]/[the date of the most recent Liquidity Compliance Certificate][(except as disclosed in detail on Attachment 3)] less than $10,000,000. The Borrower hereby further certifies, on behalf of the Loan Parties, that as of [_____] [___], 20[___] [10] (the "Computation Date"):

(1) The unrestricted cash (excluding any cash subject to reinvestment) of the Borrower and its Subsidiaries as of the Computation Date was $[____], as detailed [(with snapshots of the applicable deposit accounts subject to an Account Control Agreement)][11] on Attachment 1 hereto;

(2) The unrestricted Cash Equivalents of the Borrower and its Subsidiaries as of the Computation Date was $[____], as detailed [(with snapshots of the applicable securities accounts subject to an Account Control Agreement)][12] on Attachment 2 hereto;

---

[10] To be the last day of the previous fiscal month.

[11] Not required prior to deadline for delivery of DACAs pursuant to Section 8.22 of the Loan Agreement.

[12] Not required prior to deadline for delivery of DACAs pursuant to Section 8.22 of the Loan Agreement.

(3) Liquidity of the Borrower and its Subsidiaries as of the Computation Date (i.e. the sum of items 1 and 2) was $[____]; and

(4) The foregoing calculations of unrestricted cash, unrestricted Cash Equivalents and Liquidity are true, correct and accurate in all material respects.

To the extent there is any inconsistency between the language in the Attachment and the language in the Loan Agreement, the language in the Loan Agreement controls.

[Remainder of page intentionally left blank]

The foregoing information is true, complete and correct in all respects as of the Computation Date.

[_____]

By: __
Name:
Title:

[Signature Page to Liquidity Compliance Certificate]

EXHIBIT E

PERFECTION CERTIFICATE

[See Attached.]

EXHIBIT F

FORM OF ASSIGNMENT AND ACCEPTANCE

Reference is hereby made to the Loan Agreement dated as of June 30, 2020 among MIMEDX GROUP, INC., a Florida corporation (the "Borrower"), the Subsidiaries of Borrower that are Guarantors or become Guarantors thereunder pursuant to Section 8.10 thereof, the Lenders from time to time party thereto, and Hayfin Services LLP, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent") and as collateral agent for the Secured Parties (in such capacity, together with its successors and permitted assigns in such capacity, the "Collateral Agent", and together with the Administrative Agent, each an "Agent" and collectively the "Agents") (as amended, amended and restated, supplemented or otherwise modified, renewed or replaced from time to time, the "Loan Agreement"). Capitalized terms used but not otherwise defined herein have the meanings given to them in the Loan Agreement.

The Assignor identified on Schedule l hereto (the "Assignor") and the Assignee identified on Schedule l hereto (the "Assignee") agree as follows:

1. The Assignor hereby irrevocably sells and assigns to the Assignee without recourse to the Assignor, and the Assignee hereby irrevocably purchases and assumes from the Assignor without recourse to the Assignor, as of the Effective Date (as defined below), the percentage interest identified on Schedule 1 hereto in and to all of the Assignor's rights and obligations under the Loan Agreement with respect to the Loan or Loans described on Schedule 1 hereto, in the respective principal amounts for such Loan or Loans as set forth on Schedule 1 hereto (the "Assigned Interest").

2. The Assignor: (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; (b) makes no representation or warranty and assumes no responsibility or liability with respect to (i) any statement, representation or warranty made in, pursuant to, or otherwise in connection with the Loan Agreement or any other Loan Document, (ii) with respect to the execution, delivery, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Agreement, any other Loan Document or any other agreement, document or instrument executed, delivered or otherwise furnished pursuant thereto or (iii) with respect to the attachment, perfection or priority of any Lien granted by the Borrower or any other Loan Party in favor of the Collateral Agent or any Lender or otherwise with respect to the Collateral, other than that the Assignor is the legal and beneficial owner of the Assigned Interest, has not created any adverse claim upon the Assigned Interest, and that the Assigned Interest is free and clear of any such adverse claim created by the Assignor; (c) makes no representation or warranty and assumes no responsibility or liability with respect to the financial condition of the Borrower, any of its Subsidiaries or any other Loan Party or the performance or observance by the Borrower, any of its Subsidiaries or any other Loan Party of any of their respective obligations under the Loan Agreement or any other Loan Document or any other

agreement, document or instrument executed, delivered or otherwise furnished pursuant hereto or thereto; (d) attaches the Note(s), if any, held by the Assignor evidencing the Assigned Interest ("Notes"); and (e) requests that the Administrative Agent (i) exchange the attached Notes for a new Note or Notes payable to the order of the Assignee and (ii) if the Assignor has retained any interest in the Loans, exchange the attached Notes for a new Note or Notes payable to the order of the Assignor, in each case in amounts which reflect the assignment being made hereby (and after giving effect to any other assignments which have become effective on the Effective Date (as defined below)).

3. The Assignee: (a) represents and warrants that the Assignee has the necessary power and authority, and has taken all actions necessary, to execute and deliver this Assignment and Acceptance and perform the obligations of the Assignee hereunder; (b) represents that the Assignee [is/is not] already a Lender, [is/is not] an Affiliate of a Lender and [is an Approved Fund of [_____]/is not an Approved Fund] and is not a Disqualified Institution; (c) confirms that the Assignee has received copies of the Loan Agreement and any other Loan Document requested by the Assignee, together with copies of the most recent financial statements delivered pursuant to Sections 8.01(a) and 8.01(c) of the Loan Agreement (or referred to in Section 5.10(a) thereof, as applicable) and such other documents and information as the Assignee has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (d) designates on Schedule 1 hereto the Assignee's address, facsimile number and email address for notices and other communications under the Loan Agreement and the other Loan Documents; (e) if applicable, attaches two properly completed Forms W-9, W-8BEN, or W-8 BEN-E in the case of an entity, and W-8ECI or successor form prescribed by the Internal Revenue Service of the United States, certifying that the Assignee is entitled to receive all payments under the Loan Agreement without deduction or withholding of any United States federal income taxes; (f) agrees that the Assignee will, independently and without reliance upon the Assignor, any Agent or any other Lender and based upon such documents and information as the Assignee deems appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Agreement, the other Loan Documents or any other agreement, document or instrument executed, delivered or otherwise furnished pursuant hereto or thereto; (g) appoints and authorizes each Agent to take such action as agent on behalf of the Assignee and to exercise such powers and discretion under the Loan Agreement, the other Loan Documents and each other agreement, document or instrument executed, delivered or otherwise furnished pursuant thereto as are delegated to such Agent by the terms thereof, together with such powers as are incidental thereto; and (h) agrees that the Assignee will be bound by the provisions of the Loan Agreement and the other Loan Documents and will perform in accordance with its respective terms all the obligations which by the terms thereof are required to be performed by the Assignee as a Lender, including, if the Assignee is organized under the laws of a jurisdiction outside the United States, its obligations pursuant to Section 4.04 of the Loan Agreement ("Taxes").

4. Following the execution of this Assignment and Acceptance by the Assignor and the Assignee, the Assignor and the Assignee shall deliver it to the Administrative Agent (together with a processing and recordation fee of $3,500 to the Administrative Agent, to the extent required by Section 12.06(b)(ii)(C) of the Loan Agreement) for acceptance and recording by the Administrative Agent pursuant to the terms of the Loan Agreement, effective as of the

"Effective Date of Assignment" (which shall not, unless otherwise agreed to by the Administrative Agent, be earlier than five (5) Business Days after the date of such acceptance and recording by the Administrative Agent). The effective date of this Assignment and Acceptance shall be the date on which the Administrative Agent records this Assignment and Acceptance in the Register (the "Effective Date").

5. Upon such acceptance and recording by the Administrative Agent, from and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued prior to the Effective Date and to the Assignee for amounts which have accrued on and after the Effective Date.

6. From and after the Effective Date, (a) the Assignee shall be a party to the Loan Agreement and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of a Lender thereunder and under the other Loan Documents and shall be bound by the provisions thereof, and (b) the Assignor shall, to the extent provided in this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Loan Agreement.

7. Each party hereto agrees that the terms and provisions of Sections 12.01 ("Amendments and Waivers"), 12.02 ("Notices and Other Communications"), 12.10 ("Effectiveness of Facsimile Documents and Signatures"), 12.11 ("Counterparts"), 12.12 ("Severability"), and 12.13 ("Integration") of the Loan Agreement are hereby incorporated herein by reference, and shall apply to this Assignment and Acceptance *mutatis mutandis* as if fully set forth herein.

8. THIS ASSIGNMENT AND ACCEPTANCE AND THE VALIDITY, INTERPRETATION, CONSTRUCTION, AND PERFORMANCE HEREOF SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND ANY CLAIM BY ANY PARTY HERETO AGAINST ANY OTHER PARTY HERETO (INCLUDING ANY CLAIMS SOUNDING IN CONTRACT OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) SHALL BE DETERMINED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK FOR CONTRACTS MADE AND TO BE PERFORMED WHOLLY WITHIN THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS REQUIRING APPLICATION OF THE LAW OF ANY OTHER JURISDICTION.

9. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (I) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS ASSIGNMENT AND ACCEPTANCE, OR (II) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS ASSIGNMENT AND ACCEPTANCE. EACH PARTY FURTHER AGREES THAT THE TERMS AND PROVISIONS OF ARTICLE XIII OF THE LOAN AGREEMENT ("JURISDICTION; VENUE, SERVICE OF PROCESS; JURY TRIAL WAIVER") ARE HEREBY INCORPORATED HEREIN BY REFERENCE, AND SHALL APPLY TO THIS ASSIGNMENT AND ACCEPTANCE *MUTATIS MUTANDIS* AS IF FULLY SET FORTH HEREIN.

[signatures begin on next page]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Acceptance to be executed and delivered as of the date first above written.

ASSIGNOR:
[_____]

By _
Name:
Title:

ASSIGNEE:
[_____]

By _
Name:
Title:

CONSENTED:

[HAYFIN SERVICES LLP,
as Administrative Agent] [13]

By __
Name:
Title:

[[___]] [14]

By __
Name:
Title:

[MIMEDX GROUP, INC.,
as Borrower] [15]

By __
Name:
Title:

[13] Include to the extent required by Section 12.06 of the Loan Agreement.

[14] Include to the extent required by Section 12.06 of the Loan Agreement.

[15] Include to the extent required by Section 12.06 of the Loan Agreement.

ACCEPTED:

HAYFIN SERVICES LLP,
as Administrative Agent

By __
Name:
Title:

Schedule 1
to Assignment and Acceptance

Name of Assignor:	
Name of Assignee:	
Effective Date of Assignment:	

Loan	Percentage of Assignor's Loan Assigned	Percentage of All Lenders' Loan Assigned	Principal Amount of Loan Assigned (Face)	Principal Amount of Loan Assigned (Outstanding)
Term Loan	_%	_%	$___	$___

Address, facsimile number and email address for notices and other communications under the Loan Agreement and the other Loan Documents:

[Assignee]

__
__
Attention: __
Facsimile No.: __
Email: __

EXHIBIT G

FORM OF SOLVENCY CERTIFICATE

[ ], 2020

Reference is hereby made to the Loan Agreement dated as of June 30, 2020 among MIMEDX GROUP, INC., a Florida corporation ("Borrower"), the Subsidiaries of Borrower that are Guarantors or become Guarantors thereunder pursuant to Section 8.10 thereof, the Lenders from time to time party thereto, and Hayfin Services LLP, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent") and as collateral agent for the Secured Parties (in such capacity, together with its successors and permitted assigns in such capacity, the "Collateral Agent", and together with the Administrative Agent, each an "Agent" and collectively the "Agents") (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Loan Agreement"). All capitalized terms used but not otherwise defined herein have the meanings given to them in the Loan Agreement.

THE UNDERSIGNED [Chief Financial Officer] of the Borrower, HEREBY CERTIFIES to the Administrative Agent and the Lenders (solely in such undersigned's capacity as [chief financial officer] of the Borrower and not individually (and without personal liability)), as follows:

(i) I am the duly elected, qualified and acting [Chief Financial Officer] of the Borrower and am familiar with the business and financial and other matters set forth herein; and

(ii) As of the date hereof, on a pro forma basis after giving effect to the consummation of the Transactions, including the incurrence of the indebtedness represented by the Loans under the Loan Agreement, and after giving effect to the application of the proceeds of the Loans under the Loan Agreement in accordance with the terms of Section 7.06 of the Loan Agreement:

(a) the fair value of the assets (on a going concern basis) of the Borrower and the Guarantors on a consolidated basis, taken as a whole, exceeds its and their respective debts and liabilities on a consolidated basis taken as a whole, subordinated, contingent or otherwise;

(b) the present fair saleable value of the property (on a going concern basis) of the Borrower and the Guarantors on a consolidated basis, taken as a whole, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their respective debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured in the Ordinary Course of Business;

(c) each of the Borrower and the Guarantors on a consolidated basis taken as a whole, are able to pay their respective debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured in the Ordinary Course of Business; and

(d) each of the Borrower and the Guarantors on a consolidated basis taken as a whole, are not engaged in, and are not about to engage in, business contemplated as of the date hereof for which they have unreasonably small capital.

For purposes of this Solvency Certificate, the amount of any contingent liability at any time shall be computed as the amount that, in light of all the facts and circumstances existing at such time, represents the amount of such liabilities that reasonably can be expected to become actual or matured liabilities.

* * *

IN WITNESS WHEREOF, the undersigned has executed this Solvency Certificate as of the date first written above.

Name:
Title: [Chief Financial Officer] of MIMEDX GROUP, INC.

[Signature Page to Solvency Certificate]

EXHIBIT H

BORROWING NOTICE

[●], 202[●]

Hayfin Services LLP
One Eagle Place
London
SW1Y 6AF
United Kingdom
Attention: Loanops / Legal, Andrew Merrill & Barrett Polan
Facsimile: +44 0207 692 4641
Email: gc@hayfin.com, loanops@hayfin.com,
Andrew.Merrill@hayfin.com, &
Barrett.Polan@hayfin.com

Re: Request for Borrowing of [Initial Term Loans][DDTLs][Incremental Term Loans] Notice

Ladies and Gentlemen:

Reference is made to that certain Loan Agreement, to be dated on or around June 30, 2020 (as amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the "Loan Agreement"), by and among, *inter alios*, MiMedx Group, Inc., a Florida corporation, as borrower (the "Borrower"), the guarantors from time to time party thereto, the lenders from time to time party thereto (the "Lenders"), and HAYFIN SERVICES LLP, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent"). All capitalized terms used herein shall have the meanings ascribed to such terms in the Loan Agreement.

Pursuant to Section 5.08 of the Loan Agreement, the undersigned Authorized Officer of the Borrower hereby provides this Request for Borrowing of [Initial Term Loans][DDTLs][Incremental Term Loans] Notice (this "Request for Borrowing Notice") in connection with the Borrower's request to borrow the [Initial Term Loans][DDTLs][Incremental Term Loans] (such [Initial Term Loans][DDTLs][Incremental Term Loans], the "Proposed Loans"), pursuant to the terms of the Loan Agreement, as specified below:

Date of Borrowing: [●] (the "Proposed Closing Date")

Principal Amount of Borrowing: $[●] [16]

Class of Borrowing: [●]

Interest Period: 3 months

[16] If a Borrowing of a DDTL, the amount of Initial Term Loans in an aggregate principal amount cannot be less than $5,000,000.

Disbursement instructions: The Borrower irrevocably authorizes and directs the Administrative Agent to disburse the proceeds of the Proposed Loans issued on the Proposed Closing Date by wire transfer of funds to the account(s) and payee(s) indicated on Exhibit 1 attached hereto and made part hereof, and upon such disbursement the Borrower hereby acknowledges receipt of the same. In the event any of the information set forth on Exhibit 1 is incorrect, the Borrower hereby agrees that it shall be fully liable for any and all losses, costs and expenses arising therefrom. The undersigned hereby certifies that the following statements are true on the date hereof and will be true on the Proposed Closing Date, both before and after giving effect to the Borrowing of Proposed Loans and any other Loans to be issued on or before Proposed Closing Date:

(i) the representations and warranties set forth in the Loan Agreement and each other Loan Document shall be true and correct in all material respects on and as of the Proposed Closing Date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct as of such earlier date);provided that, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates; and

no Default or Event of Default shall be occurring and continuing on the Proposed Closing Date.

The Borrower acknowledges and agrees that the disbursements are being made strictly on the basis of the information set forth on Exhibit 1 attached hereto and in the event such information is inaccurate, the Borrower shall be liable for any and all losses, costs and expenses arising from any inaccuracy in such information.

[Signatures Appear on the Following Page]

Borrower:

MIMEDX GROUP, INC.

By _____

Name: Peter M. Carlson
Title: Chief Financial Officer

EXHIBIT 1 [17]

[17] To be provided.

Exhibit 10.37

April 30, 2020

Mr. William L. Phelan
[**]

Dear Bill,

I am pleased to confirm our offer of employment to you for the position of Senior Vice President / Chief Accounting Officer of MiMedx Group, Inc. ("MiMedx" or "Company"), which employment is to commence on or before May 1, 2020. In this position, you will report directly to Peter Carlson, Chief Financial Officer.

Your initial base salary will be $13,461 (gross before deductions) per biweekly pay period, which is equivalent to the gross amount of $350,000 on an annualized basis. Your salary will be payable on a biweekly basis. Your future salary adjustments will be in accordance with Company policy and based upon individual and Company performance.

You will be eligible to participate in the MiMedx Management Incentive Plan ("MIP") with an annual target bonus amount equal to forty percent (40%) of the base salary paid to you in accordance with the terms of such program in effect from time-to-time. You will be eligible to begin participating in the MIP effective immediately upon employment and your participation in the 2020 MIP will be based on a full year and will not be prorated. Your 2020 MIP incentive will be calculated based on the achievement of MiMedx financial targets and your individual objectives. The individual objectives will be comprised of one or more key operational measures and/or outcomes that are specific to your position and directly influenced by your performance. In the 2020 MIP, specified portions of your above-referenced target bonus are expected to be allocated to a) MiMedx revenue performance, b) MiMedx Adjusted Earnings Before Interest, Taxes, Depreciation and Amortization ("Adjusted EBITDA") and c) your performance in the attainment of your 2020 individual objectives. Following the final approval of the 2020 MIP by the MiMedx Board of Directors, you will receive further confirmation of the details of the 2020 MIP.

Immediately upon employment, you will be eligible to begin accrual of PTO benefits at the accrual rate of twenty (20) days per annum.

Based on the Company's analysis of competitive data, the Company has established a target annual long-term incentive value for each position eligible to participate in the Company's stock incentive program. This target is expressed as a percentage of the participant's annual base salary, and is used as a guide by which to measure the appropriate and competitive value of the annual equity grant to be proposed by the Company for approval by the Compensation committee. In your position, your target annual long-term incentive value is seventy percent (70%) of your annual base salary.

As an incentive to enter employ of the Company, the Company will make a restricted stock unit (RSU) award to you with an initial value of $350,000. Such Restricted Stock Unit Award will be subject to the terms of the applicable grant and the terms and conditions of the Company's 2016 Equity and Cash Incentive Plan and the Restricted Stock Award Agreement. One-third of the award shall vest on each anniversary of the date of grant, provided you remain employed by the Company.

As an additional incentive to enter into employ of the Company, the Company will make a second RSU award to you with an initial value of $150,000. Such Restricted Stock Unit Award will be subject to the terms of the applicable grant and the terms and conditions of the Company's 2016 Equity and Cash Incentive Plan and the Restricted Stock Award Agreement. One-third of the award shall vest upon the achievement of each of the following performance milestones to the satisfaction of the Chief Financial Officer:

1. The Company files its annual report on Form 10-K for the year ended December 31, 2019 no later than 100 days following the date it filed its annual report on Form 10-K for the year ended December 31, 2018;
2. MiMedx is relisted on either the NASDAQ or NYSE no later than 6 months following the filing of the 2019 Form 10-K;
3. With the consent of the Company's independent registered accountants, the Company transitions from cash accounting to accrual based accounting no later than October 1, 2020.

The Company will not require your relocation to the Marietta, Georgia area, but rather allow you to commute on a weekly basis from your residence in Media, Pennsylvania to Marietta, Georgia. During this time, you will be expected to primarily work from the Company's Marietta, Georgia office and maintain a schedule averaging four and one-half (4.5) days per week working from the Marietta office or traveling on Company business, unless otherwise agreed between you and the Chief Financial Officer.

The MiMedx Board of Directors will review your full compensation package as you are expected to be a 16b officer. The terms of your offer include the specific compensation arrangements described above as well as a Change of Control Severance and Restrictive Covenant Agreement. The Company has retained a compensation consultant which is, among other things, reviewing the Company's severance plan(s) for executives. The consultant will make a formal recommendation to the Compensation Committee of the Board of Directors. You will be entitled to the severance benefits approved by the Compensation Committee for non-CEO executives and will be presented a retention agreement once such benefits are approved.

You will be eligible to participate in the Company's medical, dental, vision, life insurance, and disability benefits programs the first day of the month following the date of your employment. You will be eligible to participate in the MiMedx Group 401(k) Plan effective the first day of the month following your employment.

Each such benefit shall be provided in accordance with the terms of the applicable benefit plans, which may be revised at any time at the Company's discretion. A summary of the Company's benefits is enclosed for your review. More detailed benefits eligibility and enrollment information will be sent to you shortly after you begin employment.

This offer is contingent upon a favorable background investigation and a pre-employment drug screen result. You will receive an email to complete the application process on ADP which includes the background authorization form. You must sign and complete the form before the background investigation and drug screen can commence. Once we receive the executed *Background Authorization* form, you will receive an email from Pembrooke with instructions for the drug screen process and a Chain of Custody ID number for specimen collection.

To find the nearest LabCorp location, please go online to www.labcorp.com, go to the "I am a Patient" locator tab, and click on "Find a lab". Type in your street address, city, state and zip code and make sure the testing service selection is "Routine clinical laboratory collections", then click "Search". The lab locations in proximity to your address will be shown. No appointments are necessary. Please make sure that you bring the Chain of Custody ID number and photo identification, such as your driver's license. If you cannot find a location that is close to you, please call 1-800-247-0717, Monday – Friday from 6am to midnight (CST).

The Company is committed to the highest standards of integrity and to treating its customers, employees, fellow workers, business partners and competitors in good faith and fair dealing. We expect employees to share the same standard and values. By accepting this offer, you agree that throughout your employment, you will observe all of the Company's rules governing conduct of its business and employees, including its policies protecting employees from illegal discrimination and harassment, as those rules and policies may be amended from time to time.

As an employee of MiMedx, you are prohibited from the use or disclosure of confidential information or trade secrets obtained from your past employers. If you have any such documents in your possession, you are expected to return them to the respective organization, and during the course of your employment with the Company, not bring onto MiMedx premises or utilize in any manner such documents, confidential information or trade secrets. While you have not made the Company aware of any such information in your possession, we urge you to abide by this prohibition if such information is currently in your possession.

This offer of employment is contingent on the absence of any restrictive covenants that would prevent you from conducting the duties and responsibilities of your position with MiMedx. By your acceptance of this offer, you represent that you are not a party to any non-disclosure, restrictive covenant or invention assignment agreements currently in effect. If you become aware of any such agreements to which you are a party, by your acceptance of this offer, you agree to provide us with a copy of such additional agreements.

As a condition of your employment, you will be required to sign and comply with the enclosed MiMedx Confidentiality and Non-Solicitation Agreement, MiMedx Employee Inventions Assignment Agreement, and MiMedx Non-Competition Agreement. If the provisions of this offer are agreeable to you, please sign this letter to indicate your acceptance and return one copy along with the above-referenced agreements in the enclosed self-addressed envelope.

Bill, I am delighted to extend this offer to you and look forward to an exciting and mutually rewarding business association. We look forward to your joining MiMedx. Please feel free to contact me via email or on my cell phone at 404-796-5670 if you have any questions.

Sincerely,

/s/ Lee Ann Lawson

Lee Ann Lawson
Senior Vice President, Human Resources

cc: Timothy R. Wright
Peter M. Carlson

ACCEPTANCE

I have read and understand the foregoing which constitutes the entire and exclusive agreement between the Company and the undersigned and supersedes all prior or contemporaneous proposals, promises, understandings, representations, conditions, oral or written, relating to the subject matter of this agreement. I understand and agree that my employment is at-will and is subject to the terms and conditions contained herein.

/s/ William L. Phelan

William L. Phelan

EXHIBIT 10.38

SECURITIES PURCHASE AGREEMENT

by and among

MIMEDX GROUP, INC.,

FALCON FUND 2 HOLDING COMPANY, L.P.

and

THE OTHER INVESTORS SET FORTH ON SCHEDULE 1 HERETO

Dated as of June 30, 2020

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SECURITIES PURCHASE AGREEMENT

THIS SECURITIES PURCHASE AGREEMENT (this "Agreement"), dated as of June 30, 2020 is made by and between MiMedx Group, Inc., a Florida corporation (the "Company"), Falcon Fund 2 Holding Company, L.P., a Delaware limited partnership (the "EW Investor") and the other investors whose names are set forth on Schedule 1 hereto (each a "Hayfin Investor", collectively the "Hayfin Investors", and together with EW Investor, the "Investors"). The Company and each of the Investors are referred to herein, individually, as a "Party," and, collectively, as the "Parties." Capitalized terms that are used but not otherwise defined in this Agreement shall have the meanings given to them in Section 1.1 hereof.

RECITALS

WHEREAS, pursuant to the terms and conditions contained in this Agreement, (a) the Company desires to issue and sell, and each Investor desires to purchase and acquire from the Company, at the Closing, that aggregate number of shares of the Company's Series B Convertible Preferred Stock, with a par value of $0.001 per share and having the designation, preferences, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions, as specified in the Preferred Stock Amendment (as defined below) set forth opposite such Investor's name in the column headed "Private Placement Shares" on Section (a) or Section (b) (as applicable) of Schedule 1, with each such Investor making such purchase severally and not jointly.

WHEREAS, on or about the date hereof, the Company, as borrower, will enter into a loan agreement with the Initial Term Loan Lenders (as defined therein) and an aggregate commitment amount of up to $75,000,000 with the lenders thereto and Hayfin Services LLP, as administrative agent and collateral agent (the "New Credit Agreement").

NOW, THEREFORE, in consideration of the mutual promises, agreements, representations, warranties and covenants contained herein, the Company and each Investor hereby agree as follows:

Article I

DEFINITIONS

Section 1.1 Definitions.

(a) Except as otherwise expressly provided in this Agreement, whenever used in this Agreement, the following terms shall have the respective meanings specified below:

"10% Holder" means, with respect to the EW Investor, that since the Closing, 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 Closing, 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).

"Action" means any action, cause of action, claim, complaint, charge, suit, demand, inquiry, investigation, indictment, litigation, hearing, mediation, arbitration or other proceeding, whether civil, criminal, administrative, judicial or investigative, formal or informal, whether at Law or in equity and whether private or public, including by or before any Governmental Entity.

"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; provided, that no Excluded Hayfin Entities shall be deemed to be Affiliates of the Hayfin Investors. "Affiliated" has a correlative meaning.

"Aggregate Hayfin Purchase Price" means $10,000,000.

"Articles of Incorporation" means the Amended Articles of Incorporation of the Company, as amended, as in effect on the date hereof.

"Bankruptcy Code" means Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as it may be amended from time to time.

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 Rules 13d-3 and 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 Company.

"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 Company, as amended as of October 3, 2018, and as may be further amended from time to time.

"Chapter 11" means Chapter 11 of the Bankruptcy Code.

"Code" means the Internal Revenue Code of 1986, as amended.

"Common Stock" means the common stock, par value $0.001 per share, of the Company.

"Company Charter Documents" means the Articles of Incorporation and Bylaws of the Company, each as amended to the date of this Agreement, and shall include the Preferred Stock Amendment when filed with and accepted for record by the Office of the Department of State of the State of Florida.

"Company Data" means Confidential Data held by the Company or held by any third party in connection with the provision of services to and/or further to an agreement with the Company.

"Company RSU Award" means an award of restricted stock units corresponding to shares of Common Stock.

"Company Stock Option" means an option to purchase shares of Common Stock.

"Company Stock Plans" means the stock-based compensation plans of the Company and its Subsidiaries.

"Competitor" means any Person that in the good faith judgment of the Board is a competitor of the Company, or any Affiliate or successor thereof, including any entity that acquires a controlling interest in a competitor.

"Confidential Data" means (i) proprietary or confidential Data, including Personal Information, of the Company and (ii) proprietary or confidential Data, including Personal Information, of any third party that has been entrusted to the Company.

"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.

"Credit Agreement" means that certain loan agreement, dated as of June 10, 2019, by and among the Company, Blue Torch Finance LLC and others.

"Data" means data and information of any kind (including images, software code, and other works, files, or data elements), in electronic or tangible form. "Data" also includes any data and information in oral form if so indicated or if suggested by the context in which the term is used.

"Employee Benefit Plan" means any employee benefit plan, as defined in Section 3(3) of ERISA, which is sponsored, maintained, contributed to by (or to which there is an obligation to contribute of) the Company or any of its ERISA Affiliates or under which the Company or any ERISA Affiliate has or could reasonably be expected to have present or future liability.

"Environmental Claims" means any and all actions (including administrative, regulatory and judicial actions), suits, demands, demand letters, claims, Liens, notices of noncompliance or violation, requests for information, warning letters, notices of deficiencies, notices of investigations (other than internal reports prepared by the Company) arising under Environmental Law or related to any alleged violation of or non-compliance with any Environmental Law or any permit issued, or any approval given, under any Environmental Law, including (i) any actual or threatened claims or assertions of liability by any Governmental Entities for enforcement, cleanup, removal, response, fines, penalties, remedial or other actions or damages pursuant to any applicable Environmental Law and (ii) any claims or assertions of liability by any third party seeking damages, contribution, indemnification, cost recovery, fines, penalties, compensation or injunctive relief resulting from the release or threatened release of Hazardous Materials or arising from any alleged violation of Environmental Law.

"Environmental Law" means any applicable federal, state, foreign, local or municipal statute, Law (including the common law), rule, regulation, order, ordinance, code, decree, or other legally binding written requirement of any Governmental Entity now or hereafter in effect, in each case as amended, and any legally binding judicial interpretation thereof, including any legally binding judicial or administrative order, consent decree or Judgment, relating to or imposing liability or standards of conduct concerning protection of the environment or natural resources, or the protection of human health or safety (from exposure to Hazardous Materials), or occupational health and safety (from exposure to Hazardous Materials).

"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.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means each person (as defined in Section 3(9) of ERISA) that, together with the Company, is, or at any relevant time was, treated as a "single employer" within the meaning of Section 4001(b) of ERISA or Section 414(b), (c), (m) or (o) of the Code.

"ERISA Event" means any of the following: (i) a Reportable Event with respect to any Employee Benefit Plan; (ii) any Employee Benefit Plan is insolvent or in endangered or critical status within the meaning of Section 432 of the Code or Section 4241 or 4245 of ERISA or notice of any such insolvency has been given to any of the Company or any of its ERISA Affiliates; (iii) any Employee Benefit Plan is in "at risk" status (as defined in Section 430 of the Code or Section 303 of ERISA); (iv) any Employee Benefit Plan (other than a Multiemployer Plan) has failed to satisfy the minimum funding standard of Section 412 of the Code or Section 302 of ERISA (whether or not waived in accordance with Section 412(c) of the Code or Section 302(c) of ERISA), or any of the Company or its Affiliates have applied for or received a waiver of the minimum funding standard or an extension of any amortization period within the meaning of Section 412 of the Code or Section 302, 303 or 304 of ERISA with respect to any Employee Benefit Plan; (v) the Company or any of its ERISA Affiliates fails to make by its due date a

required installment under Section 430(j) of the Code with respect to any Employee Benefit Plan or to make any required contribution to a Multiemployer Plan when due; (vi) the Company or any of its ERISA Affiliates incurs (or is reasonably expected to incur) any liability to or on account of an Employee Benefit Plan pursuant to Section 409, 502(i), 502(l), 515, 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or Section 436(f), 4971, 4975 or 4980 of the Code or is notified in writing that it will incur any liability under any of the foregoing Sections with respect to any Employee Benefit Plan; (vii) any proceeding is instituted (or is reasonably likely to be instituted) to terminate any Employee Benefit Plan or to appoint a trustee to administer any Employee Benefit Plan, or any written notice of any such proceeding is given to any of the Company or any of its ERISA Affiliates; (viii) the imposition on account of any Employee Benefit Plan of any Lien under the Code or ERISA on the assets of the Company or any of its ERISA Affiliates or notification to the Company or any of its ERISA Affiliates that such a Lien will be imposed on the assets of the Company or any of its ERISA Affiliates; (ix) the occurrence of an event, circumstance, transaction, or failure that results in liability to the Company or any of its ERISA Affiliates under Title I of ERISA or a Tax under any of Sections 4971 through 5000 of the Code; or (x) the complete or partial withdrawal of the Company or any of its ERISA Affiliates from a Multiemployer Plan that results in or is reasonably expect to result in the imposition of Withdrawal Liability or insolvency under Title IV of ERISA of any Multiemployer Plan.

"EW Investor Parties" means the EW Investor and each Permitted Transferee of the EW Investor to whom any EW Investor Private Placement Shares are Transferred pursuant to Section 5.4(b)(i).

"EW Investor Private Placement Shares" means the number of shares of Series B Preferred Stock set forth opposite the EW Investor's name in the column headed "Private Placement Shares" on Section (a) or Section (b) (as applicable) of Schedule 1 hereto.

"EW Investor Purchase Price" means the purchase price paid by the EW Investor for the EW Investor Private Placement Shares, as set forth opposite the EW Investor's name in the column headed "Purchase Price" on Section (a) or Section (b) (as applicable) of Schedule 1 hereto.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excluded Hayfin Entities" means (i) the Persons set forth on Confidential Schedule 2 hereto, and (ii) portfolio companies of Hayfin Capital Management LLP in respect of which Hayfin Capital Management LLP and its Affiliates do not own or control 50% or more of the voting equity interests or otherwise have the ability to elect or appoint a majority of the board of directors, the general partner or managing member of such portfolio company.

"Fair Market Value" means, with respect to any security or other property, the fair market value of such security or other property as reasonably determined in good faith by a majority of the Board (excluding any Investor Director or Preferred Director), or an authorized committee thereof.

"FDA" means the United States Food and Drug Administration.

"FINRA" means Financial Industry Regulatory Authority, Inc.

"Fraud" means common law fraud in the making of the representations and warranties under this Agreement under the Laws of the State of Delaware; provided, however, that the term "Fraud" does not include the doctrine of constructive or equitable fraud.

"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.

"Fundamental Change Event" means (a) the Company has after the date of this Agreement entered into a definitive written agreement providing for (i) any acquisition of a majority of the voting securities of the Company by any Person or group, (ii) any acquisition of a majority of the consolidated assets of the Company and its Subsidiaries by any Person or group, or (iii) any tender or exchange offer, merger or other business combination or any recapitalization, restructuring, liquidation, dissolution or other extraordinary transaction (provided that, in the case of any transaction covered by the foregoing clause (iii), immediately following such transaction, any Person (or the direct or indirect shareholders of such Person) will beneficially own a majority of the outstanding voting power of the Company or the surviving parent entity in such transaction); (b) the Company has approved the consummation of, entered into an agreement providing for, or publicly announced an intent to enter into an agreement providing for, any liquidation or dissolution of the Company, or (c) the Company has commenced a voluntary case under the federal bankruptcy laws, made or approved a general assignment for the benefit of creditors or consents to the appointment of, or the taking of possession by, a receiver, liquidator or trustee of itself or all or substantially all of its assets.

"GAAP" means generally accepted accounting principles in the United States, consistently applied.

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

"Hayfin Investor Parties" means, with respect to each Hayfin Investor, such Hayfin Investor and each Permitted Transferee of Hayfin Investor to whom any Hayfin Private Placement Shares are Transferred pursuant to Section 5.4(b)(i).

"Hayfin Investor Private Placement Shares" means, with respect to each Hayfin Investor, the number of shares of Series B Preferred Stock set forth opposite such Hayfin Investor's name in the column headed "Private Placement Shares" on Section (a) or Section (b) (as applicable) of Schedule 1 hereto.

"Hayfin Investor Purchase Price" means, with respect to each Hayfin Investor, the purchase price paid by such Hayfin Investor for the Hayfin Investor Private Placement Shares, as set forth opposite such Hayfin Investor's name in the column headed "Purchase Price" on Section (a) or Section (b) (as applicable) of Schedule 1 hereto.

"Hazardous Materials" means: (a) any petroleum or petroleum products, radioactive materials, friable asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing regulated levels of polychlorinated biphenyls, and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous waste," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," "toxic substances," "toxic pollutants," "contaminants" or "pollutants" under any applicable Environmental Law; (c) any chemical, waste, material or substance which is regulated under any Environmental Law: and (d) oil, petroleum, natural gas, natural gas liquids, synthetic gas, drilling fluids, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, any explosives or any radioactive materials, asbestos in any form, polychlorinated biphenyls, toxic mold, mycotoxins or microbial matter (naturally occurring or otherwise), and infectious waste.

"HCT/P's" means Human Cells, Tissues, and Cellular and Tissue-Based Products, as each is defined by the FDA.

"Health Care Laws" means all applicable Laws of the United States with respect to regulatory matters primarily relating to patient healthcare, including, without limitation, such Laws pertaining to: (i) any federal health care program (as such term is defined in 42 U.S.C. § 1320a-7b(f)), including those pertaining to providers of goods or services that are paid for by any federal health care program, including the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the Stark Law (42 U.S.C. § 1395nn), the civil False Claims Act (31 U.S.C. § 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), exclusion from participation in federal health care programs (42 U.S.C. § 1320a-7), civil monetary penalties with respect to federal health care programs (42 U.S.C. § 1320a-7a), Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), and the Public Health Service Act (42 U.S.C. §§ 201 et seq.); (ii) the general federal anti-fraud statute related to healthcare benefit programs (18 U.S.C. §1347); (iii) the privacy and security of patient-identifying health care information, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009; (iv) the research, testing, production, manufacturing, transfer, distribution and sale of drugs and medical devices, including, without limitation, the Federal Food, Drug and Cosmetic Act (21 U.S.C. §§ 301 et seq.) and its implementing regulations; (v) the hiring of employees or the acquisition of services or supplies from individuals or entities that have been excluded from government health care programs; and (vi) permits required to be held by individuals and entities involved in the manufacture and delivery of health care items and services, including HCT/P's, biologics, pharmaceuticals and medical devices; and with respect to the foregoing, all regulations promulgated thereunder, and equivalent applicable laws of other applicable Governmental Entities, and each of clauses (i) through (vi) as may be amended from time to time.

"Investor Designee" means an individual designated in writing by EW Investor for election to the Board pursuant to Section 5.6.

"Investor Material Adverse Effect" means any effect, change, event or occurrence that would reasonably be expected to prevent or materially delay, interfere with, hinder or impair (i) the consummation by an Investor of the Transaction on a timely basis or (ii) the compliance by such Investor with its obligations under this Agreement.

"IP Rights" means any or all of the following and all rights in, arising out of, or associated therewith (including all applications or rights to apply for any of the following, and all registrations, renewals, extensions, future equivalents, and restorations, now or hereafter in force and effect): (a) all United States, international, and foreign: (i) patents, utility models, and applications therefor, and all reissues, divisions, re-examinations, provisionals, continuations and continuations-in-part, and equivalent or similar rights anywhere in the world in inventions, discoveries, and designs, including invention disclosures; (ii) all trademarks, trade names, logos, and service marks, trade dress, and all applications therefor, and all goodwill associated therewith throughout the world; (iii) all copyrights and tangible works of expression, and all applications therefor, and all other rights corresponding thereto (including moral rights), throughout the world; (iv) all trade secrets and other rights in know-how and confidential or proprietary information; (v) all rights in Internet domain names, World Wide Web addresses and applications and registrations therefor, and all related contract rights therein; and (vi) any other intellectual property rights including similar, corresponding, or equivalent rights to any of the foregoing in items (i) through (v) above, and including any such rights in computer software, databases, datasets and Data (each, "Software"), in each case anywhere in the world.

"IT Systems" means all information technology and computer systems, including servers, Software, computer firmware, computer hardware, electronic Data Processing, information, record keeping, website, databases, circuits, networks, network equipment, interfaces, platforms, peripherals computer systems, and other computer, communications and telecommunications assets and equipment, and information contained therein or transmitted thereby, including any cloud or other

outsourced systems used by or for the Company relating to the transmission, storage, maintenance, organization, presentation, generation, Processing or analysis of Data and information, whether or not in electronic format, in each foregoing case, owned by the Company and the Subsidiaries and necessary to the conduct of the business of the Company and its Subsidiaries.

"Judgment" means any outstanding judgment, order, injunction, ruling, writ or decree of any Governmental Entity or arbitrator of applicable jurisdiction.

"knowledge" in reference to the Company means the actual knowledge, after due inquiry of the Persons set forth on Section 1.1 of the Company Disclosure Letter.

"Law" means any law (statutory or common), statute, regulation, rule, code or ordinance enacted, adopted, issued or promulgated by any Governmental Entity.

"Lien" means any mortgage, pledge, lien, charge, encumbrance, hypothecation, assignment, security interest or similar restriction.

"Lookback Date" means January 1, 2019.

"Material Adverse Effect" means any effect, change, event or occurrence that has or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the business, results of operations or financial condition of the Company and its Subsidiaries, taken as a whole; provided, that none of the following, and no effect, change, event or occurrence arising out of, or resulting from, the following, shall constitute or be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur: any effect, change, event or occurrence (A) generally affecting (1) the industries in which the Company and its Subsidiaries operate or (2) the economy, or credit, financial or capital markets, in the United States or elsewhere in the world, including changes in interest or exchange rates, or (B) to the extent arising out of, resulting from or related to (1) changes or prospective changes in Law or in GAAP or in accounting standards, or any changes or prospective changes in the interpretation or enforcement of any of the foregoing, or any changes or prospective changes in general legal, regulatory or political conditions, (2) the negotiation, execution or announcement of the Transaction or any of the Transaction Documents or the consummation of the Transaction, including the impact thereof on relationships, contractual or otherwise, with customers, suppliers, distributors, partners, employees or regulators, (3) acts of war (whether or not declared), sabotage or terrorism, or any escalation or worsening of any such acts of war (whether or not declared), sabotage or terrorism, (4) volcanoes, tsunamis, pandemics (including COVID-19), earthquakes, hurricanes, tornados or other natural disasters, crises or calamities, in each case including the impact thereof (including through any changes in Law or customer or Governmental Entity behavior or norms) on liquidity, indebtedness, access to capital (including debt and equity financing), decreases in demand with respect to the Company's products, as well as on relationships, contractual or otherwise, with customers, suppliers, distributors, partners, employees or regulators, (5) any action taken by the Company or its Subsidiaries that is contemplated by this Agreement or with an Investor's express written consent or at an Investor's express written request, (6) any change resulting or arising from the identity of, or any facts or circumstances relating to, an Investor or any of its Affiliates, (7) any decline in the market price, or change in trading volume, of the capital stock of the Company, or (8) any failure to meet any internal, external or public projections, forecasts, guidance, estimates, milestones, budgets or internal, external or published financial or operating predictions of revenue, earnings, cash flow or cash position (it being understood that the exceptions in clauses (7) and (8) shall not prevent or otherwise affect a determination that the underlying cause of any such change, decline or failure referred to therein (if not otherwise falling within any of the exceptions provided by clause (A) and clauses (B)(1) through (8) hereof) is a Material Adverse Effect); provided further, however, that any effect, change, event or occurrence referred to in clause (A), (B)(1) (except to the extent such effect is covered under clause (B)(4)) or (B)(3) may be taken into account in determining whether there has been, or would reasonably be expected to be, individually or in the aggregate, a Material Adverse Effect to the extent such effect, change, event or occurrence has a disproportionate adverse effect on the business, results of operations or financial condition of the Company and its Subsidiaries, taken as a whole, as compared to other similarly situated participants in the industries in which the Company and its Subsidiaries operate (in which case only the incremental disproportionate impact or impacts may be taken into account in determining whether there has been, or would reasonably be expected to be, a Material Adverse Effect).

"Multiemployer Plan" means any multiemployer plan, as defined in Section 4001(a)(3) of ERISA, which is contributed to by (or to which there is an obligation to contribute of) the Company or any of its ERISA Affiliates, and each such plan for the six-year period immediately following the latest date on which the Company or any of its ERISA Affiliates contributed to or had an obligation to contribute to such plan.

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

"Permitted Lien" means (i) any Lien for Taxes not yet due or delinquent or being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, (ii) any statutory Lien arising in the ordinary course of business by operation of law with respect to a liability that is not yet due or delinquent, (iii) any Lien created by operation of Law, such as materialmen's liens, mechanics' liens and other similar liens, arising in the ordinary course of business with respect to a liability that is not yet due or delinquent or that are being contested in good faith by appropriate proceedings, (iv) Liens securing financing obtained in the ordinary course of the Company's operations, including

financing with respect to the acquisition or lease of equipment and financing of insurance premiums, and (v) Liens incurred in connection with the extension, renewal or refinancing of the indebtedness secured by Liens of the type described in clause (iv) above.

"Permitted Transferee" means, with respect to any transferor, (i) any Affiliate of such transferor, so long as it remains such, (ii) any successor entity of such Person, (iii) with respect to any transferor that is an investment fund, vehicle or similar entity, any other investment fund, vehicle or similar entity that is Controlled by or under common Control with such transferor and (iv) any customary co-investor so long as such transferor or its Affiliates continue to retain sole Control of the voting and disposition of the Private Placement Shares so transferred; provided, that, (a) portfolio companies of the EW Investor or of any of its Affiliates shall not be Permitted Transferees of any EW Investor Party hereunder, and (b) portfolio companies of the Hayfin Investors or of any of their respective Affiliates shall not be Permitted Transferees of any Hayfin Investor Party hereunder.

"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.

"Personal Information" means, as pertinent to an identified or identifiable employee, applicant, contractor, individual business contact, website user, customer, donor, patient, or other natural person: (i) the natural person's last name in combination with any one or more of the following items: the natural person's street address, telephone number, email address, photograph, driver's license number, social security or other national identification number, passport number, credit card number, biometric identifier, bank information, account number, or health information, (ii) payment cardholder information, and (iii) any other Data relating to such identified or identifiable natural person.

"Preferred Stock Amendment" means the Articles of Amendment to the Articles of Incorporation of the Company to be filed with the Office of the Department of State of the State of Florida on or about the date hereof, in the form annexed hereto as Exhibit A.

"Privacy Policy(ies)" means each external policy concerning the privacy, security, or Processing of Personal Information in the conduct of the Company's business.

"Privacy Requirements" means all applicable Laws imposed by a competent Governmental Entity concerning or related to: (i) the Processing of Personal Information; the security of Personal Information; the geographic location where Personal Information is stored or otherwise Processed; and/or (ii) notification to Data subjects or any Governmental Entity in connection with a Security Breach involving Personal Information, including the privacy and security of patient-identifying health care information, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, and all regulations promulgated thereunder, as well as similar U.S. state Laws and associated regulations.

"Private Placement Shares" means shares of Series B Preferred Stock issued to the Investors under this Agreement, as set forth opposite such Investor's name in the column headed "Private Placement Shares" on Section (a) or Section (b) (as applicable) of Schedule 1 hereto.

"Processing", "Process", or "Processed", with respect to Data or IT Systems, means any collection, access, acquisition, storage, use, disposal, disclosure, destruction, transfer, modification, or any other processing (as defined by any applicable Privacy Requirement) of such Data or IT Systems.

"Purchase Price" means, with respect to each Investor, the purchase price paid by such Investor for the Private Placement Shares, as set forth opposite such Investor's name in the column headed "Purchase Price" on Section (a) or Section (b) (as applicable) of Schedule 1 hereto.

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 Company are traded and applicable governance policies of the Company; (ii) satisfies all other criteria and qualifications for service as a director applicable to all directors of the Company; (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) 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.

"Real Property" means, with respect to any Person, all right, title and interest of such Person (including, without limitation, any leasehold estate) in and to a parcel of real property owned, leased or operated by such Person together with, in each case, all improvements and appurtenant fixtures, equipment, personal property, easements and other property and rights incidental to the ownership, lease or operation thereof.

"Registration Rights Agreement" means the registration rights agreement, by and between the Company and the EW Investor, in the form annexed hereto as Exhibit B.

"Reportable Event" means an event described in Section 4043(c) of ERISA with respect to an Employee Benefit Plan, other than an event for which the requirement to notify the PBGC of such event has been waived.

"Representatives" means, with respect to any Person, such Person's directors, officers, members, partners, limited partners, general partners, management companies, investment managers, shareholders, managers, employees, agents, investment bankers, attorneys, accountants, advisors and other representatives.

"SEC" means the U.S. Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended.

"Security Breach" means the known or reasonably suspected loss, theft, material unplanned unavailability or alteration, corruption, or unauthorized modification, use, deletion, or disclosure, of Company Data.

"Series B Preferred Stock" means the Company's Series B Convertible Preferred Stock, with a par value of $0.001 per share, having the designation, preferences, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions, as specified in the Preferred Stock Amendment.

"Standstill Period" means the period of time commencing on the date hereof and ending on the date that is (a) in the case of the EW Investor, the later of (i) the third anniversary of the date hereof or (ii) the date that the EW Investor is no longer a 10% Holder nor a 5% Holder, and (b) in the case of any Hayfin Investor, the third anniversary of the date hereof.

"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.

"Taxes" means all taxes, assessments, duties, levies or other mandatory governmental charges or other like assessments or charges in the nature of taxes imposed by or paid to a Governmental Entity, including all federal, state, local, foreign and other income, franchise, profits, gross receipts, capital gains, capital stock, transfer, property, sales, use, alternative or add-on minimum, value-added, occupation, excise, severance, windfall profits, stamp, payroll, social security, withholding and other taxes, assessments, duties, levies or other mandatory governmental charges of any kind whatsoever paid to a Governmental Entity (whether payable directly or by withholding), all estimated taxes, deficiency assessments, additions to tax, penalties and interest thereon and shall include any liability for such amounts as a result of being a member of a combined, consolidated, unitary or affiliated group.

"Tax Return" means any return, report, election, claims for refund, disclosure, declaration of estimated Taxes and information return or statement, including any schedule or attachment thereto or any amendment thereof, with respect to Taxes filed or required to be filed with any Governmental Entity.

"Transaction Documents" means this Agreement, the Preferred Stock Amendment, the Registration Rights Agreement and all other documents, certificates or agreements executed in connection with the transactions contemplated by this Agreement, the Preferred Stock Amendment or the Registration Rights Agreement.

"Transfer" means to voluntarily or involuntarily sell, transfer, assign, pledge, hypothecate, participate, donate or otherwise encumber or dispose of, directly or indirectly. "Transfer" used as a noun has a correlative meaning.

"Treasury Regulations" mean the Treasury regulations promulgated under the Code.

"Unfunded Current Liability" of any Employee Benefit Plan means the amount, if any, by which the value of the accumulated plan benefits under the Employee Benefit Plan, determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the Fair Market Value of all plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions).

"U.S. Person" means any Person that is a "United States person" as defined in Section 7701(a)(30) of the Code.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Title IV of ERISA.

(b) In addition to the terms defined in Section 1.1(a), the following terms have the meanings assigned thereto in the Sections set forth below:

Term	Article / Section
Agreement	Preamble
Announcement	Section 5.1

Bankruptcy and Equity Exception	3.3
Capitalization Date	Section 3.10(a)
Closing	Section 2.2(a)
Company	Preamble
Company Disclosure Letter	Article III
Company Intellectual Property	Section 3.15(a)
Company Preferred Stock	Section 3.10(a)
Company Products	Section 3.25(e)
Company Securities	Section 3.10(b)
Competition Laws	Section 3.5
Confidential Information	Section 5.2
Confidentiality Agreement	Section 5.2
Contracts	Section 3.4
Director Indemnitors	Section 5.6(g)
Draft 10-K	Article III
Draft 10-Q	Article III
Draft SEC Documents	Article III
Environmental Permits	Section 3.17(a)
Execution Condition	Section 2.2(d)
Exempt Post-Lockup Transfers	Section 5.4(c)
FCPA	Section 3.23
Filed SEC Documents	Article III
Funding Condition	Section 2.2(d)
Hayfin Condition	Section 2.2(d)
Hayfin Condition Satisfaction Time	Section 2.2(d)
Insurance Policies	Section 3.18
Investors	Preamble
Investor Director	Section 5.6(c)
IRS	Section 2.2(b)
New Credit Agreement	Recitals
Party	Preamble
Permitted Purpose	Section 5.2
Preferred Directors	Section 5.6(a)
Preferred Stock Amendment	Recitals
Private Placement Shares	Recitals
Proposed Securities	Section 5.8(b)(i)
Registered IP	Section 3.15(a)
Regulatory Authority	Section 3.25(c)
Safety Notices	Section 3.25(g)
Sanctions	Section 3.22
Software	Section 1.1
Transaction	Section 2.1
Transfer Tax	Section 5.7(b)
WARN Act	Section 3.13(a)

Section 1.2 Construction. In this Agreement, unless the context otherwise requires:

(a) references to Articles, Sections, Exhibits and Schedules are references to the articles and sections or subsections of, and the exhibits and schedules attached to, this Agreement;

(b) references in this Agreement to “writing” or comparable expressions include a reference to a written document transmitted by means of electronic mail in portable document format (.pdf), facsimile transmission or comparable means of communication;

(c) words expressed in the singular number shall include the plural and vice versa; words expressed in the masculine shall include the feminine and neuter gender and vice versa;

(d) the words "hereof," "herein," "hereto" and "hereunder," and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole, including all Exhibits and Schedules attached to this Agreement, and not to any provision of this Agreement;

(e) the term "this Agreement" shall be construed as a reference to this Agreement as the same may have been, or may from time to time be, amended, modified, varied, novated or supplemented;

(f) "include," "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words;

(g) references to "day" or "days" are to calendar days;

(h) references to "the date hereof" means the date of this Agreement;

(i) unless otherwise specified, references to a statute means such statute as amended from time to time and includes any successor legislation thereto and any rules or regulations promulgated thereunder in effect from time to time; and

(j) references to "dollars" or "$" refer to currency of the United States of America, unless otherwise expressly provided.

ARTICLE II

PURCHASE AND SALE

Section 2.1 Purchase and Sale at the Closing. On the terms and conditions of this Agreement, at the Closing each Investor shall purchase and acquire from the Company, and the Company shall issue, sell and deliver to such Investor the number of shares of Series B Preferred Stock set forth opposite its name in the column headed "Private Placement Shares" on Section (a) or Section (b) (as applicable) of Schedule 1 hereto. The purchase and sale of the shares of Series B Preferred Stock by the Investors are several as among the Investors, and not joint, but for purposes of this Agreement shall collectively be referred to as the "Transaction". The Company shall use the proceeds of the Transaction to pay off all amounts outstanding under the Credit Agreement promptly after Closing and for other corporate purposes.

Section 2.2 Closing.

(a) The closing of the Transaction (the "Closing") shall occur upon delivery by the Company to the Investors of a copy of the acceptance for record of the Preferred Stock Amendment from the Office of the Department of State of the State of Florida, or such other date as mutually agreed upon by the Company and the Investors, by electronic exchange of documents and signatures which shall be deemed to have occurred at the offices of Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019.

(b) At the Closing:

(i) subject to each Investor's compliance with Section 2.2(b)(ii), the Company shall deliver to each Investor: (A) the applicable Private Placement Shares purchased by such Investor pursuant to Section 2.1 free and clear of all Liens, except restrictions on Transfer imposed by the Company Charter Documents, the Securities Act, this Agreement and any applicable securities Laws and record such Investor as the owner of such Private Placement Shares on the books and records of the Company, with stock certificates to follow promptly following the Closing, (B) evidence that the Preferred Stock Amendment has been filed by the Company with, and accepted by, the Office of the Department of State of the State of Florida, (C) a certificate signed by a duly authorized officer of the Company, in the form attached hereto as Exhibit C with respect to the (1) Company's organizational document in effect as of the Closing, (2) the resolutions of the Board authorizing the execution delivery and performance of this Agreement and the consummation of the transactions contemplated hereby and (3) the incumbency of officers authorized to execute this Agreement or any Transaction Document to which the Company is to be a party; and (D) the Transaction Documents to which it is a party, duly executed by the Company; and

(ii) each Investor shall: (A) subject to compliance by the Company with Section 2.2(b)(i)(B), (C) and (D), deliver and pay the Purchase Price by wire transfer of immediately available funds in U.S. dollars into the bank account designated by the Company in writing, (B) deliver to the Company the Transaction Documents to which it is a party, duly executed by the Investor, and (C) deliver to the Company a duly executed, valid, accurate and properly completed Internal Revenue Service ("IRS") Form W-9 from the Investor certifying that such Investor is a U.S. Person, or appropriate IRS Form W-8 from the Investor, as applicable.

(c) It shall be a condition to the obligations of the Investors to consummate the Closing (which condition is for the benefit of the Investors and may be waived by the Investors) that, at the Closing, the Company shall have delivered a certificate signed by a duly authorized officer of the Company, in the form attached hereto as Exhibit D.

(d) It shall be a condition to the obligations of the Hayfin Investors (but not to the obligations of the EW Investor) to consummate the Closing (which condition, subject to the proviso to this sentence, is for the sole benefit of the Hayfin Investors and may be waived by the Hayfin Investors) that (i) the New Credit Agreement is duly executed and in effect, by and among the Company and the Initial Term Loan Lenders (as defined in the New Credit Agreement) (the "Execution Condition"); and (ii) all conditions precedent to the funding of the Initial Term Loans (as defined in the New Credit Agreement) by the Initial Term Loan Lenders (as defined in the New Credit Agreement), as set forth in Article V of the New Credit Agreement, have been, in accordance with the terms and conditions of the New Credit Agreement, satisfied or waived prior to, or will be satisfied or waived substantially simultaneously with, the Closing under this Agreement (the "Funding Condition", and together with the Execution Condition, the "Hayfin Condition"), in each case, as of the time that the Closing would otherwise occur under this Agreement but for this Section 2.2(d) ("Hayfin Condition Satisfaction Time"); provided that the Execution Condition shall also be a condition to the obligations of the Company and may not be waived by the Hayfin Investors without the consent of the Company.

(e) If the Execution Condition has not been satisfied or waived in accordance with Section 2.2(d) by the Hayfin Condition Satisfaction Time or the Hayfin Condition has not been satisfied or waived in accordance with Section 2.2(d) by the Hayfin Condition Satisfaction Time, then the following shall occur with immediate effect and the Agreement shall be deemed to automatically be amended and restated to reflect that:

(i) Each of the Hayfin Investors shall immediately cease to be a Party to this Agreement, and any rights of such Hayfin Investors and any obligations owed to such Hayfin Investors under this Agreement shall become null and void and of no further force and effect;

(ii) The Agreement shall be deemed to be between the Company and the EW Investor only;

(iii) All references in this Agreement to the Investors shall be deemed to be a reference to the EW Investor only; and

(iv) Section (b) of Schedule 1 shall apply from and after the Hayfin Condition Satisfaction Time with respect to this Agreement, and the EW Investor agrees to consummate the transactions contemplated under this Agreement on the basis of the Purchase Price and Private Placement Shares set forth in Section (b) of Schedule 1.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to each Investor as of the date hereof (except to the extent made only as of a specified date or period, in which case such representation and warranty is made as of such date or period) that, except as (A) set forth in the confidential disclosure letter delivered by the Company to the Investors prior to the execution of this Agreement (the "Company Disclosure Letter") (it being understood that any information, item or matter set forth on one section or subsection of the Company Disclosure Letter shall be deemed disclosure with respect to, and shall be deemed to apply to and qualify, the section or subsection of this Agreement to which it corresponds in number and each other section or subsection of this Agreement to the extent that it is reasonably apparent that such information, item or matter is relevant to such other section or subsection) or (B) disclosed in any report, schedule, form, statement or other document (including exhibits) filed with, or furnished to, the SEC and publicly available after December 31, 2019 and prior to the date hereof (collectively, the "Filed SEC Documents") or (x) the Form 10-K in respect of the year ended December 31, 2019, a draft of which has been reviewed by the Investors (the "Draft 10-K") or (y) the Form 10-Q in respect of the fiscal quarter ended March 31, 2020, a draft of which has been reviewed by the Investors (the "Draft 10-Q" and together with the Draft 10-K, the "Draft SEC Documents"), other than any risk factor disclosures in any such Filed SEC Document contained in the "Risk Factors" section or any forward-looking statements within the meaning of the Securities Act or the Exchange Act thereof:

Section 3.1 Organization.

(a) The Company is a duly organized and validly existing corporation in good standing under the Laws of the jurisdiction of its organization, and has all requisite corporate power and authority necessary to carry on its business as it is now being conducted and is duly licensed or qualified to do business and is in good standing (where such concept is recognized under applicable Law) in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Each of the Company's Subsidiaries is duly organized or formed and validly existing in good standing under the Laws of the jurisdiction of its organization, and has all requisite power and authority necessary to carry on its business as it is now being conducted and is duly licensed or qualified to do business and is in good standing (where such concept is recognized under applicable Law) in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary, in each case except where the failure to be so licensed, qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 3.2 Power and Authority, Execution and Delivery. The Company has all requisite corporate power and authority to execute and deliver this Agreement and the other Transaction Documents, and to perform its obligations hereunder and thereunder and to consummate the Transaction. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents, and the consummation by it of the Transaction, has been duly authorized by the Board and no other corporate proceedings on the part of the Company are necessary to authorize the execution, delivery and performance by the Company of this Agreement and the other Transaction Documents and the consummation by it of the Transaction.

Section 3.3 Enforceability. This Agreement and the other Transaction Documents constitute the legal, valid and binding obligation of the Company and are enforceable against the Company in accordance with their terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, moratorium, reorganization and other similar laws relating to or affecting creditors' rights generally and to general equitable principles (the "Bankruptcy and Equity Exception").

Section 3.4 No Violation. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents (including, for the avoidance of doubt, the payment of any dividends contemplated hereby and thereby) the compliance with the terms and provisions hereof and thereof, and the consummation of the Transaction, do not (a) conflict with, contravene or violate any provision of any Law or Judgment applicable to the Company or any of its Subsidiaries, (b) conflict with or result in a breach of any of the terms, covenants, conditions or provisions of any loan or credit agreement (including, for the avoidance of doubt, the New Credit Agreement), indenture, debenture, note, bond, mortgage, deed of trust, lease, sublease, license, contract or other agreement to which the Company or any of its Subsidiaries is a party (each, a "Contract"), or, with or without notice, lapse of time or both, accelerate or increase the Company's or, if applicable, any of its Subsidiaries' obligations under any such Contract, result in the loss of a material benefit of the Company or its Subsidiaries under any such Contract, or give rise to a right of termination under any such Contract, (c) result in the creation or imposition of (or the obligation to create or impose) any Lien upon any of the property or assets of the Company (other than Permitted Liens), or (d) violate any provision of the Company Charter Documents (in the case of clauses (b) and (c), to the extent that such conflict, breach, contravention, creation, imposition or violation would not result in a Material Adverse Effect, provided, however, that for the purposes of this Section 3.4(b) and (c), the definition of Material Adverse Effect shall not include clause (B)(2) in the proviso of such definition).

Section 3.5 Consents and Approvals. Except (a) such as may be required under the Exchange Act, the Securities Act or "blue sky" Laws and (b) the filing of the Preferred Stock Amendment with the Office of the Department of State of the State of Florida, which shall have been filed and accepted by the Office of the Department of State of the State of Florida as of or prior to the Closing, no consent or approval of, or filing, license, permit or authorization, declaration or registration with, any Governmental Entity is necessary for the execution and delivery of this Agreement and the other Transaction Documents, and the consummation by the Company of the Transaction.

Section 3.6 SEC Filings.

(a) The Company has filed with the SEC, on a timely basis, all required reports, schedules, forms, statements and other documents required to be filed by the Company with the SEC pursuant to the Exchange Act since the Lookback Date, with the exception of the following: (i) the Company's annual reports on Form 10-K for the years ended December 31, 2017, December 31, 2018 and December 31, 2019, and (ii) the Company's quarterly reports on Form 10-Q for all quarters since the quarter ended September 30, 2017. As of their respective SEC filing dates, the Filed SEC Documents complied, and the Draft SEC Documents will when filed comply, as to form in all material respects with the requirements of the Securities Act, the Exchange Act or the Sarbanes-Oxley Act of 2002 (and the regulations promulgated thereunder), as the case may be, applicable to such Filed SEC Documents or Draft SEC Documents, and none of the Filed SEC Documents or Draft SEC Documents as of such respective dates (or, if amended prior to the date hereof, the date of the filing of such amendment, with respect to the disclosures that are amended) contained or will when filed contain any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Except with respect to the transactions contemplated by this Agreement, no event giving rise to an obligation to file (or furnish) a report under Form 8-K with the SEC has occurred as to which the time period for making such filing has not yet expired and as to which the applicable Form 8-K has not been publicly filed or furnished (unless such event has otherwise been disclosed to the Investor in writing prior to the date hereof).

(b) The consolidated financial statements of the Company (including all related notes or schedules) included or incorporated by reference in the Filed SEC Documents complied (and, in the case of the Draft SEC Documents will, when filed, comply) as to form, as of their respective dates of filing with the SEC, in all material respects with the published rules and regulations of the SEC with respect thereto, have been (or, in the case of the Draft SEC Documents, will have been) prepared in all material respects in accordance with GAAP (except, in the case of unaudited quarterly statements, as permitted by Form 10-Q of the SEC or other rules and regulations of the SEC), applied on a consistent basis during the periods involved (except (i) as may be indicated in the notes thereto or (ii) as permitted by Regulation S-X) and fairly presented (or will when filed fairly present) in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods shown in accordance with GAAP (subject, in the case of unaudited quarterly financial statements, to normal year-end adjustments and the absence of footnote disclosures). Except as disclosed in the Filed SEC Documents or to be

disclosed in the Draft SEC Documents, neither the Company nor any of its Subsidiaries is a party to, or has any commitment to become a party to, any "off balance sheet arrangement" within the meaning of Item 303 of Regulation S-K promulgated under the Securities Act.

(c) Neither the Company nor any of its Subsidiaries has any liabilities of any nature (whether accrued, absolute, contingent or otherwise) that would be required under GAAP, as in effect on the date hereof, to be reflected on a consolidated balance sheet of the Company (including the notes thereto), except liabilities (i) reflected or reserved against in the unaudited balance sheet (or the notes thereto) of the Company and its Subsidiaries as of March 31, 2020 (the "Balance Sheet Date") included in the Draft 10-Q, (ii) incurred after the Balance Sheet Date in the ordinary course of business, (iii) as expressly contemplated by this Agreement or otherwise incurred in connection with the Transaction, (iv) that have been discharged or paid prior to the date of this Agreement or (v) as would not have a Material Adverse Effect.

Section 3.7 Absence of Certain Changes. Since March 31, 2020, there has not been any Material Adverse Effect.

Section 3.8 Investment Company Act. The Company is not an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

Section 3.9 Litigation. There is no Action pending, or to the Company's knowledge threatened or reasonably expected, against or involving the Company or its Real Property, its Subsidiaries or their Real Property, or to the Company's knowledge, the Company's or its Subsidiaries' officers, directors, members, managers, employees or agents or the Common Stock which, if sustained, constitutes a Material Adverse Effect. Since the Lookback Date, there have been no decisions, settlements, Judgments, orders, awards, decrees or other holdings entered, issued, rendered or made by any Governmental Entity, arbitrator or mediator involving the Company or its Real Property or its Subsidiaries or their Real Property, or the Company's or its Subsidiaries officers, directors, members, managers, employees or agents or the Common Stock which, individually or in the aggregate, constitute a Material Adverse Effect.

Section 3.1 Capitalization.

(a) The authorized capital stock of the Company consists of 150,000,000 shares of Common Stock, and 5,000,000 shares of preferred stock, par value $0.001 per share ("Company Preferred Stock"). At the close of business on June 25, 2020 (the "Capitalization Date"), (i) 110,328,875 shares of Common Stock were issued and outstanding, (ii) no shares of Company Preferred Stock were issued and outstanding, (iii) 2,375,051 shares of Common Stock were held in treasury by the Company or owned by its Subsidiaries, (iv) except as provided in clauses (v) and (vi) no shares of Common Stock were reserved for issuance pursuant to the Company Stock Plans, (v) 105,634 shares of Common Stock were underlying outstanding Company RSU Awards (assuming target performance in the case of any performance based Company RSU Awards), (vi) 2,359,043 shares of Common Stock were reserved for issuance upon the exercise of outstanding unexercised Company Stock Options, and (vii) no other shares of capital stock of, or other equity interests (or any securities convertible into or exchangeable for or any rights exercisable for any such equity securities) in, the Company were issued, reserved for issuance or outstanding.

(b) Except as described in this Section 3.10, as of the Capitalization Date, there were (i) no outstanding shares of capital stock of, or other equity or voting interests in, the Company, (ii) no outstanding securities of the Company convertible into or exchangeable for shares of capital stock of, or other equity or voting interests in, the Company, (iii) no outstanding options, warrants, rights or other commitments or agreements to acquire from the Company, or that obligate the Company to issue, any capital stock of, or other equity or voting interests (or voting debt) in, or any securities convertible into or exchangeable for shares of capital stock of, or other equity or voting interests in, the Company other than obligations under the Company Stock Plans in the ordinary course of business, (iv) no obligations of the Company to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment relating to any capital stock of, or other equity or voting interests in, the Company (the items in clauses (i), (ii), (iii) and (iv) being referred to collectively as "Company Securities") and (v) no other obligations by the Company or any of its Subsidiaries to make any payments based on the price or value of any Company Securities.

(c) There are no outstanding agreements of any kind which obligate the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Company Securities (other than pursuant to the cashless exercise of Company Stock Options or the satisfaction of Tax withholding with respect to the exercise of Company Stock Options or the vesting of Company RSU Awards, or pursuant to the Preferred Stock Amendment), or obligate the Company to grant, extend or enter into any such agreements relating to any Company Securities, including any agreements granting any preemptive rights, subscription rights, anti-dilutive rights, rights of first refusal or similar rights with respect to any Company Securities (other than pursuant to this Agreement and the Preferred Stock Amendment).

(d) Other than this Agreement and the other Transaction Documents, neither the Company nor any Subsidiary of the Company is a party to any shareholders' agreement, voting trust agreement, registration rights agreement or other similar agreement or understanding relating to any Company Securities or any other agreement relating to the disposition, voting or dividends with respect to any Company Securities.

(e) From the close of business on the Capitalization Date through the date of this Agreement, there have been no issuances of (i) any Common Stock, Company Preferred Stock or any other equity or voting securities or interests in the

Company, other than issuances of shares of Common Stock pursuant to the exercise, vesting or settlement, as applicable, of Company RSU Awards or Company Stock Options outstanding as of the close of business on the Capitalization Date in accordance with the terms of such Company equity awards or (ii) any other Company Securities, including equity-based awards.

Section 3.2 Status of Securities. The Private Placement Shares and the shares of Common Stock issuable upon conversion of the Private Placement Shares in accordance with the terms of the Preferred Stock Amendment will be, when issued, duly authorized by all necessary corporate action on the part of the Company, validly issued, fully paid and nonassessable and issued in compliance with all applicable federal and state securities laws and will not be subject to preemptive rights of any other Person by which the Company is bound, and will be free and clear of all Liens, except restrictions imposed by this Agreement, the Securities Act, and any applicable securities Laws, and any Liens arising from the actions of the Investors.

Section 3.3 Tax Returns and Payments. The Company and each of its Subsidiaries have prepared (or caused to be prepared) and timely filed (taking into account valid extensions of time within which to file) all income and other material Tax Returns required to be filed by any of them, and all such filed Tax Returns (taking into account all amendments thereto) are true, complete and correct in all material respects. All Taxes owed by the Company and each of its Subsidiaries (whether or not shown to be due and payable on any Tax Return) have been timely paid except for Taxes (i) that are being contested in good faith by appropriate proceedings or for which adequate reserves have been established in accordance with GAAP or (ii) that would not, individually or in the aggregate, have a Material Adverse Effect. The Company has not executed any outstanding waiver of any statute of limitations for, or extension of, the period for the assessment or collection of any Tax which period has not yet expired (other than automatic extensions or any customary extensions obtained in the ordinary course of business). There are no examination, audits or other administrative or court proceedings of any income and other material Tax Return of the Company or any of its Subsidiaries by any Governmental Entity (or any other dispute or claim concerning any material Tax liability of the Company or any of its Subsidiaries) currently in progress or threatened in writing other than any examination, audit or proceeding presenting issues for which adequate reserves have been established in accordance with GAAP. The Company and each of its Subsidiaries have complied in all material respects with all applicable Laws relating to the payment and withholding of Taxes and has, within the time and manger prescribed by Law, paid over to the proper Governmental Entity all material amounts required to be withheld and paid over under all applicable Laws. There are no Liens relating or attributable to Taxes encumbering the assets of the Company or any of its Subsidiaries, except for Permitted Liens. Within the past six (6) years, neither the Company nor any of its Subsidiaries has engaged in any "listed transaction" within the meaning of Treasury Regulations Section 1.6011-4(b)(2). The Company is not and has not been for the five years prior to Closing, a "United States real property holding corporation" as defined in the Code and any applicable Treasury Regulations promulgated thereunder.

Section 3.1 Labor and Employment Matters.

(a) The Company and its Subsidiaries are, and since the Lookback Date, have been, in compliance with all applicable Laws relating to terms and conditions of employment, equal pay, health and safety, wages and hours (including the classification of independent contractors and exempt and non-exempt employees and the payment of such employees), immigration and employment verification matters (including the completion of I-9s for all employees and the proper confirmation of employee visas), employment discrimination, harassment, and retaliation, disability rights or benefits, leave Laws, human rights, equal opportunity (including compliance with any affirmative action plan obligations), plant closures and layoffs (including the Worker Adjustment and Retraining Notification Act of 1988, as amended, or any similar Laws (the "WARN Act")), occupational safety and health, workers' compensation, labor relations, employee leave issues, affirmative action and affirmative action plan requirements and unemployment insurance, except for any such non-compliance that would not result in a Material Adverse Effect.

(b) The Company and its Subsidiaries have never been nor are currently a party to or otherwise bound by any collective bargaining agreement or other agreement with a labor union, works council, group of employees or equivalent organization, and there is no organizational campaign or other effort to cause a labor union or equivalent organization to be recognized or certified as a representative on behalf of the employees in dealing with the Company or its Subsidiaries. There is no pending or, to the knowledge of the Company, threatened, and since the Lookback Date there have not been any, labor strikes, slowdowns, labor disputes, or work stoppages or disruptions, picketing or lockouts affecting the Company or its Subsidiaries.

(c) The Company and its Affiliates have no liability for (i) any unpaid wages, salaries, wage premiums, overtime, commissions, bonuses, fees, or other compensation to any current or former employees, and current or former independent contractors under applicable Law, contract or policy of the Company or its Subsidiaries; and/or (ii) any fines, Taxes, interest, or other penalties for any failure to pay or delinquency in paying such compensation, except for any such liabilities that would not have a Material Adverse Effect.

(d) Except as would not result in a Material Adverse Effect (i) all employees of the Company and its Subsidiaries who are or have been classified as exempt under the Fair Labor Standards Act and any applicable state and local wage and hour Laws at any time during the three-year period prior to the Closing are, were and have been properly classified as exempt at all times so classified, (ii) all employees of the Company and its Subsidiaries who are or have been classified as nonexempt under the Fair Labor Standards Act and any applicable state and local wage and hour Laws since the Lookback Date have been fully and properly paid all wages, including overtime, due under such Laws, and (iii) all Persons providing work or services to the Company or its Subsidiaries who are or have been classified as independent contractors at any time during the three year period prior to the Closing have been properly classified as independent contractors under all applicable Laws at all times so classified.

(a) Except as would not result in a Material Adverse Effect, since the Lookback Date, (i) no written allegations of sexual harassment or sexual misconduct have been made involving any current or former director, officer, or employee at the level of vice president or above of the Company or any of its Subsidiaries, (ii) neither the Company nor its Subsidiaries have entered into any settlement agreements related to allegations of sexual harassment or sexual misconduct by any current or former director, officer, or employee at the level of vice president or above of the Company or its Subsidiaries, and (iii) to the knowledge of the Company, no current director or officer of the Company or its Subsidiaries have been the subject of any written complaint of sexual harassment, sexual assault, or sexual discrimination during his or her tenure at the Company.

(a) The Company and its Affiliates have complied with all applicable Laws, including but not limited to all applicable federal, state, and local statutes, regulations, and orders related to employee leave, workplace safety, and employee accommodations, related to, or in response to, COVID-19, except for any such non-compliance that would not result in a Material Adverse Effect.

Section 3.1 Compliance with ERISA. Each Employee Benefit Plan (and each related trust, insurance contract or fund) is in compliance with its terms and with ERISA, the Code and all applicable Laws, except for instances of noncompliance which, individually or in the aggregate, have not or could not reasonably be expected to result in a Material Adverse Effect. No ERISA Event has occurred or is reasonably expected to occur, which, individually or in the aggregate, has resulted or could reasonably be expected to result in a Material Adverse Effect. Each Employee Benefit Plan (and each related trust, if any) that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS, or is entitled to rely upon an advisory or opinion letter issued to the provider of a pre-approved plan from the IRS, including for all required amendments, regarding its qualification thereunder that considers the law changes incorporated in the Employee Benefit Plan sponsor's most recently expired remedial amendment cycle determined under the provisions of Rev. Proc. 2007-44 (or any successor thereto). No action, suit, proceeding, hearing, audit or investigation against or involving of any Employee Benefit Plan (other than routine claims for benefits) is pending, or to the knowledge of the Company, expected or threatened, and could reasonably be expected to result in a Material Adverse Effect. No Employee Benefit Plan has an Unfunded Current Liability that has resulted or could reasonably be expected to result in a Material Adverse Effect. No employee welfare benefit plan within the meaning of §3(1) or §3(2)(B) of ERISA of the Company or any ERISA Affiliate provides benefit coverage subsequent to termination of employment except as required by Title I, Part 6 of ERISA or applicable state insurance Laws or except which could not reasonably be expected to have a Material Adverse Effect. No Withdrawal Liability has been, or is reasonably expected to be, incurred for any Multiemployer Plan by the Company or any of its ERISA Affiliates.

Section 3.2 Intellectual Property; Licenses; System and Data, etc.

(a) Section 3.15(a) of the Company Disclosure Letter sets forth a true, correct and complete list of all (i) applications to register and all registered IP Rights with the United States Patent and Trademark Office, the United States Copyright Office, or any foreign equivalent thereof that are owned, in whole or in part, by any Company or one of its Subsidiaries ("Registered IP"); and (ii) all material license agreements or other agreements granting IP Rights of another Person to the Company or any of its Subsidiaries (excluding any "shrink wrap" licenses and third-party Software licenses generally available to the public at a cost of less than $250,000 annually) (such agreements collectively "IP Licenses"), (collectively, all IP Rights included in sections (i) and (ii) above, the "Company Intellectual Property").

(b) All fees in respect of Registered IP, including renewal and maintenance fees, have been paid or any delay in payment has not caused such Registered IP to lapse or expire without the ability to restore (except in relation to Registered IP that was considered not to be material in the aggregate to the Company or one of its Subsidiaries).

(c) The Company and each of its Subsidiaries owns, licenses or otherwise possesses the right to use, all of the material IP Rights that are reasonably necessary for, or otherwise used or held for use in, the operation of any portion of its respective businesses of the Company and its Subsidiaries as currently conducted. The conduct and operations of the businesses of the Company and each of its Subsidiaries as currently conducted does not, to the knowledge of the Company, infringe, misappropriate, dilute, or otherwise violate any IP Rights owned by any other Person. To the knowledge of the Company, no Person is infringing, violating, misusing or misappropriating any IP Rights owned by the Company or any Subsidiary, and no such claims have been made against any Person by the Company or any of its Subsidiaries. No claim or litigation (i) challenging any right, title or interest of the Company or any of its Subsidiaries in any IP Rights owned by the Company or such Subsidiary, (ii) contesting the use of any IP Rights owned by the Company or such Subsidiary, (iii) contesting the validity or enforceability of such IP Rights, or (iv) alleging infringement, misappropriation, dilution, or other violation by the Company or any of its Subsidiaries of any IP Rights owned by any other Person, is pending or, to the knowledge of the Company, threatened in writing against the Company or any of its Subsidiaries, which constitutes a Material Adverse Effect. As of the Closing, none of the IP Rights owned by the Company or any of its Subsidiaries is subject to any exclusive licensing agreement or similar arrangement. No representations and warranties in respect of IP Rights are provided by the Company or any of its Subsidiaries in this Agreement other than exclusively as set forth in this Section 3.15.

(d) Each of the IP Licenses is valid and binding on the Company or one of its Subsidiaries, and to the knowledge of the Company, on the respective other party thereto in accordance with its terms and is in full force and effect. Neither the Company or one of its Subsidiaries who is a party on the one hand, or to the knowledge of the Company, the other

party on the other hand, to any Intellectual Property License has materially breached or defaulted under, or has provided or received any notice of a material breach or default of or any intention to terminate, any IP License.

(e) Except as would not have a Material Adverse Effect, the Company and its Subsidiaries have taken all commercially reasonable and customary measures and precautions necessary to protect and maintain the confidentiality of all trade secrets and all otherwise confidential information associated with the Company and its' Subsidiaries in which the Company or any of its' Subsidiaries has any right, title or interest in to maintain and protect the full value of all such information. Except as would not result in a Material Adverse Effect, neither the Company nor any of its' Subsidiaries has disclosed any trade secrets or otherwise confidential information in which the Company or any of its' Subsidiaries has (or purports to have) any right, title or interest (or any tangible embodiment thereof) to any person without having the recipient thereof execute a written agreement regarding the non-disclosure and non-use thereof. Except as would not result in a Material Adverse Effect, all use, disclosure or appropriation of any trade secret or otherwise confidential information not owned by the Company and its' Subsidiaries has been pursuant to the terms of a written agreement between the Company or one of its' Subsidiaries and the owner of such trade secret or confidential information, or is otherwise lawful.

(f) Except as would not have a Material Adverse Effect, no funding, facilities or personnel of any Governmental Entity were used, directly or indirectly, to develop or create, in whole or in part, any IP Rights owned or purported to be owned by the Company or any of its' Subsidiaries, or any products. To the knowledge of the Company, the Company and its Subsidiaries have the right to use all Data, Data sets, databases and algorithms, used in, held for use in, or necessary for the conduct of the business of the Company and its' Subsidiaries (including in relation to the products), as currently conducted (collectively, "Company Data and Data Sets"), and all such Company Data and Data Sets are either (i) owned by the Company or one of its' Subsidiaries, (ii) used under valid, enforceable, and perpetual licenses to the Company or one of its' Subsidiaries, or (iii) otherwise used without encroaching on the rights of any third party.

(g) Except as would not result in a Material Adverse Effect, the consummation of the transactions contemplated herein shall not result in the loss or impairment of the Company's or any of its' Subsidiaries' right to own or use any Company Intellectual Property; and there are no third party consents or other permissions, with respect to any Company Intellectual Property, required for the completion of the transactions contemplated hereby.

(h) Except as would not result in a Material Adverse Effect, all IT Systems owned or used by the Company are sufficient for the needs of conducting its business, in sufficiently good working condition to effectively perform all information technology operations and include a sufficient number of license seats for all Software, and are fully functional and operate and run in a reasonable and efficient business manner, and are free from any material: (i) defect, bug, or virus; or (ii) programming, design or documentation error or corruptant or other Software routines or hardware components that are reasonably expected to permit unauthorized access to, or the unauthorized disablement or erasure of, hardware components. Except as would not result in a Material Adverse Effect, since January 1, 2019, there has been no: (x) disruption, interruption, breakdown, failure, continued substandard performance, outage, or other adverse event affecting the IT Systems; or (y) unauthorized intrusions or breaches of security of the IT Systems. Except as would not result in a Material Adverse Effect, the Company has implemented and maintained its IT Systems with commercially reasonable information security controls, regularly tested and fully encrypted backup systems, and disaster recovery and business continuity practices.

(i) Except as would not result in a Material Adverse Effect, the Company's practices with regard to the Processing and security of Company Data are and have at all times since the Lookback Date been in accordance with: (i) applicable Privacy Requirements; (ii) applicable material contractual commitments of the Company relating to Data privacy and security of Company Data, and (iii) any published Company Privacy Policies of the Company. Except as would not result in a Material Adverse Effect, the Company has, since the Lookback Date, had in place commercially reasonable and appropriate written internal privacy and information security policies, designed to address the implementation and maintenance of appropriate and risk-based administrative, physical, and technical controls to protect and address the Processing of Company Data (in paper or electronic form) in a manner consistent with industry practices for the protection and appropriate use of valuable confidential or proprietary information and that meet or exceed the requirements of applicable Privacy Requirements. Except as would not result in a Material Adverse Effect, since the Lookback Date, the Company has not been required to, or voluntarily elected to, give notice to any customer, supplier, Governmental Entity, employee, or other person of any actual or alleged Security Breach or IT System or Data security failure or noncompliance, pursuant to any applicable Law or contract or otherwise. To the knowledge of the Company, since the Lookback Date, the Company has not experienced a Security Breach, except as would not result in a Material Adverse Effect.

Section 3.3 Ownership of Properties; Title; Real Property; Leases. The Company does not own any interest in Real Property. Section 3.16 of the Company Disclosure Letter lists all of the material Real Property leased by the Company or its Subsidiaries as of the Closing, indicating the identity of the lessor and the location of the material leased Real Property. Except as would not result in a Material Adverse Effect, the Company has valid and enforceable leasehold interests in such leased property, in each case, free and clear of all Liens except for Permitted Liens, subject to the Bankruptcy and Equity Exception.

Section 3.4 Environmental Matters.

(a) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (i) the Company and its Subsidiaries, and each of their respective businesses, operations and Real Property (y)

have been and are in compliance with all Environmental Laws in all jurisdictions in which the Company or such Subsidiary, as the case may be, are currently doing business and (z) have obtained and are in compliance with all permits required under Environmental Laws (the "Environmental Permits"); and (ii) the Company is capable of continued operation in compliance with Environmental Permits.

(b) Neither the Company nor any of its Subsidiaries has become subject to any pending or, to the knowledge of the Company, threatened in writing, Environmental Claim;

(a) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, neither the Company nor any of its Subsidiaries has used, managed, handled, generated, treated, stored, transported, released or disposed of Hazardous Materials in, on, at, under, to or from any currently or formerly owned or leased Real Property or facility relating to its business in a manner that requires or is reasonably expected to require corrective, investigative, monitoring, remedial or cleanup actions under any Environmental Law.

(b) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, no Hazardous Materials have spilled, discharged, released, emitted, injected, leaked in, on, under, to or from any Real Property or structure currently or previously owned, leased or occupied by the Company or any Subsidiary which has resulted in contamination in excess of applicable federal, state or local limits or requires remediation under any Environmental Law and there are no Hazardous Materials in, on, under, emanating from, or migrating from or onto any portion of any Real Property or structure currently owned, leased, or occupied or, to the knowledge of the Company, previously owned, leased, or occupied by the Company or the Subsidiaries which has resulted in contamination in excess of applicable federal, state or local limits or requires remediation under any Environmental Law.

(c) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, the Company and the Subsidiaries have not agreed to assume any actual or potential liability under any Environmental Laws of any other Person.

(d) The Company has provided the Investor with access to true and correct copies of all material reports, which are not protected by a legal privilege, in the possession or custody of the Company or any Subsidiary pertaining or relating to Hazardous Materials or Environmental Claim in connection with any Real Property now or previously owned, leased or occupied by the Company which were prepared since the Lookback Date, and to the knowledge of the Company, since July 1, 2015.

(e) Neither the Company nor any Subsidiary is aware of any current or proposed requirements under Environmental Law which would require material capital expenditures in the next twelve months which are not shown on the current balance sheets.

(f) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, there are no actions, activities, circumstances, facts, conditions, events or incidents, including the presence of any Hazardous Materials, which would be reasonably be expected to form the basis of any Environmental Claim against the Company or its Subsidiaries.

Section 3.1 Insurance. Section 3.18 of the Company Disclosure Letter sets forth a list of all current policies, binders, bonds and insurance risk arrangements for fire, liability, workers' compensation, property, casualty and other forms of insurance owned or held by the Company or with respect to which the Company is an insured or which otherwise provide coverage for the Company's assets, employees or operations as of the date hereof the ("Insurance Policies"). As of the date hereof, all premiums with respect to the Insurance Policies that are due and payable have been duly paid and none of the Insurance Policies is subject to any unpaid retrospective premium or other experience-based premium adjustment. To the Company's knowledge, no grounds for rescission or cancellation of any of the Insurance Policies exist. The Company has not received, and to the Company's knowledge, no notice of any material violation or cancellation of any of the Insurance Policies has been issued, and the Company has complied in all material respects with the requirements of each such policy.

Section 3.1 Compliance with Laws. The Company and each of its Subsidiaries (a) is and since the Lookback Date has been in compliance with all applicable Laws and (b) has all requisite governmental licenses, permits, authorizations, consents and approvals to operate its business as currently conducted, except in the case of clauses (a) and (b), in which (x) such requirement of applicable Laws, permits, government licenses, authorizations or approvals are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted or (y) the failure to have or comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 3.2 Indebtedness. Except with respect to the covenants contained in the Credit Agreement and the New Credit Agreement, the Company is not party to any agreement, and is not subject to any provision in the Company Charter Documents or resolutions of the Board that, in each case, by its terms prohibits or prevents the Company from paying dividends in the form and the amounts contemplated by the Preferred Stock Amendment or from redeeming the Private Placement Shares in accordance with the Preferred Stock Amendment.

Section 3.3 No Brokers. Except for J.P. Morgan Securities LLC, the Company is not a party to any contract with any Person requiring the Company to pay any brokerage commission, finder's fee or similar payment in connection with the Transaction.

Section 3.4 Economic Sanctions/OFAC.

(a) Neither the Company nor any Subsidiary of the Company, nor any director, officer or employee thereof, nor, to the Company's knowledge, any agent or representative of the Company or any of its Subsidiaries, is an individual or entity, is, or is owned 50% or more or Controlled by, individually or in the aggregate, a Person or Persons that is (i) the subject or target of any economic or financial sanctions or trade embargoes imposed, administered or enforced by any Governmental Entity with jurisdiction over the parties to the Agreement ("Sanctions"), including those administered by the U.S. Department of Treasury's Office of Foreign Assets Control, or (ii) located, organized, or a resident of a country, region or territory that is the subject of comprehensive Sanctions (each, a "Sanctioned Country").

(b) The Company will not, directly or indirectly, use the proceeds of the offering of Private Placement Shares hereunder, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions.

(c) Since the Lookback Date, and to the knowledge of the Company, since June 29, 2015, the Company and its Subsidiaries have not knowingly engaged in, and are not now knowingly engaged in, and will not knowingly engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions or with any Sanctioned Country.

Section 3.5 Foreign Corrupt Practices Act.

(a) Since the Lookback Date, and to the knowledge of the Company, since June 29, 2015, neither the Company nor any Subsidiary of the Company, nor any director, officer, employee of the Company or any of its Subsidiaries, nor, to the knowledge of the Company, any agent acting on behalf of the Company, has taken any action in violation of applicable Law in furtherance of an offer, payment, promise to pay or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any foreign or domestic official (including any officer or employee of a government or a government-owned, government-controlled or other quasi-governmental entity or of a public international organization, or any Person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) to influence official action or secure an improper advantage or otherwise, and the Company has conducted its businesses in compliance in all material respects with the anti-bribery provisions of the Foreign Corrupt Practices Act, as amended (15 U.S.C. § 78dd-1) (the "FCPA") and other applicable anti-corruption laws.

(a) The Company will not, directly or indirectly, use the proceeds of the offering of Private Placement Shares hereunder, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, directly or indirectly, in whole or in part, to fund or facilitate any activities or business in violation of the FCPA or other applicable anti-corruption laws.

Section 3.6 Money Laundering.

(a) Since the Lookback Date, the Company and its Subsidiaries have complied in all material respects with U.S. and applicable international Laws and regulations relating to currency reporting and money laundering, but not limited to: (i) the United States Bank Secrecy Act and implementing regulations; (ii) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 and implementing regulations; and (iii) all applicable international anti-money laundering laws, rules and regulations.

(b) The Company will not knowingly, directly or indirectly, use the proceeds of the offering of Private Placement Shares hereunder, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, directly or indirectly, in whole or in part, in violation of applicable anti-money laundering and similar laws, rules, and regulations.

Section 3.7 Health Care and FDA Regulatory Matters.

(a) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Company is, and since the Lookback Date has been in compliance with all Health Care Laws applicable to the Company's business and all other laws with respect to the labeling, storing, testing, developing, manufacturing, packaging, distributing, marketing, advertising, promoting, and selling of the Company Products. Since November 2017, the Company has been in compliance with the FDA document entitled *Regulatory Considerations for Human Cells, Tissues, and Cellular Tissue Based Products: Minimal Manipulation and Homologous Use.*

(b) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Company is not a party to any corporate integrity agreements, monitoring agreements, consent decrees, settlement orders with Governmental Entities, or similar agreements with or imposed by any Governmental Entity.

(c) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, neither the Company nor any officer, employee or agent of the Company has made an untrue statement of a material fact or fraudulent statement to the FDA or other national, state and local regulatory agency, department, bureau, commission and other Governmental Entity with authority over the clinical testing, manufacture, storage, distribution, sale and use of the Company Products (each a "Regulatory Authority") or any other Governmental Entity, failed to disclose a material fact required to be disclosed to the FDA or any other Regulatory Authority or other Governmental Entity or committed an act, made a statement, or failed to make a statement that, at the time such disclosure was made, could reasonably be expected to provide a basis for the FDA or any other Regulatory Authority or any other Governmental Entity to invoke its policy respecting Fraud, Untrue Statements of Material Facts, Bribery and Illegal Gratuities set forth in 56 Fed. Reg. 46191 (September 10, 1991) or any similar policy. Neither the Company nor its current officers or employees, or to the Company's knowledge, any agents acting on its behalf, have been convicted of any crime or, to the Company's knowledge, engaged in any conduct, that could result in a material debarment or exclusion under 21 U.S.C. § 335a, 42 U.S.C. § 1320A-7, Federal Acquisitions Regulation (FAR) Subpart 9.4, or any similar state or foreign Law, rule or regulation that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. No claims, actions, proceedings or investigations that would reasonably be expected to result in such a material debarment or exclusion are, to the Company's knowledge, pending or threatened against the Company or its officers or employees, or any agents acting on its behalf.

(d) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (i) the Company possesses and is operating in compliance with permits issued by, and have made all declarations and filings with, the appropriate Governmental Entities reasonably necessary to conduct its business, including without limitation all those that may be required by the FDA and any other Governmental Entity engaged in the regulation of HCT/P's, pharmaceuticals, medical devices, biologics, cosmetics or biohazardous materials; (ii) all such permits are valid and in full force and effect; (iii) all applications, notifications, submissions, information, claims, reports and statistics, and other data and conclusions derived therefrom, utilized as the basis for or submitted in connection with any and all requests for a permit, when submitted to the Governmental Entity were true, complete and correct in all material respects as of the date of submission and any necessary or required updates, changes, corrections or modification to such applications, submissions, information and data have been submitted to the Governmental Entity; and (iv) there is no Governmental Entity action pending or, to the Company's knowledge, threatened which could reasonably be expected to limit, revoke, suspend or materially modify any permit.

(e) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, since the Lookback Date, the Company has not received from the FDA or any other Governmental Entity any notices of adverse findings, Form FDA 483a, warning or untitled letters, or other correspondence concerning any HCT/P's, drugs, biologics or medical devices manufactured or sold by or on behalf of the Company ("Company Products") in which any Governmental Entity alleges or asserts a failure to comply with applicable Health Care Laws, or that such products may not be safe, effective or approvable. All deficiencies and non-conformities discovered during internal and external audits and inspections have been corrected and resolved in all material respects.

(f) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, since the Lookback Date, the Company has not had any product or manufacturing site (whether owned by the Company or that of a contract manufacturer for Company Products) subject to a Governmental Entity (including FDA) shutdown or import or export prohibition.

(g) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, since the Lookback Date, the Company has not had (i) any recalls, field notifications, field corrections, market withdrawals or replacements, warnings, "dear provider" letters, investigator notices, safety alerts or other notice of action relating to an alleged lack of safety, efficacy, or regulatory compliance of the Company Products issued by the Company ("Safety Notices") or (ii) to the Company's knowledge, any material complaints with respect to the Company Products that are currently unresolved. Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, to the Company's knowledge, there are no facts that would be reasonably likely to result in (A) a Safety Notice with respect to the Company Products; or (B) a termination or suspension of marketing or testing of any of the Company Products; or (C) or a determination that any of the Company's Products are adulterated or misbranded.

Section 3.8 Sale of Securities. Assuming the accuracy of the representations and warranties set forth in Section 4.10, the sale of the Private Placement Shares pursuant to this Agreement is exempt from the registration and prospectus delivery requirements of the Securities Act and the rules and regulations thereunder. Without limiting the foregoing, neither the Company nor, to the knowledge of the Company, any other Person authorized by the Company to act on its behalf, has engaged in a general solicitation or general advertising (within the meaning of Regulation D of the Securities Act) of investors with respect to offers or sales of the Private Placement Shares and neither the Company nor, to the knowledge of the Company, any Person acting on its behalf has made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause the offering or issuance of Private Placement Shares under this Agreement to be integrated with prior offerings by the Company for purposes of the Securities Act that would result in none of Regulation D or any other applicable exemption from

registration under the Securities Act to be available, nor will the Company take any action or step that would cause the offering or issuance of Private Placement Shares under this Agreement to be integrated with other offerings by the Company.

Section 3.9 Authorized Shares. At any time that Private Placement Shares remain outstanding, the Company shall from time to time take all lawful action within its control to cause the authorized capital stock of the Company to include a sufficient number of authorized but unissued shares of Common Stock to satisfy the conversion requirements of the Private Placement Shares then outstanding.

Section 3.10 No Other Representations or Warranties. Except for the representations and warranties made by the Company in this Article III, neither the Company nor any other Person acting on its behalf makes any other express or implied representation or warranty with respect to the Private Placement Shares, the Common Stock, the Company or any of its Subsidiaries or their respective businesses, operations, properties, assets, liabilities, condition (financial or otherwise) or prospects, notwithstanding the delivery or disclosure to the Investor or their respective Representatives of any documentation, forecasts or other information with respect to any one or more of the foregoing, and the Investors acknowledge the foregoing. In particular, and without limiting the generality of the foregoing, except for the representations and warranties made by the Company in this Article III, neither the Company nor any other Person makes or has made any express or implied representation or warranty to the Investors or any of their respective Representatives with respect to (a) any financial projection, forecast, estimate, budget or prospect information relating to the Company, any of its Subsidiaries or their respective businesses or (b) any oral or written information presented to the Investors or any of their respective Representatives in the course of its due diligence investigation of the Company, the negotiation of this Agreement or the course of the Transaction or any other transactions or potential transactions involving the Company and any Investor.

Section 3.11 No Other Purchaser Representations or Warranties. Except for the representations and warranties expressly set forth in Article IV, the Company hereby acknowledges that no Investor nor any other Person (a) has made or is making any other express or implied representation or warranty with respect to such Investor or any of its Subsidiaries or their respective businesses, operations, assets, liabilities, condition (financial or otherwise) or prospects, including with respect to any information provided or made available to the Company or any of its Representatives or any information developed by the Company or any of its Representatives or (b) except in the case of Fraud in connection with the representations and warranties expressly set forth in Article IV, will have or be subject to any liability or indemnification obligation to the Company resulting from the delivery, dissemination or any other distribution to the Company or any of its Representatives, or the use by the Company or any of its Representatives, of any information, documents, estimates, projections, forecasts or other forward-looking information, business plans or other material developed by or provided or made available to the Company or any of its Representatives, including in due diligence materials, in anticipation or contemplation of the Transaction or any other transactions or potential transactions involving the Company and such Investor. The Company, on behalf of itself and on behalf of its Affiliates, expressly waives any such claim relating to the foregoing matters, except with respect to Fraud in connection with the representations and warranties expressly set forth in Article IV.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE INVESTORS

Each Investor (solely with respect to itself and its Affiliates and not with respect to another Investor or its respective Affiliates) represents and warrants to the Company, as of the date hereof (except to the extent made only as of a specified date or period, in which case such representation and warranty is made as of such date or period) that:

Section 4.1 Organization. Such Investor is a duly organized or formed and validly existing corporation or other registered entity in good standing under the Laws of the jurisdiction of its organization, and has all requisite power and authority necessary to carry on its business as it is now being conducted and is duly licensed or qualified to do business and is in good standing (where such concept is recognized under applicable Law) in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have an Investor Material Adverse Effect.

Section 4.2 Power and Authority, Execution and Delivery. Such Investor has all requisite power and authority to execute and deliver this Agreement and the other Transaction Documents, to perform its obligations hereunder and thereunder and to consummate the Transaction. The execution, delivery and performance by such Investor of this Agreement and the other Transaction Documents and the consummation by such Investor of the Transaction has been duly authorized and approved by all necessary action on the part of such Investor, and no further action, approval or authorization by any of its shareholders, partners, members or other equity owners, as the case may be, is necessary to authorize the execution, delivery and performance by such Investor of this Agreement and the other Transaction Documents to which it is a party and the consummation by such Investor of the Transaction.

Section 4.3 Enforceability. This Agreement constitutes the legal, valid and binding obligation of such Investor and is enforceable against such Investor in accordance with its terms, subject to the Bankruptcy and Equity Exception.

Section 4.4 No Violation. The execution, delivery and performance by such Investor of this Agreement and the other Transaction Documents, the compliance with the terms and provisions hereof and thereof, and the consummation of the Transaction, do not and will not (a) conflict with, contravene or violate any provision of any Law or Judgment applicable to such Investor or its Subsidiaries (b) conflict with or result in a breach of any of the terms, covenants, conditions or provisions of any contract or other agreement to which such Investor or any of its Subsidiaries is a party, or (c) violate any provision of the certificate or articles of incorporation, bylaws or other comparable charter or organizational documents of such Investor (in the case of clauses (a) and (b), to the extent that such conflict, breach, contravention, payment or violation could not, individually or in the aggregate, reasonably be expected to have an Investor Material Adverse Effect).

Section 4.5 Consents and Approvals. Except (a) such as may be required under the Exchange Act, the Securities Act or "blue sky" Laws and (b) the filing of the Preferred Stock Amendment with the Office of the Department of State of the State of Florida, which shall have been filed and accepted by the Office of the Department of State of the State of Florida as of or prior to the Closing, no consent or approval of, or filing, license, permit or authorization, declaration or registration with, any Governmental Entity is necessary for the execution and delivery of this Agreement and the other Transaction Documents and the consummation by such Investor of the Transaction.

Section 4.6 Financing. The EW Investor has and, at the Closing, will have all immediately available funds to pay the EW Investor Purchase Price on the terms and conditions contemplated by this Agreement. Each Hayfin Investor has and, at the Closing, will have all immediately available funds necessary to pay the applicable Hayfin Investor Purchase Price on the terms and conditions contemplated by this Agreement.

Section 4.7 Ownership of Company Stock. Such Investor and its Affiliates do not own any capital stock or other securities of the Company other than the Private Placement Shares to be issued at Closing.

Section 4.8 Brokers and Other Advisors. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses in connection therewith, in connection with the Transaction based upon arrangements made by or on behalf of such Investor or its Affiliates.

Section 4.9 Non-Reliance on Company Estimates, Projections, Forecasts, Forward-Looking Statements and Business Plans. In connection with the due diligence investigation of the Company by such Investor and its Representatives, such Investor and its Representatives have received and may continue to receive from the Company and its Representatives certain estimates, projections, forecasts and other forward-looking information, as well as certain business plan information containing such information, regarding the Company and its Subsidiaries and their respective businesses and operations. Such Investor hereby acknowledges that there are uncertainties inherent in attempting to make such estimates, projections, forecasts and other forward-looking statements, as well as in such business plans, with which such Investor is familiar, that such Investor is making its own evaluation of the adequacy and accuracy of all estimates, projections, forecasts and other forward-looking information, as well as such business plans, so furnished to such Investor (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, forward-looking information or business plans), that neither the Company nor any of its Subsidiaries nor any other Person has made any representation or warranty with respect to such estimates, projections, forecasts, forward-looking information or business plans, and except as to any claims against the Company for Fraud in connection with the representations and warranties expressly set forth in Article III, that such Investor will have no claim against the Company or any of its Subsidiaries, or any of their respective Representatives, with respect thereto.

Section 4.10 Purchase for Investment. Such Investor acknowledges that the Private Placement Shares and the Common Stock issuable upon conversion of the Private Placement Shares have not been registered under the Securities Act or under any state or other applicable securities laws. Such Investor (a) acknowledges that it is acquiring its Private Placement Shares and the Common Stock issuable upon conversion of the Private Placement Shares pursuant to an exemption from registration under the Securities Act solely for investment with no intention to distribute any of the foregoing to any Person, (b) will not sell, Transfer, or otherwise dispose of any of the Private Placement Shares or the Common Stock issuable upon conversion of the Private Placement Shares, except in compliance with this Agreement and the registration requirements or exemption provisions of the Securities Act and any other applicable securities Laws, (c) is a sophisticated institutional investor with extensive knowledge and experience in financial and business matters and in investments of this type, (d) is capable of evaluating the merits and risks of its investment in the Private Placement Shares and the Common Stock issuable upon conversion of the Private Placement Shares and of making an informed investment decision, (e) is an "accredited investor" (as that term is defined by Rule 501 of Regulation D under the Securities Act), (f) is an "institutional account" (as that term is defined in FINRA Rule 4512(c)) and (g) (1) has been furnished with or has had full access to all the information that it considers necessary or appropriate to make an informed investment decision with respect to the Private Placement Shares and the Common Stock issuable upon conversion of the Private Placement Shares, (2) has had an opportunity to discuss with the Company and its Representatives the intended business and financial affairs of the Company and to obtain information necessary to verify any information furnished to it or to which it had access and (3) can bear the economic risk of (i) an investment in the Private Placement Shares and the Common Stock issuable upon conversion of the Private Placement Shares indefinitely and (ii) a total loss in respect of such investment. Such Investor has such knowledge and experience in business and financial matters so as to enable it to understand and evaluate the risks of, and form an investment decision with respect to its investment in, the Private Placement Shares and the Common Stock issuable upon conversion of the Private Placement Shares, and to protect its own

interest in connection with such investment. Such Investor agrees that J.P. Morgan Securities LLC shall have no liability to such Investor in connection with the Transaction.

Section 4.11 No Other Company Representations or Warranties. Except for the representations and warranties expressly set forth in Article III, such Investor hereby acknowledges that (a) neither the Company nor any of its Subsidiaries, nor any other Person, has made or is making any express or implied representation or warranty with respect to the Company or any of its Subsidiaries or their respective businesses, operations, assets, liabilities, condition (financial or otherwise) or prospects, including with respect to any information provided or made available to such Investor or any of its Representatives or any information developed by such Investor or any of its Representatives, (b) such Investor has not relied on any representation or warranty from the Company, any Subsidiary of the Company or any other Person in determining to enter into this Agreement or the other Transaction Documents, and (c) neither the Company nor any of its Subsidiaries nor any other Person will have or be subject to any liability to such Investor resulting from the delivery, dissemination or any other distribution to such Investor or any of its Representatives, or the use by such Investor or any of its Representatives, of any information, documents, estimates, projections, forecasts or other forward-looking information, business plans or other material developed by or provided or made available to such Investor or any of its Representatives, including in due diligence materials, "data rooms" or management presentations (formal or informal), in anticipation or contemplation of the Transaction or any other transactions or potential transactions involving the Company and such Investor. Such Investor, on behalf of itself and on behalf of its Affiliates, expressly waives any such claim relating to the foregoing matters. Such Investor hereby acknowledges (for itself and on behalf of its Affiliates and Representatives) that it has conducted, to its satisfaction, its own independent investigation of the business, operations, assets and financial condition of the Company and its Subsidiaries and its own in-depth analysis of the merits and risks of the Transaction in making its investment decision and, in making its determination to proceed with the Transaction, such Investor and its Affiliates and Representatives have relied on the results of their own independent investigation and analysis.

Section 4.1 Resignation of Preferred Directors. On or prior to the Closing, the EW Investor has caused each of the initial Preferred Directors to resign from the board of directors of TissueTech, Inc. and its Affiliates.

Section 4.2 No Other Agreements. Other than this Agreement, there are no other agreements, arrangements or understandings by, among or between the EW Investor or any of its Affiliates on the one hand, and the Hayfin Investor or any of its Affiliates on the other hand, with respect to the acquisition, voting, holding or disposition of the Private Placement Shares or the Common Stock of the Company.

ARTICLE V

ADDITIONAL COVENANTS

Section 5.1 Public Disclosure. The Investors and the Company shall consult with each other before issuing, and give each other the opportunity to review and comment upon, any press release or other public statements with respect to the Transaction Documents or the Transaction, and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by applicable Law, Judgment, court process or the rules and regulations of any national securities exchange or national securities quotation system. The Investors and the Company agree that the initial press release to be issued with respect to the Transaction following execution of this Agreement shall be in the form mutually agreed by the parties (the "Announcement"). Notwithstanding the foregoing, this Section 5.1 shall not apply to any press release or other public statement made by the Company or the Investors (a) that is consistent with the Announcement and does not contain any information relating to the Transaction that has not been previously announced or made public in accordance with the terms of this Agreement or (b) is made in the ordinary course of business and does not relate specifically to the signing of the Transaction Documents or the Transaction.

Section 5.2 Confidentiality. Each Investor will, and will cause its respective Affiliates and its and their respective Representatives to, keep confidential any information (including oral, written and electronic information) concerning the Company, its Subsidiaries or its Affiliates that may be furnished to such Investor, their Affiliates or its or their respective Representatives by or on behalf of the Company or any of its Representatives pursuant to (x) this Agreement, including any such information provided in connection with such Investor's rights under Section 5.4(f) (in the case of the Hayfin Investors), Section 5.6 or Section 5.8 or (y) pursuant to the non-disclosure agreement, dated as of April 1, 2020, by and between Essex Woodlands Services Co., Inc. and the Company (the "Confidentiality Agreement") (the information referred to in clauses (x) and (y), collectively referred to as the "Confidential Information") and to use the Confidential Information solely for the purposes of monitoring, administering or managing such Investor's investment in the Company made pursuant to this Agreement (a "Permitted Purpose"); provided that the Confidential Information shall not include information that (i) was or becomes available to the public other than as a result of a disclosure by such Investor, any of its Affiliates or any of their respective Representatives, (ii) was or becomes available to such Investor, any of its Affiliates or any of their respective Representatives on a non-confidential basis from a source other than the Company or its Representatives; provided that such source was not, to such Investor's knowledge after due inquiry, subject to any legally binding obligation (whether by agreement or otherwise) to keep such information confidential, (iii) at the time of disclosure is already in the possession of such Investor, any of its Affiliates or any of their respective Representatives, provided that such information is not, to such Investor's knowledge after due inquiry, subject to any legally binding obligation (whether by agreement or otherwise) to keep such information confidential, or (iv) is independently developed by such Investor, any of its Affiliates or any of their respective Representatives without reference to,

incorporation of, reliance on or other use of any Confidential Information. Such Investor agrees, on behalf of itself and its Affiliates and its and their respective Representatives, that Confidential Information may be disclosed solely (i) to such Investor, its Affiliates, and its and their respective Representatives to the extent required for a Permitted Purpose, and in any event shall not be shared with any such Representative who, to such Investor's knowledge, has an employment, advisory, agency, director or officer relationship with a Competitor, (ii) to its stockholders, limited partners, members or other owners, as the case may be, regarding the general status of its investment in the Company (without disclosing specific confidential information), and (iii) in the event that such Investor, any of its Affiliates or any of its or their respective Representatives are requested or required by applicable Law, Judgment, stock exchange rule or other applicable judicial or governmental process (including by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, in each of which instances such Investor, its Affiliates and its and their respective Representatives, as the case may be, shall, to the extent legally permitted, provide notice to the Company sufficiently in advance of any such disclosure so that the Company will have a reasonable opportunity to timely seek to limit, condition or quash such disclosure (in which case such Investor shall use reasonable efforts to assist the Company in this respect), at the Company's sole cost and expense.

Section 5.3 Standstill. For the duration of the Standstill Period, each Investor agrees that unless specifically requested in writing in advance by the Board acting upon a majority vote of the directors other than the Investor Director(s), it will not, and will cause its Affiliates to not, directly or indirectly (including through any of its or its Affiliates' respective Representatives acting on its or its Affiliates' behalf), acting alone or in concert with others (or at any time during the Standstill Period assist, advise, participate or encourage others to):

(a) acquire (or agree, offer, seek or propose to acquire, in each case, publicly or privately), by purchase, tender offer, exchange offer, agreement or business combination or in any other manner, any ownership, including beneficial ownership (as defined in Rule 13d-3 under the Exchange Act, subject to the last sentence of this Section 5.3) of any material assets or businesses or any securities of the Company or any of its Subsidiaries, or any rights or options to acquire such ownership (including from any third party); provided that the foregoing shall not prevent any conversion into shares of Common Stock pursuant to the terms of the Private Placement Shares or any acquisition of securities pursuant to Section 5.8;

(b) publicly or privately offer to enter into, or publicly or privately propose, any merger, business combination, recapitalization, restructuring or other extraordinary transaction with the Company or any of its Subsidiaries;

(c) initiate any shareholder proposal or the convening of a shareholders' meeting of or involving the Company or any of its Subsidiaries;

(d) solicit proxies (as such terms are defined in Rule 14a-1 under the Exchange Act), whether or not such solicitation is exempt pursuant to Rule 14a-2 under the Exchange Act, with respect to any matter from, or otherwise seek to influence, advise or direct the vote of, holders of any shares of capital stock of the Company or any securities convertible into or exchangeable or exercisable for (in each case, whether currently or upon the occurrence of any contingency) such capital stock, or make any communication exempted from the definition of solicitation by Rule 14a-1(l)(2)(iv) under the Exchange Act;

(e) otherwise seek or propose to influence, advise, change or control the management, board of directors, governing instruments, affairs or policies of the Company or any of its Subsidiaries thereof; provided, that this clause (e) shall not restrict the exercise by such Investor of any of its express rights under this Agreement or the Transaction Documents;

(f) enter into any discussions, negotiations, agreements, arrangements or understandings with any other Person with respect to any matter described in the foregoing clauses (a) through (e) or form, join or participate in a "group" (within the meaning of Section 13(d)(3) of the Exchange Act) to vote, acquire or dispose of any securities of the Company or any of its Subsidiaries;

(g) request that the Company (or its Board or the Company's Representatives) amend, waive, grant any consent under or otherwise not enforce any provision of this section, or refer to any desire or intention, but for this section, to do so; or

(h) make any public disclosure, or take any action that could reasonably be expected to require such Investor or its Affiliates (or its and their Representatives) or the Company to make a public disclosure, with respect to any of the matters set forth in this Agreement or the Transaction Documents.

Notwithstanding anything in this Section 5.3 to the contrary (A) such Investor may make requests (but only privately to the Company and not publicly) for amendments, waivers, consents under or agreements not to enforce clause (a) or clause (b) of this Section 5.3 and may make proposals or offers (but only privately to the Company and not publicly) regarding the transactions contemplated by clause (a) or clause (b) of this Section 5.3, in each case, at any time after a Fundamental Change Event, (B) the Hayfin Investors and their respective Affiliates, may during the Standstill Period, purely for passive investment purposes, acquire additional Common Stock of the Company, so long as the aggregate amount of

Common Stock beneficially owned by the Hayfin Investors and their Affiliates and any other person in a group (as such term is used in Section 13(d) of the Exchange Act) with any of the Hayfin Investors or their Affiliates in the aggregate would not exceed 4.9% of the total number of outstanding shares of Common Stock. For purposes of this Section 5.3, the following will be deemed to be an acquisition of beneficial ownership of securities: (1) establishing or increasing a call equivalent position, or liquidating or decreasing a put equivalent position, with respect to such securities within the meaning of Section 16 of the Exchange Act; or (2) entering into any swap or other arrangement that results in the acquisition of any of the economic consequences of ownership of such securities, whether such transaction is to be settled by delivery of such securities, in cash or otherwise.

Section 5.4 Transfer Restrictions.

(a) Except as otherwise permitted in Section 5.4(b), from the date hereof until the second anniversary of the Closing (the "Lock-Up Period"), each of the EW Investor Parties and each of the Hayfin Investor Parties will not (i) Transfer any Private Placement Shares or shares of Common Stock issued upon conversion of Private Placement Shares or (ii) make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a short sale of or the purpose of which is to offset the loss that results from a decline in the market price of, the Private Placement Shares or any shares of Common Stock, or otherwise establish or increase, directly or indirectly, a put equivalent position, as defined in Rule 16a-1(h) under the Exchange Act, with respect to any of the Private Placement Shares or shares of Common Stock or any other capital stock of the Company.

(b) Notwithstanding Section 5.4(a), during the Lock-Up Period each of the EW Investor Parties and each of the Hayfin Investor Parties shall be permitted to Transfer any portion or all of their Private Placement Shares or shares of Common Stock issued upon conversion of Private Placement Shares under the following circumstances:

(i) (x) in the case of the EW Investor, Transfers to any Permitted Transferees of the EW Investor or an EW Investor Party, and (y) in the case of each Hayfin Investor, Transfers to any Permitted Transferees of such Hayfin Investor or a Hayfin Investor Party, but only if in each case of (x) and (y), (A) the transferee agrees in writing prior to such Transfer for the express benefit of the Company (in form and substance reasonably satisfactory to the Company and with a copy thereof to be furnished to the Company) to be bound by the terms of this Agreement; and (B) the transferee and the transferor agree in writing prior to such Transfer for the express benefit of the Company (in form and substance reasonably satisfactory to the Company and with a copy thereof to be furnished to the Company) that the transferee shall Transfer the Private Placement Shares and/or shares of Common Stock issued upon conversion of Private Placement Shares so Transferred back to the transferor or another Permitted Transferee (of the Investor from whose holdings such Private Placement Shares were first transferred) at or before such time as the transferee ceases to be a Permitted Transferee of the transferor;

(ii) Transfers of shares of Common Stock issued upon conversion of Private Placement Shares pursuant to a tender offer or exchange offer for at least a majority of the equity securities of the Company made by a Person who is not an EW Investor Party or Hayfin Investor Party (or any of their respective Affiliates) to all shareholders of the Company, with the prior consent of the Board acting upon a majority vote of the directors other than the Investor Director(s); and

(iii) In the case of the Hayfin Investors, the granting of pledges and security interests in the ordinary course of business to bona fide debt financing sources of the Hayfin Investors or any of their Affiliates (and any enforcement of any such pledge or security interest.

(c) Following the end of the Lock-Up Period, Transfers may only be made by any EW Investor Party or Hayfin Investor Party (as applicable): (i) in ordinary course market transactions executed through the facilities of an exchange or over the counter market that are not directed to specific Persons; (ii) in the case of the EW Investor Parties, in broadly-distributed public offerings (A) pursuant to such Investor's rights under the Registration Rights Agreement or (B) pursuant to Rule 144 under the Securities Act; or (iii) in customary block trades executed through brokers, provided, that (x) no EW Investor Party or Hayfin Investor Party (together with their respective Affiliates) may Transfer, in any such transaction or a series of related transactions, more than 4.9% of the total number of outstanding shares of Common Stock, and (y) no such block trade shall be permitted if such EW Investor Party or Hayfin Investor Party or any of their respective Affiliates knows or believes that any transferee in such transaction is a Competitor (Transfers described in clauses (i), (ii) and (iii), "Exempt Post-Lockup Transfers"); or (iv) to any Person that is not a Competitor in compliance with the provisions of Section 5.4(d).

(d) For a Transfer (other than an Exempt Post-Lockup Transfer, which need not comply with this Section 5.4(d)) to comply with this Section 5.4(d), (i) the transferor in any such Transfer shall provide prior written notice to the Company of the identity of the transferee, together with a certification by the transferor that to its knowledge the transferee is not a Competitor and (ii) the transferee shall (A) provide to the Company prior to such Transfer a certification by the transferee that it is not a Competitor and (B) agree in writing prior to such Transfer for the express benefit of the Company (in form and substance reasonably satisfactory to the Company) to be bound by the restrictions on Transfers set forth in Section 5.4(c) to the same extent as if it were an Investor. The Company may at any time, and shall,

within 15 Business Days of a request by an Investor made from and after the 30th day prior to the end of the Lock-Up Period, provide a list of all Competitors of the Company to whom Transfers are prohibited pursuant to Section 5.4(c), which list shall be final and binding on the Investors and the Company for all purposes hereunder.

(e) Any attempted Transfer in violation of this Section 5.4 shall be null and void *ab initio* and the Company shall not be required to recognize such Transfer.

(f) For the period from the date hereof until the date that is four years following the Closing, the Company shall provide prior written notice to the Hayfin Investors if the Company will undertake any actions set forth in Subsections 13(i), (ii) and (vi) of the Preferred Stock Amendment, such notice to be provided no later than the tenth (10th) Business Day prior to such action being effective; provided, that the contents of such notice shall constitute Confidential Information for the purposes of this Agreement. The rights of each of the Hayfin Investors under this Section 5.4(f) are individual to each such Hayfin Investor and shall not be directly or indirectly transferable or assignable to any other Person, other than to Permitted Transferees of the Hayfin Investors (but excluding Persons falling within subclause (iv) of the definition of "Permitted Transferee" as set forth in Section 1.1).

Section 5.5 Legend.

(a) All certificates or other instruments representing the Private Placement Shares and any shares of Common Stock issued upon conversion of Private Placement Shares will bear a legend substantially to the following effect:

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO TRANSFER AND OTHER RESTRICTIONS SET FORTH IN A SECURITIES PURCHASE AGREEMENT, DATED AS OF JUNE 30, 2020, COPIES OF WHICH ARE ON FILE WITH THE SECRETARY OF THE ISSUER.

(b) Upon request of the applicable EW Investor Party or Hayfin Investor Party and, if reasonably requested by the Company, receipt by the Company of an opinion of counsel reasonably satisfactory to the Company to the effect that such legend is no longer required under the Securities Act and applicable state securities laws, the Company shall promptly cause the first paragraph of the legend to be removed from any certificate or other instrument for any Private Placement Shares or Common Stock to be Transferred in accordance with the terms of this Agreement. The second paragraph of the legend shall be removed upon request by an Investor in connection with any Transfer permitted by this Agreement to the extent the restrictions set forth in this Agreement would not be applicable to the Transfer.

Section 5.6 Investor Directors.

(a) Designation of Preferred Directors. Pursuant to Subsection 14 of the Preferred Stock Amendment, the EW Investor is entitled to designate up to two (2) directors to the Board (such directors, the "Preferred Directors") upon and subject to the terms and conditions set forth therein and only for so long as any shares of the Series B Preferred Stock remain outstanding. The Parties acknowledge and agree that if the EW Investor is a 5% Holder or a 10% Holder at the time that no shares of Series B Preferred Stock are outstanding, then (i) any Preferred Directors then sitting on the Board shall be deemed to be the Investor Directors hereunder as if they had been the Investor Designees hereunder and been appointed or elected to the Board and (ii) the rights set forth in this Section 5.6 shall take effect from and after the time that no shares of Series B Preferred Stock remain outstanding. None of the rights of the EW Investor under this Section 5.6 shall be in effect unless and until no shares of Series B Preferred Stock are outstanding.

(b) From and after the time that no shares of Series B Preferred Stock remain outstanding:

(i) for so long as the EW Investor is a 10% Holder, the EW Investor shall have the right to designate two (2) Investor Designees to be nominated by the Company to serve on the Board;

(ii) for so long as the EW Investor is a 5% Holder, the EW Investor shall have the right to designate one (1) Investor Designee to be nominated by the Company to serve on the Board; and

(iii) in the event the EW Investor is neither a 5% Holder nor a 10% Holder, the EW Investor shall have no right to designate any person to be nominated by the Company to serve on the Board.

(a) Election of Investor Designees. From and after the time that no shares of Series B Preferred Stock remain outstanding:

(i) the Investor Designees shall, when up for election, subject to the terms hereof and applicable Law, be the Company's nominees to serve on the Board and the Company shall solicit proxies for the Investor Designees

to the same extent as it would for any of its other nominees to the Board;

(ii) the Company's proxy statement for the election of directors shall include the Investor Designees and the recommendation of the Board in favor of election of the Investor Designees; and

(iii) if any Investor Designee is not elected to serve as an Investor Director, the Board will take all lawful actions to appoint such Investor Designee as an Investor Director, including increasing the size of the Board and appointing such Investor Designee to fill the vacancy created by such increase.

Upon the earlier of appointment or election to the Board, an Investor Designee shall herein be referred to as an "Investor Director".

(b) Resignation; Removal.

(i) If, at any time after no shares of Series B Preferred Stock remain outstanding, two (2) Investor Directors are serving on the Board, and the EW Investor ceases to be a 10% Holder, the EW Investor shall immediately deliver notice to the Board indicating which Investor Director's conditional resignation described in Section 5.6(e)(iii) below shall be deemed to have been tendered, and a majority of the then remaining directors (other than the Investor Directors) 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 Directors) shall determine which Investor Director's conditional resignation described in Section 5.6(e)(iii) below shall be deemed to have been tendered, and a majority of the then remaining directors (other than the Investor Directors) shall determine whether or not to accept such resignation. If the Board determines not to accept such resignation, the Investor Director who tendered his or her resignation shall cease to be an Investor Director hereunder.

(i) If, at any time after no shares of Series B Preferred Stock remain outstanding, pursuant to Section 5.6(d)(i), only one (1) Investor Director is serving on the Board, and the EW Investor ceases to be a 5% Holder, (a) a majority of the then remaining directors (other than the Investor Director) shall determine whether or not to accept the conditional resignation of such Investor Director and (b) the EW Investor shall no longer have any rights under this Section 5.6.

(i) Subject to Section 5.6(b), the EW Investor shall have the right to designate any replacement for an Investor Designee, who shall be a Qualified Person, upon the death, resignation, retirement, disqualification or removal from office of any such Investor Designee and the Board shall take all necessary action to appoint such replacement Investor Designee, subject in all cases to (i) compliance with the Articles of Incorporation, the Bylaws, applicable Laws and applicable stock exchange rules and (ii) the requirements set forth in Section 5.6(e) below

(c) Appointment Procedure. As a condition to any Investor Designee's appointment or election to the Board pursuant to this Section 5.6, the EW Investor and such Investor Designee shall provide to the Company:

(i) if requested by the Company, 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;

(ii) 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 Company applicable to non-executive directors of the Company; and (B) recuse himself or herself from any deliberations or discussion of the Board or any committee thereof regarding the Company's relationship with the EW Investor or any of its Affiliates, including in connection with the EW Investor's purchase or holding of the Series B Preferred Stock; and

(iii) 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 Directors), 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 Section 5.6(d)(i), (B) the EW Investor's ceasing to be a 5% Holder, (C) such Investor Designee's failure to 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 Company's Articles of Incorporation or Bylaws, committee charters, corporate governance guidelines, insider trading policies, stock ownership guidelines or similar governance documents.

(a) The EW Investor will cause each proposed Preferred Director or Investor Designee to make himself or herself reasonably available for interviews and to consent to such reference and background checks or other investigations as the Board may reasonably request in order to determine such proposed Preferred Director or Investor Designee's eligibility and qualification to serve as contemplated hereunder.

(b) Indemnification. The Company 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 Company Charter Documents, applicable Laws or otherwise. The Company 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 Company hereby agrees and acknowledges that (i) it is the indemnitor of first resort with respect to such 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 Company Charter Documents, 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 Company further agrees that no advancement or payment by the Director Indemnitors on behalf of the Company with respect to any claim for which such Investor Director have sought indemnification from the Company 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 Company. These rights described in this Section 5.6(g) shall be a contract right.

(c) Conflicts.

(i) The Company reserves the right to withhold any information and to exclude the Investor Directors 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 Directors not to participate in, and to recuse themselves from, any Board deliberations and actions relating to the Company's relationship with any EW Investor Parties, including in connection with such EW Investor Parties' purchase or holding of the Series B Preferred Stock.

(a) For the avoidance of doubt, notwithstanding anything to the contrary herein or in the Company Charter Documents, the number of directors that the EW Investor is entitled to designate, nominate or require the Company to nominate to the Board pursuant to the Company Charter Documents or this Agreement, (i) shall not exceed two (2) from the Closing until the EW Investor is no longer at 10% Holder, (ii) shall not exceed one (1) from the Closing until the EW Investor is neither a 10% Holder nor a 5% Holder, and (iii) shall be zero thereafter.

(b) No Assignment. The EW Investor's rights under this Section 5.6 are individual to the EW Investor and shall not be directly or indirectly transferable or assignable to any other Person.

Section 5.7 Tax Matters.

(a) The Company and its paying agent shall be entitled to deduct and withhold Taxes on all payments and distributions (or deemed distributions) with respect to the Private Placement Shares, or upon the conversion thereof, the Common Stock issued upon conversion of any or all of the Private Placement Shares, in each case, to the extent required by applicable Law. To the extent that any amounts are so deducted or withheld and properly remitted to the applicable Governmental Entity, such deducted or withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction or withholding was made. In the event the Company previously remitted any amounts to a Governmental Entity on account of Taxes required to be deducted or withheld in respect of any payment or distribution (or deemed distribution) with respect to a Private Placement Share, or upon the conversion thereof, a share of Common Stock issued upon the conversion of a Private Placement Share, the Company shall be entitled (i) to offset any such amounts against any amounts otherwise payable in respect of such Private Placement Share or any shares of Common Stock issued upon the conversion of Private Placement Shares, or any amount otherwise payable in respect of a share of Common Stock received upon the conversion of Private Placement Shares or any other amounts otherwise payable by the Company to the relevant holder or (ii) to require the Person in respect of whom such deduction or withholding was made to reimburse the Company for such amounts. Prior to the date of any payment, distribution or deemed distribution or conversion described in this Section 5.7, each Investor and each Permitted Transferee shall have delivered to the Company's paying agent upon its request a duly executed, valid (as of the time of the applicable payment, distribution or deemed distribution or conversion), accurate and properly completed IRS Form W-9, certifying that such Person is a U.S. Person, or appropriate Form W-8, as applicable.

(b) The Company shall pay any and all documentary, stamp, recording, registration and similar issue or transfer Tax ("Transfer Tax") due on (x) the issuance of the Private Placement Shares and (y) the issuance of shares of Common Stock upon conversion of Private Placement Shares. However, the Company 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 Private Placement Shares or shares of Common Stock issued upon conversion of Private Placement Shares to a beneficial owner other than the beneficial owner of such Private Placement Shares or such 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 Company the amount of any such Transfer Tax or has established to the satisfaction of the Company that such Transfer Tax has been paid or is not payable.

(c) The Company and the Hayfin Investors agree that it is their intention that the Hayfin Investors shall not be required to include in income as a dividend for U.S. federal income tax purposes under Section 305 of the Code any income or gain in respect of the Series B Preferred Stock on account of the accrual of dividends thereon (including any deemed dividends or as a result of any discount) unless and until such dividends are declared and paid in cash in accordance with Subsection 4 of Section 3.4 of the Articles of Incorporation or upon the conversion of such Hayfin Investor's Series B Preferred Stock. The Company and the Hayfin Investors agree to take no positions or actions inconsistent with such treatment (including on any IRS Form 1099), unless otherwise required by (i) a change in applicable law or published official interpretation thereof after the date hereof, (ii) the promulgation of proposed Treasury Regulations by the Treasury Department or a notice promulgated by the IRS announcing the intent to promulgate such Treasury Regulations that, in each case, if finalized, would be legally applicable to the Company and have retroactive effect to the date on which a determination with respect to the obligation to withhold is being made, or (iii) a final determination of a Governmental Entity that is binding on the Company.

Section 5.8 Pre-emptive Rights.

(a) For the purposes of this Section 5.8, "Excluded Issuance" shall mean: (a) the Company'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 Company's issuance to directors, officers, employees, consultants, service providers or agents of the Company of equity securities, including those issued upon the exercise of stock options, and the vesting and settlement of other awards granted under any employee share purchase or equity-based incentive plan, program or arrangement of the Company in existence as of the Closing or that has been approved by the Board; (c) the Company'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 Company'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 Closing, provided that such exercise, exchange or conversion is effected pursuant to the terms of such securities as in effect on the Closing; (e) the Company'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 the Board and as in effect on the Closing; and (f) the Company's issuance of the Series B Preferred Stock and any shares of Common Stock upon conversion of the Series B Preferred Stock.

(b) For so long as the EW Investor is a 10% Holder, if the Company proposes to issue any equity securities (including any warrants, options or other rights to acquire, or any securities that are exercisable for, exchangeable for or convertible into, equity securities), other than in an Excluded Issuance, then the Company shall:

(i) give written notice to the EW Investor no less than fifteen (15) Business Days prior to the closing of such issuance, setting forth in reasonable detail (to the extent then known) (A) the designation and all of the material terms and provisions of the securities proposed to be issued (the "Proposed Securities"); (B) the price and other terms of the proposed sale of such securities; and (C) the amount of such securities proposed to be issued; provided that following the delivery of such notice, the Company shall deliver to the EW Investor any such information the EW Investor may reasonably request in order to evaluate the proposed issuance, except that the Company shall not be required to deliver any information that has not been or will not be provided to the proposed purchasers of the Proposed Securities; and

(ii) offer to issue and sell to the EW Investor on such terms as the Proposed Securities are issued and upon full payment by the EW Investor a portion of the Proposed Securities equal to the fully-diluted pro-forma ownership percentage that the shares of Series B Preferred Stock then held by the EW Investor would represent if all outstanding shares of Series B Preferred Stock were converted to shares of Common Stock at the time such equity securities are issued; provided, that if such issuance of Proposed Securities to the EW Investor would require the Company to obtain shareholder approval under applicable Law or the rules of the relevant securities exchange, then (A) the Company shall not be required to offer to issue or sell to the EW Investor such portion of the Proposed Securities if and to the extent that shareholder approval is not obtained, and (B) notwithstanding anything to the contrary in this Section 5.8, the Company will be free to sell the portion of the Proposed Securities that are not subject to the EW Investor's rights under this Section 5.8(b)(ii) to the proposed purchasers of such Proposed Securities during the period in which shareholder approval is being sought for the issuance to the EW Investor hereunder.

(c) The EW Investor will have the option, exercisable by written notice to the Company, to accept the Company's offer and irrevocably commit to purchase, directly or through an Affiliate of the EW Investor, any or all of the equity securities offered to be sold by the Company to the EW Investor, which notice must be given within eight (8) Business Days after receipt of such notice from the Company. If the Company offers two (2) or more securities in units to the other participants in the offering, the EW Investor or its Affiliate, as applicable, must purchase such units as a whole and will not be given the opportunity to purchase only one (1) of the securities making up such unit. The closing of the exercise of such subscription right shall take place simultaneously with the closing of the sale of the Proposed Securities

giving rise to such subscription right; provided, that the closing of any purchase by the EW Investor or its Affiliate may be extended beyond the closing of the sale of the Proposed Securities giving rise to such preemptive right to the extent necessary to obtain required approvals from any Governmental Entity. Upon the expiration of the offering period described above, the Company will be free to sell such Proposed Securities that the EW Investor or its Affiliates have not elected to purchase during the 120 days following such expiration on terms and conditions not materially more favorable to the purchasers thereof than those offered to the EW Investor in the notice delivered in accordance with clause (b) above. Any Proposed Securities offered or sold by the Company after such 120-day period shall be reoffered to the EW Investor pursuant to this Section 5.8.

(d) The election by the EW Investor not to exercise its subscription rights under this Section 5.8 in any one instance shall not affect its right as to any subsequent proposed issuance.

(e) Notwithstanding anything in this Section 5.8 to the contrary, the Company will not be deemed to have breached this Section 5.8 if not later than thirty (30) Business Days following the issuance of any Proposed Securities in contravention of this Section 5.8, the Company or the transferee of such Proposed Securities offers to sell a portion of such equity securities or additional equity securities of the type(s) in question to the EW Investor so that, taking into account such previously-issued Proposed Securities and any such additional Proposed Securities, the EW Investor will have had the right to purchase or subscribe for Proposed Securities in a manner consistent with the allocation and other terms and upon substantially the same economic and other terms provided for in clause (b) and clause (c) above.

(f) In the case of an issuance subject to this Section 5.8 for consideration in whole or in part other than cash, including securities acquired in exchange therefor (other than securities by their terms so exchangeable), the consideration other than cash shall be deemed to be the Fair Market Value thereof.

Section 5.9 Relisting of Shares. The Company shall use commercially reasonable efforts to cause its shares of Common Stock to be relisted on the Nasdaq Capital Market as soon as reasonably practicable following the Closing by using commercially reasonable efforts to (a) be in compliance with Nasdaq listing rules, (b) be in compliance with the Company's reporting obligations under the Exchange Act, (c) apply with Nasdaq to have its shares of Common Stock relisted on the Nasdaq Capital Market and (d) take any other actions reasonably necessary to satisfy the covenants set forth in this Section 5.9. The Company shall pay all fees and expenses in connection with satisfying the obligations under this Section 5.9.

Section 5.10 Listing of Shares. Upon the Company's shares of Common Stock being relisted on the Nasdaq Capital Market, the Company shall promptly secure the listing or designation for quotation (as the case may be) of all of the Common Stock issuable upon conversion of Private Placement Shares on the Nasdaq Capital Market (to the extent such action was not taken in connection with the relisting) and shall, for so long as the Private Placement Shares remain outstanding, maintain such listing or designation for quotation (as the case may be) of all Common Stock from time to time issuable under the terms of the Preferred Stock Amendment. The Company shall pay all fees and expenses in connection with satisfying the obligations under this Section 5.10.

Section 5.11 Foreign Corrupt Practices Act Policies. The Company shall promptly institute and maintain policies and procedures designed to promote and achieve compliance with the anti-bribery provisions of the FCPA and other applicable anti-bribery or anti-corruption laws by the Company, its Subsidiaries, joint venture partners, and directors, officers, employees, and agents or other Persons acting on behalf of the Company.

ARTICLE VI

GENERAL PROVISIONS

Section 6.1 Notices. All notices, requests and other communications to any Party in connection with this Agreement shall be in writing and shall be deemed received on the date of receipt by the recipient thereof if delivered personally or, if received prior to 5:00 p.m. on a Business Day in the place of receipt, if sent via electronic facsimile, mailed by registered or certified mail (return receipt requested) or delivered by an express courier (with confirmation) to the recipient. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding Business Day in the place of receipt. All such notices, requests and other communications to any Party shall be given to such Parties at the following addresses (or at such other address for a Party as may be specified by like notice):

(a) If to the Company:

MiMedx Group, Inc.
1775 West Oak Commons Ct. NE
Marietta, GA 30062
Attention: William F. "Butch" Hulse
Email: BHulse@mimedx.com

with copies (which shall not constitute notice) to:

Sidley Austin LLP

787 Seventh Avenue
New York, NY 10019
Attention: Asi Kirmayer
Email: akirmayer@sidley.com

(b) If to the EW Investor:

EW Healthcare Partners
21 Waterway Avenue, Suite 225
The Woodlands, TX 77380
Attention: Richard Kolodziejcyk
Email: RKolodziejcyk@ewhealthcare.com

with copies (which shall not constitute notice) to:

Reed Smith LLP
599 Lexington Avenue, 22nd Floor
New York, NY 10022-7650
Attention: Mark Pedretti
Email: MPedretti@ReedSmith.com

(a) If to any Hayfin Investor:

One Eagle Place
London, SW1Y 6AF
UK
Attention: Andrew Merrill, Barrett Polan
Email: gc@hayfin.com, Loanops@hayfin.com, Andrew.Merrill@hayfin.com, Barrett.Polan@hayfin.com
Fax: +44 207 692 4641

with copies (which shall not constitute notice) to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attention: Peter Feist
Email: peter.feist@weil.com

Section 6.2 Assignment; Third Party Beneficiaries. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned by (a) any Investor (whether by operation of Law or otherwise) without the prior written consent of the Company; provided, however, that following the Closing and subject to compliance with Section 5.4, an Investor may transfer or assign its rights hereunder to a Permitted Transferee in connection with the Transfer to such Permitted Transferee of the Private Placement Shares, or (b) by the Company without the prior written consent of the Investors. Any assignment in violation of this Section 6.2 shall be void *ab initio*. This Agreement (including the documents and instruments referred to in this Agreement) is not intended to and does not confer upon any Person any rights or remedies under this Agreement other than the Parties and permitted assigns.

Section 6.3 Prior Negotiations; Entire Agreement. This Agreement, the other Transaction Documents and the Confidentiality Agreement constitute the entire agreement of the Parties and supersedes all prior agreements, arrangements or understandings, whether written or oral, among the Parties (including any prior agreement between the Company and any of each Investor's Affiliates) with respect to the subject matter of this Agreement.

Section 6.4 Governing Law; Venue. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of New York, without regard to any choice of Law provisions which would require the application of the Law of any other jurisdiction. By its execution and delivery of this Agreement, each Party irrevocably and unconditionally agrees for itself that any legal action, suit, or proceeding against it with respect to any matter arising under or arising out of or in connection with this Agreement shall be brought in the courts of the State of New York located in the City of New York, Borough of Manhattan, or of the United States of America for the Southern District of New York, and by executing and delivering this Agreement, each of the Parties irrevocably accepts and submits itself to the exclusive jurisdiction of such court, generally and unconditionally, with respect to any such action, suit or proceeding, provided, that an action for recognition or enforcement of any Judgment rendered by such court may be brought anywhere in the world. The Parties hereby agree that mailing of process or other papers in connection with any such action or proceeding to an address provided in writing by the recipient of such mailing, or in such other manner as may be permitted by law, shall be valid and sufficient service thereof and hereby waive any objections to service accomplished in the manner herein provided.

Section 6.5 Counterparts. This Agreement may be executed in any number of counterparts, all of which will be considered one and the same agreement and will become effective when counterparts have been signed by each of the Parties and

delivered to each other Party (including via facsimile or other electronic transmission), it being understood that each Party need not sign the same counterpart.

Section 6.6 Waivers and Amendments; Rights Cumulative; Consent. This Agreement may be amended, restated, modified or changed only upon written agreement of the Company and the Investors. Any amendment, restatement, modification or change effected in accordance with this Section 6.6 shall be binding upon the Investors, each transferee or future holder of the Private Placement Shares or shares of Common Stock issued upon the conversion of Private Placement Shares and the Company. No delay on the part of any Party in exercising any right, power or privilege pursuant to this Agreement will operate as a waiver thereof, nor will any waiver on the part of any Party of any right, power or privilege pursuant to this Agreement, nor will any single or partial exercise of any right, power or privilege pursuant to this Agreement, preclude any other or further exercise thereof or the exercise of any other right, power or privilege pursuant to this Agreement.

Section 6.7 Headings. The headings in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of this Agreement.

Section 6.8 Specific Performance. Subject to Section 6.12, each of the Parties hereto agrees that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that each of the Parties hereto shall be entitled to an injunction or injunctions without the necessity of posting a bond to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity. Unless otherwise expressly stated in this Agreement, no right or remedy described or provided in this Agreement is intended to be exclusive or to preclude a Party hereto from pursuing other rights and remedies to the extent available under this Agreement, at law or in equity.

Section 6.9 WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER, (C) IT MAKES SUCH WAIVER VOLUNTARILY AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 6.9.

Section 6.10 Severability. If any term, condition or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other terms, provisions and conditions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term, condition or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable Law.

Section 6.11 Expenses. The EW Investor shall be entitled to receive reimbursement for all reasonable and documented out-of-pocket fees and expenses incurred through the Closing in connection with the Transaction (including reasonable and documented fees, charges and disbursements of the Investor's outside attorneys) that are invoiced to the Company promptly following the Closing, up to a maximum amount of $1,500,000. To the extent invoiced prior to the Closing, the Company shall pay such fees and expenses at the Closing. Subject to the foregoing, and except as otherwise expressly provided herein or as otherwise agreed among the Parties, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the Transactions shall be paid by the Party incurring such costs and expenses.

Section 6.1 Limitations Regarding the Representations and Warranties.

(a) All of the covenants or other agreements of the Parties contained in this Agreement shall survive until fully performed or fulfilled, unless and to the extent that non-compliance with such covenants or agreements is waived in writing by the Party entitled to such performance. The representations and warranties made herein shall survive for twelve (12) months following the Closing, other than the following representations and warranties: Section 3.1, Section 3.2, Section 3.3, Section 3.8, Section 3.10, Section 3.21, Section 4.1, Section 4.2, Section 4.3, Section 4.8, Section 4.9 and Section 4.11, each of which shall survive for two (2) years following the Closing, and Section 3.11, which shall survive for four (4) years following the Closing; provided, that nothing herein shall relieve any Party of liability for any inaccuracy in or breach of such representation or warranty to the extent that any good-faith allegation of such inaccuracy or breach is made in writing prior to such expiration by a Person entitled to make such claim pursuant to the terms and conditions of this Agreement. For the avoidance of doubt, claims may be made with respect to the breach of any representation, warranty or covenant until the applicable survival period therefor as described above expires.

(b) Without limiting the effect of any of the other limitations set forth in this Agreement, none of the Investors nor any other Person shall be entitled to recover any costs, damages, payments or monies of any kind in respect of any

asserted breach of the representations and warranties of the Company made herein unless the aggregate amount of damages associated with such breach, together with the damages associated with all other breaches of the representations and warranties of the Company made herein, actually suffered by the Investors exceeds 0.5% of (i) in the case of the EW Investor Parties, the EW Investor Purchase Price or (ii) in the case of the Hayfin Investor Parties, the Aggregate Hayfin Purchase Price, at which time such EW Investor Parties or the Hayfin Investor Parties (as applicable) shall be entitled to recover the amount of the damages actually incurred by the EW Investor Parties or the Hayfin Investor Parties (as applicable) as a direct result of all such breaches of the representations and warranties of the Company made herein that exceeds such amount.

(c) Notwithstanding anything to the contrary in this Agreement, the sole and exclusive remedy for each Investor and their respective Affiliates for any claim arising out of an alleged breach of the representations and warranties of the Company made herein will be to bring a claim for a breach of contract in respect of such breach.

Section 6.2 Rights and Remedies under the New Credit Agreement. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement (including Section 4.9, Section 4.11, Section 5.2 and Section 5.3) shall restrict Hayfin Services LLP or any lender under the New Credit Agreement from exercising any and all of its rights or remedies under, and shall not amend, waive or otherwise modify any of the terms or provisions of, the New Credit Agreement or any of the Loan Documents (as defined in the New Credit Agreement).

Section 6.3 Acknowledgement. Each of the Parties hereby acknowledges and agrees that the Investors are acting independently of each other and nothing herein or in any other Transaction Document shall be deemed to create any agreement, arrangement or understanding between or among the EW Investor, on the one hand, and each of the Hayfin Investors, on the other hand. All agreements of the EW Investor are between the EW Investor and the Company, and all agreements of the Hayfin Investors are between the Hayfin Investors and the Company.

[*Signature pages follow*]

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

MIMEDX GROUP, INC.

By: /s/ Timothy R. Wright
Name: Timothy R. Wright
Title: Chief Executive Officer

FALCON FUND 2 HOLDING COMPANY, L.P.
By: EW Healthcare Partners Fund 2-UGP, LLC,
its general partner

By: /s/ Martin P. Sutter
Name: Martin P. Sutter
Title: Authorized Signatory

[Signature Page to Securities Purchase Agreement]

HAYFIN DIRECT LENDING FUND III SCSP

By: Hayfin DLF III GP Sarl, its General Partner

By: /s/ Lina Kavoliune
Name: Lina Kavoliune
Title: Authorized Signatory

[Signature page to Securities Purchase Agreement]

HAYFIN SAPPHIRE IV LP,

By: Hayfin Sapphire GP Limited, its General Partner

By: /s/ Lorna Carroll
Name: Lorna Carroll
Title: Authorized Signatory

[Signature page to Securities Purchase Agreement]

HAYFIN PT LP

By: Hayfin PT GP Limited, its General Partner

By: /s/ Lorna Carroll
Name: Lorna Carroll
Title: Authorized Signatory

[Signature page to Securities Purchase Agreement]

INFINITY HOLDCO PRIVATE DEBT II S.AR.L.

By: /s/ Lina Kavoliune
Name: Lina Kavoliune
Title: Authorized Signatory

[Signature page to Securities Purchase Agreement]

Schedule 1

Schedule of Investors

Section (a): The following sets forth the Purchase Price payable by each Investor and the number of Private Placement Shares to be issued to such Investor in accordance with the terms of this Agreement, if the Hayfin Condition has been satisfied or waived in accordance with Section 2.2(d) by the Hayfin Condition Satisfaction Time:

Investor	**Private Placement Shares**	**Purchase Price**
Falcon Fund 2 Holding Company, L.P.	90,000	$90,000,000
Hayfin Direct Lending Fund III SCSp	7,888	$7,888,000
Hayfin Sapphire IV LP	884	$884,000
Hayfin PT LP	816	$816,000
Infinity Holdco Private Debt II S.ar.l.	412	$412,000

Section (b): The following sets forth the Purchase Price payable by each Investor and the number of Private Placement Shares to be issued to such Investor, each in accordance with the terms of this Agreement, if the Hayfin Condition has not been satisfied or waived in accordance with Section 2.2(d) by the Hayfin Condition Satisfaction Time:

Investor	**Private Placement Shares**	**Purchase Price**
Falcon Fund 2 Holding Company, L.P.	100,000	$100,000,000

REGISTRATION RIGHTS AGREEMENT

by and between

MIMEDX GROUP, INC.,

and

FALCON FUND 2 HOLDING COMPANY, L.P.

Dated as of July 2, 2020

REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this "Agreement") is entered into as of July 2, 2020, by and among MiMedx Group, Inc., a Florida corporation (the "Company"), and Falcon Fund 2 Holding Company, L.P., a Delaware limited partnership (the "Purchaser"). Capitalized terms used but not defined elsewhere herein are defined in Exhibit A. The Purchaser and any other party that may become a party hereto pursuant to Section 5.1 are referred to collectively as the "Investors" and individually each as an "Investor".

WHEREAS, the Company and the Purchaser are parties to the Securities Purchase Agreement, dated as of June 30, 2020 (as it may be amended from time to time, the "SPA"), pursuant to which the Company is selling to the Purchaser, and the Purchaser is purchasing from the Company, 90,000 shares of the Company's Series B Convertible Preferred Stock, par value $0.001 per share ("Series B Preferred Stock"); and

WHEREAS, as a condition to the obligations of the Company and the Purchaser under the SPA, the Company and the Purchaser are entering into this Agreement for the purpose of granting certain registration rights to the Investors.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

Article I

Resale Shelf Registration

Section 1.1 Resale Shelf Registration Statement. Upon the written request of the Purchaser, which request may be made on or after the date that is 90 days prior to the expiration of the Lock-Up Period (such date the "Registration Rights Effective Date"), the Company shall use its commercially reasonable efforts to prepare, file and cause to be declared effective, no later than the Effectiveness Deadline, a registration statement covering the sale or distribution from time to time by the Holders, on a delayed or continuous basis pursuant to Rule 415 of the Securities Act, of all of the Registrable Securities on Form S-3 (except if the Company is not eligible as of the Registration Rights Effective Date to register for resale the Registrable Securities on Form S-3, then the Company shall use its commercially reasonable efforts to prepare, file and cause to be declared effective, no later than the Effectiveness Deadline, a registration statement on another appropriate form which shall provide for the registration of such Registrable Securities for resale by the Holders in accordance with any reasonable method of distribution elected by the Holders) (any such registration statement, the "Resale Shelf Registration Statement"), (it being agreed that the Resale Shelf Registration Statement shall be an automatic shelf registration statement that may become effective upon filing with the SEC pursuant to Rule 462(e) if Rule 462(e) is then available to the Company).

Section 1.2 Effectiveness Period. Once declared effective, the Company shall, subject to the other applicable provisions of this Agreement, use its commercially reasonable efforts to cause the Resale Shelf Registration Statement to be continuously effective and usable until such time as there are no longer any Registrable Securities (the "Effectiveness Period").

Section 1.3 Subsequent Shelf Registration Statement. If any Shelf Registration Statement ceases to be effective under the Securities Act for any reason at any time during the Effectiveness Period, the Company shall use its commercially reasonable efforts to promptly cause such Shelf Registration Statement to again become effective under the Securities Act (including obtaining the prompt withdrawal of any order suspending the effectiveness of such Shelf Registration Statement), and shall use its commercially reasonable efforts to promptly amend such Shelf Registration Statement in a manner reasonably expected to result in the withdrawal of any order suspending the effectiveness of such Shelf Registration Statement or file an additional registration statement (a "Subsequent Shelf Registration Statement") for an offering to be made on a delayed or continuous basis pursuant to Rule 415 of the Securities Act registering the resale from time to time by the Holders thereof of all securities that are Registrable Securities as of the time of such filing. If a Subsequent Shelf Registration Statement is filed, the Company shall use its commercially reasonable efforts to (a) cause such Subsequent Shelf Registration Statement to become effective under the Securities Act promptly after the filing thereof (it being agreed that the Subsequent Shelf Registration Statement shall be an automatic shelf registration statement that shall become effective upon filing with the SEC pursuant to Rule 462(e) if Rule 462(e) is then available to the Company) and (b) keep such Subsequent Shelf Registration Statement continuously effective and usable until the end of the Effectiveness Period. Any such Subsequent Shelf Registration Statement shall be a registration statement on Form S-3 to the extent that the Company is eligible to use such form.

Otherwise, such Subsequent Shelf Registration Statement shall be on another appropriate form and shall provide for the registration of such Registrable Securities for resale by the Holders in accordance with any reasonable method of distribution elected by the Holders.

Section 1.4 Supplements and Amendments. The Company shall supplement and amend any Shelf Registration Statement if required by the Securities Act or the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration Statement.

Section 1.5 Subsequent Holder Notice. If a Person entitled to the benefits of this Agreement becomes a Holder of Registrable Securities after a Shelf Registration Statement becomes effective under the Securities Act, the Company shall, as promptly as reasonably practicable, following delivery of written notice to the Company of such Person becoming a Holder and requesting for its name to be included as a selling securityholder in the prospectus related to the Shelf Registration Statement (a "Subsequent Holder Notice"):

(a) if required and permitted by applicable law, file with the SEC a supplement to the related prospectus or a post-effective amendment to the Shelf Registration Statement so that such Holder is named as a selling securityholder in the Shelf Registration Statement and the related prospectus in such a manner as to permit such Holder to deliver a prospectus to purchasers of the Registrable Securities in accordance with applicable law provided, however, that the Company shall not be required to file more than one post-effective amendment or supplement to the related prospectus for such purpose within any fiscal quarter;

(b) if, pursuant to Section 1.5(a), the Company shall have filed a post-effective amendment to the Shelf Registration Statement that is not automatically effective, use its commercially reasonable efforts to cause such post-effective amendment to become promptly effective under the Securities Act; and

(c) promptly notify such Holder after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 1.5(a).

Section 1.6 Shelf Take-Downs.

(a) Subject to any applicable restrictions on transfer in the SPA or under applicable law, at any time that any Shelf Registration Statement is effective, if a Holder delivers a notice to the Company stating that it intends to effect a sale or distribution of all or part of its Registrable Securities included by it on any Shelf Registration Statement (a "Shelf Offering") and stating the number of the Registrable Securities to be included in such Shelf Offering, then the Company shall, subject to the other applicable provisions of this Agreement, amend or supplement the Shelf Registration Statement as may be necessary in order to enable such Registrable Securities to be sold and distributed pursuant to the Shelf Offering.

(b) Subject to any applicable restrictions on transfer in the SPA or under applicable law, a Holder may, after any Shelf Registration Statement becomes effective, deliver a written notice to the Company (the "Underwritten Shelf Take-Down Notice") specifying that a Shelf

Offering is intended to be conducted through an Underwritten Offering (such Underwritten Offering, an "Underwritten Shelf Take-Down"), which shall specify the number of Registrable Securities intended to be included in such Underwritten Shelf Take-Down; provided, however, that the Holders of Registrable Securities may not, without the Company's prior written consent, (i) launch an Underwritten Shelf Take-Down, the anticipated gross proceeds of which shall be less than the Minimum Amount, (ii) launch an Underwritten Shelf Take-Down within the period commencing 30 days prior to and ending one (1) day following the Company's filing of its annual report on Form 10-K or quarterly report on Form 10-Q for such fiscal quarter or year or (iii) launch more than one Underwritten Shelf Take-Down in any 12 month period or more than two Underwritten Shelf Take-Downs in the aggregate. To the extent an Underwritten Shelf Take-Down is a Marketed Underwritten Offering, the Company shall deliver the Underwritten Shelf Take-Down Notice to the other Holders of Registrable Securities that have been included on such Shelf Registration Statement and permit such Holders to include their Registrable Securities included on the Shelf Registration Statement in such Underwritten Shelf Take-Down that is a Marketed Underwritten Offering if such Holder notifies the Holder delivering the Underwritten Shelf Take-Down Notice and the Company within three (3) Business Days after delivery of the Underwritten Shelf Take-Down Notice to such Holder.

(c) In the event of an Underwritten Shelf Take-Down, the Holder delivering the related Underwritten Shelf Take-Down Notice shall (in the case of a Marketed Underwritten Offering, in consultation with other Holders participating in the Underwritten Shelf Take-Down) select the managing underwriter(s) to administer the Underwritten Shelf Take-Down; provided that the choice of such managing underwriter(s) shall be subject to the consent of the Company, which shall not be unreasonably withheld. The Company and the Holders of Registrable Securities participating in an Underwritten Shelf Take-Down will enter into an underwriting agreement in customary form with the managing underwriter or underwriters selected for such offering.

(d) The Company will not include in any Underwritten Shelf Take-Down pursuant to this Section 1.6 any securities that are not Registrable Securities without the prior written consent of the Holder(s) participating in such Underwritten Shelf Take-Down. In the case of an Underwritten Shelf Take-Down that is a Marketed Underwritten Offering, if the managing underwriter or underwriters advise the Company and the Holders in writing that in its or their good faith opinion the number of Registrable Securities (and, if permitted hereunder, other securities) requested to be included in such offering exceeds the number of securities which can be sold in such offering in light of market conditions or is such so as to adversely affect the success of such offering, the Company will include in such offering only such number of securities that can be sold without adversely affecting the marketability of the offering, which securities will be so included in the following order of priority: (i) first, the Registrable Securities of the Holders that have requested to participate in such Underwritten Shelf Take-Down that is a Marketed Underwritten Offering, allocated *pro rata* among such Holders on the basis of the percentage of the Registrable Securities owned by such Holders, and (ii) second, any other securities of the Company that have been requested to be so included.

Section 1.7 Piggyback Registration.

(a) Except with respect to a Demand Registration (as defined below), the procedures for which are addressed in Article II, if the Company proposes on or after the Registration Rights Effective Date to file a registration statement under the Securities Act with respect to an offering of Common Stock or securities convertible into, or exchangeable or exercisable for, Common Stock, whether or not for sale for its own account (other than a registration statement (i) on Form S-4, Form S-8 or any successor forms thereto or (ii) filed to effectuate an exchange offer or any employee benefit or dividend reinvestment plan), in a manner that would permit registration of the Registrable Securities for sale for cash to the public under the Securities Act, then the Company shall give prompt written notice of such filing, which notice shall be given, no later than ten (10) Business Days prior to the filing date (the "Piggyback Notice") to the Holders of Registrable Securities. The Piggyback Notice shall offer such Holders the opportunity to include (or cause to be included) in such registration statement the number of shares of Registrable Securities as each such Holder may request (each registration statement in respect of which the Company provides a Piggyback Notice, a "Piggyback Registration Statement"). Subject to Section 1.7(b), the Company shall include in each Piggyback Registration Statement all Registrable Securities with respect to which the Company has received written requests for inclusion therein (each, a "Piggyback Request") within five (5) Business Days after the date of the Piggyback Notice. The Company shall not be required to maintain the effectiveness of a Piggyback Registration Statement beyond the earlier of (x) 120 days after the effective date thereof and (y) consummation of the distribution by the Holders of the Registrable Securities included in such registration statement. The Company may withdraw a Piggyback Registration Statement at any time prior to any sales being made pursuant to the Piggyback Registration Statement without incurring any liability to the Holders.

(b) If any of the securities to be registered pursuant to the registration giving rise to the rights under this Section 1.7 are to be sold in an Underwritten Offering, the Company shall use commercially reasonable efforts to cause the managing underwriter or underwriters of a proposed Underwritten Offering to permit Holders of Registrable Securities who have timely submitted a Piggyback Request in connection with such offering to include in such offering all Registrable Securities included in each Holder's Piggyback Request on the same terms and subject to the same conditions as any other shares of capital stock, if any, of the Company included in the Underwritten Offering. Notwithstanding the foregoing, if the managing underwriter or underwriters of such offering advise the Company in writing that in its or their good faith opinion the number of securities exceeds the number of securities which can be sold in such offering in light of market conditions or is such so as to adversely affect the success of such offering, the Company will include in such Underwritten Offering only such number of securities that can be sold without adversely affecting the marketability of the offering, which securities will be so included in the following order of priority: (i) first, the securities proposed to be sold by the Company for its own account and (ii) second, the Registrable Securities of the Holders and any other persons with piggyback registration rights who have the right to participate and that have requested to participate in such offering, allocated *pro rata* among the selling shareholders according to the total amount of securities entitled to be included therein owned by each selling shareholder and its Affiliates (other than the Company) or in such other proportions as shall mutually be agreed to by such selling shareholders.

ARTICLE II

Demand Registration Rights

Section 2.1 Right to Demand Registrations. Subject to any applicable restrictions on transfer in the SPA or under applicable law, a Holder may, following the Registration Rights Effective Date (but only if there is no Shelf Registration Statement then in effect covering all of the Registrable Securities held by such Holder of the class of securities sought to be registered), request, by providing written notice to the Company, that the Company effect the registration under the Securities Act of all or part of the Registrable Securities (a "Demand Registration"). Each request for a Demand Registration (a "Demand Registration Request") shall specify the number of Registrable Securities intended to be offered and sold pursuant to the Demand Registration and the intended method of distribution thereof, including whether it is intended to be an Underwritten Offering. Promptly after receipt of a Demand Registration Request, the Company shall, subject to Section 2.3, use commercially reasonable efforts to register all Registrable Securities that have been requested to be registered in the Demand Registration Request; provided, that the Company shall not be required to file a registration statement pursuant to this Section 2.1 (a "Demand Registration Statement") (i) within sixty (60) days following the effective date of any prior Demand Registration Statement for the same class of Registrable Securities or (ii) if the number of Registrable Securities proposed to be included therein does not equal or exceed the Minimum Amount (calculated on the basis of the average closing price of a share of the Common Stock on the Nasdaq Capital Market or the over-the-counter market as reported by the OTC Markets Group Inc. over the five trading days preceding such Demand Registration Request in the case of a demand for the registration of offers of Common Stock). Promptly (but in no event later than five (5) Business Days) after receipt by the Company of a Demand Registration Request, the Company shall give written notice of such Demand Registration Request to all other Holders and shall include in such Demand Registration all Registrable Securities with respect to which the Company received written requests for inclusion therein within ten (10) Business Days after the delivery of such notice to such Holder.

Section 2.2 Number of Demand Registrations. The Purchaser shall be entitled to deliver up to two (2) Demand Registration Requests for the registration of offers of Common Stock held by the Investors (which, for the avoidance of doubt, shall be separate from the Shelf Registration Statement, Shelf Offerings and Underwritten Shelf Take-Downs pursuant to Article I).

Section 2.3 Underwritten Offerings Pursuant to Demand Registrations. In the event of an Underwritten Offering pursuant to a Demand Registration, the Holder delivering the Demand Registration Request (in consultation with other Holders participating in such Underwritten Offering) shall select the managing underwriter(s) to administer such Underwritten Offering; provided that the choice of such managing underwriter(s) shall be subject to the consent of the Company, which shall not to be unreasonably withheld. If the managing underwriter or underwriters advise the Company and the Holders in writing that in its or their good faith opinion the number of Registrable Securities (and, if permitted hereunder, other securities) requested to be included in

such offering exceeds the number of securities which can be sold in such offering in light of market conditions or is such so as to adversely affect the success of such offering, the Company will include in such offering only such number of securities that can be sold without adversely affecting the marketability of the offering, which securities will be so included in the following order of priority: (i) first, the Registrable Securities of the Holders that have requested to participate in such Underwritten Offering, allocated *pro rata* among such Holders on the basis of the percentage of the Registrable Securities owned by such Holders, and (ii) second, any other securities of the Company to be sold for its account.

Section 2.4 Withdrawal. A Holder may, by written notice to the Company, withdraw its Registrable Securities from a Demand Registration at any time prior to the effectiveness of the applicable registration statement. Upon receipt of notices from all applicable Holders to such effect, the Company shall cease all efforts to seek effectiveness of the applicable registration statement with respect to any Registrable Securities.

ARTICLE III

Additional Provisions Regarding Registration Rights

Section 3.1 Registration Procedures. Subject to the other applicable provisions of this Agreement, in the case of each registration of Registrable Securities effected by the Company pursuant to Article I or Article II, the Company will:

(a) prepare and as promptly as reasonably practicable file with the SEC a registration statement with respect to such securities and use commercially reasonable efforts to cause such registration statement to become and remain effective for the period of the distribution contemplated thereby, in accordance with the applicable provisions of this Agreement;

(b) prepare and file with the SEC such amendments (including post-effective amendments) and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to keep such registration statement effective for the period specified in Section 3.1(a) above and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement in accordance with the Holders' intended method of distribution set forth in such registration statement for such period;

(c) furnish to the Holders copies of the registration statement and the prospectus included therein (including each preliminary prospectus) proposed to be filed and provide such legal counsel a reasonable opportunity to review and comment on such registration statement;

(d) if requested by the managing underwriter or underwriters, if any, or the Holder(s), as promptly as reasonably practicable, include in any prospectus supplement or post-effective amendment such information as the managing underwriter or underwriters, if any, or the Holder(s) may reasonably request in order to permit the intended method of distribution of such

securities and make all required filings of such prospectus supplement or post-effective amendment as soon as reasonably practicable after the Company has received such request; provided, however, that the Company shall not be required to take any actions under this Section 3.1(d) that are not, in the opinion of counsel for the Company, in compliance with applicable law;

(e) in the event that the Registrable Securities are being offered in an Underwritten Offering, furnish to the Holder(s) and the underwriters of the securities being registered such reasonable number of copies of the registration statement, preliminary prospectus and final prospectus as the Holder(s) or such underwriters may reasonably request in order to facilitate the public offering or other disposition of such securities;

(f) promptly notify the Holder(s) at any time when a prospectus relating thereto is required to be delivered under the Securities Act or of the Company's discovery of the occurrence of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in the light of the circumstances then existing, and, subject to Section 3.2, at the request of the Holder(s), promptly prepare and furnish to the Holder(s) a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the Holder(s) of such securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in the light of the circumstances then existing;

(g) use commercially reasonable efforts to register and qualify (or exempt from such registration or qualification) the securities covered by such registration statement under such other securities or "blue sky" laws of such jurisdictions within the United States as shall be reasonably requested in writing by the Holder(s); provided, however, that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business in any jurisdictions or file a general consent to service of process in any such jurisdictions where it would not otherwise be required to qualify but for this subsection;

(h) in the event that the Registrable Securities are being offered in an underwritten public offering, enter into an underwriting agreement or equivalent agreement, in each case in accordance with the applicable provisions of this Agreement;

(i) in connection with an Underwritten Offering, the Company shall cause its officers to use their commercially reasonable efforts to support the marketing of the Registrable Securities covered by such offering, including but not limited to management presentations (including "electronic road shows" in the nature of management presentations) or investor calls to the extent reasonably necessary to support the proposed sale of Registrable Securities pursuant to such Underwritten Offering (it being understood that the Company and its officers shall not be obligated to participate in any in-person road show presentations);

(j) use commercially reasonable efforts to furnish, on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, (i) an opinion dated such date of the legal counsel representing the Company

for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, (ii) a "negative assurances letter", dated such date of the legal counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering and (iii) "comfort" letters dated the date of pricing of such offering and dated such date from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters;

(k) in the event that the Registrable Securities covered by such registration statement are shares of Common Stock, use commercially reasonable efforts to list the Registrable Securities covered by such registration statement with any securities exchange on which the Common Stock is then listed;

(l) in connection with a customary due diligence review, make available for inspection by any underwriter participating in any such disposition of Registrable Securities, if any, and any counsel or accountants retained by the underwriter (collectively, the "Offering Persons"), at the offices where normally kept or electronically, during reasonable business hours, all financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries, and cause the officers, directors and employees of the Company and its subsidiaries to supply all information and participate in customary due diligence sessions in each case reasonably requested by any such representative, underwriter, counsel or accountant in connection with such registration statement and/or offering; provided, however, that any information that is not generally publicly available at the time of delivery of such information shall be kept confidential by such Offering Persons unless (i) disclosure of such information is required by court or administrative order or in connection with an audit or examination by, or a blanket document request from, a regulatory or self-regulatory authority, bank examiner or auditor, (ii) disclosure of such information, in the reasonable judgment of the Offering Persons, is required by law or applicable legal process (including in connection with the offer and sale of securities pursuant to the rules and regulations of the SEC), (iii) such information is or becomes generally available to the public other than as a result of a non-permitted disclosure or failure to safeguard by such Offering Persons in violation of this Agreement or (iv) such information (A) was known (after reasonable inquiry) to such Offering Persons (prior to its disclosure by the Company) from a source other than the Company when such source, to the knowledge of the Offering Persons, was not bound by any contractual, legal or fiduciary obligation of confidentiality to the Company with respect to such information, (B) becomes available to the Offering Persons from a source other than the Company when such source, to the knowledge of the Offering Persons, is not bound by any contractual, legal or fiduciary obligation of confidentiality to the Company with respect to such information or (C) was developed independently by the Offering Persons or their respective representatives without the use of, or reliance on, such information provided by the Company. In the case of a proposed disclosure pursuant to (i) or (ii) above, such Person shall be required to give the Company written notice of the proposed disclosure prior to such disclosure (except in the case of (ii) above when a proposed disclosure was or is to be made in connection with a registration statement or prospectus under this Agreement and except in the case of clause (i) above when a proposed disclosure is in connection with a routine audit or

examination by, or a blanket document request from, a regulatory or self-regulatory authority, bank examiner or auditor);

(m) cooperate with each underwriter or agent participating in the disposition of Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA, including the use of commercially reasonable efforts to obtain FINRA's pre-clearance or pre-approval of the registration statement and applicable prospectus upon filing with the SEC;

(n) promptly notify the Holder(s) when the prospectus or any prospectus supplement or post-effective amendment has been filed and, with respect to such registration statement or any post-effective amendment, when the same has become effective, of any request by the SEC or other federal or state governmental authority for amendments or supplements to such registration statement or related prospectus or to amend or to supplement such prospectus or for additional information, of the issuance by the SEC of any stop order suspending the effectiveness of such registration statement or the initiation of any proceedings for such purpose, if at any time the Company has reason to believe that the representations and warranties of the Company contained in any agreement contemplated by Section 3.1(f) above relating to any applicable offering cease to be true and correct or of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose;

(o) The Holders agree that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3.1(f), Section 3.1(n)(ii) or Section 3.1(n)(iii), the Holders shall discontinue disposition of any Registrable Securities covered by such registration statement or the related prospectus until receipt of the copies of the supplemented or amended prospectus, which supplement or amendment shall, subject to the other applicable provisions of this Agreement, be prepared and furnished as soon as reasonably practicable, or until the Holders are advised in writing by the Company that the use of the applicable prospectus may be resumed, and have received copies of any amended or supplemented prospectus or any additional or supplemental filings which are incorporated, or deemed to be incorporated, by reference in such prospectus (such period during which disposition is discontinued being an "Interruption Period") and, if requested by the Company, the Holders shall use commercially reasonable efforts to return to the Company all copies then in their possession, of the prospectus covering such Registrable Securities at the time of receipt of such request. As soon as practicable after the Company has determined that the use of the applicable prospectus may be resumed, the Company will notify the Holders thereof. In the event the Company invokes an Interruption Period hereunder and in the sole discretion of the Company the need for the Company to continue the Interruption Period ceases for any reason, the Company shall, as soon as reasonably practicable, provide written notice to the Holders that such Interruption Period is no longer applicable;

(p) shall provide a transfer agent and registrar for all such Registrable Securities no later than the effective date of the registration statement; and

(q) shall take all other reasonable steps, at the written request of the Holders, necessary to effect the registration and offer and sale of the Registrable Securities as required hereby.

Section 3.2 Suspension. (a) The Company shall be entitled, by providing written notice to the Holders, no more than two (2) times in any twelve (12) month period for a period of time not to exceed 45 days for each suspension, to postpone the filing or effectiveness of a registration statement to sell Registrable Securities or to require the Holders of Registrable Securities to suspend any offerings or sales of Registrable Securities pursuant to a registration statement, if the Company delivers to the Holders a certificate signed by an executive officer certifying that such registration and offering would (i) require the Company to make an Adverse Disclosure or (ii) materially interfere with any *bona fide* material financing, acquisition, disposition or other similar transaction involving the Company or any of its subsidiaries then under consideration, and in each case, to the extent such information would not constitute material non-public information, shall contain a statement of the reasons for such suspension and an approximation of the anticipated length of such suspension. If the Company postpones registration of Registrable Securities in response to a Underwritten Shelf Take-Down Notice or a Demand Registration Request or requires the Holders to suspend any Underwritten Offering, the Purchaser shall be entitled to withdraw such Underwritten Shelf Take-Down Notice or a Demand Registration Request, as applicable, and if it does so, such request shall not be treated for any purpose as the delivery of an Underwritten Shelf Take-Down Notice pursuant to Section 1.6 or a Demand Registration Request pursuant to Section 2.1.

Section 3.3 Expenses of Registration. All Registration Expenses incurred in connection with any registration pursuant to Article I or Article II shall be borne by the Company. All Selling Expenses in connection with the sale of Registrable Securities by the Holders of the Registrable Securities shall be borne, pro rata, by such Holders included in such registration.

Section 3.4 Cooperation by Holders. The Holder or Holders of Registrable Securities included in any registration shall, and the Purchaser shall cause such Holder or Holders to, furnish to the Company the number of shares of Common Stock (or any securities convertible, exchangeable or exercisable for Common Stock within 60 days of any such filing) owned by such Holder or Holders, the number of such Registrable Securities proposed to be sold, the name and address of such Holder or Holders proposing to sell, and the distribution proposed by such Holder or Holders as shall be required in connection with any registration, qualification or compliance referred to in this Agreement. It is understood and agreed that the obligations of the Company under Article I and Article II are conditioned on the timely provisions of the foregoing information by such Holder or Holders and, without limitation of the foregoing, will be conditioned on compliance by such Holder or Holders with the following:

(a) such Holder or Holders will, and will cause their respective Affiliates to, cooperate with the Company in connection with the preparation of the applicable registration statement and prospectus and, for so long as the Company is obligated to keep such registration statement effective, such Holder or Holders will and will cause their respective Affiliates to, provide to the Company, in writing and in a timely manner, for use in such registration statement (and expressly identified in writing as such), all information regarding themselves and their respective Affiliates and such other information as may be required by applicable law to enable the Company to prepare or amend such registration statement, any related prospectus and any other documents related to such offering covering the applicable Registrable Securities owned by such Holder or Holders and to maintain the currency and effectiveness thereof; and

(b) during such time as such Holder or Holders and their respective Affiliates may be engaged in a distribution of the Registrable Securities, such Holder or Holders will, and they will cause their Affiliates to, comply with all laws applicable to such distribution, including Regulation M promulgated under the Exchange Act, and, to the extent required by such laws, will, and will cause their Affiliates to, among other things (i) not engage in any stabilization activity in connection with the securities of the Company in contravention of such laws; (ii) distribute the Registrable Securities acquired by them solely in the manner described in the applicable registration statement and (iii) if required by applicable law, cause to be furnished to each agent or broker-dealer to or through whom such Registrable Securities may be offered, or to the offeree if an offer is made directly by such Holder or Holders or their respective Affiliates, such copies of the applicable prospectus (as amended and supplemented to such date) and documents incorporated by reference therein as may be required by such agent, broker-dealer or offeree.

Section 3.5 Rule 144 Reporting. With a view to making available the benefits of Rule 144 to the Holders, the Company agrees that, from and after the date on which the Company files its Form 10-Q for the quarter ending March 31, 2020, for so long as a Holder owns Registrable Securities, the Company will use its commercially reasonable efforts to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144, at all times after the date of this Agreement; and

(b) so long as a Holder owns any Restricted Securities, furnish to the Holder upon request given in accordance with Section 6.8, (i) a written statement by the Company as to its compliance with the reporting requirements of the Exchange Act and (ii) any other such information or documentation as may be reasonably necessary by a Holder pursuant to any SEC rule or regulation promulgated after the date hereof that is similar to Rule 144 or is a successor to Rule 144 that permits the sale of securities without registration.

Section 3.6 Holdback Agreement. If the Company shall file a registration statement (other than in connection with the registration of securities issuable pursuant to an employee stock option, stock purchase or similar plan or pursuant to a merger, exchange offer or a transaction of the type specified in Rule 145(a) under the Securities Act) with respect to an underwritten public offering of Common Stock or securities convertible into, or exchangeable or exercisable for, such securities or otherwise informs the Purchaser that it intends to conduct such an offering utilizing an effective registration statement or pursuant to an underwritten Rule 144A and/or Regulation S offering and provides the Purchaser and each Holder the opportunity to participate in such offering in accordance with and to the extent required by Section 1.7, each Holder participating in such offering shall, if requested by the managing underwriter or underwriters, enter into a customary “lock-up” agreement relating to the sale, offering or distribution of Registrable Securities, in the form reasonably requested by the managing underwriter or underwriters, covering the period commencing on the date of the prospectus pursuant to which such offering may be made and continuing until up to 90 days from the date of such prospectus; *provided* that nothing herein will prevent (i) any Holder from making a transfer to an Affiliate, (ii) any pledge of Registrable Securities by a Holder in connection with debt financing obtained in the ordinary course of such Holder’s operations (“Permitted Debt Financing”), or (iii) any foreclosure in connection with

Permitted Debt Financing or transfer in lieu of a foreclosure thereunder, in each case that is otherwise in compliance with applicable securities laws.

ARTICLE IV

Indemnification

Section 4.1 Indemnification by Company. To the extent permitted by applicable law, the Company will, with respect to any Registrable Securities covered by a registration statement or prospectus, or as to which registration, qualification or compliance under applicable "blue sky" laws has been effected pursuant to this Agreement, indemnify and hold harmless each Holder, each Holder's current and former officers, directors, partners, members, managers, shareholders, agents, employees and Affiliates, and each Person controlling such Holder within the meaning of Section 15 of the Securities Act and such Holder's current and former officers, directors, partners, members, managers, shareholders, accountants, attorneys, agents, employees and Affiliates, and each underwriter thereof, if any, and each Person who controls any such underwriter within the meaning of Section 15 of the Securities Act (collectively, the "Company Indemnified Parties"), from and against any and all expenses, claims, losses, damages, costs (including costs of preparation, reasonable and documented attorney's fees and expenses and any legal or other documented fees or expenses reasonably incurred by such party in connection with any investigation or proceeding), judgments, fines, penalties, charges, amounts paid in settlement and other liabilities, joint or several (collectively, "Losses") to the extent arising out of or based on (i) any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular, "issuer free writing prospectus" (as such term is defined in Rule 433 under the Securities Act) or other document, in each case related to such registration statement, or any amendment or supplement thereto, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading, or (ii) any violation by the Company of the Securities Act, the Exchange Act, any state securities law or any rules or regulations thereunder applicable to the Company in connection with any registration or offering hereunder, and (without limiting the preceding portions of this Section 4.1), the Company will reimburse each of the Company Indemnified Parties for any reasonable and documented out-of-pocket legal expenses and any other reasonable and documented out-of-pocket expenses actually incurred in connection with investigating, defending or, subject to the last sentence of this Section 4.1, settling any such Losses or action, as such expenses are incurred; provided that the Company's indemnification obligations shall not apply to amounts paid in settlement of any Losses or action if such settlement is effected without the prior written consent of the Company (which consent shall not be unreasonably withheld or delayed), nor shall the Company be liable to a Holder in any such case for any such Losses or action to the extent that it arises out of or is based upon a violation or alleged violation of any state or federal law (including any claim arising out of or based on any untrue statement or alleged untrue statement or omission or alleged omission in the registration statement or prospectus) which occurs in reliance upon and in conformity with written information regarding such Holder furnished to the Company by such Holder or its authorized representatives expressly for use in connection with such registration by or on behalf of any Holder.

Section 4.2 Indemnification by Holders. To the extent permitted by applicable law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which registration or qualification or compliance under applicable "blue sky" laws is being effected, indemnify, severally and not jointly with any other Holders of Registrable Securities, the Company, the Company's current and former officers, directors, agents, employees and Affiliates and each underwriter thereof, and each Person who controls the Company or such underwriter within the meaning of Section 15 of the Securities Act (collectively, the "Holder Indemnified Parties"), against all Losses (or actions in respect thereof) to the extent arising out of or based (i) on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular, "issuer free writing prospectus" or other document, in each case related to such registration statement, or any amendment or supplement thereto, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading, or (ii) any violation by the Holder of the Securities Act, the Exchange Act, any state securities law or any rules or regulations thereunder applicable to the Holder in connection with any registration or offering hereunder and will reimburse each of the Holder Indemnified Parties for any reasonable and documented out-of-pocket legal expenses and any other reasonable and documented out-of-pocket expenses actually incurred in connection with investigating, defending or, subject to the last sentence of this Section 4.2, settling any such Losses or action, as such expenses are incurred, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular, "issuer free writing prospectus" or other document in reliance upon and in conformity with written information regarding such Holder furnished to the Company by such Holder or its authorized representatives and stated to be specifically for use therein; provided, however, that in no event shall any indemnity under this Section 4.2 payable by the Purchaser and any Holder exceed an amount equal to the net proceeds received by such Holder in respect of the sale of the Registrable Securities giving rise to such indemnification obligation. The indemnity agreement contained in this Section 4.2 shall not apply to amounts paid in settlement of any Losses or action if such settlement is effected without the prior written consent of the applicable Holder (which consent shall not be unreasonably withheld or delayed).

Section 4.3 Notification. If any Person shall be entitled to indemnification under this Article IV (each, an "Indemnified Party"), such Indemnified Party shall give prompt notice to the party required to provide indemnification (each, an "Indemnifying Party") of any claim or of the commencement of any proceeding as to which indemnity is sought. The Indemnifying Party shall have the right, exercisable by promptly giving written notice to the Indemnified Party after the receipt of written notice from such Indemnified Party of such claim or proceeding, to assume, at the Indemnifying Party's expense, the defense of any such claim or litigation, with counsel reasonably satisfactory to the Indemnified Party and, after notice from the Indemnifying Party to such Indemnified Party of its election to assume the defense thereof, the Indemnifying Party will not (so long as it shall continue to have the right to defend, contest, litigate and settle the matter in question in accordance with this paragraph) be liable to such Indemnified Party hereunder for any legal expenses and other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof; provided, however, that an Indemnified Party shall have the right to employ

separate counsel in any such claim or litigation, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (i) the use of counsel chosen by the Indemnifying Party to represent the Indemnified Party would present such counsel with a conflict of interest; (ii) such action includes both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it and/or other Indemnified Parties that are different from those available to the Indemnifying Party as a result of which such counsel would have a conflict of interest; or (iii) the Indemnifying Party shall have failed within a reasonable period of time to employ counsel reasonably satisfactory to the Indemnified Party and assume such defense and the Indemnified Party is or would reasonably be expected to be materially prejudiced by such delay. The failure of any Indemnified Party to give notice as provided herein shall relieve an Indemnifying Party of its obligations under this Article IV only to the extent that the failure to give such notice is materially prejudicial or harmful to such Indemnifying Party's ability to defend such action. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the prior written consent of each Indemnified Party (which consent shall not be unreasonably withheld or delayed), consent to entry of any judgment or enter into any settlement which (A) does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation and (B) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Party. The indemnity agreements contained in this Article IV shall not apply to amounts paid in settlement of any claim, loss, damage, liability or action if such settlement is effected without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed. The indemnification set forth in this Article IV shall be in addition to any other indemnification rights or agreements that an Indemnified Party may have. An Indemnifying Party who is not entitled to, or elects not to, assume the defense of a claim will not be obligated to pay the fees and expenses of more than one counsel (in addition to one local counsel, as needed) for all parties indemnified by such Indemnifying Party with respect to such claim, unless in the reasonable judgment of any Indemnified Party a conflict of interest may exist between such Indemnified Party and any other Indemnified Parties with respect to such claim.

Section 4.4 Contribution. If the indemnification provided for in this Article IV is held by a court of competent jurisdiction to be unavailable to an Indemnified Party, other than pursuant to its terms, with respect to any Losses or action referred to therein, then, subject to the limitations contained in this Article IV, the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses or action in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party, on the one hand, and the Indemnified Party, on the other, in connection with the actions, statements or omissions that resulted in such Losses or action, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party, on the one hand, and the Indemnified Party, on the other hand, shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, has been made (or omitted) by, or relates to information supplied by such Indemnifying Party, on the one hand, or such Indemnified Party, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent any such action, statement or omission. The Company and the Holders agree that it would not be just and equitable if contribution pursuant to

this Section 4.4 was determined solely upon *pro rata* allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding sentence of this Section 4.4. Notwithstanding the provisions of this Section 4.4, an Indemnifying Party that is a Holder shall not be required to contribute to any amount in excess of the amount by which the net proceeds to the Indemnifying Party from the sale of the Registrable Securities sold in a transaction that resulted in Losses in respect of which contribution is sought in such proceeding pursuant to this Section 4.4 exceed the amount of any damages such Indemnifying Party has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission (including as a result of any indemnification obligation hereunder). No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

ARTICLE V

Transfer and Termination of Registration Rights

Section 5.1 Transfer of Registration Rights. Any rights to cause the Company to register securities granted to a Holder under this Agreement may be transferred or assigned to any Investor in connection with (a) a Permitted Transfer (as defined in the SPA) of Series B Preferred Stock or Common Stock, as applicable, to such Person in a permitted Transfer pursuant to Section 5.4(b) of the SPA or (b) a pledge by such Holder of its rights and an assignment by such Holder of its rights in connection with a foreclosure under a pledge of Registrable Securities, in each case, pursuant to a Permitted Debt Financing; provided, however, in the case of each of clauses (a) and (b), that (i) prior written notice of such assignment of rights is given to the Company and (ii) such Investor agrees in writing to be bound by, and subject to, this Agreement as a "Holder" pursuant to a written instrument in form and substance reasonably acceptable to the Company.

Section 5.2 Termination of Registration Rights. The rights of any particular Holder to cause the Company to register securities under Article I or Article II shall terminate with respect to such Holder upon the date upon which such Holder no longer holds any Registrable Securities. The registration rights set forth in this Agreement shall terminate on the date on which all shares of Common Stock issuable (or actually issued) upon conversion of the Private Placement Shares (as such term is defined in the SPA) cease to be Registrable Securities.

ARTICLE VI

Miscellaneous

Section 6.1 Amendments and Waivers. Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and is signed by the Company and the Holder(s) with respect to which such amendment or waiver is applicable.

Section 6.2 Extension of Time, Waiver, Etc. The parties hereto may, subject to applicable law, (a) extend the time for the performance of any of the obligations or acts of the other party or (b) waive compliance by the other party with any of the agreements contained herein

applicable to such party or, except as otherwise provided herein, waive any of such party's conditions. Notwithstanding the foregoing, no failure or delay by the parties hereto in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right hereunder. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party; provided that the Purchaser may execute such waivers on behalf of any Investor.

Section 6.3 Assignment. Except as provided in Section 5.1, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of law or otherwise, by any of the parties hereto without the prior written consent of the other party hereto; provided, however, that the Purchaser may provide any such consent on behalf of the Investors.

Section 6.4 Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile or electronic mail), each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other parties hereto The words "execution," "signed," "signature," and words of like import in this Agreement or in any other certificate, agreement or document related to this Agreement shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf", "tif" or "jpg") and other electronic signatures (including, without limitation, DocuSign and AdobeSign). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

Section 6.5 Entire Agreement; No Third Party Beneficiary. This Agreement, including the Transaction Documents (as defined in the SPA), constitutes the entire agreement, and supersedes all other prior agreements and understandings, both written and oral, among the parties and their Affiliates, or any of them, with respect to the subject matter hereof and thereof. No provision of this Agreement shall confer upon any Person other than the parties hereto and their permitted assigns any rights or remedies hereunder.

Section 6.6 Governing Law; Jurisdiction.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed in and to be performed entirely within that State, regardless of the laws that might otherwise govern under any applicable conflict of laws principles.

(b) All legal or administrative proceedings, suits, investigations, arbitrations or actions ("Actions") arising out of or relating to this Agreement shall be heard and determined in the courts of the State of New York located in the City of New York, Borough of Manhattan, or of the United States of America for the Southern District of New York, and the parties hereto hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Action and irrevocably waive the defense of an inconvenient forum or lack of jurisdiction to the maintenance of any such Action. The consents to jurisdiction and venue set forth in this Section 6.6 shall not constitute general consents to service of process in the State of New York and shall have no effect for any purpose except as provided in this paragraph and shall not be deemed to confer rights on any Person other than the parties hereto. Each party hereto agrees that service of process upon such party in any Action arising out of or relating to this Agreement shall be effective if notice is given by overnight courier at the address set forth in Section 6.8 of this Agreement. The parties hereto agree that a final judgment in any such Action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law; provided, however, that nothing in the foregoing shall restrict any party's rights to seek any post-judgment relief regarding, or any appeal from, a final trial court judgment.

Section 6.7 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER, (C) IT MAKES SUCH WAIVER VOLUNTARILY AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 6.7.

Section 6.8 Notices. All notices, requests and other communications to any party hereunder shall be in writing and shall be deemed given if delivered personally, emailed (which is confirmed) or sent by overnight courier (providing proof of delivery) to the parties at the following addresses:

(a) If to the Company, to it at:

MiMedx Group, Inc.
1775 West Oak Commons Ct. NE
Marietta, GA 30062

Attn: William F. “Butch” Hulse
Email: BHulse@mimedx.com

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

Sidley Austin LLP
787 Seventh Avenue
New York, New York 10019
Attn: Asi Kirmayer
Email: akirmayer@sidley.com

(b) If to the Purchaser or any Holder at:

Falcon Fund 2 Holding Company, L.P.
21 Waterway Avenue
Suite 225
The Woodlands, TX 77380
Attn: Richard Kolodziejcyk, Chief Financial Officer
Email: rkolodziejcyk@ewhealthcare.com

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

Reed Smith LLP
599 Lexington Avenue
New York, NY 10022-7650
Attention: Mark Pedretti
Email: MPedretti@ReedSmith.com

or such other address or email address as such party may hereafter specify by like notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of actual receipt by the recipient thereof if received prior to 5:00 p.m. local time in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

Section 6.9 Severability. If any term, condition or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, provisions and conditions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term, condition or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable law.

Section 6.10 Expenses. Except as provided in Section 3.3, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

Section 6.11 Interpretation. The rules of interpretation set forth in Section 1.2 (Construction) of the SPA shall apply to this Agreement, *mutatis mutandis*. For the avoidance of doubt, nothing in this Agreement is intended to permit any action by the Investor that is prohibited by Section 5.4 (Transfer Restrictions) of the SPA.

[*Signature pages follow*]

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

MIMEDX GROUP, INC.

By: /s/ Timothy R. Wright
Name: Timothy R. Wright
Title: Chief Executive Officer

[*Signature Page to Registration Rights Agreement*]

FALCON FUND 2 HOLDING COMPANY, L.P.
By: EW Healthcare Partners Fund 2-UGP, LLC,
its general partner

By: /s/ Martin P. Sutter
Name: Martin P. Sutter
Title: Authorized Signatory

[*Signature Page to Registration Rights Agreement*]

EXHIBIT A

DEFINED TERMS

The following capitalized terms have the meanings indicated:

"Actions" shall have the meaning given to such term in Section 6.6(b).

"Adverse Disclosure" means public disclosure of material non-public information that, in the good faith judgment of the Company (after consultation with legal counsel): (i) would be required to be made in any registration statement filed with the SEC by the Company so that such registration statement would not be materially misleading; (ii) would not be required to be made at such time but for the filing, effectiveness or continued use of such registration statement; and (iii) the Company has a *bona fide* business purpose for not disclosing publicly.

"Affiliates" shall have the meaning given to such term in the SPA.

"Agreement" shall have the meaning given to such term in the Preamble.

"Business Day" shall have the meaning given to such term in the SPA.

"Common Stock" means all shares currently or hereafter existing of the Company's common stock, par value $0.001 per share.

"Company" shall have the meaning given to such term in the Preamble.

"Company Indemnified Parties" shall have the meaning given to such term in Section 4.1.

"Demand Registration" shall have the meaning given to such term in Section 2.1.

"Demand Registration Request" shall have the meaning given to such term in Section 2.1.

"Demand Registration Statement" shall have the meaning given to such term in Section 2.1.

"Effectiveness Deadline" means the date 90 days following the Company's receipt of a written request from the Purchaser to file a Resale Shelf Registration Statement under Section 1.1, provided, that (a) if the SEC reviews and has written comments to any Resale Shelf Registration Statement that has been filed by the Company on Form S-1, then the Effectiveness Deadline shall be extended to the date 120 calendar days following the Company's receipt of a written request from the Purchaser to file such Resale Shelf Registration Statement, and (b) if the Effectiveness Deadline falls on a Saturday, Sunday or other day that the SEC is closed for business, the Effectiveness Deadline shall be extended to the next Business Day on which the SEC is open for business.

"Effectiveness Period" shall have the meaning given to such term in Section 1.2.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and any successor statute thereto, and the rules and regulations of the SEC promulgated thereunder.

"FINRA" means the Financial Industry Regulatory Authority, Inc.

"Form S-1" means such form under the Securities Act as in effect on the date hereof or any successor registration form under the Securities Act subsequently adopted by the SEC.

"Form S-3" means such form under the Securities Act as in effect on the date hereof or any registration form under the Securities Act subsequently adopted by the SEC that permits incorporation of substantial information by reference to other documents filed by the Company with the SEC.

"Holder" means any Investor holding Registrable Securities.

"Holder Indemnified Parties" shall have the meaning given to such term in Section 4.2.

"Indemnified Party" shall have the meaning given to such term in Section 4.3.

"Indemnifying Party" shall have the meaning given to such term in Section 4.3.

"Interruption Period" shall have the meaning given to such term in Section 3.1(o).

"Investor" shall have the meaning given to such term in the Preamble.

"Lock-Up Period" shall have the meaning given to such term in the SPA.

"Losses" shall have the meaning given to such term in Section 4.1.

"Marketed Underwritten Offering" means any Underwritten Offering that includes a customary "electronic road show" or other marketing efforts by the Company and the underwriters, which for the avoidance of doubt, shall not include block trades (it being understood that nothing in this Agreement shall require the Company to participate in any in-person road show).

"Minimum Amount" shall mean $75 million; provided that if all the Holders are proposing to sell all of their remaining Registrable Securities, the "Minimum Amount" shall mean zero.

"Offering Persons" shall have the meaning given to such term in Section 3.1(l).

"Permitted Debt Financing" shall have the meaning given to such term in Section 3.6.

"Person" means any individual, corporation, limited liability company, partnership, joint venture, association, trust, unincorporated organization or any other entity, including a governmental authority.

"Piggyback Notice" shall have the meaning given to such term in Section 1.7(a).

"Piggyback Registration Statement" shall have the meaning given to such term in Section 1.7(a).

"Piggyback Request" shall have the meaning given to such term in Section 1.7(a).

"Purchaser" shall have the meaning given to such term in the Preamble.

"register", "registered" and "registration" refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement or the automatic effectiveness of such registration statement, as applicable.

"Registrable Securities" means, as of any date of determination, any shares of Common Stock issued or issuable upon the conversion of the Private Placement Shares (as such term is defined in the SPA) hereafter held by the Purchaser, including any other equity securities issued or issuable with respect to any such shares of Common Stock by way of share split, share dividend, distribution, recapitalization, merger, exchange, replacement, reorganization, conversion or similar event. As to any particular Registrable Securities, once issued, such securities shall cease to be Registrable Securities when (i) such securities are sold or otherwise transferred pursuant to an effective registration statement under the Securities Act, (ii) such securities shall have ceased to be outstanding, (iii) such securities have been transferred in a transaction in which the Holder's rights under this Agreement are not assigned in accordance with the terms of this Agreement to the transferee of the securities, (iv) such securities are sold or disposed of under circumstances in which all of the applicable conditions of Rule 144 (or any similar provisions then in force) are met, or (v) as to any Registrable Securities that are Common Stock of a Holder, at any time such Holder and its Affiliates own less than 1% of the outstanding shares of Common Stock.

"Registration Expenses" means (i) all expenses incurred by the Company in complying with Article I or Article II, including all registration, qualification, listing and filing fees, printing expenses, escrow fees, and fees and disbursements of counsel for the Company, fees and disbursements of the Company's independent public accountants, fees and disbursements of the transfer agent, blue sky fees and expenses, *plus* (ii) reasonable and documented out-of-pocket fees and disbursements of legal counsel to the Holders incurred in connection with the filing of any registration statement that the Company is required to file under this Agreement, up to a maximum of $10,000 per registration statement filed hereunder, and provided that the Company will not be responsible for any fees and disbursements of more than one firm of attorneys for all Holders.

"Registration Rights Effective Date" shall have the meaning given to such term in Section 1.1.

"Resale Shelf Registration Statement" shall have the meaning given to such term in Section 1.1.

"Restricted Securities" means any Common Stock required to bear the legend set forth in Section 5.5(a) of the SPA.

"Rule 144" means Rule 144 promulgated under the Securities Act and any successor provision.

"Rule 462(e)" means Rule 462(e) promulgated under the Securities Act and any successor provision.

"SEC" means the U.S. Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and any successor statute thereto, and the rules and regulations of the SEC promulgated thereunder.

"Selling Expenses" means (a) all underwriting discounts, selling commissions and stock transfer taxes applicable to the securities registered by the Holders and the fees and expenses of any auditor of any Holders or any counsel to any Holders (other than such fees and expenses included in Registration Expenses) or any underwriters, (b) all out-of-pocket fees and expenses of legal counsel, brokers, advisors or accountants retained by the Holders in connection with any registration contemplated hereby (other than such fees and expenses included in Registration Expenses) and (c) any applicable transfer or similar taxes.

"Series B Preferred Stock" shall have the meaning given to such term in the Recitals.

"Shelf Offering" shall have the meaning given to such term in Section 1.6(a).

"Shelf Registration Statement" means the Resale Shelf Registration Statement, a Subsequent Shelf Registration Statement or any other shelf registration statement pursuant to which any Registrable Securities are registered, as applicable.

"SPA" shall have the meaning given to such term in the Recitals.

"Subsequent Holder Notice" shall have the meaning given to such term in Section 1.5.

"Subsequent Shelf Registration Statement" shall have the meaning given to such term in Section 1.3.

"Underwritten Offering" means a registered offering in which securities of the Company are sold to one or more underwriters on a firm-commitment basis for reoffering to the public.

"Underwritten Shelf Take-Down" shall have the meaning given to such term in Section 1.6(b).

"Underwritten Shelf Take-Down Notice" shall have the meaning given to such term in Section 1.6(b).

Exhibit 21.1

MiMedx Group, Inc.
List of Subsidiaries

Company	**Jurisdiction of Organization**
MiMedx Tissue Services, LLC	Georgia
MiMedx Processing Services, LLC	Florida

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

MiMedx Group, Inc.
Marietta, Georgia

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8, (No. 333-153255, 333-183991, 333-189784, 333-199841, and 333-211900) of MiMedx Group, Inc. of our reports dated July 6, 2020 relating to the consolidated financial statements, and the effectiveness of MiMedx Group, Inc.'s internal control over financial reporting, which appear in this Form 10-K. Our report on the effectiveness of internal control over financial reporting expresses an adverse opinion on the effectiveness of MiMedx Group, Inc.’s internal control over financial reporting as of December 31, 2019.

/s/ BDO USA, LLP
Atlanta, Georgia

July 6, 2020

EXHIBIT 31.1

Certification

I, Timothy R. Wright, certify that:

1. I have reviewed this report on Form 10-K 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

Timothy R. Wright

Chief Executive Officer

EXHIBIT 31.2

Certification

I, Peter M. Carlson, certify that:

1. I have reviewed this report on Form 10-K 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

Peter M. Carlson

Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 90S 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 Annual Report on Form 10-K for the period ending December 31, 2019 (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

Timothy R. Wright
Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 90S 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 Annual Report on Form 10-K for the period ending December 31, 2019 (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

Peter M. Carlson
Chief 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 it 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 Degressive 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 Degressive Issuance; and

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

provided, however, that (A) the Conversion Price will not be adjusted pursuant to this Subsection 11(b) to the extent that the Degressive 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